



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER CIRKOVIC

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/263)
Children's Services Award 2010**

**(ODN AM2008/77)
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Sydney

10.11 AM, TUESDAY, 7 FEBRUARY 2017

PN1

THE COMMISSIONER: Good morning. I'll take appearances, please.

PN2

MR M ROBSON: Robson, initial M, with Venville, initial N, appearing for United Voice.

PN3

THE COMMISSIONER: Thank you, Mr Robson.

PN4

MR M ROUCEK: Roucek, initial M. I seek leave to appear for Australian Business Industrial, New South Wales Business Chamber and the Australia Childcare Alliance.

PN5

THE COMMISSIONER: Thank you, Mr Roucek.

PN6

MS R BHATT: If it pleases the Commission, Bhatt, initial R, appearing for the Australian Industry Group.

PN7

THE COMMISSIONER: Thank you, Ms Bhatt.

PN8

MS J ZADEL: If the Commission pleases, Zadel, initial J, for the Australian Federation of Employers and Industries. I have assisting me today, Mr Miljak.

PN9

THE COMMISSIONER: Thank you.

PN10

MR J GUNN: If it pleases the Commission, Gunn, initial J, for Community Connections Solutions Australia; CCSA.

PN11

THE COMMISSIONER: Thank you, Mr Gunn. Do you need to seek permission?

PN12

MR GUNN: No, Commissioner.

PN13

THE COMMISSIONER: Who do we have on video-link?

PN14

MR C KLEPPER: Klepper, initial C, from Business SA.

PN15

THE COMMISSIONER: Thank you, Mr Klepper.

PN16

MR B COOPER: May it please the Commission, Cooper, initial B, of Livingstons. I seek leave to appear on behalf of my client, G8 Education.

PN17

THE COMMISSIONER: Thank you, Mr Cooper. You may remain seated. I will hear you first in relation to permission, Mr Roucek.

PN18

MR ROUCEK: Commissioner, as I understand, my colleague Julian Arndt has already appeared in these proceedings and had permission granted.

PN19

THE COMMISSIONER: All right. Thank you.

PN20

MR ROUCEK: Having regard to the complexity of the matter, it would be efficient to - - -

PN21

THE COMMISSIONER: If that is the case, then certainly permission will continue today.

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MR ROUCEK: Thank you, Commissioner.

PN23

THE COMMISSIONER: Mr Cooper, have you sought permission previously?

PN24

MR COOPER: To be honest with you, Commissioner, I have inherited this matter from another consultant. I am aware that we have appeared in Full Bench proceedings before the Commission. I'm unaware whether permission has been granted in those instances. However, my assumption is that it would have been.

PN25

THE COMMISSIONER: Perhaps for the record you can seek permission pursuant to whatever section of 596 you seek to rely on and then we can go from there.

PN26

MR COOPER: Yes. Thank you, Commissioner. We would seek permission pursuant to section 596(2) of the Fair Work Act. We say that the claim which is sought by our client is a matter of substantial variation to the award. It would be our proposal that that matter be dealt with by way of evidence and, therefore, it distinguishes it from some of the other matters which may be of a more technical nature, and we think that our appearance would be of assistance to the Commission dealing with the complexity of the matter.

PN27

THE COMMISSIONER: Thank you, Mr Cooper. I understand your submission. Do any of the parties have anything they wish to say in relation to that

submission? Thank you, Mr Cooper. Permission is granted pursuant to section 596(2).

PN28

MR COOPER: Thank you, Commissioner.

PN29

THE COMMISSIONER: Before we commence, I will just confirm a couple of preliminary matters. This is a follow-up conference following the hearing before the Full Bench on 6 December. The focus today will be on the summary submissions that have been circulated. I intend to go through that summary, first to confirm its accuracy or the need for any corrections, errors or if there are any misunderstandings, they can be dealt with. It may be that some matters on further reflection and consideration do not need to be pressed. I encourage the parties to advise me if that is the case and then we can withdraw some of those matters if that is how it transpires.

