



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**CEREMONIAL SITTING OF THE FAIR WORK COMMISSION
TO WELCOME DEPUTY PRESIDENT FAROUQUE
AND COMMISSIONER CLARKE**

Melbourne

9.30 AM, MONDAY, 12 MAY 2025

PN1

JUSTICE HATCHER: Good morning, everybody. I begin by acknowledging the Wurundjeri people of the Kulin Nation, the traditional custodians of this land, and I pay my respects to the elders past, present and emerging. I extend that respect to any Aboriginal and Torres Strait Islander persons here today.

PN2

This morning's ceremony is for the purpose of acknowledging the appointment to the Fair Work Commission of Deputy President Farouque and Commissioner Clarke. I welcome their families, the speakers at the Bar table and all the other guests present.

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So, to start off with, I'll ask Mr Breen, the assistant secretary of the Department of Employment and Workplace Relations who is representing the secretary of the department to address the Commission first. Mr Breen?

PN4

MR BREEN: Thank you. May it please the Commission. I begin today by associating myself with your acknowledgement of country and pay my respects to the elders of the Wurundjeri people of the Kulin Nation, both past and present, and extend that respect to all Aboriginal and Torres Strait Islander peoples who are present today.

PN5

It's an honour for me to be here representing the Australian Government at today's welcoming of Deputy President Farouque and Commissioner Trevor Clarke. I acknowledge, your Honour the President and all members of the Fair Work Commission, as well as representatives from the legal community, industry and the trade union movement present today. I welcome and acknowledge Deputy President Farouque and Commissioner Clarke and the members of your families on this significant occasion.

PN6

It has been more than 15 years since the Fair Work Commission was established. In this time our society has evolved. The Commission and its predecessors have helped to shape Australia's workplace landscape for more than 100 years, and this role is still as important as ever. This is highlighted with the implementation of recent workplace relations reforms to ensure secure jobs, better pay and safer working conditions for Australian workers.

PN7

The Commission has evolved to keep up with the pace of change that we are seeing both in our economy and our society, because as much as our society has changed, the fundamental tenet of a fair go must be upheld. There must be balance and there must be fairness, and that's what is delivered by the Commission. As the nation changes, so too does the framework of our workplace relations system. With the Fair Work legislation covering the majority of Australian workplaces, the decisions of the Commission are impacting the nation. These decisions are felt in homes and they are felt in workplaces.

PN8

The Commission is required to perform functions and exercise powers under the Fair Work Act 2009 in a manner that is fair and just, open and transparent and in a way that promotes harmonious and cooperative workplace relations. The Australian Government is absolutely determined that the Commission will continue to perform its functions in this way.

PN9

Deputy President Farouque, you bring to the Fair Work Commission a breadth of knowledge and experience in workplace relations, with almost 30 years of experience as both a lawyer and union official before your appointment to the Commission. In 1995 you graduated from the University of Adelaide with a Bachelor of Laws and a Bachelor of Arts. You began your career as a graduate public servant at the Commissioner for Public Employment of South Australia.

PN10

From 1996 to 1999 you held roles as a trainee industrial advocate at the Australian Council of Trade Unions, a prosecutions officer at the Liquor, Hospitality and Miscellaneous Workers' Union, an associate of the Federal Court of Australia and a national industrial officer at the Finance Sector Union. In 1999, you became a barrister at the Victorian Bar before joining Maurice Blackburn as in-house counsel in 2004. In 2008, you were appointed to the role of senior associate at Maurice Blackburn, before being appointed as a principal lawyer at the firm in 2010, a role you held until you were appointed to this Commission on 7 April.

PN11

As a lawyer at Maurice Blackburn, you made many appearances before this Commission and the courts representing trade unions and employees in key industrial and employment matters. You also presented at various seminars hosted by the courts and the Law Institute of Victoria, among others, on diverse topics such as costs issues in industrial law, adverse action matters and restraints of trade. Further, you are recognised as a pre-eminent lawyer in Doyle's Guide from 2016 to 2024.

PN12

Deputy President Farouque, you bring to this role strong leadership experience, and with your expertise and experience in workplace relations I am confident you will execute your duties with impartiality and diligence.

PN13

Commissioner Clarke, you bring to the Fair Work Commission a wealth of knowledge and experience in workplace relations, having represented the interests of workers as a lawyer and official of the Australian Council of Trade Unions for over 20 years before your appointment to the Commission.

PN14

In 1999, you graduated from La Trobe University with a Bachelor of Laws and a Bachelor of Arts. In 2001 you commenced a role as a solicitor at Slater and Gordon, where you undertook secondments to the Office of the Premier of Victoria and the United Firefighters Union. In 2005, you were appointed to the role of associate at Slater and Gordon and, in 2007, you were appointed to the role

of senior associate at the firm. As a lawyer at Slater and Gordon you gained experience in litigation across diverse subject matter, including industrial action, unfair dismissal, discrimination and work health and safety disputes.

PN15

In 2009, you became an industrial officer at the Australian Council of Trade Unions before being appointed as Director, Industrial and Research, and later as Manager, Industrial and Legal, at the organisation, a role you held until you were appointed to this Commission on 24 March. At the Australian Council of Trade Unions, you developed comprehensive resources for the organisation's affiliates to assist with the transition to the Fair Work system and successive amendments. While at the Australian Council of Trade Unions you also delivered advocacy training in most Australian states to union staff to prepare and conduct conciliation and arbitration proceedings in the Commission.

PN16

In your career at Slater and Gordon and the Australian Council of Trade Unions, you made many appearances before this Commission and the courts representing trade unions and the interests of workers, including in processes such as the Annual Wage Review. Commissioner Clarke, with your strong leadership experience and your expertise in workplace relations, I'm confident you will exercise your duties with impartiality and diligence.

