



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**COMMISSIONER CIRKOVIC**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards  
(AM2014/266)  
Educational Services (Teachers) Award 2010**

**Melbourne**

**10.08 AM, TUESDAY, 7 MARCH 2017**

**Continued from 30/01/2017**

PN364

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

PN365

MR A ODGERS: If the Commission pleases, my name is Odgers, initial A, and I appear together with Ms Wischer, initial K, on behalf of the Independent Education Union.

PN366

THE COMMISSIONER: Thank you, Mr Odgers, and you appeared at the last conference, is that correct, on 30 January.

PN367

MR ODGERS: I did. Ms Wischer and myself appeared at the last conference.

PN368

THE COMMISSIONER: Thank you.

PN369

MS K KNOPE: If the Commission pleases, Knope, initial K for six associations of independent schools. Appearing with me is Ms Gilmour, initial L, and we also appeared at the last conference on 30 January. Thank you.

PN370

THE COMMISSIONER: Thank you. In Sydney?

PN371

MR ROBSON: Commissioner, if I may sit?

PN372

THE COMMISSIONER: Of course, yes.

PN373

MR M ROBSON: Thank you. Robson, initial M, for United Voice, and I appeared at the last conference.

PN374

THE COMMISSIONER: Thank you, Mr Robson.

PN375

MS J ZADEL: If the Commission pleases, Zadel, initial J, for the Australian Federation of Employers and Industries, and I have with me Ms Hunt, initial S, just sitting behind, assisting today.

PN376

THE COMMISSIONER: Thank you. Ms Zadel, you appeared at the last conference, on 30 January, is that correct?

PN377

MS ZADEL: I did, yes, that's correct.

PN378

THE COMMISSIONER: Thank you.

PN379

MR M ROCEK: If the Commission pleases, Rocek, initial M, I seek permission to appear for the first time in these proceedings for the Australian Childcare Alliance, Australian Business Industrial and New South Wales Business Chamber.

PN380

THE COMMISSIONER: Thank you, Mr Rocek. When you say "for the first time" are you appearing in lieu of another colleague?

PN381

MR ROCEK: I now have carriage of this matter in place of Mr Arndt.

PN382

THE COMMISSIONER: So Mr Arndt sought and was granted permission at the last conference, is that correct?

PN383

MR ROCEK: I understand that to be the case, Commissioner.

PN384

THE COMMISSIONER: Thank you.

PN385

MR J GUNN: If the Commission pleases, Gunn, initial J, for Community Connections Solutions Australia, CCSA, and I appeared at the last conference, Commissioner.

PN386

THE COMMISSIONER: Thank you, Mr Gunn. Mr Rocek, on the basis that you are appearing in lieu of Mr Arndt, who appeared at the last conference and having sought permission and having been granted permission then that permission continues, unless there's any objection by any of the parties or anything I need to consider that I haven't.

PN387

MR ROCEK: Thank you, Commissioner.

PN388

THE COMMISSIONER: Thank you. This is a follow up conference from the last conference, on 30 January. A revised summary of submissions, technical and drafting has been published. That was published on 14 February. A document was also published and circulated late yesterday afternoon, headed Research Arising from Draft Report and it's dated 23 February 2017. Do the parties have that document?

PN389

MR ROCEK: Yes, Commissioner.

PN390

THE COMMISSIONER: It relates to item 23 of the summary of submissions, so we'll get to that in due course. The focus today, of course, is again on the technical and drafting aspect of the summaries, missions and exposure drafts. I intend to go through the summary item by item, confirm what's been recorded in the revised summary of submissions document, ask the parties to confirm that their understanding is as has been recorded and hear from the parties if there are any issues they wish to raise or any matters they wish to correct, any errors, misunderstandings or the like, or any additional matters that they wish to raise.

PN391

Again, the purpose is to attempt to further identify and narrow the issues between you. I anticipate, given the way this matter has progressed, that we are fairly close to resolution of the technical and drafting issues and I anticipate that perhaps one more conference between the parties that should do it, of course, unless there's anything that arises today that anyone needs to ventilate further.