PN30

The purpose of today is to further identify and narrow the issues between you, and it is my intention to certainly give the parties an opportunity for a further conference if that's deemed appropriate, necessary and/or helpful to further narrow and see what matters can be resolved without the need for arbitration. Certainly don't feel that today is the be all and end all. We will, if necessary, reconvene. If necessary, submissions can be made in writing if that's how the parties wish to proceed in any matters. You're very eager to say something, I take it, Mr Roucek.

PN31

MR ROUCEK: Commissioner, at this early stage can I just foreshadow that as sometimes happens within federally registered organisations that you take instructions from, a state body has come forward with one or two additional matters which may need to be agitated at a further conference. I will do my very best - - -

PN32

THE COMMISSIONER: I would hope that you would raise those issues today.

PN33

MR ROUCEK: Yes.

PN34

THE COMMISSIONER: They will then be added to the matters that are recorded in the summary of submissions. They will then be republished and, if need be, a further conference will be convened.

PN35

MR ROUCEK: May I just point out I received them very late last night and I don't know whether they are final instructions. I simply raise them now to foreshadow that something may be confirmed perhaps tomorrow or the next day. I just don't know at this point in time and my instructions aren't clear.

PN36

THE COMMISSIONER: To the extent that you can comment on the matters then that are in the current summary of submissions, I ask you to do that. To the extent that you can comment on additions, then I suggest you do that. It will then be incumbent on you to perhaps put in submissions prior to the next conference so that the parties have an opportunity to consider them - the parties and the Commission.

PN37

MR ROUCEK: Thank you, Commissioner.

PN38

THE COMMISSIONER: All right. Is there anything else anyone wishes to raise before we go to the matters? Anyone via video-link? Was that all clear to you, gentlemen?

PN39

MR KLEPPER: Yes, it was. Thank you, Commissioner.

PN40

MR COOPER: Yes.

PN41

THE COMMISSIONER: Thank you. What I would like to do is go through each of the clauses in the exposure drafts. I'm assuming everyone has with them the revised summary of submissions. That includes the feedback from the 6 December hearing. If you could just confirm that that is what you have.

PN42

MS ZADEL: Yes.

PN43

MR ROUCEK: Yes, Commissioner.

PN44

THE COMMISSIONER: All right. I'll start with the exposure draft; the clauses in each one. I'll go to each party, ask for their current position and see if we can actually then put those clauses to one side or form some sort of conclusion, and then move on to the next one. I find that approach is preferable to asking each of the parties to undertake a submission in relation to their view as to each of the clauses. So if we can do it that way, that's my preference, unless someone has a preferred option. All right. Starting with clause 2, who would like to go first? Business SA?

PN45

MR KLEPPER: Thank you, Commissioner. I noticed in the latest exposure draft that our submission regarding the definition of "children's services" and "early childhood education industry" has been adopted.

PN46

THE COMMISSIONER: Yes.

PN47

MR KLEPPER: So we are thankful for that.

PN48

THE COMMISSIONER: That's something that is agreed doesn't require any further consideration?

PN49

MR KLEPPER: Not to my knowledge, no.

PN50

THE COMMISSIONER: AiG?

PN51

MS BHATT: Yes, if I may, Commissioner. Thank you. We made a submission regarding the need to insert a definition of the term "ordinary hourly rate" which now appears in the revised exposure draft. We made a further submission about that definition on 16 January, which is not identified in this summary of submissions because of course it was published prior to that submission.

PN52

THE COMMISSIONER: I'm sorry, that was on 16 January?

PN53

MS BHATT: Yes, Commissioner.

PN54

THE COMMISSIONER: So that needs to certainly be incorporated.

PN55

MS BHATT: If that can be incorporated in the summary.

PN56

THE COMMISSIONER: Yes.

PN57

MS BHATT: I can speak to the submission very briefly, if it assists. We simply noted that the definition that is now contained in the exposure draft does not reflect the Commission's earlier decision as to what definition should be adopted for that term. Specifically the term does not refer to the minimum rate prescribed by the award. On one reading, it could include over-award payments. That is our concern.

