



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

JUSTICE HATCHER, PRESIDENT

AM2023/20

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

**Application by Pollock
(AM2023/20)**

Educational Services (Post-Secondary Education) Award 2020

Sydney

11.00 AM, WEDNESDAY, 25 OCTOBER 2023

PN1

JUSTICE HATCHER: I'll take the appearances. Ms Pollock, you're the applicant in this matter and you appear for yourself?

PN2

MS V POLLOCK: Yes.

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JUSTICE HATCHER: Ms O'Sullivan, you appear for the Victorian TAFE Association?

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MS M O'SULLIVAN: (No audible reply)

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JUSTICE HATCHER: Mr Odgers, you appear for the IEU?

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MR A ODGERS: I do.

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JUSTICE HATCHER: And Mr Kenchington-Evans, you appear for the AEU?

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MR J KENCHINGTON-EVANS: Thank you, your Honour.

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JUSTICE HATCHER: Ms Pollock, I'll turn to you first. Can I just clarify what capacity you've made the application? Are you an employee covered by the award?

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MS POLLOCK: Yes.

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JUSTICE HATCHER: I just want to check that I've understood correctly what you propose, and that is this, that in clause B.2.1(a), you would delete the word 'either.'

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MS POLLOCK: Yes.

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JUSTICE HATCHER: I just want to clarify, the effect of that is to qualify for Category A there would effectively be two changes. So there would be two options: either you'd have a degree or diploma of education or equivalent and a diploma in TESOL. That's option 1. Or option 2 is you'd have a postgraduate diploma in applied linguistics, languages other than English, or in multicultural education. Is that the way you want it to read?

PN14

MS POLLOCK: Yes. I'd like to remove the 'either', but there also is just another discrepancy in the Category A, as well as Category B, that I'd like to raise as well.

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JUSTICE HATCHER: What's that?

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MS POLLOCK: Category A is for postgraduate qualifications. So as it reads there now, Category A is where a teacher is having a degree and diploma of education, and a diploma in TESOL, but it is referring to a postgraduate qualification there. The second option for that employee would be a postgraduate diploma with a stream of TESOL, which is English second language.

PN17

So A is regarding a postgraduate-qualified teacher. When we go down – would you like me to go on further with B to explain that the difference carries over?

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JUSTICE HATCHER: I just want to know what you actually want changed.

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MS POLLOCK: I would like to remove 'either.'

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JUSTICE HATCHER: Yes.

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MS POLLOCK: And include a postgraduate diploma in TESOL for the first sentence of Category A.

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JUSTICE HATCHER: Okay. So - - -

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MS POLLOCK: It was incorrect - yes.

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JUSTICE HATCHER: We're not hearing now. I just want to understand what – so they're the two changes of concern?

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MS POLLOCK: Question A, yes, because the parentheses shows that there's a postgraduate diploma in there, but outside the parentheses in the first sentence, it just says 'a diploma in TESOL.' That should say 'a postgraduate qualification in TESOL.'

PN26

JUSTICE HATCHER: Yes, all right. So they're the two changes you want?

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MS POLLOCK: Yes, and I'd also like to go down to B, if possible, please.

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JUSTICE HATCHER: Yes. So what's the change for B?

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MS POLLOCK: So B is where we have a teacher who has a qualification in the Department of Education, plus a recognised TESOL certificate. That is one option. And then we have a degree - after semi-colon, we have a degree and diploma including the TESOL stream. We should input into the second option a teacher having a degree and diploma of education with the additional TESOL stream, because the second option in B is exactly the same as the second option in C.

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JUSTICE HATCHER: All right.

PN31

MS POLLOCK: So we have to make sure that B is where we have a teacher who has a Department of Education qualification with a TESOL certificate, or a stream in that education degree. C and D are okay.

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JUSTICE HATCHER: Just so there's no doubt, the changes you want - Ms Pollock, I'm inclined to make a direction that within a week - and you can do this in a number of formats, whether it's using strikeout or markup or whatever - a revised version of B.2.1, which sets out precisely the words you want to appear in the clause. Are you able to do that?

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MS POLLOCK: Yes.

PN34

JUSTICE HATCHER: I'm going to direct you to file that document in the same way you filed your application within a week. So just set out B.2.1 with the new wording that you propose. Okay?