PN392

All right, is there anything that anyone wishes to raise at the outset? Everyone happy to proceed on that basis? All right, thank you. Item 1 then, that's been withdrawn and I can confirm that the parties agree to that and that there's no issue?

PN393

MR ROBSON: Yes, that's withdrawn.

PN394

THE COMMISSIONER: Item 2?

PN395

MR ROBSON: That's also withdrawn.

PN396

THE COMMISSIONER: Thank you. Item 3?

PN397

MS K WISCHER: Item 3 remains outstanding. The IEU and AIS maintain that application and that the agreement flexibility should only be listed with overtime and penalties - sorry, for the overtime payments and penalty rates being applicable to employees under schedule A.

PN398

MS KNOPE: If the Commission pleases, our view is that this requires a notation, given that those elements are not part of the main award, they're only relevant with respect to schedule A. So our request is simply for a notation alongside them, that it was just schedule A only, or something like that is what we're seeking.

PN399

THE COMMISSIONER: Okay. How would the other parties feel if there was a notation?

PN400

MR GUNN: Commissioner, Mr Gunn for CCSA, we still maintain the position that, particularly with the increase in the number of multiple service types, so this is purely for the early childhood sector, we find services that have long day care, out of school hours care and pre-schools all in the one operation, it's important to retain the standard clause. If there were to be a notation, rather than referring to schedule A my preference would be that the notation simply identified that B and C did not apply to teachers employed in a school or in some other wording that covered that sector.

PN401

But in the case of the early childhood sector you have multiple service types where teachers are employed across the different types, some teachers moving from 48 weeks to 41 et cetera, and there's also a demand nowadays, in New South Wales at least, to align teachers with the remainder of the staff within the early childhood service, many of whom, in fact, have that award flexibility available to them because they're covered by the Children Services Award of the Clerks Private Sector Award.

PN402

THE COMMISSIONER: Am I correct then in assuming that a notation, let's put aside what precisely the terms of the notation are, but a notation in schedule A, would satisfy the parties, or is there something - - -

PN403

MR GUNN: I think the notation would have to appear in the flexibility clause, Commissioner, rather in schedule A.

PN404

THE COMMISSIONER: So you'd want a notation in the 6.1 as well as something in schedule A?

PN405

MR GUNN: I would think only in 6.1(b) and (c), Commissioner, noting that that does not apply to teachers in a school setting, or some wording to that effect. We have no particular opinion on that, that's for the IEU and AIS, from our perspective, we're only concerned with the early childhood setting.

PN406

THE COMMISSIONER: What do the parties have to say about that, if there was such a - the wording of the notation can be - - -

PN407

MS KNOPE: Commissioner, that would serve our purposes. Because there are no overtime rates or penalty rates in the award, other than in schedule A, it doesn't matter whether it refers a negative notation or a positive notation, it would suit our purposes quite well, we would be very happy with a notation.

PN408

THE COMMISSIONER: So we can record that item 3 can be agreed, pending a suitable notation in 6.1(b) and (c), is that correct, Mr Gunn?

PN409

MR GUNN: Yes, Commissioner.

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THE COMMISSIONER: Everyone happy with that?

PN411

MS KNOPE: Yes, Commissioner, thank you.

PN412

THE COMMISSIONER: All right, thank you. Item 4?

PN413

MS KNOPE: In terms of item 4, we haven't actually considered that the other terms were in fact facility provisions, we thought the facility provisions were as we had agreed on them, back in 2009. I think if the Commission is of the view that they are, in fact, facilitative provisions, we've been accustomed to using them for a very long time, then we'd probably have no significant objection to them going in to the clause. I think that's right?

PN414

MS WISCHER: I think we might have a slightly different view on that.

PN415

MR ODGERS: I think our position, in relation to this, is that the net effect of the negotiations that were held when the award was made was to limit the number of matters that would be available in the workplace for negotiation as facilitator of provisions. Those discussions occurred, in an industry context, over about six months. We're certainly not prepared to vary that agreement, based on the bear assertion that ADI have come up with to date that it in some way be useful or normative.

PN416

THE COMMISSIONER: Do any of the other parties have a position in relation to that item?