PN58

The second element is that it appears to include some sort of description of what is meant by "all purposes" and we say that's not necessary because now there is a separate definition of the term "all purposes", so for that reason we say the definition should be amended to reflect the Commission's decision. As I say, that's all set out in our submission of 16 January.

PN59

THE COMMISSIONER: In your submissions. Are you saying that your submission accords with the standardised approach that was outlined by the Full Bench?

PN60

MS BHATT: Yes.

PN61

THE COMMISSIONER: I don't know whether it was 2015 - - -

PN62

MS BHATT: Yes, it is, Commissioner. It's a decision that was handed down by a Full Bench of this Commission in July of 2015.

PN63

THE COMMISSIONER: July 2015.

PN64

MS BHATT: Yes. I have the citation, if that assists.

PN65

THE COMMISSIONER: Yes.

PN66

MS BHATT: [2015] FWCFB 4658.

PN67

THE COMMISSIONER: Thank you, yes. At this stage certainly the summary of submissions needs to accurately record and incorporate your submissions.

PN68

MS BHATT: Yes.

PN69

THE COMMISSIONER: That is, I think, what we'll agree to do at this point. Unless there is anything from anyone else on that issue, it could be something that is discussed further at the next conference.

PN70

MS BHATT: Yes, Commissioner. Thank you.

PN71

MR ROBSON: Certainly United Voice would like to discuss it further at the next conference.

PN72

THE COMMISSIONER: Yes.

PN73

MR ROBSON: I have had discussions with AiG and of course this relates to our submission at item 3. We think there might be a form of words that could accommodate both our concerns.

PN74

THE COMMISSIONER: I would encourage you to perhaps continue those discussions prior to the next conference. If there are a form of words that might be agreed upon, then certainly it's something that can be put to the Commission and parties by way of submission.

PN75

MR ROBSON: Of course, Commissioner.

PN76

MS BHATT: We are of course happy to deal with it. I should say the submission that I have just made relates to the definition of "ordinary hourly rate". It might be - and I don't mean to put words in my friend's mouth - that what Mr Robson has just referred to is the term "minimum hourly rate". Mr Robson has correctly identified that we have had some brief discussions and I am hopeful that that is something we can deal with at the next conference. That issue is identified at item number 3 of the summary of submissions.

PN77

THE COMMISSIONER: Yes, all right. Thank you. At this stage we will incorporate the 16 January AiG submission note, Mr Robson, that you would appreciate an opportunity to actually have some discussions with AiG regarding the wording.

PN78

MR ROBSON: May it please.

PN79

THE COMMISSIONER: We can go from there. Is there anything from you, Mr Cooper, on this issue?

PN80

MR COOPER: No, nothing on this issue.

PN81

THE COMMISSIONER: Thank you. Anything from anyone else? All right. Thank you. So that deals then with items on the first page - the first five items - does it not?

PN82

MS BHATT: The issue at item 5 is a slightly separate one, but we say it is now resolved. The exposure draft of 6 January includes a definition of "all purpose". We say it properly reflects the Commission's earlier decision, so the matter has in that way been dealt with.

PN83

THE COMMISSIONER: Dealt with, yes. All right. We'll note that that has been resolved. Does anyone else have any views in relation to that? That's item 5.

PN84

MR ROUCEK: No, Commissioner.

PN85

MS ZADEL: No, Commissioner.

PN86

THE COMMISSIONER: Thank you.

PN87

MR COOPER: No, thank you, Commissioner.

PN88

THE COMMISSIONER: Item 6? Mr Robson, do you care to - - -

PN89

MR ROBSON: Yes. Look, this has been dealt with in a decision of the Commission and that submission is not pressed.

PN90

THE COMMISSIONER: Thank you. We can confirm then that item 6 is no longer pressed. Item 7?

PN91

MR ROBSON: This is a substantive matter.

PN92

THE COMMISSIONER: Yes.

