



**TRANSCRIPT OF PROCEEDINGS**  
*Fair Work Act 2009*

**VICE PRESIDENT GIBIAN**

**AM2024/9**  
**AM2024/33**  
**AM2024/26**  
**AM2024/40**

**s.157 – FWC may vary etc. modern awards if necessary to achieve modern awards objective**

**s.158 - Application to vary or revoke a modern award**

**s 160 – Variation of modern award to remove ambiguity or uncertainty or correct error**

**Application by The Australian Retailers Association  
(AM2024/9)**

**Variation at the Commissions own Initiative  
(AM2024/33)**

**Application by Anthony Hicks  
(AM2024/26)**

**Application by The Shop, Distributive and Allied Employees Association  
(AM2024/40)**

**General Retail Industry Award 2020**

**Sydney**

**10.00 AM, FRIDAY, 6 SEPTEMBER 2024**

PN1

THE VICE PRESIDENT: Yes, thank you. I will take the appearances first of all, Ms Leoncio, you seek permission to appear for the Australian Retailers Association?

PN2

MS LEONCIO: Yes, I do. Thank you, Vice President.

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THE VICE PRESIDENT: Ms Bhatt, you appear for the Ai Group?

PN4

MS BHATT: I do, Vice President. Thank you.

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THE VICE PRESIDENT: Ms Burnley, for the SDA?

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MS BURNLEY: Yes, your Honour.

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THE VICE PRESIDENT: Mr Cullinan for RAFFWU?

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MR CULLINAN: Thank you.

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THE VICE PRESIDENT: And Mr Song for – is it ABL or New South Wales Business?

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MR SONG: Yes. For both Vice President.

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THE VICE PRESIDENT: Yes, thank you. And Mr Hicks, you are the applicant, as I understand it, in matter AM2024/26?

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MR HICKS: Yes, that's right, Vice President.

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THE VICE PRESIDENT: All right. Do I assume that no one has an objection to Ms Leoncio being granted permission to appear at least for the purposes of today? All right. I'll take that silence to be an absence of objection and I am satisfied that it's appropriate for Ms Leoncio to be granted permission to appear for the Australian Retailers Association, given to allow the matter to be dealt with more efficiently.

PN14

As the parties are aware the Full Bench has been allocated to deal with certain matters in the ARA's application in matter AM2024/9 being the proposed

variations within categories A, B, D, F, G, H, I, J – part of L, O, P, and Q. Various proposals arising from the Award Review process in matter AM2024/33.

PN15

In addition, I think as a result of recent developments the Full Bench will also be dealing with Mr Hicks's application in matter AM2024/26 and the SDA's application in AM2024/40. And the purpose of listing the matter today was to endeavour to work out a sense of the way to progress the Commission dealing with the array of variations sought in those various proceedings.

PN16

Ms Leoncio, I think there was circulated this morning, or at least provided to my Chambers this morning some proposed directions which are jointly proposed, as I understand it, by the Australian Retailers Association, Ai Group and the National Retailers Association. Is that right?

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MS LEONCIO: Yes, that's correct. And apologies. I believe the email was circulated with all interested parties copied in as well this morning. But we had also previously provided those proposed directions to the interested parties yesterday.

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THE VICE PRESIDENT: I see.

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MS LEONCIO: I should also note though that that was prior to the matters that you had referred to just now in terms of those additional applications. But, of course, we've not had an opportunity to confer with those applicants.

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THE VICE PRESIDENT: All right. Yes, okay. Well, look, I'm pleased to hear that other people at least are aware of, in broad outline, what is proposed by way of directions. It seemed to be reasonably self-explanatory to me. The only thing I was just going to clarify was the first direction which is proposed in ARA's proposed directions or substantive, I suppose, is in paragraph four was there to be a conferral between parties and the provision of a list of proposed variations by the 20 September? Is that conferral with all the parties? Or just the proposing parties that it's proposed?

