



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

**CEREMONIAL SITTING OF THE FAIR WORK COMMISSION
TO WELCOME COMMISSIONER SLOAN**

Sydney

9.30 AM, WEDNESDAY, 6 NOVEMBER 2024

PN1

JUSTICE HATCHER: Morning, everybody. At the outset, I would like to acknowledge the Gadigal people of the Eora nation, the traditional custodians of this land, and pay my respects to their elders past, present and emerging.

PN2

The ceremony today is for the purpose of acknowledging the appointment to the Fair Work Commission of Commissioner Sloan, and I welcome his family, the speakers at the Bar table, and all the other guests that are present here this morning.

PN3

To start off, I am going to ask Mr Moxham, who is representing the Australian Council of Trade Unions, to speak first of behalf of the union movement. Mr Moxham.

PN4

MR B MOXHAM: Thank you, your Honour. I also want to begin by acknowledging the traditional owners of the land upon we meet today, the Gadigal people of the Eora nation, and pay my respect to their elders past and present. I also extend that respect to any Aboriginal and Torres Strait Islander people here today. It always was, and always will be, Aboriginal land.

PN5

I would also like to acknowledge, Your Honour the President, other members of the Fair Work Commission here today, my fellow representatives at the Bar table, and especially our new Commissioner and, most importantly, his family and friends here today who have been with him on this whole journey.

PN6

It is a privilege to appear here today before the Commission on behalf of the Australian Council of Trade Unions and unions and workers more generally. The Fair Work Commission is one of our nation's most important and trusted institutions, underpinning fairness and prosperity at work. Today's appointment will add to that record, not just because of the calibre of the Commissioner, which I will get to in a moment, but also because his appointment represents a genuine commitment to ensuring a balance of members here from all sides of industrial relations, and that balance should give every single party who comes to this place a little bit more confidence that they will get a fair hearing and a fair go.

PN7

Back to calibre. In Commissioner Sloan, we are getting over a quarter of a century of legal experience and knowledge in workplace relations. You have extensive experience in private practice, nearly 14 years of billable units, and most of them at partner rates.

PN8

From 2010 to 2018, you were in senior roles at Toll Holdings, most recently as Group General Manager of Employee and Industrial Relations. I spoke to my union colleagues in the transport sector who described you as someone who sees that there is more than one side to an issue, the importance of underpinning and fair workplace standards, and the value for all parties in reaching an agreement

that balances all interests. At Toll, you knew firsthand the financial pressures a business and its workforce face being in the middle of a critical high pressure and national supply chain.

PN9

These are the experiences and approaches that we need at the Fair Work Commission, especially as it embarks on overseeing and implementing world leading reforms in the road transport industry, which I will speak to in a bit more detail.

PN10

The industry faces tremendous challenges. It is one of the most dangerous places to be a worker, and the complexity of supply chains within it can place serious pressures on the pay and conditions of workers and businesses alike, but those challenges can be more than matched by the goodwill across the whole industry to meet them via the new legal architecture here at the Commission, aiming to ensure the industry is safe, sustainable and viable. Your appointment to the new Road Transport Expert Panel is most welcome, and the panel will have a key role in setting standards in the industry from the awards through to the new minimum standards orders and contractual chain orders, and we look forward to what it produces.

PN11

Finally, this is not your first trip around the block as a Commissioner. You have served as a Commissioner of the New South Wales IRC since 2018 and, aside from making you incredibly well qualified for this new role, I am sure it has given you plenty of chances to offer the President free advice on just how they run things across town at the IRC, from managing workloads through to the quality of the biscuits in the tea room.

PN12

More seriously, Commissioner, we wish you well in your new role and offer our warmest congratulations to you on your appointment.

PN13

JUSTICE HATCHER: Mr Ward, on behalf of the Australian Chamber of Commerce and Industry, Australian Business Industrial and employers generally. Mr Ward.

PN14

MR N WARD: If the Commission pleases. I commence by acknowledging the Gadigal people, the traditional custodians of the land we are on, and pay my respects to elders past, present and emerging.