PN17

The government has made it clear that for the Commission to work as intended, it needs to be properly balanced. That is why it is restoring balance to the Fair Work Commission to give workers as equal a voice as employers in decisions that affect them. Your Honour, great responsibility is placed on members of the Fair Work Commission. The balance and fairness of the system depends on the integrity, judgment and skills of members of the tribunal and its senior leaders. If they are to discharge their responsibilities effectively, they require the goodwill, understanding and cooperation of parties, employers, employees and their representatives. I trust this will be forthcoming from all concerned to Deputy President Farouque and Commissioner Clarke.

PN18

Deputy President Farouque and Commissioner Clarke, on behalf of the Australian Government I congratulate you on your appointments to the Fair Work Commission. I have no doubt you will make an important contribution to the work of the Commission for years to come. I convey our goodwill and wish you well in the exercise of the responsibilities of your office. Thank you.

PN19

JUSTICE HATCHER: Ms O'Neil, the President of the Australian Council of Trade Unions.

PN20

MS O'NEIL: Thank you, Your Honour, and I also want to begin by acknowledging the traditional owners of the lands we're meeting on today, the Wurundjeri people of the Kulin Nation. I pay all my respects to elders past and present. It always was, and it always will be, Aboriginal land.

PN21

I'd also like to acknowledge you, Your Honour, and all the Members of the Fair Work Commission, as well as members of the trade union movement, industry and the legal community, and especially the friends and families of the new Deputy President and Commissioner we are welcoming today.

PN22

Your Honour, on behalf of the ACTU, the Australian trade union movement and the working people of this country, it's my honour to acknowledge Deputy President Kamal Farouque and Commissioner Trevor Clarke and congratulate them on their appointments. They will now help to lead one of Australia's most respected and unique institutions. The Commission and its predecessors have underpinned an industrial relations system that strives to achieve fairness at work and some of the highest living standards in the world. Your appointments make one of our nation's most trusted and important institutions even more so.

PN23

Let me first turn to my reflections on Commissioner Clarke. I first met Trevor over 20 years ago, when he was a brand-new, baby lawyer at Slater and Gordon, helping my then union, the Textile, Clothing and Footwear Union of Australia to pursue justice for our members. I remember Trevor representing us in a mediation in the Federal Court when we were prosecuting a clothing employer who had exploited home-based out-workers in his supply chain, trying to provide us very earnest, sensible and calm advice in the midst of a wild storm of accusations and, let's just say, more than a little use of negotiating tactics that had little to do with legal precedent but a lot to do with passion and setting a new example in an industry in desperate need of a clean-up. He learnt quickly. He respected and valued the skill and capacity of those who weren't lawyers and never took his eye off the people who it was really for.

PN24

He was in the employment and industrial team at Slater's for a decade, rising to senior associate, as well as doing a stint at the United Firefighters Union. Trevor then joined the ACTU in 2009 as a legal and industrial officer, initially to help the union movement with the roll-out of the Fair Work Act, before progressing to become the manager of industrial and legal work in 2012. For these 15 years Trevor has been the Australian trade union movement's guardian angel of the modern awards system, involved in every major case and an endless source of advice for all unions, from the never-ending four-yearly reviews of modern awards, the Sunday penalty rate case, the COVID-19 variations and, more recently, gender undervaluation.

PN25

Most major IR test cases over this period have had Trevor somewhere in the mix, but it is his efforts over 15 annual wage reviews on behalf of the ACTU and all award-reliant workers that has made him a legend in our movement. There is no piece of data, argument or rhetoric that hasn't been subjected to his forensic examination over this period. I'm not exaggerating. Here's a couple of examples from last year's Annual Wage Review submissions.

PN26

Firstly, he argued the economic impact of Taylor Swift's Eras Tour and how it slightly improved the economic health of key award-reliant sectors, an important sign of the strength of the hospitality and entertainment sectors, despite their opposition to the ACTU claim.

PN27

Secondly, he carefully scrutinised the impact of Chinese tariffs on exports of wine by members of the South Australian Wine Association, finding that rapidly increasing imports into the administrative territories of Hong Kong and Macau and Taiwan were off-setting some of the tariff losses, essential to counter the argument that the tariff changes left South Australian winemakers unable to afford an increase in workers' minimum wage.

PN28

Do these insights persuade the expert panel? If there was even a tiny glimmer of a chance that it might, Trevor would be up until the early hours of the morning exploring it. Few people would do this, but few people have Trevor's profound sense of fairness and justice, a tremendous work ethic and unwavering commitment to respecting what the evidence is telling us, and a curiosity for legal argument powered by a formidable intellect. These qualities also turned him, perhaps inadvertently, into our resident polymath, exploring any and all economic, legal and public policy arguments in support of a fair pay increase for some of Australia's lowest paid workers.

PN29

He's also employed these qualities in putting forward the ACTU's position in countless cycles of law reform inquiries, reviews and Royal Commissions. There is unlikely to be any amendments to the Fair Work Act that Trevor hasn't sought to influence on behalf of working people, with some success. He has a rare ability to quickly grasp the overall architecture of a legal issue, paired with his uncanny ability to spot unintended consequences or ambiguities in legislation.

PN30

The respect Trevor has across the union movement is profound. In case of an emergency, a union industrial officer doesn't break the glass, they give Trevor Clarke a ring, because as described to me by one such union lawyer, he's responsive, collegiate, personable and always ready to help. Trevor has no ego. He appears to remember everything he's ever read. His incredible sharpness is often hidden behind his laconic and broad delivery and a trademark sense of humour, dry and often absurdist. He has also been a great mentor to many, generous with his time, patient, supportive and kind. He always sees and grabs onto the best in people.

