



## TRANSCRIPT OF PROCEEDINGS

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*Workplace Relations Act 1996*

18860-1

**JUSTICE GIUDICE, PRESIDENT**

**C2008/114 C2008/115 C2008/116 C2008/117 C2008/118 C2008/119 C2008/120  
C2008/121 C2008/2627 C2008/2628 C2008/2629 C2008/2630 C2008/2631  
C2008/2632 C2008/2636 C2008/2637 C2008/2638 C2008/2646 C2008/2660  
C2008/2661 C2008/2662 C2008/2663 C2008/2664 C2008/2665**

**s.553(1) - Appl'n for variation of award (maintain min. safety net entitlements)**

**Application by Liquor, Hospitality and Miscellaneous Union  
(C2008/114)**

**cl.29 Sch. 6 - Variation of transitional awards - general**

**s.553(1) - Appl'n for variation of award (maintain min. safety net entitlements)**

**s.553(1) - Appl'n for variation of award (maintain min. safety net entitlements)**

**cl.29 Sch. 6 - Variation of transitional awards - general**

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**Application by Liquor, Hospitality and Miscellaneous Union (C2008/115)**

**Application by Liquor, Hospitality and Miscellaneous Union (C2008/116)**

**Application by Liquor, Hospitality and Miscellaneous Union (C2008/117)**

**Application by Liquor, Hospitality and Miscellaneous Union (C2008/118)**

**Application by Liquor, Hospitality and Miscellaneous Union (C2008/119)**

**Application by Liquor, Hospitality and Miscellaneous Union (C2008/120)**

**Application by Liquor, Hospitality and Miscellaneous Union (C2008/121)**

**Application by Australian Municipal, Administrative, Clerical and Services Union (C2008/2627)**

**Application by Australian Municipal, Administrative, Clerical and Services Union (C2008/2628)**

**Application by Australian Municipal, Administrative, Clerical and Services Union (C2008/2629)**

**Application by Australian Municipal, Administrative, Clerical and Services Union (C2008/2630)**

**Application by Australian Municipal, Administrative, Clerical and Services Union (C2008/2631)**

**Application by Australian Municipal, Administrative, Clerical and Services Union  
(C2008/2632)**

**Application by Construction, Forestry, Mining and Energy Union  
(C2008/2636)**

**Application by Construction, Forestry, Mining and Energy Union  
(C2008/2637)**

**Application by Finance Sector Union of Australia  
(C2008/2638)**

**Application by Association of Professional Engineers, Scientists and Managers, Australia, The  
(C2008/2646)**

**Application by The Australian Workers' Union  
(C2008/2660)**

**Application by The Australian Workers' Union  
(C2008/2661)**

**Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union  
(C2008/2662)**

**Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union  
(C2008/2663)**

**Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union  
(C2008/2664)**

**Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union  
(C2008/2665)**

**MELBOURNE**

**10.04AM, FRIDAY, 25 JULY 2008**

**THE FOLLOWING PROCEEDINGS WERE CONDUCTED VIA VIDEO CONFERENCE AND RECORDED IN MELBOURNE**

PN1

JUSTICE GIUDICE: Yes, can I have the appearances please.

PN2

MS M GAYNOR: I appear for MR M SWANCOTT for the LHMU, MR A ROSITZKI for the FSU, MS J MILES for the ASU, MR J KELLY for APESMA, MS S CABLE for the AMWU, MS R REID for the CFMEU, FFPD and MR J ELLIS for the AWU and we seek leave to intervene for MR G BELCHAM for the ACTU.

PN3

JUSTICE GIUDICE: We might as well go down the line I think Mr Lawrence.

PN4

MR B LAWRENCE: I appear on behalf of the Australian Catholic Council for Employment Relations and seek leave to intervene in this matter.

PN5

MR J YOUNG: I appear on behalf of the Australian Industry Group and the Engineering Employers Association of South Australia.

PN6

MR D DUKE: I appear for the Victorian Automobile Chamber of Commerce.

PN7

MR D MAMMONE: I appear on behalf of the Australian Chamber of Commerce and Industry along with my colleague MR C HARRIS, we act for a number of respondents in this matter. I seek to tender a document that outlines the respondents we represent today and also on behalf of ACOL I also seek leave to intervene in all matters arising from these proceedings.

PN8

MR C GRAHAM: I am in Sydney and I am a solicitor and I seek leave to appear for and on behalf of the commercial free to air television stations. Your Honour is it more convenient that I stand or sit given that I'm speaking to you via video?