PN417

MR ROCEK: Commissioner, it's Rocek, initial M, for ACA, ABI and New South Wales Business Chamber. Our position remains as was enunciated by my colleague, Mr Arndt, simply to provide a clearer understanding about what those facilitative provisions are and what they are there for. We haven't change our particular position on this since the last time we were here.

PN418

THE COMMISSIONER: Thank you. Mr Odgers, how then do you foresee a resolution of this?

PN419

MR ODGERS: It sounds, Commissioner, as though the parties may need to make submissions in respect of it at the time the award is finalised.

PN420

MS KNOPE: Commissioner, we did put in a combined position, I suppose we've slightly mellowed over a period of time. And we haven't actually discussed it so I do apologise for that.

PN421

THE COMMISSIONER: I'm hoping Mr Odgers could mellow as well.

PN422

MS KNOPE: I suppose it's a question as to whether it's - and I haven't looked at a range of other awards, but it is normal to list an RDO provision, a slight change with the meal break and also time off instead of an overtime payment, as facilitative provisions in awards? I haven't researched the other awards, so is it normal for that to occur, for those to be listed as facilitative provisions?

PN423

THE COMMISSIONER: That might be something that needs to be looked at further.

PN424

MS KNOPE: That would be my question. The other point I'd make - I'm sorry.

PN425

MR ROBSON: I'm sorry, Commissioner, if it may assist, United Voice is involved in approximately 120 awards in the review. Certainly our experience with the facilitative cause is that it's not really a substantive clause it's simply a list of clauses in the award that allow you to depart from the standard provision and its purpose is less to - I don't think facilitative provision has any substantive meaning but there are clauses in the award that allow an employer and an employee or an employer and a group of employees to agree to depart from the norm set by the award. Looking at the clauses that are at issue here, such as 12.2, that provides that a casual engagement may be extended, by agreement, between the teacher and the employer, provided that the total period of the engagement doesn't exceed certain limitations.

PN426

I think some of the things that are referred to in this clause are facilitative, referred to by ABI, would be facilitative provisions, but things such as 12.2 possibly would fall outside of that. But, in general, the position, I think, would be across the award system that facilitative provisions are simply those provisions that allow for an agreement to depart from the standard provided by the award.

PN427

THE COMMISSIONER: Within that context that that is certainly what the facilitative provisions and the common understanding of the design and purpose of them is certainly to allow that. Within that context, perhaps, Mr Odgers, I think we'd need some further submissions.

PN428

MR ODGERS: We'll certainly be happy to make further submissions in relation to the issue. But taking my colleagues point about 12.2, it already contains its own flexibility so the parameters by which the clause can be varied have been

agreed, universally, between the employers on the one hand, representing every school in Australia, subject to the award, and the union that's representing every teacher subject to the award, in a school context. So it's just very hard for us to contemplate why it is that we would revisit that for form sake.

PN429

MS KNOPE: Commissioner, I agree with what Mr Odgers has just said, each of those clauses has a very defined limit on what you can do, it's not open-ended in any way, so it doesn't facilitate anything more than what the award says. You can either do this or you can do this, it isn't as if you've got 15 different options that could arise out of the award clause, so it's actually very narrow. It's not broad in the concept of facilitation. So, again, I haven't done enough research to know, and I appreciate what was said before, to know exactly what a facilitative provision should be and how open it should be, because I think these are actually rather confined and rather closed and we wouldn't be wanting to open them up to be more facilitative.

PN430

THE COMMISSIONER: Than that.

PN431

MS KNOPE: Than what they are now. So I presume that's not the intention of anybody, but we don't know.

PN432

MS WISCHER: There's so many different clauses within themselves so they are the award, rather than departure from it.

PN433

MR ROCEK: Commissioner, it's Mr Rocek again, I mean I really think clause 12.2 really speaks for itself. It enables an agreement between an employer and an individual. It doesn't allow for any departure from what the limitations are in (a) and (b) and it's there to facilitate agreement between, as I've said, an employer and an individual. I mean really, on that basis, it's a signpost for employers and employees to refer to particular clauses which allow some form of departure by agreement. It's on that basis that we press this particular change.

PN434

THE COMMISSIONER: Well, I think, given where you're all at, further submissions will be required in relation to that item. Right, item 5?