PN31

A word of warning, however. These qualities stand in stark contrast to his taste in music, dark, gloomy and heavy. He likes bands with names like My Dying Bride and Cradle of Filth. This just might be his secret weapon in this place. If parties can't settle a matter in conciliation, the good Commissioner can just threaten everyone with his Spotify playlist. Musical tastes aside, I hope this gives everyone here an idea of why we are delighted that Trevor is now a Commissioner

of the Fair Work Commission. His tremendous qualities will be an asset to this place and everyone who walks through these doors seeking fairness at work.

PN32

I also want to offer a few remarks on Deputy President Farouque. Kamal has made an extraordinary contribution to the lives of working people. He is well known for his diligence, his rectitude and his firm moral commitment to ensuring the system operates fairly and that no worker is discriminated against or unfairly disadvantaged.

PN33

Kamal graduated from the University of Honours with a Bachelor of Laws and a Bachelor of Arts. He worked as a graduate public servant in South Australia before working as a trainee industrial officer with the ACTU. This was followed by working as a legal officer with the LMHU, now the United Workers Union, and later as the National Industrial Officer for the Finance Sector Union. Kamal spent five years from 1999 as a barrister at the Victorian Bar before starting with Maurice Blackburn as in-house counsel in 2004. From 2008 to 2010, he was a senior associate at the firm and since 2010 has been a principal lawyer there.

PN34

This listing of career accomplishments is indicative of Kamal's first-rate legal mind and his extraordinary work ethic and commitment to his profession, but beneath this listing of dates and positions there's so much more. He is well loved and deeply respected as one of the foremost industrial lawyers in the country by members of his legal team, the broader labour movement and across the aisle. He's very generous with his time and expertise, especially in lending his personal knowledge and support in the training of the next generation of lawyers.

PN35

He's a brilliant lawyer, an empathetic leader, a respectful mentor and an all-round good guy, but a good guy who can sometimes upset expectations. Colleagues have noted surprise at his obsession with muscle cars. Maybe Trevor can bring along the soundtrack for any road trips they do together. Perhaps more expected is his enthusiasm for cycling and the finest brewed coffee known to humanity.

PN36

Most of all, in his legal practice Kamal has been driven by his values, his deep and abiding belief in fairness and equality before the law. In essence, his deep conviction to the fair go for everyone. Those who have worked with Kamal and those who have received the benefit of his hard work testify to this fact.

PN37

There are many examples through his distinguished legal career, but I wanted to make mention of one in particular. Those gathered here today may recall the case from a few years ago when a technician working for BP was sacked by the company after privately sharing a satirical meme based on the movie Downfall amid some heated and difficult enterprise bargaining. Despite being shared on a private Facebook group the company pursued the worker. While the Commissioner rejected the initial claim of unfair dismissal, this was appealed to a

Full Bench, which reinstated the worker, finding that the meme was satirical. BP then challenged this in the Federal Court, a challenge that was dismissed.

PN38

Kamal took on the case defending the worker pro bono. This was a case when the extraordinary power of a large and wealthy company was brought to bear on an individual worker, backed only by his union and his lawyer. This case was about protecting that individual worker's rights, and this alone made it of extraordinary importance, but this case was about something bigger, that a large employer should not be able to override a worker's right just because they're big and powerful.

PN39

More than a century ago, Australia pioneered an industrial system that would ensure fairness for working people as well as employers. Through all the time that has passed, and all the changes made, we've all had to work hard to ensure that the system continues to deliver fairness and equality. This has not just happened. It has required diligence, dedication and hard work from justices, lawyers, unions and, yes, employers, to ensure that our fundamental Australian belief in the fair go is embedded in the heart of our industrial system.

PN40

Through his time as an industrial lawyer, Kamal has demonstrated himself to be an ardent and persuasive defender of the fundamental principles upon which our industrial system was built. We know that as Deputy President of the Fair Work Commission he will continue the Commission's proudest tradition of upholding those fundamental values of fairness and equality.

PN41

Finally, I want to say that rebalancing the Fair Work Commission is critically important for the trust and confidence in this most important institution, and in Trevor and Kamal - the Commission and Australia's IR system are getting two of the hardest working, sharpest and fairest practitioners in the country. This will be felt by the working people who often trepidatiously walk through its doors, and by employers, and it will be written across every page of the decisions that come out of this place with their names on it.

PN42

I'm sure Deputy President Farouque's family and Commissioner Clarke's family are incredibly proud of them, but we in the union movement, we'll miss them. Our loss, yes, but it will be outweighed by everyone's gain. Congratulations again to Commissioner Clarke and Deputy President Farouque. If it pleases the Commission.

PN43

JUSTICE HATCHER: Ms Bell from the Victorian Chamber of Commerce and Industry on behalf of employers generally.

PN44

MS BELL: Thank you, Your Honour, and good morning. I acknowledge the traditional owners of the land on which we're meeting today and pay my respects

to their elders past and present and any Aboriginal elders of other communities who may be with us today. I'd like to acknowledge those Members of the Fair Work Commission in front of me, as well as those next to me at the Bar table, and of course acknowledge our newest members of the Commission, Deputy President Farouque and Commissioner Clarke, as well as their friends and family who join us today.

PN45

The Fair Work Commission, deeply entrenched in Australia's socio-economic landscape, plays a pivotal role in bridging the interests of businesses and employees, ensuring that both prosper. In difficult economic times the Commission's role is magnified. It needs stable and strong minds to keep Australia's economy moving. Today it's my privilege to introduce two minds, Deputy President Farouque and Commissioner Clarke, to the Fair Work Commission.