PN93

MR ROBSON: We have filed draft determinations on that issue. It really shouldn't be the subject for these proceedings.

PN94

THE COMMISSIONER: Yes. It seems to me that that appears to be on the face of it at the very least a substantive issue. Did I hear you correctly, Mr Robson; did you say that you would be making further submissions on this matter outside the scope of this hearing?

PN95

MR ROBSON: Yes, Commissioner. We have filed draft determinations in accordance with the directions of the Full Bench.

PN96

THE COMMISSIONER: Yes.

PN97

MR ROBSON: We are of course awaiting their further guidance about when to proceed with the substantive case.

PN98

THE COMMISSIONER: We will note that that matter is not something that needs to be considered in the course of these conferences.

PN99

MR ROBSON: Yes, you're correct. Thank you.

PN100

THE COMMISSIONER: Thank you. All right. Is there anyone else who wishes to say something in relation to item 7?

PN101

MR GUNN: Commissioner, I just note that listed against the summary for AiG it refers to CCSA having brought a claim. We withdrew that back at 30 September in regard to the Cuddlepie decision.

PN102

THE COMMISSIONER: I see. So item 7, to the extent that it refers to CCSA, is incorrect.

PN103

MR GUNN: That's correct, Commissioner.

PN104

THE COMMISSIONER: It says here, "Seeks to vary" - that should be removed.

PN105

MR GUNN: That has been withdrawn.

PN106

THE COMMISSIONER: It has been withdrawn?

PN107

MR GUNN: Yes, Commissioner.

PN108

THE COMMISSIONER: Thank you. The summary will be then amended to reflect that. Item 8.

PN109

MS BHATT: Item 8 is a matter raised by Ai Group. The variation sought has been made in the exposure draft. We say that has now been resolved.

PN110

THE COMMISSIONER: All right. So item 8 has been resolved. The submissions will be amended to reflect that. Does anyone else wish to comment on item 8? Item 9?

PN111

MS BHATT: Item 9 relates to clause 11.1. I can speak to it briefly. The summary doesn't identify the position of the other parties and I'm not sure if that's because nothing was put in response.

PN112

THE COMMISSIONER: So the summary - okay. I'll hear from the other parties in a moment, if need be.

PN113

MS BHATT: Of course. The short version is the current award at clause 10.5(a), we say, requires the calculation of the casual loading on the minimum hourly rate that is prescribed by the award absent the inclusion of any all-purpose allowances. The redrafting of the exposure draft has the effect - or appears to have the effect of requiring the application of the casual loading on the ordinary hourly rate, which is of course defined as including any all-purpose allowances. We say that is a substantive change. It increases the entitlement.

PN114

THE COMMISSIONER: In this award the all-purpose allowance is a - is it referred to as a qualification allowance?

PN115

MR ROBSON: Yes, Commissioner. The only all-purpose allowance in this award is the qualifications allowance which is paid for a person who has additional qualifications. United Voice opposes the AiG's submission. We say that the qualifications allowance, being an all-purposes allowance, it is included in the calculation of the ordinary hourly rate and therefore it is included in the calculation of casual loading.

PN116

THE COMMISSIONER: Is anybody else interested or have a submission in relation to this issue? Mr Cooper?

PN117

MR COOPER: No, Commissioner. Our interest is only - - -

PN118

THE COMMISSIONER: Thank you. I just want to confirm that you can hear us. Mr Klepper, is there anything from you on this issue?

PN119

MR KLEPPER: Not at this stage, thank you, Commissioner.

PN120

THE COMMISSIONER: Thank you. All right. It seems to me that this is also something that will require further submissions, particularly I think given that it could be a departure from what has been put by the Commission in previous decisions in your position, Ms Bhatt.

PN121

MS BHATT: Yes.