PN21

MS LEONCIO: It should really be for the proposing parties. The intent is so that following on from the President's statement that subject – that the proposals that were advanced in that review are subject to the parties identifying that they're pressed in the proceedings. So it was really to give that opportunity to identify those proposed variations and also to the extent they can be articulated as a variation to be put into a consolidated list.

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THE VICE PRESIDENT: All right.

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MS LEONCIO: For the Commission.

PN24

THE VICE PRESIDENT: That makes sense and I might adjust the wording slightly. But all I wanted to check was that that's both a viable timeframe but also that what was proposed was an actual list of proposed variations, that is the terms of variations that are proposed to the parties, so that the other parties and the Commission can have that. Obviously, I understand these things can develop over the course of proceedings such as this. But, nonetheless, it would be useful to know at the outset what in terms the proposals actually are.

PN25

All right. Was there anything else you wanted to add, Ms Leoncio? In terms of the proposed directions?

PN26

MS LEONCIO: There is one matter. It's adjacent to the proposed directions, which is just in terms of the proposed variations that were identified in the President's statement, we identified three missing items which we considered to be potentially oversight. And that is in respect of proposal C, and that is because the determination that was made in May only dealt with one of the items. Item 5 for proposal C, it is a deferral of the remaining items 6 and 7 which you will be able to see if you have the Full Bench's decision at 2024 FWCFCB 251 which was back in May 2024. It's clearly articulated there at paragraph four of this proposed variation C decision, that there were other aspects of proposed variation C which were not to be dealt with in that determination.

PN27

And they rarely relate to the change of the minimum break period from 12 to 10 hours. So we would seek that the items 6 and 7 form part of this review or this application.

PN28

THE VICE PRESIDENT: Yes. All right. I understand. That is the list of items which is set out in paragraph five of the President's statement, being 2024 FWC 2163 should also include items – well, category C, item 6 and 7, at least to the extent that those items have not already been dealt with?

PN29

MS LEONCIO: That's correct. There is also one further item which is item 30 which relates to proposed variation P and it seems to me that may have also been left off because that item, once you look back at the original application refers to 16.6 which was the subject of proposed variation C decision but it's a separate proposal which relates to the deletion and renaming of clauses.

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THE VICE PRESIDENT: All right.

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MS LEONCIO: And it's all tied to the same issue we believe.

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THE VICE PRESIDENT: All right. Well, that's useful to know. At the moment I'd be inclined just to leave that to the consolidated list which is proposed to be filed - - -

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MS LEONCIO: Yes.

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THE VICE PRESIDENT: - - -on the 20 September but at least the other parties are on notice that there's those additional issues as well which are proposed to be dealt with.

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MS LEONCIO: I might just flag that we had intended paragraph four to only be the consolidated list was in respect of the Commission initiated proceedings. So not the ARA application.

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THE VICE PRESIDENT: Okay.

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MS LEONCIO: We're content to include it if that's - - -

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THE VICE PRESIDENT: I think it might be useful - - -

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MS LEONCIO: - - - your preference.

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THE VICE PRESIDENT: - - -to have a single consolidated list across, at least, the ARA's application and the other proposing applications. I think that would be useful. We might have to separately deal with the SDA in Mr Hicks's applications. But I think that would be useful to have one consolidated document if that is able to be done.

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MS LEONCIO: Yes. Yes, well we're in your hands as to that matter.

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THE VICE PRESIDENT: Yes. I assume that the ARA's application does set out the terms of the variations that it seeks - - -

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MS LEONCIO: It does.

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THE VICE PRESIDENT: - - -I think comprehensively. So it's perhaps more critical in relation to the other matters but it would be useful to have a single list so that we can deal with them without differentiation of the different proceedings.

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MS LEONCIO: Yes.

PN46

THE VICE PRESIDENT: All right. Thank you. Ms Bhatt, was there anything you wanted to add?

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MS BHATT: Not in relation to the draft directions, Vice President, with one small exception we do intend to press the matters that we had raised in the context of the Award Review but, again, that can be dealt with in the context of the consolidated list that's to be prepared and we will engage with the other parties in that regard.