PN15

On behalf of the Australian Chamber and all employers, we congratulate you on your appointment to the Fair Work Commission. Given the role of this place and the New South Wales Commission, you are doubly blessed, having held appointments in both places, and I start by saying their loss is this place's gain, and you have already been sorely missed.

PN16

There is probably no greater compliment I can pay you in regard to your time in the New South Wales Commission than to say this. When a matter was allocated to you, both the unions and the employers would say one very simple thing: 'He's a good pick for us.' And that's rare.

PN17

Your appointment to this place is welcome and much deserved, and I will pay it the highest compliment: simply put, it is meritorious.

PN18

It has been my great privilege to be your friend for well over a decade. I could have actually given the years, but I thought 'over a decade' probably was good enough. We have enjoyed a lot together over that time. We spent over three and a half years together making the landmark modernised General Carriers Contract Determination in New South Wales. Hours of arbitration, targeted arbitration overseen by Acting Justice Kite, the process was a benchmark of what industrial relations should be, and this was reflected in the conduct of the tribunal, the TWU's officers, the principal contractor representatives and the process itself.

PN19

It hasn't always been plain sailing together. I remember vividly the times we shared in what could only be described as the somewhat bizarre experience of the Road Safety Remuneration Tribunal and, without doubt, it will live in memory for a long time sitting on the Easter long weekend.

PN20

I note firsthand from your short-lived New South Wales career that you represent the former approach and not the latter.

PN21

During these times that I have known you, you have displayed entirely laudable characteristics. You are honest and, in fact, you are honest even if it costs you. You are dedicated. You are prepared to work hard to find a solution and be accountable for the solution. You are practical. You have an understanding that once the deal's done, it has got to actually work on the ground. You are both book smart and street smart.

PN22

Pleasingly, you hold a somewhat off-centre sense of humour that is so often necessary to survive in industrial relations. These are very, very fine qualities which, sadly, on occasions, evaporate, and I am told the best example of those qualities evaporating is in your choice of Lycra outfits when you are cycling. Now, I've never seen you in Lycra - I have imagined you in Lycra - but I am told that you and Maurice Baroni make a wonderful pair.

PN23

At a personal level, I think one of your most laudable qualities is your uncanny ability to buy cigars I love but can't afford.

PN24

You will be an important asset to this place generally, but in particular in regard to your knowledge of transport and owner drivers, from the construction of cost and rate models, to contract staples, to practical issues like utilisation and asset

choice. It remains what many call a black box, and you don't have to take off your shoes and socks to count the people who really understand how to operate in that black box. You are certainly one of them.

PN25

So I wish you well for the next chapter of your already excellent career. I know it will continue to be an excellent career. This tribunal plays an extraordinary place in the society of this country. People of your calibre are needed for it. There is a fellowship in this Commission, and I think you will add to the fellowship of this Commission, and I wish you the very best on behalf of employers for the future. If the Commission pleases.

PN26

JUSTICE HATCHER: Mr McGrath, on behalf of the Law Society of New South Wales.

PN27

MR B MCGRATH: Thank you, your Honour.

PN28

As the Commission pleases, I, too, acknowledge the Gadigal of the Eora nation, the traditional owners of the land on which we are meeting, those who cared for this land for countless generations as this Commission meets through our current generation.

PN29

Pulling us firmly into this room, I would also like to add my acknowledgement of your family, your wonderful wife Emma, your children, and your no doubt proud parents. We are lucky to be celebrating you as a Commissioner of the Fair Work Commission.

PN30

Few things affect us more in life than work. Most people will work close to 100,000 hours in their adult lives. It has been said, 'He that wants money, means and content is without three good friends.' From As You Like it to corporate speak, there is also synergy in this idea, and as this ceremony today, you, too, Commissioner, have been driven by finding your place in the working world.