PN46

Of course, Deputy President Farouque is no stranger to the Fair Work Commission, having forged an illustrious career, primarily through his practice of employment, discrimination and workplace law. You boast an exemplary legal resume, having been called to the Bar in 1999, and your appointment as Principal Lawyer at Maurice Blackburn in 2010. Your extensive career of the officer of the court promoting justice and upholding the law holds you in great stead to execute your duties of the Commission with diligence, integrity and impartiality.

PN47

And, Commissioner Clarke, as we've heard, you've enjoyed a lengthy career as a legal professional within the union movement, demonstrating your enduring commitment to advocacy, to the industrial relations space and making Australian workplaces better. You're of course no stranger to the Fair Work Commission, and as a result of your previous roles, where you recently most concluded your role as a manager of industrial legal matters.

PN48

Deputy President Farouque and Commissioner Clarke, your appointments come at a time when the work of the tribunal has never been more critical. Over the past years our economy has faced immense challenges, the effects of the pandemic, shifts in workplace dynamics and an overwhelmingly increase to complexities of the industrial relations system, to name but a few.

PN49

As you both embark on this new chapter with the Fair Work Commission you bring not just years of experience but a drive to make Australian workplaces better. While you both come from a union background and I from an employer one, I lack any reservation about your resolute commitment to the impartial discharge of your duties as a Fair Work Commissioner.

PN50

On behalf of the Australian Chamber of Commerce and Industry and employers generally, we look forward with optimism, knowing that under your guidance we'll continue to ensure a productive and fair industrial landscape in Australia that

balances both the interests of employees and employers. If the Commission pleases.

PN51

JUSTICE HATCHER: Mr Ballantyne, Deputy President of the Law Institute of Victoria, on behalf of the legal profession.

PN52

MR BALLANTYNE: Thank you. If the Commission pleases. I would first like to acknowledge the traditional owners of the lands on which we meet. It's a legal fact that this is Aboriginal land, and the LIV believes that acknowledgements of country play an important role in reconciliation.

PN53

The Law Institute's president, Matthew Hibbins, has asked me to extend his welcome and his congratulations to you both today. He was unfortunately unable to attend. Deputy President Farouque and Commissioner Clarke, we congratulate both of you on your appointments. At these events I usually only have to follow the Bar, which is not too difficult a task, but after these three wonderful speeches, I think it's important to note that the well of content, of probably patience, of everyone watching has run dry and I'll try not to rehash old ground. What I do want to do, though, is just share a few reflections from solicitors that you've worked with over your career that I think highlight the extensive experience and the dedication and the attributes that you bring to your new roles.

PN54

First, Commissioner Clarke. We've heard a lot about your career at the ACTU, where you were known for your exhaustive attention to detail and advocacy on behalf of low-paid workers. Ben Moxham, who is the Legal and Policy Director there, told us that in your former role you were a key player in all the major award cases which have come before this Commission over the past decade. He said that you were always generous with your time and modest about your achievements. He said that you possess an incredible legal mind, which will be greatly missed by all who sought your counsel. I'm told that many people regularly picked up the phone to consult you and seek your advice over your career.

PN55

Marcus Clayton, who is the Partner and Head of Industrial Law at Gordon Legal, told us that you are a lateral thinker as well as an excellent lawyer with a deep commitment to workers' rights and to fair and decent living standards and working conditions for all. He told us that you're compassionate, with a sincere belief in the critically important role that unions play in the industrial relations system and Australian society in general.

PN56

Marcus also noted your quirky sense of humour, which he said many find appealing, but he also said that he never got his head around your one major flaw, which was your deep and abiding love of heavy music, which seems to be a theme. The thing about time is that the kids grow up and we bring our questionable taste in music with us.

PN57

Deputy President Farouque, I'm here on behalf of the Law Institute, but I'm also honoured to have known and worked with you for many years at Maurice Blackburn. I've always been impressed by your formidable legal mind, but the other thing that has always stood out is your dedication to achieving a fair and equitable workplace for all workers.

PN58

Karen Batt, who is the Victorian branch secretary of the CPSU, agreed. For 25 years you've managed the union's legal work, and she said that you always provided strong legal advice in a very practical way. Karen says you managed to direct your clever mind to her many legal problems and mostly managed to come up trumps whenever the instructions were simply, 'just find me a way.'

PN59

I want to highlight that these sentiments were shared across the union movement. People were lining up to tell us about your intellect, your dignity and your compassion, and we could go on for hours, frankly, with all of the insights. Hearing all that, it's no surprise that you'll be greatly missed at our firm at Maurice Blackburn. Our CEO, Jacob Varghese, describes you as remarkable, a fundamentally decent human being who lives his values consistently. Jacob also once described you as the smartest person at Maurice Blackburn. Now, many of my colleagues will find that deeply wounding, but I want to say to them, deep down I think we all know that he was right.

PN60

Then there are those who have been opposed to you and experienced the weight of your arguments over the years. Ross Jackson, who is a principal lawyer at Maddocks is one such practitioner. Ross said that one interesting thing, having been opposed to you for so long, is that the professional regard for each other has deepened over that time, and he said that your standing in the profession is reflected in this appointment. In his words, you are a wonderfully principled man, fair in any fight and taking an evidence-based approach to every argument. He thought that you would be a wonderful appointment to this Commission.

