



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

s.604—Appeal of decisions

Woolworths Ltd trading as Produce and Recycling Distribution Centre (C2010/2647)

JUSTICE GIUDICE, PRESIDENT
SENIOR DEPUTY PRESIDENT ACTON
COMMISSIONER HAMPTON

MELBOURNE, 26 FEBRUARY 2010

Appeal – application for approval of enterprise agreement – dispute settlement procedure – whether procedure complies with the statutory requirements – Fair Work Act 2009 ss.186(6), 595, 737, 738 and 739– Fair Work Regulations 2009, Schedule 6.1.

[1] This is an appeal, for which permission is required, by Woolworths Ltd trading as Produce and Recycling Distribution Centre (Woolworths) against a decision made by Commissioner Smith on 21 January 2010.¹ In the decision the Commissioner dismissed an application made by Woolworths for approval of an enterprise agreement. The sole basis for the decision was the Commissioner's view that the agreement did not contain a procedure to settle disputes about matters arising under the agreement and the National Employment Standards (NES), as required by s.186(6) of the *Fair Work Act 2009* (the Fair Work Act).

[2] Woolworths is an aggrieved person within the meaning of s.604 of the Fair Work Act and made substantial submissions. We also heard submissions from the Shop, Distributive and Allied Employees Association (SDA) and, due to the significant public interest considerations attaching to this matter, from a number of other interests. The Minister for Education, Employment and Workplace Relations (the Minister) made submissions as contemplated by s.597 of the Fair Work Act.

The statutory provision

[3] Section 186 sets out the general requirements for the approval of agreements. Section 186(1) provides that Fair Work Australia must approve an agreement if the requirements set out in the section, and in s.187, are met. For present purposes the only requirement in issue is that in s.186(6). That section provides:

“186 When FWA must approve an enterprise agreement – general requirements
Basic rule

(1) ...

Requirement for a term about settling disputes

(6) FWA must be satisfied that the agreement includes a term:

(a) that provides a procedure that requires or allows FWA, or another person who is independent of the employers, employees or employee organisations covered by the agreement, to settle disputes:

(i) about any matters arising under the agreement; and

(ii) in relation to the National Employment Standards; and

(b) that allows for the representation of employees covered by the agreement for the purposes of that procedure.

Note 1: FWA or a person must not settle a dispute about whether an employer had reasonable business grounds under subsection 65(5) or 76(4) (see subsections 739(2) and 740(2)).

Note 2: However, this does not prevent FWA from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4)."

The provision in the agreement

[4] Woolworths made application for approval of an enterprise agreement known as the SDAEA Mulgrave Produce and Recycling Enterprise Agreement 2009-2012 (the agreement). The agreement contains the following provision:

“30. DISPUTE RESOLUTION PROCEDURE

The parties agree to participate in the Dispute resolution procedure (DRP) in good faith and in recognition that the satisfactory resolution of any dispute is in the interests of all parties to this agreement.

- 30.1** A grievance between an Employee and the Employer about matters contained in or arising from this agreement should be discussed in the first instance between the employee and the employee’s line manager.
- 30.2** If the matter is still not resolved the employee may then raise the matter with the relevant Senior Operations Manager and Human Resource Manager. At this stage the employee has the option of enlisting the support of a representative who may be a union representative.
- 30.3** If the matter is not resolved the employee and/or their representative may then refer the matter to the relevant General Manager and Divisional Human Resources Manager.
- 30.4** If the matter has still not been resolved either party may refer it to Fair Work Australia for conciliation.
- 30.5** If the matter is still not resolved the employee may raise the matter with the relevant General Manager and Director of Human Resources. In instances where the employee

elects to be represented by the union, the National Secretary of the union shall represent the employee in discussions with the relevant General Manager and Director of Human Resources.

- 30.6** If after 30.5, there is still no resolution and the employer's Director of Human Resources and the employee agree or, in instances where the employee elects to be represented by the union, the employer's Director of Human Resources and the National Secretary of the union agree, the matter may proceed to arbitration by Fair Work Australia.

If arbitration is necessary Fair Work Australia may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions in line with the Act which are necessary to make arbitration effective.

The decision of Fair Work Australia will bind the parties, subject to either party exercising a right of appeal against the decision.

