



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

ACTING PRESIDENT HATCHER

AM2022/36

s.158 - Application to make a modern award

**Application by Association of Professional Engineers, Scientists and Managers Australia
t/a Professionals Australia & The Australian Industry Group
(AM2022/36)**

Proposed Language Services Industry Award 2023

Sydney

3.00 PM, MONDAY, 16 JANUARY 2023

PN1

ACTING PRESIDENT HATCHER: I will take the appearances. Mr Ferguson, you appear with Mr Chang for Ai Group?

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MR B FERGUSON: Yes, Acting President.

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ACTING PRESIDENT HATCHER: Ms Baulch, you appear for APESMA?

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MS J BAULCH: Yes, Acting President.

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ACTING PRESIDENT HATCHER: Ms Thompson and Ms Simmons, you appear for the Australian Business Industrial and the New South Wales Business Chamber?

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MS K THOMSON: Yes, thank you, Acting President.

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ACTING PRESIDENT HATCHER: Mr Kenchington-Evans, you appear for the Australian Education Union?

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MR J KENCHINGTON-EVANS: Thank you, Acting President.

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ACTING PRESIDENT HATCHER: Mr Stella, you appear for LanguageLoop; is that right?

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MR D STELLA: That is correct, your Honour.

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ACTING PRESIDENT HATCHER: Who would like to kick off?

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MR FERGUSON: I'm happy to if it's convenient, Acting President.

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ACTING PRESIDENT HATCHER: Yes.

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MR FERGUSON: So this is, as you will have seen from the application, an application for a new award covering what we have described as the Language Services Industry. It's essentially employers who provide translation or interpretation services and the idea is the award would cover those parties and their employees working as translators or interpreters.

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Just for your context, there is a fair history, a lengthy history, underpinning the making of this application. There were proceedings in the four yearly review arising from a proposal from APESMA to vary the Health Professionals Award to extend its coverage on an occupational basis to cover interpreters and translators. That proposal was unsuccessful, but the Full Bench there indicated that there would be merit in an award or the award coverage of those employees being dealt with unambiguously, in effect, by the system and the matter was I think then referred onto the President.

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Now, ultimately what happened is APESMA subsequently filed a new application again seeking to extend the coverage of the Health Professionals Award. I think that was filed in late 2021. There were then some contested proceedings that were partly dealt with and were being timetabled or scheduled towards arbitration.

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While those proceedings or that timetable was on foot, Ai Group, APESMA and others had discussions and came to a shared view that it would be better to make a new award covering these employers and employees rather than to vary the Health Professionals Award for reasons which include, among others, that there are many translators that work outside of the health industry. It didn't seem sensible just to extend that industry award or occupation award.

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As a result of that there has been lengthy negotiations, primarily between APESMA and Ai Group. Others have been involved, but that culminated in the making of this application. We haven't yet reached a complete agreement on what the terms would be, but we have foreshadowed adopting this course with Catanzariti VP in order to make the progress we had reached public and to enable APESMA also to discontinue the other proceedings which nobody intended – or they did not intend to press once this application was on foot.

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So where we're at now is a situation where we've got quite advanced negotiations between APESMA and Ai Group, including some discussions with other parties. They're not complete, but they're at a more advanced stage than might be suggested by the application. There are a number of clauses that, because we were still actively discussing them on a without prejudice basis, we haven't included in the drafts.

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What we would propose is the most sensible way forward would be for the parties to be given a further period – say until at least late February - to continue those discussions before the matter is listed for another report back. I suggest that time frame knowing that Ms Baulch who is online is on leave until the end of January, so I don't expect much progress will be made until she returns. That would be the course of action that we suggest would be most efficient, Acting President. I'm happy to deal with any questions.

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ACTING PRESIDENT HATCHER: In terms of the draft order so I understand, the draft order filed is APESMA's versions with notations as to where the Ai Group either disagrees or there hasn't been agreement yet?

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MR FERGUSON: It's a document that was jointly prepared and jointly proposed. There are clauses that are just not agreed and identified as such or omitted. In some instances it might include – if memory serves, but Ms Baulch will correct me – some areas where APESMA has proposed some amendments that we've not agreed to. If there is no amendment, if there is no sort of notation or anything like that, it's agreed.

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ACTING PRESIDENT HATCHER: So the minimum weekly and hourly rates are agreed, are they?

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MR FERGUSON: Yes. If memory serves, Ms Baulch, yes.

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ACTING PRESIDENT HATCHER: Where were those rates derived from or how were they calculated?

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MR FERGUSON: Sorry, you're testing me now. We negotiated a significant period of time - - -

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ACTING PRESIDENT HATCHER: All right.

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MR FERGUSON: I think they may have been taken from the Health Professionals Award, but I don't want to mislead.

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ACTING PRESIDENT HATCHER: Yes, all right. Ms Baulch, do you want to add anything to that?

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MS BAULCH: No, I don't think there's anything necessary, suffice to say that AiG, ourselves and others have been trying to come to an agreement. We actually believe we'll come to an agreement on almost everything. There may be one or two things that we might have to seek the assistance of the Commission on, but I have to say we are actually probably a lot further progressed than the application would give rise to, mainly because we've both got to go back and consult with our various members.

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I think we should, by the end of February, be able to tell you whether we've reached agreement or not. Hopefully we can reach agreement on everything. One thing I do need to say is that - and there are others here - there has been quite a bit

of concern expressed about the application. To me and others it's only meant to cover language service industry companies, those that provide language services to other organisations. For example, the court or immigration or wherever.

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It's not seeking to cover those who are already employees of, say, federal public service or anywhere else. I think we need to make that absolutely clear.