PN31

From being employed and employing people in law and the corporate world over 30 years, from knowing the ups and downs of that personally, we find a meeting of personal and professional experience which is frankly impossible to give due credit to today. I say that because, as an accredited specialist with the Law Society of New South Wales in employment and industrial law for 17 years, as a principal and partner in employment law and industrial relations in several firms, you have an extensive legal career. As we have heard, you were the Group General Manager of Employee and Industrial Relations at Toll Holdings when it was the largest transport logistics company in Australia with tens of thousands of employees, and most recently, Commissioner, at the Industrial Relations Commission, deciding employment matters for the largest employer in the State, the New South Wales Public Service. From all this, we can only hope today to paint broad strokes of what makes you an outstanding appointment to this Commission.

PN32

Perhaps it boils down to knowing that, 'Meeting jaw to jaw is better than war', as Churchill said, that there is a two way street in all employment relationships, and you bring an innate sense of empowering people towards agreement, and helping them communicate is simply beneficial to society.

PN33

As I have the privilege of representing more than 42,000 solicitors in the State of New South Wales today, I note that we also make up 42 per cent of all the solicitors in the country, and the Law Society of New South Wales is the largest professional membership body in Australia. I mention this because you come to this appointment having spent most of your non-judicial working life as a senior solicitor here in New South Wales, as we have heard, but, conversely to what we have heard, this is a career that you described your early efforts in as - and these are your words, Commissioner - 'useless, pretty useless, naive and really struggling'. This was in the space of a few sentences. I submit that this is not fair to you, Commissioner.

PN34

It was also in that same conversation that you described teaching law as an epiphany, that in teaching others, the law became clear, connected and a place you began to relax in, and it has been a place that you have not just relaxed in, but succeeded in. From knowing how hard starting in law can be, how hard securing work in your early career can be, you have come to mentor younger solicitors without drawing attention to this, often without senior colleagues even being aware. Through sharing your integrity and knowledge, I am reliably informed this has been a huge help, illustrated by those who have prospered under your mentorship.

PN35

Those who have seen your legal reasoning have said that there is, in reality, a very good industrial relations brain, a legal brain operating with a strong humanising influence, a deep understanding of industrial relations, and your incredible work ethic can be seen in a number of decisions you produced at the Industrial Relations Commission. Through devoted hours, there was never a long list of reserved decisions. Being an outstanding Commissioner in quantity and quality has been important.

PN36

Of nearly as much importance is a total, utter devotion to musicals. At the judicial officer level, it has been noted how important daggy 80s pop songs through to slightly edgier music are to you. One informant even likened your long silver locks that appeared during the pandemic to 'rock gods of the past'.

PN37

Despite having been in Les Mis and many musicals yourself, possibly as a base voice, former colleagues also noted a stubborn refusal to sing in their presence, extending even to Happy Birthday around obligatory office cakes. Whether that ban will exist here at the level of national jurisdiction remains to be seen.

PN38

Beyond extensive evidence of a very hardworking senior solicitor and an excellent prodigious Commissioner at the Industrial Relations Commission, there was also

mention of a personal dichotomy. Some mentioned a love of driving a sporty Mini Cooper, others a love of Haigh's chocolate frogs. There was clear evidence of total joy when playing with your dog and loving great meals of all kinds, especially when given the opportunity to explore the world, and to pull between planning absolutely everything, while being extremely engaging personally, a contradiction between being a homebody, gardening on weekends, and I quote, 'A really likeable curmudgeon', as one person put it, and someone who has gone on solo trips to France after learning French in recent years.

PN39

Self-described as 'a late bloomer professionally', wider research reveals someone who showed independent, people-focused legal skills, intellectual ability and good humour of four decades of legal work, as well as someone who has a paperless office and an empty inbox policy, which our informant on the matter, who themselves has 15,000 emails in their inbox, found, and I quote, 'obnoxious'.