From 1 January 2010 the above procedure will also apply to disputes about the National Employment Standards with the exception that it will not apply to a dispute about the whether the employer has reasonable business grounds under subsection 65(5) of the FW Act.

It is a term of this agreement that while the grievance resolution procedure is being conducted work shall continue as normal before the dispute arose unless an employee has a reasonable concern about an imminent risk to his or her health or safety."

- [5] As will be apparent from what follows, the clause that led the Commissioner to dismiss the application is cl.30.6. It can be seen that the earlier parts of the clause provide for various steps for dealing with a dispute prior to accessing cl.30.6. Clause 30.6 then provides that if the dispute remains unresolved Fair Work Australia may arbitrate subject to the prior agreement of Woolworths and the employee or the SDA.

The decision under appeal

- [6] The application for approval of the agreement was filed on 1 December 2009. On 11 December 2009 Commissioner Smith wrote to Woolworths and the SDA. Omitting formal parts, the letter reads:

"I have examined the agreement and except for one matter I am satisfied that it can be certified by Fair Work Australia.

The matter that I refer to relates to the Dispute resolution procedure in clause 30. Two issues arise.

- The first is that it does not refer to the National Employment standards (see.s186(6)).
- The second is that it appears to restrict access to arbitration to circumstances where the Director of Human Resources and the National Secretary of the Union agree.

It appears that this may not be your intention and that the true intention is to ensure that any alleged dispute about matters covered by the procedure needs to attract the attention of those two persons before it is capable of being referred by an aggrieved person for arbitration.

If this is your true intention then I will accept an undertaking to that effect.”

[7] For present purposes it is unnecessary to deal with the issue concerning the NES referred to by the Commissioner. As to the second issue, it is clear that the Commissioner was expressing the view that if the agreement restricted access to arbitration and the parties did not give undertakings to implement the agreement so that access was not limited, the application for approval of the agreement would not be granted. Following correspondence from Woolworths and the SDA the Commissioner scheduled a hearing to permit arguments to be advanced concerning the requirements of s.186(6).²

[8] For the most part, it is unnecessary to set out the arguments put to the Commissioner and the way in which he dealt with them in the decision under appeal. Suffice to say he considered and rejected them all, maintaining the view in the letter of 11 December 2009. All of the arguments advanced to the Commissioner and more were advanced at the hearing of the appeal. There is, however, one matter to which we should refer. That relates to the Commissioner’s view of precisely why the provision did not comply with s.186(6). At one point in his reasons the Commissioner said, in dealing with some arguments advanced by Woolworths:

“In my view this adds weight to the view that access to arbitration is a prerequisite to the approval of an agreement.”³

[9] A number of those appearing at the appeal submitted that it would be wrong to attribute to the Commissioner the view that compulsory arbitration is a necessary ingredient in a dispute settlement provision. We reject that submission. While the position is not absolutely clear, we think the passage we have set out is indicative of the Commissioner’s view.

The submissions advanced on the appeal

[10] Mr Jauncey, who appeared with Ms Barry for Woolworths, contended that the Commissioner had made various errors that should lead to us overturning his decision. Amongst other matters, he argued that the Commissioner failed to take account of the import of other provisions of the Fair Work Act bearing upon s.186(6) and had improperly relied upon minor changes in the statutory language and some extraneous material to support the proposition that access to arbitration was a prerequisite for approval. In support of those arguments, Mr Jauncey traversed the history of the statutory requirements for instruments to contain dispute resolution procedures and contended that any change in the language and statutory context did not warrant a departure from the historical approach adopted by the Australian Industrial Relations Commission (the Commission).⁴ As a result, it was argued that s.186(6) of the Fair Work Act did not require the parties to include a term in an enterprise agreement that provided for arbitration, rather, the Fair Work Act permitted the parties to agree as to whether such would be part of the procedure that they established.

[11] Ms Burnley for the SDA emphasised the long history of good industrial relations at the enterprise concerned and emphasised that the relevant term of the agreement had been strongly supported by the employees as part of the agreed package. She also urged us to resolve the matter quickly and to consider relevant undertakings if necessary in order to have the agreement come into operation.

[12] Mr Donaghue, who appeared for the Minister, supported the appeal and in so doing contended that there was no statutory indication of an attempt to shift what had been a major policy understanding of voluntary arbitration in this area. Further, it was argued that there was no express terms of the Fair Work Act requiring arbitration as part of agreement terms, rather, the legislation provided that such was an option (albeit a desirable one) for the parties. Mr Donaghue pointed, amongst other considerations, to the implications of Part 6.2, and in particular, s.739 of the Fair Work Act.