PN435

MS KNOPE: Nothing further on that.

PN436

THE COMMISSIONER: Nothing further, that's agreed.

PN437

MS KNOPE: Agreed, yes.

PN438



THE COMMISSIONER: Item 6?

PN439

MS WISCHER: From the IEU and AIS I think from items 5 to 9 there's nothing further.

PN440

THE COMMISSIONER: I can record that as agreed. Item 7?

PN441

MS WISCHER: Agreed, nothing further.

PN442

THE COMMISSIONER: Item 8?

PN443

MS WISCHER: We're happy with the amendment to the exposure draft, as put out.

PN444

THE COMMISSIONER: Item 9?

PN445

MS WISCHER: At the end, the parties are happy with the amendment to the exposure draft.

PN446

THE COMMISSIONER: Item 10? Apologies, I missed that, I'm sorry.

PN447

MS KNOPE: Sorry, we were just working out who was going to say something first. In terms of the title of clause 14.2 - - -

PN448

THE COMMISSIONER: 14.2.

PN449

MS KNOPE: Which is the one that we're dealing with, in item 10. It was only on reading it after it being in operation for several years that we sort of wondered about what was meant by previous - - -

PN450

THE COMMISSIONER: Recognition of previous service.

PN451

MS KNOPE: That's right, in that title. So we started to wonder whether or not "previous" meant previous to the current employer or does "previous" just mean previous up until yesterday? So we don't quite know what that means because we actually rely on the whole of that clause to work out or to recognise someone's service, both with former employers when they come into a new school, for example, or with the current school, as they're working through. So that's why we questioned the use of the word "previous" and it just might depend upon how

people look at the word "previous", previous as of yesterday or previous as of the previous employer.

PN452

THE COMMISSIONER: If it was a recognition of service, without the word "previous" then how would that - - -

PN453

MS KNOPE: Sometimes when you've been using an award for a very long time you tend to read into it and how it operates.

PN454

THE COMMISSIONER: You read the word "previous" into it.

PN455

MS KNOPE: No, no, no. You sort of know how it operates because you've used it over a long period of time and you don't always read the words to obtain the meaning from it. So we would still apply it to all service of a person coming in a school, in a school workplace.

PN456

THE COMMISSIONER: How do the other parties - do the other parties have a view on it?

PN457

MS ZADEL: Commissioner, Ms Zadel in Sydney, from AFEI, just as to the concern here, it is as was written in the previous award and it appears to be a clause that relates to service on appointment. So that appears to be a clause where we're engaging an employee, we look the service that they've had prior to that appointment and I'm not sure how else it could be read than to look at previous service. Then, as they are then classified, on the basis of their previous service, they would then progress, in accordance with the progression clause, which is within the classification clauses, so I think all the clauses would need to be read in context with each other.

PN458

MS KNOPE: I think we would say that clause 14.4, on progression, couldn't stand alone from clause 14.2.

PN459

MR GILMOUR: An example of that, Commissioner, would be 14.2(b), which talks about service to part-time teacher not an employee on a pro-rata basis. So we would continue to use that clause to help infer the progression rules once an employee has commenced employment.

PN460

MS WISCHER: And the same for (d).

PN461

MR ODGERS: Despite the wording of 14.2(a), the clause clearly contemplates previous service, not only with another employer but - - -

PN462

THE COMMISSIONER: But the current.

PN463

MR ODGERS: Yes, with the current employer, for the purpose of incremental progression.

PN464

THE COMMISSIONER: So the issue for you is to ensure that previous service with a current employer is not excluded, in any way, through the misuse or misunderstanding of the word "previous".

PN465

MR ODGERS: Exactly, Commissioner, yes.

PN466

MS WISCHER: It's almost the construction that part (a) is the recognition of previous service on appointment and then from (b) onwards its service in a current role. So it could be the whole construction of the clause, although (c) - - -

PN467

MS KNOPE: (b) might be used when considering previous employment.

PN468

MS WISCHER: Previous as well, yes.

PN469

THE COMMISSIONER: Is there a way around this by noting something within the body or in the schedule that makes it clear that you're not precluding current employers from the definition? I throw that out there, I'm not sure how the other parties would feel, whether that's creating a further problem.