PN40

While I know you are no fan of serious sycophantic ceremonies, as the President of the Law Society of New South Wales, I must balance talk of haircuts and emails with professional matters, and so I would like to refer to one fellow Commissioner from your previous home, the Industrial Relations Commission, who related deeply to seeing the hard work of a good lawyer turned Commissioner, one who can write very good judgments. They admired your intellectual rigour and how you advanced the jurisprudence of the Commission. By grappling with tricky matters and writing decisions that are often cited by the rest of the Commission, you left an impression that has now turned into a loss, matched only by happiness in seeing your appointment to this jurisdiction.

PN41

It is brilliant to see good people rise to positions that affect other people's lives. From your birth place in Canberra to your upbringing, to meeting Emma, after one of the most 'will they, won't they' stories that I've ever heard, but won't have time to talk about here, through to your intensive career in law, devotion to your family, to this very moment, it is my privilege to congratulate you on your many achievements in law, in life and in finding yourself somewhere that I know has a great deal of meaning to you.

PN42

Put simply, this is celebrated today by the Law Society of New South Wales, and on behalf of the solicitors of New South Wales, my sincere congratulations, Commissioner. As the Commission pleases.

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JUSTICE HATCHER: Now I invite Commissioner Sloan to speak.

PN44

COMMISSIONER SLOAN: Thank you, Justice Hatcher. I also acknowledge the traditional owners of the land on which we meet today, the Gadigal people of the Eora nation, and pay my respects to elders past and present. I extend that respect to Aboriginal and Torres Strait Islander people today, who are joining us remotely. Thank you for all being here.

PN45

This is a very proud day for me, and I am grateful that you have been willing to share it with me. I particularly thank Mr Moxham, Mr McGrath and Nigel for your very kind words, and if this were other proceedings, I would accept all of your submissions wholeheartedly.

PN46

I am genuinely honoured to be appointed as a Commissioner of the Fair Work Commission, and that is not a trite statement. I have appeared before the Commission in its current and previous iterations on many, many occasions since I first ventured into employment law in about 1992. From those early days, I thought that being a member of the Commission looked like a pretty cool job. It turns out I was right.

PN47

I have experienced and I acknowledge and value the role that the Commission plays in establishing a system of workplace relations in Australia which aims to provide fairness to working Australians, those who represent them, and those who engage them. It says everything about the Commission that it is guided by notions such as providing a fair go all round.

PN48

I am particularly excited at the opportunity to become involved in the Commission's new jurisdiction over regulated workers, which Mr Moxham referred to. It is an unprecedented opportunity to establish fair, balanced and enforceable conditions for workers and businesses in the gig and road transport economies.

PN49

We have heard something today about the Road Safety Remuneration Tribunal. Nigel was there, Vice President Gibian was there, Brent Ferguson up the back was there. I will only say from my perspective lessons were learnt.

PN50

I have said that I have long aspired to be a member of the Commission, and it is true, but, honestly, I have to say that my appointment would have come as a surprise to me that I left university in 1990, as it may surprise some of you today. The fact is I was really quite dumb when I left university. Mr McGrath might sugarcoat that, but it's a fact. I appreciate that I am talking about my ignorance in the past tense, but this is my day, go with it. All right?

PN51

To give you an example, when you are close to finishing up at university, one of the most obvious questions that people ask is, 'What area of law are you going to work in?' and I would always reply with confidence, 'Commercial litigation.' I kid you not, I had no idea what that was. All I knew was it involved courts, which I wanted to be involved in, but didn't involve criminal or family law, which I did not want to be involved in. That was as sophisticated as it got, and so what happened, I got a job in commercial litigation at a firm that was then called Sly & Weigall in Canberra, now Norton Rose, and I was terrible at it. Truly. I wasn't being self-effacing, I was shocking at commercial litigation, to the point where I was seriously considering whether I would continue as a lawyer and whether maybe I needed to make a career change.

PN52

But after a couple of years of floundering around, Alan Grinsell at Sly and Weigall, who was the practitioner in charge of the industrial relations team at that firm, took me under his wing, and I genuinely think, and I say this with affection and gratitude, out of pity, and he introduced me to employment and industrial law, and for the first time, I found an area of law that resonated with me, and my feet were set on the path that brought me here.