PN48

THE VICE PRESIDENT: Okay, thank you. Look, my assumption is that the parties are pressing the matters in the Commission's table arising from the Award Review process unless and until we're told to the contrary. I know there are matters that are raised by other parties that aren't appearing today. My intention is that they would be subject to the same direction of the 20 September and if they don't – and that that will be on the Commission's website – and if they don't respond to that then we will assume they're not pressing at that point the matters that they have raised in the Award Review process.

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So if anyone is in contact with those parties or wishes to give them a hurry up then they're welcome to do so. But the Commission can only hear from parties that appear obviously enough.

PN50

Mr Song, was there anything you wanted to add in relation to the proposed directions?

PN51

MR SONG: Not at this stage, Vice President. My instructions are that we will continue to observe the proceedings at this stage but we may file submissions in relation to proposals H, I and J.

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THE VICE PRESIDENT: All right. And the proposed directions, I should say, do provide an opportunity for supporting parties, I think they refer to it as, to file submissions or evidence if the case may be and I would take it that your clients fall within that category.

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MR SONG: Yes, Vice President.

PN54

THE VICE PRESIDENT: All right. Can I turn then to the other parties? That's Ms Burnley first. Have you had an opportunity? Or the SDA has had an opportunity to consider the proposed directions?

PN55

MS BURNLEY: Yes, your Honour. We've had a very brief opportunity to consider them yesterday afternoon.

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THE VICE PRESIDENT: Yes.

PN57

MS BURNLEY: And we weren't consulted. So we assumed there was going to be some consultation about them prior to them being released. We do have significant issues that our timetable for filing reply submissions on matters which we don't know what sort of evidence is going to be led, or how strongly they're going to be argued, is over the December to January period. That is inappropriate for us. We won't be able to meet that timeline. So we think that we do need to know what level – well, (a) we need to know which claim is going to be pressed and in what form they're going to be pressed. So the ones which arise out of the Award made easy stream, we do not know what form those claims are going to take or what clauses are going to be provided.

PN58

We know the form of the ARA ones and we have been dealing with bits of those ones over the last few months. We've had some hearings to remove some of those claims. We also note that some of the claims might also now fall into the part time review provision. I'm not too sure. We haven't thoroughly gone back to the ARA application to check which ones might fall over into that category which is another Full Bench which will be established next year to review the part time clauses. So that will need to be established which is what – whether there's any of those matters.

PN59

And then we'd also need to ensure that there isn't any duplication or parallel claims which are similar being run on the same clause, or if there is, we need to know that clearly that both matters might be pressed. They might just be called slightly different things but the end effect is to achieve the same or similar outcome. So there would be need to be some grouping. So that there is a clearer pathway in how the claim should be addressed in the future.

PN60

So, I think if the timetable is what the employers are prepared and can meet for this side of Christmas, which means that final submissions of any party supporting any of these claims isn't made until the start of December I think it is – the 6 December. We would need until possibly the 1 May to respond to everything and setting aside the (indistinct) some sort of - - -

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THE VICE PRESIDENT: First of what? The first of what?

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MS BURNLEY: 1 May.

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THE VICE PRESIDENT: May?

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MS BURNLEY: May.

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THE VICE PRESIDENT: Well, I would require some convincing you need until May.

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MS BURNLEY: There's, I think, if we count the claims there's 57 claims listed that we need to address. The ARA ones have been explained as to what their intent and purpose. The Ai Group and the other claims which are still there haven't been explained or a proposal put to us. So we have no real ground on how we need to respond to those claims at this stage and we won't know until - - -

PN67

THE VICE PRESIDENT: I mean the employers – or the employer organisations propose to put on their evidence by the 15 November, the supporting material – any submissions most likely I would have thought in support of that position by the 6 December. I have some sympathy for the 24 January being extended somewhat. I understand there are difficulties in matters being – in evidence being prepared in the January period but I was hoping that the unions would be able to respond by some time during February. But, in any event, I will see what the parties have to say.