PN9

JUSTICE GIUDICE: No, it's quite in order to remain seated Mr Graham in fact, it's probably more convenient all round I think. Yes, thank you for that appearance.

PN10

MR J HARGRAVE: I appear on behalf of PIAA.

PN11

MR P CLARKE: I appear on behalf of members of the Victorian Hospital Industrial Association.

PN12

JUSTICE GIUDICE: Thank you Mr Clarke, Mr Mammone I think I will just read this list into the transcript, it's the – these are the parties for whom you appear is that right?

PN13

MR MAMMONE: That's correct, your Honour.

PN14

JUSTICE GIUDICE: Yes, Australian Business Industrial, Australian Hotels Association, Australian Retailers Association, Victorian Employers Chamber of Commerce and Industry, the South Australian Chamber of Commerce and Industry and the Metal Industry Association of Tasmania. All right I can indicate that – yes, I'm sorry.

PN15

MR A MUSSETT: I appear for the respondent members of the National Insurance Brokers Association in matter C2008/2638.

PN16

JUSTICE GIUDICE: Any other appearances? Can I indicate that there's a letter on the file from the National Farmers' Federation indicating that they seek leave to intervene in the review and that they are unable to attend today and that they would like to be listed as a party to the proceedings. They also indicate that they support the views of ACCI in respect of the process for the hearing. Well Ms Gaynor, perhaps I'll turn to you first.

PN17

MS GAYNOR: Thank you, your Honour discussions between the parties ACCER, AIG, ACCI and the ACTU have occurred regarding proposed directions in this matter. If the Commission pleases I'd like to hand up the agreed version of those proposed directions.

PN18

JUSTICE GIUDICE: Thank you. Yes, thanks Ms Gaynor. Does everybody have a copy of those? Mr Graham you probably don't?

PN19

MR GRAHAM: I do not your Honour no.

PN20

JUSTICE GIUDICE: Perhaps you might go through them Ms Gaynor.

PN21

MS GAYNOR: Thank you, your Honour and we'd indicate that of course these dates are proposed subject to the date of the availability of the Commission.

PN22

JUSTICE GIUDICE: Yes.

PN23

MS GAYNOR: And note that we've endeavoured to fit directions around the award an organisational consultation timetable.

PN24

JUSTICE GIUDICE: Yes.

PN25

MS GAYNOR: Your Honour the proposed directions provide for the ACTU on behalf of union applicants and any party or intervener in support file and serve on other parties and interveners by Wednesday 6 August 2008 an outline of submissions in support of the applications and any supporting material. Secondly, that union applicants file and serve draft orders for each application before the Full Bench by Wednesday 6 August 2008. Thirdly, that the Australian Catholic

Council of Employment Relations file and serve on all other parties and interveners by Wednesday 6 August 2008 an outline of its submissions and any supporting material.

PN26

Fourthly, that other parties and interveners file and serve on all other parties and interveners by Monday 11 August 2008, an outline of their submissions and any supporting evidence. Finally the proposed directions propose that the Commission sit on Thursday 14 August 2008 and if necessary Friday 15 August 2008 to hear the parties.

PN27

JUSTICE GIUDICE: Yes.

PN28

MS GAYNOR: Your Honour we believe this timetable provides ample opportunity for all the parties to put relevant matters before the Commission and in proposing these dates we're seeking to ensure that there is a large gap – as large a gap as possible between the decision of the Commission and the operative date of that decision in order to maximise the opportunity to have applications in their appropriate form before the Commission before the operative date.

PN29

JUSTICE GIUDICE: Yes, the Fair Pay Commission decision is operative from 1 October is that it?

PN30

MS GAYNOR: Yes, that's the period we are after.

PN31

JUSTICE GIUDICE: And you're seeking the same date?

PN32

MS GAYNOR: We are. That completes our submissions your Honour.

PN33

JUSTICE GIUDICE: Yes, thanks Ms Gaynor. Well your position seems to have been anticipated Mr Lawrence?

PN34

MR LAWRENCE: Yes.

PN35

JUSTICE GIUDICE: It does suggest that you're supporting the application.