PN53

I won't recount every step of the journey along that path. As is always the case, I progressed through a combination of luck, being in the right place at the right time, hard graft, but most of all with the support of some brilliant people, and many of those brilliant people are here today. I will mention just a few highlights.

PN54

Paul Green was a partner at Meyer Boettcher & Clapham in Canberra, now Meyer Vandenberg. He took me on after my time at Sly & Weigall came to its inevitable end, at a time when I seriously needed a friend, and he gave me no end of support to develop a practice in employment law. To his credit, Paul was just as supportive when I took my newfound knowledge to move to Sydney. But through the people I had met at Meyer Boettcher, I was given the chance to lecture in employment relations law at the University of Canberra.

PN55

Now if ever there was a case of 'it's not what you know, it's who you know', that was the moment. I was only ever about two chapters in the textbook ahead of the class at any given time. I was really always worried someone would read in advance and catch me out, but I got through it and, as has been said, it gave me a deeper understanding not only of employment law, but of the law as a whole. Finally, and belatedly, it all started to make sense for me.

PN56

My first firm in Sydney was Holding Redlich, and I have to acknowledge Ian Robertson, who was then its managing partner in Sydney. He taught me as much as anybody ever has about the art of being a solicitor.

PN57

After some years in private practice, as we have heard, I was lucky enough to be on the spot to get a gig working for Toll Holdings Ltd. I was even luckier when, after a few years, I was joined by Tony Wilks, himself a former member of the Australian Industrial Relations Commission, who has generously flown up from Launceston to be here today. Tony taught me a huge amount about the practice of IR. His advice that my legal knowledge and skills were not the only tools in my kit has stayed with me.

PN58

After Toll, I was more than fortunate to be appointed as a Commissioner of the Industrial Relations Commission of New South Wales. I am not only touched and grateful, but immensely honoured, that Justices Taylor, Chin, Paingakulam, Senior Commissioner Constant, Commissioners Webster, Muir, O'Sullivan, McDonald and former Commissioner Murphy have honoured me with your presence today. I am so very grateful. Until 19 August, my appointment to the Industrial Relations Commission was the highlight of my career.

PN59

But above all in everything is my family. My parents are here today, up from Canberra. You gave me and the boys, my four brothers, a great start in life. It took me an unconscionably long time to appreciate how much you went without so that the boys and I never did. You have the gift of making me feel that I am doing you proud.

PN60

My brothers, two of whom, Sean and Kieran, have also made the trip up from Canberra, you have always been a constant reassuring presence in my life. I am deeply moved at how excited and proud you are of my appointment.

PN61

My children, Riley, Flynn and Jordan, you are my own source of pride and inspiration. And most of all Emma, who has been at my side for nearly 30 years. Every step in my career since we met has been taken with your encouragement and love. You have always been my cheerleader. You are the first to pour scorn on any suggestion, usually from me, that I may not be up to a particular challenge. I would not be where I am without you.

PN62

In closing, I appreciate the honour that has been done to me through my appointment. I will always strive to demonstrate that it is one I am worthy of.

PN63

I thank Justice Hatcher and the other members of the Commission for making my transition so smooth and enjoyable. Your support could not have been greater or the welcome any warmer.

PN64

A special thank you to my associate, Abhi Panicker, and to Lidia Susac, Mirella Franceschini, and the other associates who have done a power of work behind the scenes to put today together. Thank you again.

PN65

JUSTICE HATCHER: On behalf of all my colleagues, I would like to congratulate you, Commissioner Sloan, on your appointment. I thank everyone for their attendance today, the speakers at the Bar table, the members of the New South Wales Industrial Court and Commission, Commissioner Sloan's family and his friends and other guests.

PN66

I am told that some form of morning tea has been organised on level 12, so you are all invited.

PN67

Thank you for attending again and we will now adjourn.

ADJOURNED INDEFINITELY

[9.56 AM]