PN61

You also have a rich life outside of work. We've heard about your love of cycling, which was so all-encompassing that it led to a ban on Lycra in the CPSU offices. You're also a devoted animal lover, with a menagerie of cats, dogs and even a horse. Occasionally these creatures have interrupted important work meetings, and I'm told that you would then descend into what was described as an alarmingly explicit display of affection. I suspect it's probably the only time a Deputy President of this Commission has ever uttered the word 'Shnookums'.

PN62

You're of course also a committed family man, and we want to recognise the support that Mary, Laila and Zara and the rest of your family have provided to you over your career and wish them all the best.

PN63

Deputy President Farouque and Commissioner Clarke, you are both clearly enormously respected throughout the legal profession and have helped drive legal industrial law and policy in our country for more than two decades. I want to congratulate you and welcome you to the Fair Work Commission on behalf of all of the solicitors of the State of Victoria and across the country. You're clearly both wonderful appointments and we wish you all the best in your new career. If the Commission pleases.

PN64

JUSTICE HATCHER: I'll now invite Deputy President Farouque to make some remarks.

PN65

DEPUTY PRESIDENT FAROUQUE: Thank you, your Honour. I too acknowledge the Wurundjeri people of the Kulin Nation, the traditional owners and custodians of the land on which the Commission in Melbourne sits today. I pay my respects to the elders past and present.

PN66

I would like to thank all of the speakers today for their kind and generous words. Some of them have revealed a few of my minor and benign eccentricities, but I forgive them for that. I also want to congratulate Commissioner Clarke on his appointment. He is indeed a worthy addition to the Commission, as you've heard today.

PN67

I would like to thank all of my new colleagues at the Commission. Both the staff and other members of the Commission have indeed given me a warm welcome. The collegiality shown to me by other members of the Commission has been impressive and heartening, regardless of their previous professional backgrounds, and I want to emphasise that. I am, though, hopeful that this spirit of collegiality will continue when a hastily penned but robust set of reasons from a newly minted DP comes before a Full Bench of my colleagues (indistinct).

PN68

I particularly want to acknowledge Commissioner Harper-Greenwell and longstanding Commission employee Michael Holland for the significant work that they've put into the induction for new Commission members, and I have benefited greatly from that. My associate Bree Booth has provided excellent support to me during my first month in the Commission and I'm very glad I appointed her to the job.

PN69

I am pleased to see Commissioner Tran here today and, hopefully, Commissioner Lim on video-link. I'm mindful that my appointment, like theirs, contributes to the diversity in the composition of the Commission. I do believe that it is important that the composition of the Commission broadly reflects the diversity of those who come before it as employers and workers.

PN70

To be appointed to the Fair Work Commission is both a great honour and responsibility. The Commission is a unique and historic national institution. It performs a diverse range of functions relating to collective bargaining, minimum employment standards, gender equity and individual worker rights, to name a few, so I'm very mindful of the significant responsibility entailed in becoming a member of the Commission and also of the tremendous and exciting opportunity it presents, including in its newly acquired jurisdictions.

PN71

While I'm new to the Commission, the Commission is not new to me. I have been appearing before it since 1996, when I started as a trainee industrial advocate at the ACTU. It was an amazing opportunity to cut my teeth and learn the art of advocacy doing unfair dismissals, award and collective bargaining matters. I had the memorable experience of being taught the art of industrial advocacy amidst the magnificent brutalist architecture of Clyde Cameron College in the ACT, a fantastic memory.

PN72

One of my first cases as a trainee industrial advocate at the ACTU was an unfair dismissal. I'm not sure what the presiding member thought when I entered an appearance as an ACTU advocate in an unfair dismissal. It certainly wasn't the national wage case, but it was important for that worker and it was important for me as my first case. Anyway, we won. We got an order for \$6,000 compensation. The employer refused to pay. We sent in the sheriff to seize the cappuccino machine, and the employer promptly wrote a cheque on the spot.

PN73

I subsequently worked at the LHMU, as you've heard, where as a young industrial officer I benefited greatly from the guidance of then legal officer Brian Tee, who gave me endless opportunities to run cases in the court and the Commission. I think he was just actually relieved to have somebody else to help. I recall that Brian allocated me a redundancy case involving contract workforce at the airport in which my opponent was the soon to be Justice Giudice. It was Justice Giudice's last case as a barrister before he was appointed President of the Commission. Needless to say, I lost that case, but that was one of the great experiences of doing that job. You got to run all sorts of matters at the veritable deep end and learn.

PN74

Right through my time in appearing in the Commission I had great exposure to the varying styles of different members, including Deputy President Watson, Commissioner Whelan, Commissioner Tolley, who indeed had a very distinctive and robust style, Commissioner Cribb and Commissioner Foggo, Deputy President Smith, Commissioner Gay, Commissioner Bissett and Commissioner Roe.

PN75

Many of those members had just a remarkable ability to resolve disputes through the power of conciliation, a professional skill which I hope to effectively deploy, one which is sometimes underrated, but it involves, importantly, the capacity to listen and understand the different and varying interests of parties and navigate to

a common outcome. I remember many a successful late-night conference before Commissioner Gay or Commissioner Roe to successfully resolve a bargaining dispute in an automotive component manufacturer, thereby averting a shutdown of one of the big car manufacturers, at a time when the car did indeed have a car industry.

PN76

I'm glad to see here today Acting Justice Shane Marshall of the Supreme Court of Tasmania. I was his third associate when he was a judge of the Federal Court, and he has indeed been a good friend ever since. Much of my career as a lawyer - in fact 20 years or so, was spent at Maurice Blackburn. I want to thank in particular Josh Bornstein, Justice Bernard Murphy. Justice Murphy, in his previous professional life, was a partner at Maurice Blackburn. Both of them, Josh and Bernard, in different ways taught me a lot about how to be an effective lawyer. Josh, day-to-day, working with him on significant and difficult litigation, Bernard whilst on long bike rides, albeit I do recall his insights becoming increasingly inaudible as I distanced him on the big climb into King Lake.