[13] Mr Mead for the Australian Industry Group and Mr Mammone for the Australian Chamber of Commerce and Industry generally supported the submissions of Woolworths. They also contended that the requirement for compulsory arbitration as part of an agreement term did not sit well with the approach evident in the legislation as applying to workplace determinations⁵ or in relation to State instruments that had become transitional instruments under the Fair Work Act as a result of the referral of powers by the States.⁶

[14] Ms Bowtell, who appeared with Mr Clark for the Australian Council of Trade Unions (the ACTU), opposed the appeal and contended that the view adopted by the Commissioner was appropriate given the terms of the Fair Work Act and the changes in the context in which an agreement dispute resolution provision was to operate. These included the objects of the Fair Work Act, the closed nature of agreements, the constraints on employees making claims during the life of such an instrument and the terms of s.186(6) itself. Ms Bowtell contended that in light of these and other factors, the Fair Work Act should be applied such that an agreement must contain an effective dispute resolution procedure that empowered Fair Work Australia to resolve a dispute. Further, any limitations on the role of Fair Work Australia as set out in s.739 should not operate so as to lead to the inclusion of a dispute resolution term that would be ineffective in actually resolving disputes. In that light, it was contended that the different statutory context also meant that the approach previously adopted by the Commission to earlier similar provisions, should not now be adopted.

[15] Mr Crawshaw SC, who appeared with Mr Slevin for the Construction, Forestry, Mining and Energy Union and the Maritime Union of Australia, supported the ACTU submissions and amongst other matters contended that the issue was one of whether the agreement term should provide for a binding dispute resolution mechanism, rather than whether it must provide for arbitration.

[16] Mr Irving, who appeared with Mr Harding for the Australian Institute of Employment Rights, also opposed the appeal and contended that the Fair Work Act required a procedure that could bring a dispute to an end. This, it was said, was the apparent meaning of s.186(6) and any term that would meet that requirement must include the capacity for the matter to be finally resolved.

The construction of section 186(6)

[17] We turn first to some important elements of the statutory scheme which provide the context in which s.186(6) must be interpreted. Section 595 sets out Fair Work Australia's power to deal with disputes generally and ss.738 and 739 set out Fair Work Australia's powers to deal with dispute resolution terms in, relevantly, enterprise agreements.

[18] Section 595 of the Fair Work Act reads:

“595 FWA's power to deal with disputes

(1) FWA may deal with a dispute only if FWA is expressly authorised to do so under or in accordance with another provision of this Act.

(2) FWA may deal with a dispute (other than by arbitration) as it considers appropriate, including in the following ways:

(a) by mediation or conciliation;

(b) by making a recommendation or expressing an opinion.

(3) FWA may deal with a dispute by arbitration (including by making any orders it considers appropriate) only if FWA is expressly authorised to do so under or in accordance with another provision of this Act.

Example: Parties may consent to FWA arbitrating a bargaining dispute (see subsection 240(4)).

(4) In dealing with a dispute, FWA may exercise any powers it has under this Subdivision.

Example: FWA could direct a person to attend a conference under section 592.

(5) To avoid doubt, FWA must not exercise any of the powers referred to in subsection (2) or (3) in relation to a matter before FWA except as authorised by this section.”

[19] The section is concerned with the powers the tribunal may exercise in dealing with disputes. Section 595(1) provides that Fair Work Australia may only deal with a dispute if it is expressly authorised to do so. Section 595(2) provides that the tribunal may deal with a dispute by mediation, conciliation, making a recommendation or expressing an opinion subject to the qualification that it may not deal with the dispute by arbitration. Section 595(3) permits the tribunal to arbitrate if it is expressly authorised to do so. Section 595(4) operates to confer procedural powers. It seems to us clear enough from the text of these provisions that the legislature intended that Fair Work Australia can deploy voluntary methods of dispute resolution without the consent of the parties to the dispute, provided the dispute is one with which it is authorised to deal, but can only arbitrate if it has been specifically empowered to do so.