PN122

THE COMMISSIONER: To that extent, I think perhaps it would be preferable that there be some further submissions on that and that be part of the next conference in terms of discussion. It might be that that is a matter that actually the parties cannot resolve by way of conference, in which case then it might be something that has to be determined by way of hearing and the calling of evidence

and the like. I think it's premature to make that decision at this point. Unless you have some objection, I think that further submissions - - -

PN123

MS BHATT: We are of course in the Commission's hands as to how the matter is dealt with. We have previously put some submissions in relation to this issue and I anticipate that we would seek to simply continue relying on those submissions. We have set out our reasoning there and happy to refer the matter for further discussion at the next conference.

PN124

THE COMMISSIONER: Perhaps if you could also in your submissions relate them to this particular award. It might be useful.

PN125

MS BHATT: Yes, Commissioner.

PN126

MR ROBSON: Certainly United Voice would seek to make some further submissions on this. We haven't replied to the submission of 16 January and we would like the opportunity to respond in writing before the next conference.

PN127

THE COMMISSIONER: Yes. Thank you. This document doesn't reflect, of course - it reflects only the AiG position as you quite rightly pointed out at the outset. It needs to be amended to include that certainly as far as United Voice is concerned, there is a submission that will be put.

PN128

MR ROBSON: Yes.

PN129

THE COMMISSIONER: That will need to be included and then any further submissions by you, Ms Bhatt, will be included and we can make it the subject of further discussion at the next conference.

PN130

MS BHATT: If the Commission pleases.

PN131

THE COMMISSIONER: All right. The next item, item 10.

PN132

MR KLEPPER: Yes, in relation to item 10, in response to the Commissioner's question, Business SA put forward that the reference to the award based transitional instruments in (indistinct) awards were unnecessary. I note that AFEI put forward a submission in support of that. I'm not sure if that is still opposed by United Voice.

PN133

MR ROBSON: Yes, that submission by Business SA is still opposed by United Voice. We contend that the provision is not actually a transitional provision. It

identifies a group of employees by referring to one. We are in the Commission's hands about how to take this further, but we are certainly strong in our position that these references should maintain in the award.

PN134

THE COMMISSIONER: Is it something that you think would benefit from further discussion, further submission, to try and see if there is a way forward?

PN135

MR ROBSON: Look, I certainly think that there is room for further discussion. Again, I think with all these technical matters further discussion is the better way to resolve it rather than taking it straight to submissions or, you know, contested proceedings.

PN136

THE COMMISSIONER: All right. We will note that is a matter that then will be subject to further discussion and another conference. Item 10(a) is - my copy isn't clear on who has actually made the submission there. Can the parties assist?

PN137

MR GUNN: Commissioner, Livingstons should be able to talk to that.

PN138

MR COOPER: I apologise, Commissioner. I appear to be looking at the wrong document.

PN139

THE COMMISSIONER: Who is that?

PN140

MR COOPER: Sorry, it's Ben Cooper in Brisbane.

PN141

THE COMMISSIONER: Yes. Thank you.

PN142

MR COOPER: I apologise. I appear to have been given the wrong document, so I was unfamiliar with the particular issue we were dealing with. Item 10(a) relates to the issue of the provision that seeks to be inserted by G8 Education in relation to the application when back payment would occur to qualifications in respect to that issue. The issue that we see is that as it currently stands on the interpretation given by the Fair Work Ombudsman to my client, notwithstanding when a qualification is attained by an educator, if there a particular delay - and on some occasions they have that delay for up to 12 months to two years - then the employer is required to back pay the employee to that previous position.

PN143

We say that that causes an unnecessary burden on costs to the employer and we say that it is incumbent upon the employee to bring forward their qualifications within a reasonable time. The provision we have suggested is taken directly from the Educational Services Award, wherein there is a three-month window in which

employees can bring forward those type of provisions. It's our position that there is some reasonable basis to be drawn from the Educational Services Award and the provision should be inserted into the Children's Services Award.

PN144

THE COMMISSIONER: Was there a suggestion - am I correct - at the last hearing that this might be a substantive issue? I see parties nodding.