PN77

Much of my work as an industrial officer has involved acting for unions. I have worked with many, many capable officials and legal officers of a variety of different unions. One of those, Steve Crawford, is a Member of the Commission, and I'm glad that he's able to - hopefully he's able to join us today. As Michele noted, I remember working with Commissioner Crawford on the Downfall meme case. That was ultimately an appeal before the then Vice President Hatcher. We did win. The member was reinstated and I was curiously and surprisingly, for anyone who knows me, for a moment I became Australia's leading meme lawyer.

PN78

At Maurice Blackburn I worked with many talented lawyers, some of whom are sitting on the Commission today. Deputy President Grayson, Deputy President Butler, Commissioner Thornton and Deputy President O'Neill. I look forward to working with you all once again. Former Deputy President Gooley, who I worked with at Maurice Blackburn before appointment to the Commission, is someone who, in my first years at Maurice Blackburn, was just a superb mentor to me.

PN79

Other lawyers who I've worked with at Maurice Blackman include now Justice Andrew Watson of the Supreme Court, now Judge Liberty Sanger of the County Court, Daniel Victory, Mia Pantechis, Emeline Gaske, Enrico Burgio, Declan Murphy, Bridie Murphy, Rebecca Eagles, Ben Bromberg, Jenna Vardi, Kelly Thomas, Emily Creak, Hugh Crosthwaite, Angus Mackenzie and Bobbi Murphy, all of whom were superb lawyers and assisted me greatly. Daniel Victory in particular is someone who I've worked with for some 18 years of the 20 years I spent at Maurice Blackburn, and I have a high regard for his professional skill. I also want to pay tribute to my longstanding legal assistants, Emily Wade and Victoria Melnikova. They've both provided me amazing support over the years.

PN80

I also had the pleasure of instructing many excellent counsel, in particular Herman Borenstein, Rachel Doyle, and in their previous professional lives at the Bar,

Justices Mordy Bromberg and Craig Dowling, now of the Federal Court, and Justices Steven Moore and Richard Attiwill, now of the Supreme Court, and I see they are all here today, which I'm grateful for. Herman Borenstein, in particular, as many practitioners here will have personally experienced, was endlessly patient and generous to me as a junior lawyer, prepared to take my calls whether late or early, and prepared to answer all my queries, whether minor or major, and I know I'm not alone in making that observation.

PN81

I also want to acknowledge the many quality practitioners to whom I have been opposed over time, including Ross Jackson, Sam Eichenbaum, Catherine Dunlop, Michaela Moloney, Daniel Proietto, Chris Gardner and Justin Bourke, many of whom sent generous messages to me on my appointment, and I want to emphasise that that reflects the collegiality of the profession, regardless of which side one usually acts for. Industrial practitioners, whether lawyers or lay advocates will inevitably deal with conflict-laden dynamics, but I have found that the best and most effective practitioners are those who maintain collegiate and candid relationships with their opponents.

PN82

My loving parents, Hamid and Nazli Farouque, who migrated from Sri Lanka in the 1970s, provided me endless love and support as a child. My father, who lectured in law at Adelaide University, and my mother, who worked as a social worker, instilled in me the value of hard work and compassion, values which I hope will serve me well in my work at the Commission.

PN83

My father was an avid reader and instilled in me a love of books and history. He was frequent annotator of books, identifying with some precision where the historian had got it wrong. I hope he doesn't do that with my judgments. My mother is a person who goes out of her way to reach out and help other people. Our family home in suburban Adelaide was always a magnet and social hub because of her welcoming personality. My parents raised seven children, Farah, Omar, Jameela, Karima, Ali and Salma. Most of my siblings are here today, fortunately. Their collective dedication to support my parents as they progress in age is truly amazing.

PN84

Finally, I would like to express my eternal love and affection for my wife Mary. Mary is an accomplished lawyer in her own right. She has worked as a lawyer in private practice, the community legal sector, public sector and the charity sector. Much of her professional life has been dedicated to helping others. We've been married for 30 years, and she's been an amazing partner who has a remarkable ability to bring out the best in me. We've brought up our two wonderful daughters Laila and Zara, who I love very much. Laila could fortunately be here today. Zara is on exchange in Scotland.

PN85

Mary's parents, Valerie and the late Peter Simpson, provided invaluable support to us in school pickups and after school care for Laila and Zara. My daughters have a special bond with them, and I know how much they miss Peter after he passed

away a few years ago. I'm immensely proud that Laila has made a great start to a career as a graduate lawyer. I'm very proud that Zara is one of those people who is good at everything she tries, whether it be music, science or the arts, although I do also suspect she will one day be a lawyer.

PN86

Thank you for all attending this sitting today, and I once again thank the speakers for their generous observations on my appointment.

PN87

JUSTICE HATCHER: Commissioner Clarke?

PN88

COMMISSIONER CLARKE: Thank you. Can I begin by associating myself with the acknowledgement of the traditional owners and again send my congratulations and warm regards to Deputy President Farouque on his appointment.

PN89

Can I just say how immensely grateful, honoured and humbled I am for the privilege that's bestowed on me to hold this office. Sitting here at my own welcoming ceremony is something that, in all honesty, I had hoped might happen one day, but never expected would come to pass in actuality. Self-belief has never been my strong suit.