PN68

MS BURNLEY: Yes.

PN69

THE VICE PRESIDENT: In relation to the SDA's application in matter number AM2024/40 I have only recently become aware of the existence of this matter so I don't really know what it's about. Would the SDA be able to put on material in support of that aspect of the application broadly in line with the time period that the employers propose, that is the 15 November or thereabouts?

PN70

MS BURNLEY: Yes. We are likely to be able to do that. We do have – there was a discussion briefly before President Hatcher this morning in that we were wanting to keep this matter separate from being caught up with all these other variations. But President Hatcher decided that - - -

PN71

THE VICE PRESIDENT: Well, what is it about?

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MS BURNLEY: It's about what level assistant manager in – in a store with departments – that's a brief overview – of its proper title, what level that person should be at and what level a duty manager of a department of the store should be at. So it's currently some of them are at 6. There's a manager at 8. And the SDA's application is for it to be at Level 7 for both those descriptions. And the



other matter – Mr Hicks's matter is for that. He's put in his application which he can speak to, but it is for duty manager to be at Level 8.

PN73

So the SDA's application was only filed recently. The ARA also noted that it could be a matter that could be dealt with separately this morning. And the SDA will be having some discussions with the parties in the coming weeks to see whether that can be progressed.

PN74

THE VICE PRESIDENT: Right. Obviously, if there's sort of some consent position or non-opposition, at least, by any interested party that might affect the way it's dealt with. Is it from the SDA's perspective, does it have any urgency attached to it that would merit its being dealt with separately and in advance of all of the other issues?

PN75

MS BURNLEY: Yes. Because it's dealing with classifications and what people's wage rates are. So it is a rather significant issue that should be dealt with expeditiously.

PN76

THE VICE PRESIDENT: Yes. Well, I'd like to deal with all of the matters as expeditiously as possible, obviously. As I say, I've only recently become aware of the existence of the matter so I don't really have a view about whether it's sensibly dealt with together or separately. Perhaps my initial inclination would be to make initial directions that the material in support of it, unless you want to do it faster, be filed at the same time as the employer's material in the remainder of the matters. But that's perhaps without prejudice to the opportunity that the SDA could ask for it to be dealt with separately at any point, if that seems sensible once we've seen what the material is and what the attitude of other parties is.

PN77

MS BURNLEY: Yes, your Honour. And just on your comment regarding that you think the SDA should file in February, that won't be achievable.

PN78

THE VICE PRESIDENT: Right. Well, I'll consider that. All right. Mr Cullinan? Do you have any position in relation to the proposed directions?

PN79

MR CULLINAN: Yes, thank you, Vice President. We did have some helpful conversations with representatives of the employers yesterday but we are attuned to the concerns of the SDA in terms of the timeline. We also were not aware until just now that category C are being pressed. And that might seem like a small thing. The issue for us is that the 12-hour to 10-hour break between shifts is a fundamentally health and safety issue. And, therefore, the evidence that needs to be led on that is quite different to some of the other evidence that needs to be led. And, in those circumstances, we are concerned that the evidence may not go to the health and safety issue that's led in November. And it will be left to the

unions to have to do that over Christmas. So we are concerned that more time be available to deal with those issues.

PN80

Just picking up one issue. I know that the part time arrangements were attempted to be excised from the lists that are before you, Vice President. There is some overlap though, because there's references to clauses which would specifically deal with casual workers or full time workers out of a perception from the employers that that's where they properly sit.

PN81

And we will be arguing that they don't properly sit in that group but, rather, with all workers. And that will then resurrect some of the part time issues which are hopefully – well, were intended to be dealt with separately. So I think just following up with what the SDA said we agree that there is some overlap still. But, in our discussions we felt that the timeline was possibly achievable, with the expansion to category C and the concerns of the SDA, we would support the SDA – a rare thing – but we would support the SDA's position that it be extended somewhat. It may - - -

PN82

THE VICE PRESIDENT: By 'somewhat' what did you have in mind to somewhat?