PN35

MS POLLOCK: Yes.

PN36

JUSTICE HATCHER: All right. I'll turn to the other parties. Now, I don't know whether anyone else has had a chance to form a view about the merits of the application or whether you've properly understood it yet, but I'll start with you, Ms O'Sullivan. What's your attitude to the application?

PN37

MS O'SULLIVAN: Thank you, your Honour. Look, some clarity is sought from us. I understand the words that were just said by Ms Pollock. I suppose I'm not completely clear on what issues she's trying to resolve. In our view, the provisions specify that there's a requirement a degree, an educational qualification, plus an additional qualification in TESOL, and then there are options about what that qualification in TESOL or equivalent may look like.

PN38

That's what all three do, and they give some variations. Not opposed if there would be a way to make that clearer, but we say that's what it already does. What I'm hearing from Ms Pollock would be to change A from now a degree and a diploma in TESOL would no longer be sufficient; it would have to be a degree in a postgraduate diploma in TESOL. I'm not sure of any rationale for that.

PN39

So if it's to make it clearer so that it's a degree and options in qualifications for TESOL, we are happy to do so, but we say that is what it already says and how it already applies.

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JUSTICE HATCHER: All right. Mr Odgers?

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MR ODGERS: Your Honour, the provisions referred to in the application are of very long standing and I'm not aware that there's been any disputation about their application, but notwithstanding that, we have no intrinsic objection to the application as lodged. We can see some logic there in terms of adding clarity.

PN42

We'll have to take on notice the other matters that were mentioned by the applicant today. Perhaps when materials are filed, consistent with the direction you indicated you are minded to make, then we'll be able to say something definitive about those additional approaches to the award.

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JUSTICE HATCHER: All right. Mr Kenchington-Evans?

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MR KENCHINGTON-EVANS: Thank you, your Honour. Yes, the application as filed we're more or less supportive of regarding that change to the working of 'either.'

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Regarding the comments made today, and this might be a matter for directions at a later point, we'd be grateful if the applicant was able to just set out a rationale for the further variations, in addition to a tracked changes document just putting in writing some of those comments. That'd be appreciated.

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JUSTICE HATCHER: All right. Well, once Ms Pollock has filed her document setting out precisely the variation that she seeks, what I'm inclined to do initially, unless anyone objects, is direct the parties to have discussions with each other so that Ms Pollock can explain to you the rationale of the changes she makes, and you might be able to reach some understanding or at least identify what the issues are. Does anybody oppose that course? Ms Pollock, are you still there?

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MS POLLOCK: Sorry. I'm sorry, my screen has frozen. No, that's fine. I can join that. That's no problem.

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JUSTICE HATCHER: All right. Well, look, I'm going to leave this in your hands, Ms Pollock. It's your application. So I'll allow a period of time, probably six weeks. The first week you'll provide your document, and then I'll leave it to you to arrange by whatever means you think appropriate discussion with the other parties who have attended here today to discuss your application, and then the matter will come back on at a date which I'll identify for the parties to report back as to what the position is. Is that a suitable course?

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MS POLLOCK: Yes, that's fine. Yes.

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JUSTICE HATCHER: All right. Does any party object if my Chambers provide Ms Pollock with any contact details necessary for her to arrange such a discussion? All right. So Ms Pollock, if you need contact details, just contact my Chambers and we'll forward those to you.

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MS POLLOCK: Thank you very much.

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JUSTICE HATCHER: All right. I'll advise the parties later today or tomorrow the further date to report back, but it will be approximately six weeks from today. So just to summarise, first of all, Ms Pollock, you're directed to file your document setting out the variation to clause B.2.1 which you seek within seven days, and that will be posted on the website. Step two, the parties are directed to confirm. Ms Pollock will organise that. Step three, the matter will be listed for report back in approximately six weeks, at a date which my Chambers will identify and send to you in writing.

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MS POLLOCK: Thank you.

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JUSTICE HATCHER: Is there anything further I need to deal with today?

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MS POLLOCK: No.

PN56

JUSTICE HATCHER: Thank you for your attendance. We'll now adjourn, which means you can simply disconnect.

PN57

MS POLLOCK: Thank you.

ADJOURNED TO A DATE TO BE FIXED

[11.19 AM]