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ACTING PRESIDENT HATCHER: Yes, all right. Sorry, just to make one other thing absolutely clear, is it contemplated that further negotiations will involve the other parties appearing here today?

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MR FERGUSON: Part of the intent in making the application was to make it public so that others could weigh in and consult with us in relation to the document.

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MS BAULCH: Persons of interest, yes.

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MR FERGUSON: I think Ai Group's membership as far as we understand encompasses most if not all major employers in this sector, but we would certainly be hoping to discuss the application with other interested parties and we are certainly actively working with some of the other parties online, and are happy to involve them in discussions. In answer to your other question, Acting President, the rates were taken from the Health Professionals and Support Services Award.

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ACTING PRESIDENT HATCHER: All right. Okay, well, does any other party wish to be heard in opposition to what is proposed? That is, the matter be stood for further discussions until a date to be set in late February.

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MR STELLA: Yes, your Honour.

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ACTING PRESIDENT HATCHER: Yes, Mr Stella.

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MR STELLA: Thank you. LanguageLoop in principle supports the creation of a modern award that covers the language service industry nationally. LanguageLoop would not endorse an industry award that seeks to exclude the coverage of public sector employees as proposed by APESMA. We think moving forward LanguageLoop would consider it practical as a first step that the issue of this coverage extending to both the private and public sectors be considered and determined as part of the threshold issues.

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The statutory framework outlining the creation or the Commission's power to create a new modern award has been outlined and we feel, I guess, that the best step would be to address these threshold issues first and address the coverage issue first. As a bona fide state government agency, LanguageLoop is eligible to employ its interpreters in accordance with the coverage terms of the State Government Agency Award. This award has some, I guess, restrictions in respect of the terms and conditions of employment that would not make employment conducive given, I guess, some of the industry customs and practices that exist.

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We feel that if there was going to be a transition to employment models verse that of independent contracting, ultimately if we're going to need to implement that sort of model we would be looking to either be part of the National Industry Award or seek to apply for a variation to vary the State Government Agency Award to reflect some of those industry customs and practices. We feel that in the absence of being privy to what is and isn't agreed to between AiG and APESMA, the issue of coverage should be resolved by the Commission first. That is our submission.

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ACTING PRESIDENT HATCHER: Mr Stella, I don't think anyone is proposing to exclude you from any negotiations if you wish to participate. I'm seeing agreement with that. Is there any reason why you can't, at least in the first instance, raise these issues in negotiations with the co-applicant and then we can see at the end of February the extent to which there is either agreement or disagreement about those matters?

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MR STELLA: We have sought some clarity from APESMA several times over the course of the past few months seeking to understand why it is that they seek to exclude public sector employers or state-owned enterprises from coverage of this award and no information or no submission or no response has been forthcoming.

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ACTING PRESIDENT HATCHER: Can I ask the co-applicants whether state-government agencies or the federal government are – I'll call them language services employees. Do they already have award coverage under the modern awards which apply in those areas?

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MR FERGUSON: If they're not for profit - - -

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ACTING PRESIDENT HATCHER: Sorry, I'll just start with you, Ms Baulch.

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MS BAULCH: Yes, thank you, sir. Yes, if they're employees of, say, immigration, they would be covered by the various public service instruments. The same if they're employees of, say – and I hear that the Western Australian government is here who has got a different Act and different arrangements. They would remain covered by the Western Australian

legislation. I do understand LanguageLoop's situation and we are attempting to address it. We just haven't got around to talking with them about it yet. We're talking about other matters with them at the moment, but we have no objection to them being involved in the negotiations.

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ACTING PRESIDENT HATCHER: All right. Ms Thomson, do you want to add anything?

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MR FERGUSON: Before Ms Thomson, if I could just note for the record in the application the extension of the coverage of the award to the public sector isn't an agreed matter. We had noted that was APESMA's position.

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MS BAULCH: Yes.

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MR FERGUSON: But we intended to have further discussions about that.

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ACTING PRESIDENT HATCHER: Yes, all right. Ms Thomson, did you want to add anything?

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MS THOMSON: No, thank you, Acting President, other than to say that we have been involved to a limited extent in negotiations and we appreciate the opportunity to have been so involved from AiG and APESMA, and it's our intention to continue in that regard and then, like you indicated to Mr Stella, it may be that when we come back together in February if we've got concerns, particularly with respect to threshold issues, we'll raise them with the Commission at that point in time.

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ACTING PRESIDENT HATCHER: All right. Mr Kenchington-Evans, do you want to add anything?

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MR KENCHINGTON-EVANS: No, thank you. I think we will look forward to further discussions with AiG and APESMA about coverage. Our interest is in regards to mostly post-secondary education and training. The Post-secondary Award has got some coverage of - - -

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MS BAULCH: Yes, that's correct.

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MR KENCHINGTON-EVANS: Yes, non-certified sort of tutors in the ESL load space and that's where we're sort of looking for the carve-out coverage that will be had in these conversations.

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ACTING PRESIDENT HATCHER: All right. Let me just find a date.

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MS BAULCH: While you're doing that, sir, we're happy to talk to AEU and explain what the proposed coverage means, yes.

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ACTING PRESIDENT HATCHER: Yes, all right. I might list the matter for 9.30 on 27 February.

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MS BAULCH: That's fine. Thank you, sir.

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ACTING PRESIDENT HATCHER: All right.

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MR FERGUSON: Yes, thank you.

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ACTING PRESIDENT HATCHER: We'll send the parties a listing confirming that and that will be via Teams. I thank you for your attendance. If there is nothing further, we will now adjourn.

ADJOURNED UNTIL MONDAY, 27 FEBRUARY 2023

[3.15 PM]