PN145

MR COOPER: Commissioner, it was raised as a substantive issue by us in the sense that we had proposed to explore the claim on an evidentiary basis to establish that there was a particular need. Now, if that is not the case and the parties are happy to address it with an acceptance of the affidavit that has been filed, then we are certainly happy to explore that.

PN146

THE COMMISSIONER: I will just hear from the parties.

PN147

MR ROBSON: Commissioner, I suppose two points. United Voice is opposed to G8's claim.

PN148

THE COMMISSIONER: Yes.

PN149

MR ROBSON: I think the more important point for these proceedings, this is not a technical and drafting matter. This is not an issue arising from changes made to the exposure draft in its reformatting and, you know, provision process.

PN150

THE COMMISSIONER: No, of course.

PN151

MR ROBSON: This is actually substantive and it needs to be referred back to the Full Bench to be dealt with in the course of the proceedings where substantive matters are to be dealt with. Now, there may be room for conciliation and discussions - - -

PN152

THE COMMISSIONER: In that process though - - -

PN153

MR ROBSON: In that process.

PN154

THE COMMISSIONER: - - - I think is where you're going. I must say my reaction to it is the same, that this certainly goes further than a technical drafting provision. I suggest that that approach is taken. Do any other parties have anything to say in relation to that issue? I think, Mr Cooper, we will put this one in the substantive matters basket. That's not to say that within that regime there is

no scope for conferences and the like to be pursued, and that the matter might be resolved between you at some point.

PN155

MR COOPER: Thank you, Commissioner. We're happy with that approach.

PN156

THE COMMISSIONER: Thank you.

PN157

MR COOPER: Commissioner, if I may - - -

PN158

THE COMMISSIONER: The summary will be reflected to record that. Did you say something else?

PN159

MR COOPER: Yes. That particular issue is the sole issue which G8 has in these particular proceedings. If it pleases the Commission, I would seek to be excused from the remainder of the conference.

PN160

THE COMMISSIONER: Thank you. I don't have a problem with that, Mr Cooper. You are excused.

PN161

MR COOPER: Thank you.

PN162

THE COMMISSIONER: We will just wait one moment until Mr Cooper - given the storm and that noise, it's difficult to hear. All right. The next is item 11.

PN163

MR KLEPPER: (indistinct) another Business SA submission. We have had a further look at the Commission's query at clause 16.7. Business SA's submission is that we're happy to retain the current wording of the award - the current award, sorry, at 18.1(d), so we won't progress any further with that submission.

PN164

THE COMMISSIONER: Thank you for that. The summary will be amended to reflect that that is no longer being pressed by you. In that case, I take it, Mr Robson, you have got no - - -

PN165

MR ROBSON: No, we support retaining it.

PN166

THE COMMISSIONER: Yes. Thank you. No-one else has anything they wish to add to that item. Item 12? Is that you, Mr Klepper?

PN167

MR KLEPPER: No, Commissioner. I'm not sure who from the ECD SA made that submission. We haven't received any word from them, so we don't know if they're going to be appearing today.

PN168

THE COMMISSIONER: It appears that no-one is here. Does anyone have a position in relation to that issue? None?

PN169

MR ROBSON: No, Commissioner.

PN170

THE COMMISSIONER: All right. Well, we'll leave that then. I'll record that no-one is here to press that issue for the time being and the document will be amended to reflect that. Item 13?

PN171

MS BHATT: Item 13, we say is resolved. It was simply a typographical error. It identified Ai Group, which has been amended in the revised exposure draft.

PN172

THE COMMISSIONER: Ms Bhatt, I'm so sorry, but I'm having great difficulty hearing in the noise. Did you say that was resolved?

PN173

MS BHATT: Yes, Commissioner. Yes, it has been.

PN174

THE COMMISSIONER: Thank you.

PN175

MS BHATT: It has been amended in the revised exposure draft. I apologise.

PN176

THE COMMISSIONER: Thank you. Item 13 will be amended to reflect that that matter has been resolved, in which case I take it that no other parties have any submission in relation to that item. Moving to item 14. Mr Klepper, is that you?