PN470

MR GILMOUR: I guess that was, Commissioner, what we were trying to do in our approach of just deleting the word "previous". We thought that might have been an easy way of trying to make it clear that these all could apply both pre-employment and pre-today, during employment.

PN471

THE COMMISSIONER: During employment. Ms Zadel, having heard that discourse, do you have any?

PN472

MS ZADEL: I know that in the last conference it was something that was put aside to be dealt with by submissions. I think it might be worth having a look at whether there is any sort of alternative wording to just deleting the word "previous", I'm not certain if that's the best way to deal with it, moving forward.

PN473

THE COMMISSIONER: So perhaps the parties can look, if this issue is being maintained as an issue, at submissions related to some alternate wording that satisfies - - -

PN474

MS KNOPE: Commissioner, may I make a suggestion, we've just been scribbling on a piece of paper. It's a very long title, but Recognition of Service, including with previous employers.

PN475

THE COMMISSIONER: Recognition of service, comma?

PN476

MS KNOPE: Including with previous employers. There might be a neater, more strategic way of describing it, but I haven't thought of that in the last minute or so.

PN477

MR ROBSON: Commissioner, may I suggest a definition of previous service, adopting the language that was just put, a definition, "Previous service will include service with a current and any previous employer" with any necessary qualification that that that service be teaching service. That may actually allow us to preserve, say, the simplicity of the clause without taking anything away from it.

PN478

THE COMMISSIONER: So, Mr Robson, you're proposing the definition - the heading to be Recognition of Service comma - - -

PN479

MR ROBSON: No, no change to the title, leave the clause as it is and I think, at a technical and drafting stage we should be hesitant about changing wording that has been taken from previous exposure drafts, especially since we're talking on the run here. What I'm proposing is the way to do that but still address the concerns that have been raised, include a clause 2 Definitions, a definition of previous service and I'm sure we could come to a definition of previous service that would be mutually agreeable between the parties. Something that may say, "Previous service includes service with an employee's current and previous employers", and perhaps after that, I don't have the words here, some comment that notes that this means service as a teacher, along the lines of, I don't think we need to repeat 14.2(a) and their exclusions for people employed as teachers at TAFEs and English schools, but that might - - -

PN480

THE COMMISSIONER: That might assist all the parties with their various concerns. So that would then entail the parties to put forward a definition that might go in the definitions section of the exposure draft so that all party's concerns are allayed, is that something that - - -

PN481

MS KNOPE: Commissioner, that's one option and it's probably a neater way of doing it. I would probably prefer that if we're going to talk about previous service, given that 14.2(a) already has teaching experience outlined in bold and provides a definition, we could probably do the same thing for previous service in the clause where it actually needs to be used. So my preference, I think, without talking to my IE colleagues, would be to probably put the definition within that

clause of what previous service means, in the same way we've got the meaning of teaching experience.

PN482

MR GUNN: Commissioner, Gunn for CCSA, in the Children's Services Award this exact same issue is dealt with by the simple use of a footnote stating that, "Reference to a year or years of service is to service in the industry", which I think exactly deals with the issue of it doesn't matter who your employer is, it's service in the industry that counts at any point where years of service needs to be dealt with, and that would be a simple footnote and it would also, again, for the Early Childhood part of the award, provide consistency between the two main awards.

PN483

THE COMMISSIONER: It seems to me that parties are all in agreement, to some extent, that there needs to be a consideration of the appropriate wording regarding the term "previous service". There seems to be some disagreement, if I can put it that strongly, as to where that definition should be placed in the exposure draft, whether it's by way of footnote in the body of clause 14.2 or, as you suggest, Mr Robson, in the definition section. I think let's get the wording agreed first so if perhaps the parties undertake to put in some very brief submissions as to appropriate wording or use the time between the end of this conference and perhaps the next conference, to discuss amongst themselves what that appropriate wording might be, then the issue of where we place it in the exposure draft might be easier to deal with. Are the parties happy to proceed on that basis on that issue?

PN484

MS KNOPE: Yes.