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MR CULLINAN: Well, we're busy in May anyway. So that's probably not the best day. But March or April seems a good timetable to still have the hearing in May.

PN84

THE VICE PRESIDENT: All right. I'll come back to the employers before I consider the extent of any extension to the proposed timetable what is willing to afford at this point. Mr Hicks?

PN85

MR HICKS: Yes, Vice President.

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THE VICE PRESIDENT: In relation to your application it deals with a similar issue, does it, to the SDA's application in AM2024/40. Is that as I understand it?

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MR HICKS: Yes. The duty manager issue is the same but my application doesn't deal with the assistant store manager part of that.

PN88

THE VICE PRESIDENT: I understand. What I was inclined to do with the SDA's application and your application was to include within the directions, a direction that you, as an applicant, file any submissions or any evidentiary material you want to rely upon at a time consistent with the employer

organisation's timetable for their applications. That is by the 15 November. Is that something that, indeed, you're able to comply with?

PN89

MR HICKS: Yes. I can do that Vice President.

PN90

THE VICE PRESIDENT: All right.

PN91

MR HICKS: Although, I might add to that perhaps the directions should – I'm still hopeful that we might be able to reach a consent position on this – and I think the SDA's application, as I see it, there's some other issues with the Award classifications that are sort of raised – or implicit in the SDA's application and those should be discussed as well. So I think it would be really helpful if we have some further discussions to see if we can reach that consent position.

PN92

THE VICE PRESIDENT: All right. Obviously enough the directions are not meant to cut across any discussions that can be usefully had that to either refine the issues or to resolve any issues, at least as between the parties, subject to the Commission being satisfied that the outcome is appropriate. If the Commission can provide any assistance in that respect, any of the parties are obviously able to contact my Chambers if that will be something that might be of assistance.

PN93

All right. Was there anything else you wanted to add, Mr Hicks, in relation to the proposed directions?

PN94

MR HICKS: No, thank you, Vice President.

PN95

THE VICE PRESIDENT: All right. Thank you. Ms Leoncio, are you able to tell me anything about the extent of the evidence that ARA contemplates it will likely be filing in the proceedings?

PN96

MS LEONCIO: I can't, at this stage, give you the details of it. All I can say at this stage is that we had understood that it would take about eight weeks for us to finalise them. So I suppose you can take from that that there is, you know, there will be some detailed evidence around each of the variations that we have sought. Obviously, there will be overlap but there is a significant amount.

PN97

I have heard the concerns that have been raised by some of the other parties in terms of their response time. And, at least, speaking from the ARA's perspective it may be possible to shorten that timeframe that we had sought. So that we could shorten it so that our materials are due on the 1 November, so that would bring it two weeks ahead. I appreciate that may not necessarily be achievable for the

other moving parties but I just thought I might mention that that would be possible to try to alleviate the pressure on the other side for the response materials.

PN98

THE VICE PRESIDENT: I mean if people are volunteering to do things faster I'm not going to stand in their way. But you can't tell me whether there's likely to be three witnesses or a hundred witnesses?

PN99

MS LEONCIO: I don't have a sense of that yet. But there will be – I can't give you numbers but there will be multiple witnesses. There's obviously quite a number of issues that are to be covered.

PN100

THE VICE PRESIDENT: Yes. Right. I understand. All right, Ms Bhatt – are you able to give me any indication as to the type or extent of the evidence that the Ai Group contemplates, if necessary, in the matter?

PN101

MS BHATT: I think that any evidence that we lead will be very narrow in scope and I don't envisage that we would file more than one or two statements if at all. I think that many of the proposals that we're advancing which were first proposed in the context of the Award Review rest on the industrial merits of those matters. And so I think to that extent will be largely ventilated through submission.

PN102

THE VICE PRESIDENT: All right. Yes, thank you, Ms Bhatt. All right. Ms Burnley – sorry, was there something that you wanted to add?