PN177

MR KLEPPER: Thank you, Commissioner. Business SA will withdraw that submission.

PN178

THE COMMISSIONER: Thank you. No other parties have a position then in relation to that item. Item 15? This appears to be the same as item 12, in that no-one is here to press it. That is the same with item 16. Do any of the parties that are here have a position in relation to those items that they wish to agitate? No? All right. In that case, the summary of issues will be amended to reflect that there is no pressing of those issues. Item 17?

PN179

MS BHATT: Item 17 relates to the schedule of hourly rates. We put a submission earlier which I had understood to be agreed and was identified as such before the Full Bench hearing in December last year. An amendment has been made to the exposure draft, but that amendment is not consistent with what we had put in our submission and we say that it doesn't - - -

PN180

THE COMMISSIONER: Reflect - - -

PN181

MS BHATT: - - - resolve the issue we had raised. This, too, has been dealt with in our submission of 16 January this year.

PN182

THE COMMISSIONER: So, in essence, you're saying that you had understood the matter to have been resolved.

PN183

MS BHATT: Yes.

PN184

THE COMMISSIONER: And that your understanding of that was not reflected in the exposure draft.

PN185

MS BHATT: Yes.

PN186

THE COMMISSIONER: You have dealt with that in your submission of 16 January.

PN187

MS BHATT: That's correct.

PN188

THE COMMISSIONER: Would you just briefly explain what it was you thought you were agreeing to and what the exposure draft actually says.

PN189

MS BHATT: Of course. The tables contained in the schedule of hourly rates refer to the percentage of the ordinary hourly rate in the second row of each table. They appear to indicate that the rates contained in those tables have been calculated by reference to the ordinary hourly rate.

PN190

THE COMMISSIONER: We go back to that same argument, it seems to me, whether it's the ordinary rate or the minimum rate. Whether the qualification allowance - that's an all-purpose allowance that is added to the ordinary rate - is actually what is used or whether the minimum rate is used when calculating certain - - -

PN191

MS BHATT: That's right, Commissioner. B.1.2 in the schedule states that the rates calculated in this table are based on the minimum hourly rate, so we say that that statement is inconsistent with the indication provided in the tables. We've simply suggested that the reference to the "ordinary hourly rate" contained in the tables should be replaced with "minimum hourly rate" so that it's consistent with what has been put earlier in the schedule.

PN192

THE COMMISSIONER: So it's not a substantive change in any way?

PN193

MS BHATT: No.

PN194

THE COMMISSIONER: You're suggesting that that was actually what was agreed. Are you putting it as a submission as to - that an error was made?

PN195

MS BHATT: In our submissions, we proposed a certain change. I had understood that that change was not opposed by any party. The revised exposure draft purports to give effect to the variation we had proposed, but it is in fact reflected in a different way. There is a footnote that has been inserted, but we say that that doesn't in fact resolve the issue.

PN196

THE COMMISSIONER: It's not enough, you say.

PN197

MS BHATT: Precisely.

PN198

THE COMMISSIONER: All right. I'll hear from the other parties then.

PN199

MR ROBSON: Thank you, Commissioner. We're not opposed to the AiG's claim in regard to this table. We agree that this table actually sets out the percentages calculated for the minimum hourly rate, not the ordinary hourly rate, which would be for some employees the minimum rate but for others the minimum rate plus the ordinary.

PN200

THE COMMISSIONER: Plus the allowance, yes.

PN201

MR ROBSON: We can agree that it would be confusing. We have dealt with this with the AiG in other award technical and drafting proceedings. We might want to consider the addition of a note reminding anyone reading these tables that if someone is paid the qualifications allowance, there might be a different calculation that needs to be performed and that sum would be more than what is set out here; but I think that might need to be decided pending the resolution of

the definition of “ordinary hourly rate” and perhaps our discussion with the AiG over the calculation of casual rate.