PN90

The speakers today have done a better job of building me up than any kind of indulgence of my own imagination. I thank all of them deeply. They've painted my journey here with a confident narrative and eloquence of Sinatra's 'My Way', when in my own estimation my journey was very much more like the experience of the protagonist in the Split Enz classic 'Nobody takes me seriously'.

PN91

I've been on the job for just over six weeks now, and in that time, I've been supported by the most collegiate, dedicated and welcoming group of people one could hope for. I've obviously had to look into the culture and functioning of quite a few workplaces in my industrial relations career, and I can tell you that the Fair Work Commission is, as it should be, an exemplar. And that's a credit to its leadership in the President, the General Manager, the Members and the staff, down to the person.

PN92

I make special mention of the indispensable Associates and those who in particular have worked with me in my chambers, Hailey Maloney and Jessica Wignall, and, of course, the Members themselves, with who I now share this Bench, I acknowledge with gratitude your generosity and guidance over the past weeks.

PN93

I don't come to this place as a blank slate, and frankly, I think that's the point of putting anyone here. My interest in industrial relations came from reflecting on

my experiences and the experience of others and thinking about the relationships between the everyday and the big picture. This was a constant theme of my upbringing, with my parents, Feli and Ian, and my sister Amanda. Dinnertime conversations were almost always focused on the events outside our window, the major political issues of our times and what was and what wasn't fair, right or moral. I honed my critical and analytical eye in my younger years and learnt not to take anything for granted or at face value.

PN94

My own entry into the world of work came in the form of part-time, casual work offered to me after a presumably acceptable run during school work experience at the age of 15. It was good, honest work, largely physical in nature and perfectly pleasant until I was confronted with the situation of being asked to stand, unfastened, on a pallet and lifted on a lift so that I could be hoisted, what felt like into the heavens, to move stock from upper-level storage racks onto this sort of rickety, shaky platform. Oddly enough, I said I wasn't too comfortable about that, and that was met by a threat by the owner that he could easily find someone else, if that's how I felt.

PN95

Sure, in that moment I was worried about my own safety, but I was also thinking to myself, 'Well, how does the system work if that's what it's like for everyone, and what are the knock-on effects if that type of interaction were to become the rule rather than the exception?' But in the event, I held onto that job for years, and it's one of three that I worked, for a time simultaneously, during my La Trobe University years - and when I say 'jobs', I'm not counting the late nights and country pub trips as part of a student band playing indulgent student music to penniless students.

PN96

It was rare to come out in front after the fuel costs for those trips, but the shared creative experience and occasional attention the group attracted was confidence-inspiring. But it's thanks to those jobs that I was one of relatively few in my state school cohort that came out of the end of university without the anchor of a HECS debt weighing me down. I lost half a year of my studies to recover from injuries sustained in a car accident that still occasionally haunts me, but I bounced back, I put in the work, I got the degree done.

PN97

It was again during those years that I looked to my own experience and thought about the bigger picture. One of my employers held my job open while I was recovering from that accident. They took the time to ease me back into it and to get me back up to speed, and again, it got me thinking, 'Is this what it's like for everyone, and if not, how is this whole system going to work?'

PN98

I think, though, my big law-in-context moments really came when I found myself studying corporations law in the middle of the waterfront dispute in '98 and when I took up an offer to do part of my criminal evidence and procedure course work through an assignment at the Broadmeadows Magistrates Court, and that was back in the time when both restorative justice and support services for victims of

domestic violence seemed like a good idea that might be worth looking into one day. Magistrate Paul Grant, as he then was, was an inspiring supervisor to me, indelibly fair and compassionate, and plays no small part in the thinking that led me to dream of one day holding an adjudicative office.

PN99

I rounded out my university days in 1999 with an honours by dissertation on something I found interesting but was a bit niche at the time. The Internet was relatively new at that point but I found myself perplexed and interested at what appeared to be large amounts of cross-border data flows that were going to be - you know, how was that going to be regulated, how privacy rights might be balanced against commercial interests, not only domestically under statute, contract and equitable principles, but how is that going to work internationally? Who owns what and who can sell what? Is anybody bothering to ask first? And if these practices are emerging, how is the whole system going to work for everyone? Sadly, I delivered a bit of an open finding on that one.

PN100

As most all law students do, I applied for articles of clerkship to virtually everyone. I had a knack for computers and the mail merge function got a workout. A small number of interviews were granted by those who presumably didn't think Banyule High School and La Trobe University were out of bounds, but alas, no offers.

PN101

I did, however, manage to secure a paralegal role at Slater and Gordon while I was finishing my honours, and that's where a whole new adventure began. I did eventually get my articles there, with the role being offered to me at the Christmas party by the then managing partner. This led to a number of rotations through different practice areas, with the most significant periods of time in the ensuing 10 years being spent in asbestos disease litigation and in industrial employment law.

PN102

The asbestos disease litigation is something that I found deeply affected me. Most of the time the cases that were being run were being run for the benefit of those who would be left behind, where those who had been exposed to asbestos at work many decades earlier were becoming seriously and terminally ill. Sure, the exposures to this poison happened a long time ago, but after a short time of reading the same documents over and over again and self-checking to see if I'd been missing something, it became abundantly clear that it should never have happened at all.

PN103

It was during those years that I think my views about fairness in the industrial context became more defined, and I worked very hard to develop a case strategy for reopening inquiries that had only come after a loved one had passed to ensure that some meaningful recompense could be recoverable in those circumstances too. I was deeply moved by how kind and yet determined my widow clients were in their willingness to reopen old wounds to fight for justice, and it was an honour to have served them.