PN103

MS BURNLEY: Yes, your Honour. So I note the ARA might be able to file their material of the 1 November which would be of assistance. One possible – well, two things – with regard to the evidence which is going to be and if the parties were able to indicate whether they're going to have any experts called or whether this is going to be – you know – people who work in the industry. So it's not going to be outside people coming in to give evidence about it or of big reports of huge – you know – undertakings that – you know – they've explored the retail industry for the last six months or the next two months to come up with some reports. If that could be provided within the next four weeks that would, at least, be able to have some scope as to what the SDA and the other parties might be needing to address when it comes to the proceedings.

PN104

With regard we do note that there is on the proposed directions there is 10 days down that the employers have said that they're going to be requiring. I would suspect we're probably going to need without knowing what the evidence is in the case that we will need to address probably five I would assume with for all the unions. I'm not too sure how that's going to work regard to the scheduling which is – it's hard to know - - -

PN105

THE VICE PRESIDENT: I say five days in addition to the 10 days.

PN106

MS BURNLEY: Well, I'm assuming the 10 days is for – just for the employers. I don't know.

PN107

THE VICE PRESIDENT: I had assumed that it was to deal with the case generally speaking. And I understand that there are a range of issues some of which – look, I don't purport to know what evidence people will – some of them seem to be issues that are unlikely to produce a large amount of evidence. Others seem to be – without sort of suggesting that they aren't important or that there aren't significant submissions that would be made in relation to them, but are unlikely to produce long periods of hearing of evidence. Others may produce, I understand, some evidence.

PN108

I'd not be inclined to foreshadow more than 10 days at this point in time but we can obviously revisit that if it turns out to be a great deal more evidence than we've anticipated.

PN109

All right. Ms Leoncio, did you have any – are you able to say whether there's proposed to be expert evidence or not?

PN110

MS LEONCIO: Unfortunately, I don't have a final position but we have explored the potential for our expert witnesses. So I can indicate that that is something under consideration.

PN111

THE VICE PRESIDENT: All right. Ms Bhatt, are you able to say whether there's expert evidence that is contemplated?

PN112

MS BHATT: We won't be calling any experts.

PN113

THE VICE PRESIDENT: Right. I also neglected to ask you, Ms Bhatt, whether you were enthusiastic about ARA's suggestion that you could file your material by 1 November?

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MS BHATT: I wouldn't say I'm enthusiastic, Vice President, but - - -

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THE VICE PRESIDENT: But you can if need be.

PN116

MS BHATT: We can if need be.

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THE VICE PRESIDENT: I understand. All right. So, Mr Cullinan, was there anything else you wanted to add in - - -

PN118

MR CULLINAN: No. No, thank you, Vice President.

PN119

THE VICE PRESIDENT: All right. So, I just might put the parties on mute just for a moment.

**OFF THE RECORD**

**[10.37 AM]**

**ON THE RECORD**

**[10.37 AM]**

PN120

THE VICE PRESIDENT: All right. Thank you, parties. Look, what I'm inclined to do and we'll publish some directions later today is to endeavour to embrace the ARA's suggestion that any material be filed on the 1 November. Supporting materials a couple of weeks or I think three weeks later was what was proposed. And to provide – to make some directions – not provisional directions but actual directions but subject to a recognition that the unions have raised that there may be concerns complying with them. But, initially, providing that the unions provide or file their materials by the start of March or the end of February. Something in that kind of range which will give them from, essentially, the start of November to the start of March which, whilst I understand Christmas and holidays involve some disruption, is a period of essentially four months and in the hope that that will be sufficient.

PN121

I might also foreshadow that it might be sensible to have a further directions hearing maybe in early December, late November or early December, at which time we can at least have a handle on how much evidentiary material has been filed by the applicant parties or the moving parties, so that we can reassess whether there is any need to change the directions which have been set down.