PN202

THE COMMISSIONER: Yes, I think at this stage we’ll record the two positions and certainly your position, Ms Bhatt, that the document doesn’t accurately reflect what you had agreed to. We will record Mr Robson’s position that in fact whilst he doesn’t necessarily oppose, there could be some further additions to the clause to make it clearer.

PN203

MR ROBSON: More clear, yes.

PN204

THE COMMISSIONER: Perhaps once the document reflects that, if you need to, Mr Robson, perhaps you can put something in writing as to how you might see the clause.

PN205

MR ROBSON: Of course, Commissioner.

PN206

THE COMMISSIONER: That could be the basis for further discussions at the next conference.

PN207

MS BHATT: Yes, Commissioner.

PN208

THE COMMISSIONER: Thank you. Anyone else? All right. Moving to clause 18.

PN209

MR ROUCEK: Thank you, Commissioner. I think item 18 is a relatively uncontroversial change that is sought. It really seeks at schedule C.2.1(a) the change to the wording in relation to the adjustment of expense-related allowances, to reflect that instead of “increased” it should be “adjusted” to reflect the language used in the title and also that the current wording presumes relevant figures will always be increased.

PN210

Now, whether other parties believe that it will always be increased or not is not material. I think “adjusted” achieves that and doesn’t change the central effect of the provision.

PN211

THE COMMISSIONER: You’re saying “adjusted” would cover both, in a sense.

PN212

MR ROUCEK: Yes.

PN213

THE COMMISSIONER: It wouldn't offend one, but given someone else some comfort.

PN214

MR ROUCEK: That's correct, Commissioner. Thank you.

PN215

THE COMMISSIONER: Does anyone else have a position?

PN216

MR ROBSON: Yes. Look, I would like to reserve United Voice's position on this and seek further instructions.

PN217

THE COMMISSIONER: The document will then be amended to reflect that and we could make that the subject of further discussions at the next conference; but I think your position, Mr Roucek, is clear on what you're putting.

PN218

MR ROUCEK: Thank you, Commissioner.

PN219

THE COMMISSIONER: Does anyone else have a position or anything you wish to raise? All right. That appears to be all the matters, unless there is anything else that anyone wishes to raise. The document then will be amended to reflect what has been put today. Some of the matters that have been withdrawn and/or agreed to that extent, then at the very least it's a narrowing of the issues that remain which we can all be grateful for.

PN220

Once this is then circulated - the minutes are made and circulated - we will be in a position, I think, for another conference. Do the parties have any preferences or any issues that prevent them from having another conference? I was thinking perhaps within the next four to five weeks.

PN221

MR ROBSON: No, Commissioner.

PN222

THE COMMISSIONER: All right. Just bear with me for a moment. I think four weeks from now will give ample opportunity. How are the parties placed for Thursday, 9 March, at 10 am?

PN223

MS BHATT: That would pose some difficulty for Ai Group. We are engaged in other Full Bench proceedings in this review. There is one other relevant personnel who might be able to attend, but will be on leave at the time. I apologise.

PN224

THE COMMISSIONER: That's fine. What about Friday, the 10th?

PN225

MS BHATT: We have the same issue on that day.

PN226

THE COMMISSIONER: What about Wednesday, 8 March, or are you involved in - - -

PN227

MS BHATT: Those Full Bench proceedings run all week.

PN228

THE COMMISSIONER: Are all week, are they? Monday, 27 March? I'm just conscious that if we go any further, that is already getting too far out, so I hope that - - -

PN229

MR ROBSON: No problem for us.

PN230

THE COMMISSIONER: All right. That's good.

PN231

MS BHATT: Thank you, Commissioner.

PN232

THE COMMISSIONER: Mr Klepper?

PN233

MR KLEPPER: Thank you, Commissioner. We have no problems with that date.

PN234

THE COMMISSIONER: All right. Thank you. A listing will be issued then for a further conference in Sydney on Monday, 27 March, at 10 am. Thank you all for attending and will adjourn now.

ADJOURNED UNTIL MONDAY, 27 MARCH 2017

[10.54 AM]