PN104

The industrial and employment practice at Slater and Gordon was and still is revered. Even internally, the lawyers there were thought of as highly intelligent and hardworking, if slightly aloof. They were equal parts warriors and cool nerds. It came as a surprise to me, when starting in that practice to face the reality that at least a third of the effort in that work was to be applied to technical skirmishes around whether a particular or any forum was able to agitate a dispute and what the limits of its powers were. It was reminiscent of the mountains of procedural objections I'd earlier seen in class action litigation.

PN105

I did find myself, you know, sort of thinking to myself often, in those early days, in the midst of these obfuscating arguments, 'What the hell is going on here?' and thankfully I had the wonderful Marcus Clayton as my leader to tell me, confidently, exactly what was going on, why it was happening and what was likely to happen next. I'll be forever indebted to you, Marcus, for imparting your wisdom to me, and I reflect back on our time in the trenches together often.

PN106

After 10 years at the firm I was definitely what they call a Slaters person, but it was time for me to move on and see if it was possible in the industrial relations world to actually get to the nub of the problems in Australia's workplaces a little more efficiently and effectively than the blunt force of litigation permitted, and that's what led me to the ACTU, where I met another passionate expert on industrial relations matters whose approach would come to have a very profound effect on my own thinking, and that's Tim Lyons.

PN107

In Tim I found somebody who was able to coalesce my basic intuition that the industrial relations secret sauce was a blend of law, economics and politics into a more definite and practical recipe, a recipe with some esoteric complexities, variable quantities of pragmatism and trust and the requirement to test the temperature at regular intervals.

PN108

Were it not for Tim's mentoring in just how many layers there were in this work, I can imagine that I might have eventually given the game away, but I stuck with it to a point, you know, when asked by others, 'What do you actually do at the ACTU?' I'd describe it as essentially being two jobs. In the early part of the year, I'd largely dedicate myself to work on a minimum wage system and in the following parts of the year I'd be a bit of an odd jobs bloke, doing various bits of legal and policy work that was floating around the place.

PN109

Maybe I sold myself a bit short in those descriptions, and certainly when I say 'dedicated myself' to the minimum wages work in the first part of the year, my wife and family could verify exactly what that looked like. I guess I should apologise to my new colleagues and to my historical opponents who are here today for making them just read so many words.

PN110

Throughout my working life I've not been shy of putting in the effort required to do the best I can, and I've been motivated by a sense of responsibility to others. In the case of the Annual Wage Review, there are very many of those others to feel obliged to. That's also true, however, of many of the other important projects I worked on at the ACTU, not just the test cases in this place but all the other pieces of work that were ultimately designed to make sure that unions could deliver the best for their members around the country, from travelling Australia with Commissioner Thornton, when we were ACTU colleagues, to train up the nation's industrial officers on advocacy skills, to participating in inquiries, reviews, law reform processes, innumerable government bodies and the higher level work on international labour standards.

PN111

I had the opportunity to work under three different ACTU leadership teams and I learned a variety of approaches in that time and rubbed shoulders with some of the most dedicated and inspiring people. The policy and industrial team in which I worked always punched well above its weight, and I've gained some lifelong friends through working there. To the team members past and present here today, and to the leaders, I say thank you for placing your trust in me for all those years and I wish you all the very best.

PN112

I'd also like to acknowledge the grace with which the ACTU, and Sally McManus in particular, greeted my advice to them that I had responded to the request for expressions of interest for appointments to the Fair Work Commission. Employers' reception of news that one of their employees is looking for other opportunities is usually lukewarm at best, but I received nothing but encouragement and support.

PN113

There is a world outside of work, of course, and the centre of that world is my wife Dina, and I have felt genuinely a part of her family from the outset of our relationship. As a successful woman, she's needed and displayed a degree of resilience and mastery that would never have been demanded of a man in similar circumstances.

PN114

She's always been the higher achieving and more wise and decisive of our partnership, and I would not have made it here or possibly anywhere I've wanted to be in life over the last 22 years without her. She's a pillar of strength to me, yet also supremely emotionally intelligent and very tolerant of the fact that whilst I'm capable of solving complex problems, there are many aspects of what should be ordinary human functioning that I find difficult at times.

PN115

Our marriage has led to two remarkable daughters, Leila and Jane, who thankfully have been blessed with more of our collective strengths than my weaknesses. I love them all very much.

PN116

I'm blessed to share this moment with so many I respect so deeply, yet equally conscious of those who were unable to be here. Age has not been kind to my father and he's living out his twilight years in full-time care. He would have smiled today. My later father-in-law Jack would also have been immensely proud and conspicuously jubilant to see me achieve a goal, and my grandmother probably would have looked around the room and realised that I'd surrounded myself with good people who care for me, and maybe I didn't need to get a trade after all.

PN117

I'm incredibly conscious of the responsibility that comes with this appointment. The Fair Work Commission is a unique institution, a respected umpire imbued with the best of our national character and aspiration. Very often people come to this place in difficult circumstances, when they're not at their best, but that must not be a barrier to access or fairness. In this jurisdiction, which extends from individual workplace disputes and determinations to the design and maintenance of minimum standards for employees and our other workers around the country, I pledge myself to apply to the breadth of roles to the best of my abilities, with an eye to fairness, pragmatism, respect and upholding the trust this place has deservedly earned. Thank you.

PN118

JUSTICE HATCHER: On behalf of all of my colleagues, I would like to congratulate Deputy President Farouque and Commissioner Clarke on their appointments. I want to thank all of you for attending today, the speakers at the Bar table, family and guests. Now, we have a morning tea organised on level 7, so I invite you all to join us there very shortly, and we will now adjourn.

ADJOURNED INDEFINITELY

[10.32 AM]