[20] Sections 738 and 739 are also directly relevant. They provide:

“738 Application of this Division

This Division applies if:

- (a) a modern award includes a term that provides a procedure for dealing with disputes, including a term in accordance with section 146; or
- (b) an enterprise agreement includes a term that provides a procedure for dealing with disputes, including a term referred to in subsection 186(6); or
- (c) a contract of employment or other written agreement includes a term that provides a procedure for dealing with disputes between the employer and the employee, to the extent that the dispute is about any matters in relation to the National Employment Standards or a safety net contractual entitlement; or
- (d) a determination under the *Public Service Act 1999* includes a term that provides a procedure for dealing with disputes arising under the determination or in relation to the National Employment Standards.

739 Disputes dealt with by FWA

- (1) This section applies if a term referred to in section 738 requires or allows FWA to deal with a dispute.
- (2) FWA must not deal with a dispute to the extent that the dispute is about whether an employer had reasonable business grounds under subsection 65(5) or 76(4), unless:
 - (a) the parties have agreed in a contract of employment, enterprise agreement or other written agreement to FWA dealing with the matter; or
 - (b) a determination under the *Public Service Act 1999* authorises FWA to deal with the matter.

Note: This does not prevent FWA from dealing with a dispute relating to a term of an enterprise agreement that has the same (or substantially the same) effect as subsection 65(5) or 76(4) (see also subsection 55(5)).

- (3) In dealing with a dispute, FWA must not exercise any powers limited by the term.
- (4) If, in accordance with the term, the parties have agreed that FWA may arbitrate (however described) the dispute, FWA may do so.

Note: FWA may also deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)).

(5) Despite subsection (4), FWA must not make a decision that is inconsistent with this Act, or a fair work instrument that applies to the parties.

(6) FWA may deal with a dispute only on application by a party to the dispute.”

[21] Section 738 specifies the type of dispute resolution terms to which the division applies. Section 738(b) makes it clear that the division applies in relation to a dispute resolution procedure of the kind described in s.186(6). Section 739(1) provides that the section applies if a term in s.738 requires or allows Fair Work Australia to deal with a dispute. Section 739(2) is not relevant. Section 739(3) provides that a dispute resolution term can limit the powers available to Fair Work Australia to settle a dispute. Section 739(4) sets out the circumstances in which Fair Work Australia may arbitrate a dispute, providing that if the parties have agreed that Fair Work Australia may arbitrate, Fair Work Australia may do so. It appears to us that s.739(4) strongly implies the negative stipulation that if the parties have not agreed, Fair Work Australia has no power to arbitrate.

[22] The operation of these provisions in relation to dispute resolution terms in enterprise agreements is specifically referred to in the Explanatory Memorandum to the Fair Work Bill 2008. We refer first to paragraph 2290. That paragraph deals with the relationship between s.595 and s.739. It reads:

“2290. Subclause 595(4) ensures that, when FWA is dealing with any of these disputes, FWA can exercise any of its powers under Subdivision B. For example, FWA could direct a person to attend a conference under clause 592. However, there is an exception for Part 6-2 disputes. The procedure in the modern award, enterprise agreement, workplace determination or contract of employment can limit the powers that FWA can exercise in dealing with the dispute (see subclause 739(3)).”

[23] This paragraph repeats the direct indication in s.739(3) that a dispute resolution term might limit the powers otherwise available to Fair Work Australia. It appears from the reference to s.595(4) that the paragraph is primarily referring to the procedural powers conferred by Subdivision B rather than the power to arbitrate. Relevantly, however, the concluding sentence of the paragraph supports the implication in the words of s.739(4) that in the absence of agreement Fair Work Australia has no power to arbitrate. If the legislature has specifically provided for limits upon the use of arbitral power pursuant to dispute resolution procedures, it is difficult to see how the conclusion could be sustained that “arbitration is a prerequisite to the approval of an agreement.”

[24] The Commissioner relied upon the model term for dealing with disputes for enterprise agreements provided for in s.737 of the Fair Work Act, as did a number of parties to the appeal. It will be necessary to examine the relevant provisions and the parliamentary materials. Section 737 reads:

“737 Model term about dealing with disputes

The regulations must prescribe a model term for dealing with disputes for enterprise agreements.”