PN122

I want to do that so that we can allocate some hearing time because if we don't do that then time will fill up and will be later in the year. And so I would propose to do that may be in the first half of April, if that's achievable. It might be a question as to whether the employers could – it's really a question whether it's the first half of April or the first half of May I think. And I will just have to confer internally about that. But now might be the opportunity for anyone to complain about that if that is either an unavailable period for a particularly persuasive reason or not? Sorry, Ms Leoncio?

PN123

MS LEONCIO: Yes, Vice President. We have some availability issues and it is – one, we are concerned about trying to get this matter on as expeditiously as possible. But we also have availability issues and it was part of the reason why we had hoped we could have the matter listed in the first half of March. But with

the dates that you have just proposed I don't see if that is a possibility. We have a lot of difficulty with April and May. But I'm not sure if there is much more that I can do to assist to push the matter along to get it into March.

PN124

THE VICE PRESIDENT: Well, I am happy to hear the matter in the first half of March. But I mean the union's position is that they don't think that would – well, achievable even to file their evidence by that period of time I think. I've cribbed them to a couple of months on their initial bid already so I would be concerned about a period in late February or early March being achievable. But Ms Burnley, what do you have to say about that?

PN125

MS BURNLEY: Your Honour, I'm just having a quick look at scheduling. April would probably be difficult. May would be more easier for us to accommodate and I would note that we would be - - -

PN126

THE VICE PRESIDENT: When you say it would be 'difficult', what's the difficulty?

PN127

MS BURNLEY: Counsel unavailability in April. So we would be applying to have counsel represent us in this matter.

PN128

THE VICE PRESIDENT: Do you know which counsel that is?

PN129

MS BURNLEY: It either be – I think – at this time it will be Mr Bromberg because Mr Friend is unavailable for March and April and May. So we are accommodating with a junior barrister.

PN130

THE VICE PRESIDENT: Well, Mr Bromberg will be fine. All right. Ms Leoncio what are the availability issues? This is also counsel is it?

PN131

MS LEONCIO: I'm just getting instructions. There was a timing issue with the junior pay rates matter but I'm just trying to confirm which period that was. We do also have senior counsel who has been briefed in the matter since the application was first commenced back in February of this year and there are availability issues in respect of his availability.

PN132

THE VICE PRESIDENT: All right. What I might do, rather than just sort of doing a round of the table now, is ask the parties to send a message to my Chambers in the course of today indicating any availability issues that they have in the period between 1 March and the 31 May. Maybe the 30 June so that I can assess that.

PN133

Can I direct that that include the reason for the unavailability? I don't just want to be told that people aren't available. That is, if it's counsel unavailability you can say counsel unavailability. And I'm not saying I will disregard that. But include some reason as to why there's perceived unavailability in that period, that would be of assistance.

PN134

Obviously, where there is a lot of parties we can't necessarily promise to accommodate everyone's chosen counsel necessarily. But obviously I am conscious that if people are being involved for a period of time that that is undesirable to force anyone to change counsel.

PN135

All right. Mr Cullinan, was there any availability issues that you wanted to raise?

PN136

MR CULLINAN: No, Vice President. I did just want to raise, though, the issue of any party that wants to press one of its applications but doesn't participate in the conferral. I know there's a range of organisations that have said things and they're included in the table. We're just wondering if the directions will limit that capacity, or will it simply be they just put on in November if that's what they want to do? Even if they don't participate in there – their things aren't in the list.

PN137

THE VICE PRESIDENT: Yes. Look, what I would propose is to beef up the wording that was proposed for paragraph four of the draft directions that ARA to indicate that any party that wishes to press any of the matters that are referred to in the Award Review process do so, indicate so and provide a draft clause or a draft variation by that time and, as I say, these will be matters on the website and people – you know – if they wish to press matters they should tell us. And if people fail to notice and turn up at a later time I will just – we'll just have to consider that in due course and the degree of prejudice that that would cause to other parties if that is to occur. But my hope and expectation is that parties will come forward and say what they're pressing by the date that has been identified in the ARA directions.