PN36

MR LAWRENCE: Supporting the application but we have similar matter being raised as we raised last year. You might recall your Honour that we raised the question about the adequacy of the Federal minimum wage adjustment last year. We were unsuccessful in that this year we propose to raise similar but significantly different matters which would present the Commission with various options. One of the options it wouldn't be our preferred option, but one of the options that we will present to the Commission is that the matters that we raise to be referred to the award modernisation process.

PN37

That is we want to ventilate some issues around the Federal minimum wage. We regard them as important not only in the context of this year's Fair Pay Commission decision and this wages and allowances review but they are also matters that are relevant to what we will submit and explain, the award modernisation process and the Commission at the end of the day might be so minded to simply refer the matters off to the award modernisation process. As I say it wouldn't be our preferred position, but that is one option that we clearly raise.

PN38

JUSTICE GIUDICE: Yes. Just before I turn to you Mr Graham, are there any other submissions about the suggested program? Yes, Mr Young.

PN39

MR YOUNG: Your Honour we don't object to the proposed timetable, however my instructions are that with respect to the fourth proposed direction of the date was Friday 8 August.

PN40

JUSTICE GIUDICE: I'm sorry I didn't quite catch that Mr Young.

PN41

MR YOUNG: Sorry, we don't object to the proposed timetable except for the fourth proposed direction the date being Friday 8 August, are my instructions.

PN42

JUSTICE GIUDICE: I see well you could – if you to the extent that you're bound by that, all that paragraph 4 requires is that the material be filed by 11 August so you could still file on the Friday.

PN43

MR YOUNG: Thank you.

PN44

MR DUKE: Your Honour we have no objection to the outlined timetable, beyond that I don't have anything to add.

PN45

JUSTICE GIUDICE: Thank you. Mr Mammone?

PN46

MR MAMMONE: We as the ACT have pointed out we've had discussions previously on the timetable. We don't oppose this course of action. We're mindful that the Commission is busy with the award modernisation process and we don't wish to unduly lengthen these proceedings so we're very cognisant of those proceedings. With respect to the ACCER submissions this morning we will have to take that on board when we see their submissions. I don't have any instructions on their proposal, I've just heard it this morning.

PN47

JUSTICE GIUDICE: No.

PN48

MR HARGRAVE: Your Honour we are quite happy with the directions as outlined.

PN49

JUSTICE GIUDICE: Thanks Mr Hargrave. Any other submissions? No, thank you. Mr Graham, did you hear the hopefully you've heard what Ms Gaynor said about the program. Do you have any comment about that?

PN50

MR GRAHAM: I heard what was said about the program your Honour and I have no objections to the timetable.

PN51

JUSTICE GIUDICE: Thank you. Well the proposed directions will be made and subject to consultation with the other members of the Bench I can indicate that those dates are likely to be the dates but it will have to be confirmed, so the Commission at this stage anyway would sit on Thursday 14 August and if necessary Friday 15 August to hear any oral submissions. Are there any other matters that should be ventilated this morning? Ms Gaynor I wonder if I could ask you, do you anticipate that there will be major issues?

PN52

I think this will be the third occasion on which there's been an application made to translate into the award system, the decision of the Fair Pay Commission and to some extent there's been some precedence set I suppose in the way in which the Commission has looked at those applications leaving aside the application by ACCER or the submissions to be made by ACCER. Do you anticipate any major issues, novel issues, if I can put it that way, that haven't been raised in these two subsequent applications?

PN53

MS GAYNOR: Your Honour we're hoping not, we can indicate at this stage that the ACTU would be seeking to ground the AFPC decision on 2166 to 2170 and we anticipate that won't be an issue between the parties. We don't think the quantum is at issue or indeed the operative date. As last year, the ACTU would be submitting that orders made in respect of applications to vary awards filed after the dates or from 1 October 2008 should generally have the date from which the order is made subject to the proviso that where an applicant can satisfy the Commission there are exceptional circumstances the Commission should exercise its discretion to grant retrospectivity. We believe that position is consistent with the Commission's decision of last year and we don't think it's at issue but perhaps that's for others to address your Honour. Can I say that on the hearing date, the ACTU wouldn't expect to take much time of the Commission in speaking to our submissions.

PN54

JUSTICE GIUDICE: Yes. Thanks Ms Gaynor. Is there anything else in light of that that people want to bring to my attention this morning that might be relevant to the amount of time that will be required for this matter? No. All right is there anything else before I adjourn? Thank you for your attendance and your submissions I'll adjourn.

**<ADJOURNED ACCORDINGLY**

**[10.19AM]**