[25] The model term is found in Schedule 6.1 to the *Fair Work Regulations 2009*:

“SCHEDULE 6.1 MODEL TERM FOR DEALING WITH DISPUTES FOR ENTERPRISE AGREEMENTS

(regulation 6.01)

Model term

- (1) If a dispute relates to:
 - (a) a matter arising under the agreement; or
 - (b) the National Employment Standards;this term sets out procedures to settle the dispute.
- (2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.
- (5) Fair Work Australia may deal with the dispute in 2 stages:
 - (a) Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - (b) if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

Note If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

- (6) While the parties are trying to resolve the dispute using the procedures in this term:

(a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

(b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:

(i) the work is not safe; or

(ii) applicable occupational health and safety legislation would not permit the work to be performed; or

(iii) the work is not appropriate for the employee to perform; or

(iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

(7) The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.”

[26] Having set out the terms of clause 5 of the model term, the Commissioner observed:

“This reinforces, in my view, the construction I prefer as to the meaning and operation of s.186(6). Again, whilst it is not necessary to use the model clause nonetheless, there are, in my view, essential ingredients.”⁷

[27] Consistent with our earlier conclusion, it appears to us that the construction the Commissioner was referring to was one in which compulsory arbitration is an “essential ingredient” in the procedure. As the Commissioner noted, however, the model term is not mandatory. Reference to the Explanatory Memorandum makes this clear. Paragraph 2730 and 2731 are relevant:

“2730. This requirement means, for example, that while the initial stages of a dispute resolution process may involve the direct participants, such as the manager and the employee (and his or [sic] her representative), the final stage of the process must involve FWA or any independent person or body, such as [sic] professional mediator.

2731. Employers and employees (and their bargaining representatives) can refer to the model term for guidance, and may agree to include the term, or part of it, in a proposed enterprise agreement.”

[28] These paragraphs do not support the conclusion that the legislature intended arbitration to be an “essential ingredient” in dispute resolution terms. They support the contrary view. The reference in paragraph 2730 to a “professional mediator” is a clear indication that arbitration is not an essential ingredient. A less direct, but nevertheless relevant indication is the statement in paragraph 2731 that the model term is for guidance and parties may agree to include part of the term only in a proposed agreement. The concept of “essential ingredients” is not grounded in anything to be found in Schedule 6.1 or the Explanatory Memorandum.

[29] In our view the model term does no more than illustrate the types of procedures and powers that may be dealt with in a dispute resolution term. There is no basis for an implication that all of them must be included in every term. Such an implication would, in any event, be inconsistent with the express terms of s.739(3).

[30] Now we turn to the words of s.186(6). We do so in the context of some relevant authority. The critical words of s.186(6) are as follows:

“a term... that provides a procedure that requires or allows FWA, or another person... to settle disputes...”

[31] In 1998 in *Ampol Refineries (NSW Pty Ltd and Australian Institute of Marine and Power Engineers (1998))*⁸ (*Ampol*) a Full Bench of the Commission was required to consider the construction of a statutory provision which was very similar, although not identical, to s.186(6). The provision was s.170LT(8) of the *Workplace Relations Act 1996* (WR Act). That section read:

“The agreement must include procedures for preventing and settling disputes between:

- (a) the employer; and
- (b) the employees whose employment will be subject to the agreement;

about matters arising under the agreement.”

[32] The Full Bench had before it a dispute settlement procedure in an agreement which provided for unresolved disputes to be referred to the Commission but did not require arbitration of such disputes. It was held that the procedure in question was one which met the requirements of s.170LT(8). In the course of its decision the Full Bench indicated that in its view s.170LT(8) required a procedure for preventing and settling disputes, not one which guaranteed a settlement in each case. The Full Bench gave a number of reasons. *Ampol* was decided in February 1998. The decision has never been challenged and there has been no requirement that dispute resolution procedures in agreements contain an arbitration clause, or for that matter any other mechanism to guarantee settlement of a dispute.

[33] The Commissioner held that the statutory context of the Fair Work Act, and in particular the terms of s.186(6), are such that *Ampol* could and should not be applied to applications for approval of enterprise agreements under s.185.

[34] We note firstly that the language of s.186(6) is very similar to the language of s.170LT(8). Relevantly the expression “to settle disputes” has replaced the words “for... settling disputes”. It was submitted that this change in drafting was intended to be a substantive one and that it supports the construction the Commissioner adopted. It was also submitted that the requirement in s.186(6) that the procedure “requires or allows Fair Work Australia, or another person who is independent” to settle disputes is also a relevant change.