PN138

All right. Is there anything else that anyone else wants to raise?

PN139

MS LEONCIO: I might just raise one further matter in respect of the ARA. Again, this isn't an attempt to try to compress the matter as much as we are able to. At least from the ARA's perspective we could remove the reply materials directions. So just have the supporting materials and the responsive materials and deal with any reply as part of the hearing. That may be one way in which we could get a bit closer to that first half of March. But, again, of course we're subject to other constraints that are outside of our control.

PN140



THE VICE PRESIDENT: Okay. Look, I think it's perhaps difficult to anticipate the extent of the evidence but if there is extensive factual materials, at least, in relation to some of the proposed variations then I think it would be of assistance to the Commission to have a direction for written reply evidence as well and that the course that you propose might complicate and lengthen hearings and lead to complaints that there was evidence being led that wasn't anticipated, it can't be dealt with and that, I don't think, would be in anyone's interests. Sorry, Mr Cullinan, you have put up your hand I think.

PN141

MR CULLINAN: Well, we would and wanted to just affirm what you said, Vice President. But also that at this stage it would also be responsive evidence to the SDA and Hicks applications.

PN142

THE VICE PRESIDENT: Yes.

PN143

MR CULLINAN: And if there's going to be extensive material about why someone shouldn't be at Level 7 or Level 8, we're going to need at least a little time to deal with that.

PN144

THE VICE PRESIDENT: Yes. All right. I understand.

PN145

MS LEONCIO: I don't wish to take up any more time, Vice President. I feel I've already taken up too much space this morning. But I do just want to place on the record that we do hold concerns about those other applications joining this proceeding and then elongating the timeframe, particularly in respect of the classification issues which don't appear to overlap significantly amid the matters that have been raised already which has been the subject of the present statement.

PN146

And I also just note that in terms of those matters that were raised by Mr Cullinan in terms of Part C, I just wanted to be clear that we have not at any time said that we wouldn't press those items or remaining items of proposed variation C, just to be clear on the record that that is clearly - - -

PN147

THE VICE PRESIDENT: I didn't understand Mr Cullinan to be criticising you for pressing - - -

PN148

MS LEONCIO: No.

PN149

THE VICE PRESIDENT: - - -item B only to foreshadow that that was a matter that in issue at least might produce a degree of evidence.

PN150

MS LEONCIO: Yes.

PN151

THE VICE PRESIDENT: All right. In relation to Mr Hicks's application and the SDA application I think that that's just an issue that we might need to park. I foreshadowed that we will have a directions hearing in early December some time once we have seen what material is relied upon in relation to those applications. It might be the appropriate time to consider whether they go forward together. I understand what you say that they're discrete but there's an array of different variations, all of which are discrete that are being dealt with together in these proceedings. So I am not sure that in itself is a reason why it should be dealt with separately.

PN152

But, as I say, if there is some good reason why they should be dealt with separately then I'm certainly happy to hear from the parties in that respect. All right. As I say, what I will do is I will direct the parties to provide today to my Chambers an indication of any periods in which they are not available for a hearing of the matter in the period between the 1 March 2025 and the 30 June 2025.

PN153

I am minded to set aside a period of 10 days consecutively, if possible, for the hearing of the matter at this point. Again, that can be revisited at a later point if that seems either wildly excessive or an under-estimate but it would seem to me that should be a sufficient period, at least on what I currently understand.

PN154

And we will then, once I have received those communications, publish some directions of the broad outline of which I have discussed today, either later this afternoon or on Monday. Included within that will be a directions hearing some time in late November or early December to allow us to revisit whether there's any need to adjust the directions or any other issues that need to be raised.

PN155

All right. Unless there's anything further can I thank the parties for their attendance today? The parties can obviously apply to my Chambers if there is any particular issues that they need to raise of some urgency in the meantime. Good morning, the Commission is now adjourned.

**ADJOURNED INDEFINITELY**

**[10.50 AM]**