[35] At the time *Ampol* was decided the powers of the Commission in relation to disputes under agreements were dealt with in s.170LW of the WR Act. That section should be set out in full:

“170LW Procedures for preventing and settling disputes

Procedures in a certified agreement for preventing and settling disputes between the employer and employees whose employment will be subject to the agreement may, if the Commission so approves, empower the Commission to do either or both of the following:

- (a) to settle disputes over the application of the agreement;
- (b) to appoint a board of reference as described in section 131 for the purpose of settling such disputes.”

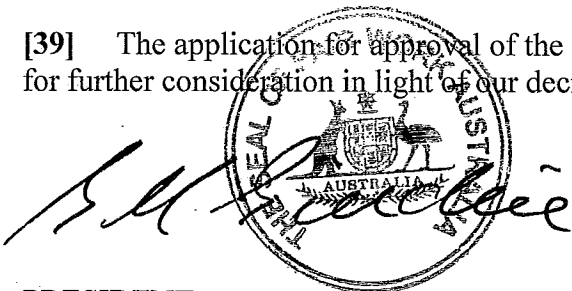
[36] It can be seen that, pursuant to this section, unless the agreement conferred dispute settling functions on it, the Commission had no power to perform those functions and the parties had a choice in that regard. It was argued that the words “requires or allows” in s.186(6) of the Fair Work Act should be read distributively so that “requires” refers to Fair Work Australia and “allows” refers to “another person who is independent”. That argument cannot stand in light of the words of s. 739(1), which are set out earlier in this decision. More importantly, the opening words of s.170LW use the expression “for ... settling disputes” and subsection (a) uses the expression “to settle disputes”. This language suggests that no significance should be attached to changes in language as between s.170LT(8) and s.186(6). The exact words upon which reliance is placed in this case as indicating a change in meaning, “to settle disputes”, were part of the statutory description of the powers that the Commission could exercise when *Ampol* was decided.

[37] The changes in terminology relied upon by those opposing the appeal are not significant. If the legislature had intended to alter the effect of the Full Bench decision in *Ampol* it could easily have made that intention explicit. The absence of an express statement of intention suggests there is no such intention. Furthermore, as we have endeavoured to show, other relevant parts of the Fair Work Act do not support the conclusion the Commissioner reached, rather they tell strongly against it.

Conclusions

[38] For these reasons the Commissioner’s decision was affected by appealable error. We grant permission to appeal. Clause 30 of the agreement includes a term that provides a procedure that requires or allows Fair Work Australia to settle disputes about any matters arising under the agreement. In the circumstances the appropriate course is to make an order quashing the decision under appeal.

[39] The application for approval of the agreement will be remitted to Commissioner Smith for further consideration in light of our decision.

A handwritten signature in black ink is written over a circular official seal. The seal features the Australian coat of arms and the text "AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION" around the perimeter. The signature is written in a cursive style.

PRESIDENT

Appearances:

S. Jauncey and *S. Barry* for Woolworths Ltd. trading as Produce and Recycling Distribution Centre.

S. Burnley for the Shop, Distributive and Allied Employees Association.

S. Donaghue for the Minister for Education, Employment and Workplace Relations.

M. Mead for the Australian Industry Group.

D. Mammone for the Australian Chamber of Commerce and Industry.

C. Bowtell and *T. Clarke* for the Australian Council of Trade Unions.

M. Irving of counsel and *M. Harding* of counsel for the Australian Institute of Employment Rights.

S. Crawshaw SC with *T. Slevin* of counsel for the Construction, Forestry, Mining and Energy Union and the Maritime Union of Australia.

Hearing details:

2010.

Melbourne:

February, 5.

¹ *Woolworths Ltd trading as Produce and Recycling Distribution Centre* [2010] FWA 30.

² [2010] FWA 30 at paras 8 and 9.

³ [2010] FWA 30 at para 17, see also paras 41-43

⁴ *Ampol Refineries (NSW) Pty Ltd and Australian Institute of Marine and Power Engineers (1998)*, Print P8620 per Giudice J, McIntyre VP and Raffaelli C.

⁵ Section 273(2).

⁶ *Fair Work Amendment (State Referrals and Other Measures) Amendment Act 2009 (Cth)*.

⁷ [2010] FWA 30 at para 42.

⁸ Print P8620 per Giudice J, McIntyre VP and Raffaelli C.