PN485

THE COMMISSIONER: Just for the Melbourne parties, if you don't mind, the monitor is having difficulty identifying the parties as they change, so would it be possible for you to identify yourselves formally when you make a submission, thank you.

PN486

All right, item 11?

PN487

MS WISCHER: I think there's nothing further to be said on that matter. That was one of the Commission's questions at 14.4, the matter has been deleted from the exposure draft.

PN488

THE COMMISSIONER: Okay, thank you. Item 12?

PN489

MS WISCHER: Item 12 is the inclusion of a minimum hourly rate. The IEU and AIS remain of the position that the hourly rate should not be included, although the alternative would be to simply make it clear that it is applicable only to schedule A employees. That could be done by notation.

PN490

THE COMMISSIONER: So assuming there was a notation that would satisfy, that it applies only to schedule A employees, is that correct?

PN491

MS WISCHER: Yes.

PN492

THE COMMISSIONER: Do the other parties have - - -

PN493

MR GUNN: Commissioner, Gunn in Sydney.

PN494

THE COMMISSIONER: I'm sorry, Mr Gunn, yes.

PN495

MR GUNN: Commissioner, we would disagree with that. It also applies to early childhood teachers who operate in the services for fewer than 48 weeks a year. There's a number of significant differences between employment as an early childhood teacher and a teacher in a school, not least of which, probably the most important, is the regulatory difference. Under the Education and Care Services National Law and National Regulations early childhood teachers are, in fact, not able to leave the premises when they're not involved in face-to-face teaching, and this may actually - we may need to, again, revisit the part-time employment discussion.

PN496

In short, the national regulations require ECTs to be present on the premises at all times the children are being cared for, even when not providing face-to-face delivery of the early childhood program. Using face-to-face time, whether in a preschool or in a long day care setting is problematic for the appropriate remuneration of early childhood teachers. There are a range of other reasons, but that's why we would oppose this particular position. But that's the key difference between the two forms of employment. The early childhood teachers are employed under a completely different set of national laws and national regulations which change their employment arrangements.

PN497

THE COMMISSIONER: Mr Gunn, is there a way that your concerns could be dealt with by way of some sort of notation?

PN498

MR GUNN: To be honest, Commissioner, I think the only way that it can be dealt with is by, in fact, the inclusion of a minimum hourly rate, or the calculated hourly rate, based on the 38 hour week, and also a, and perhaps this is in schedule A, publishing a long day care rate. The reality is that the early childhood sector is paying on an hourly rate, not paying on an annual salary, that's the industry practice. There's a range of reasons for that, not least of which is that most of them are small to medium enterprises using MYOB, which can't convert an annual salary to a 52.18 week year. We produce hourly rates each year and,

funnily enough, the IEU in New South Wales, every year, request a copy of our hourly rates, but because of the accuracy of them never once has it been raised with me that they're opposing us actually publishing those hourly rates out to our members.

PN499

MR ODGERS: The best I can say about this, Commissioner, is that it appears very clear that it's a matter for submissions.

PN500

THE COMMISSIONER: Yes. I must say I agree. I will note that this is a matter for further submissions.

PN501

MR GUNN: Yes, Commissioner.

PN502

THE COMMISSIONER: Item 13?

PN503

MS WISCHER: Commissioner, the parties are happy with the amendment to the exposure draft at 17.4.

PN504

THE COMMISSIONER: Thank you. Item 14?

PN505

MR ROCEK: I understand from the previous conference that there was broad agreement between ourselves, our parties, the ACAA, ABI and New South Wales Business Chamber and the IEU, and this is on the basis of the document produced by your associate, for the inclusion of references to levels being reinserted to ensure consistency between clauses 18.2 and schedule C(1). I think this could simply be achieved by inserting a column which heads, Classification Level 1, so that it matches up with up to 39 places, Level 2, such that it matches up with 40 to 59 places and Level 3, such that it matches up with 60 or more places.

PN506

THE COMMISSIONER: That's in 18.2?

PN507

MR ROCEK: Yes, Commissioner.

PN508

THE COMMISSIONER: Does the exposure draft not already do that?

PN509

MR ROCEK: Not on the copy that I have in front of me, unless - it's been adjusted, okay, all right. So I think, on that basis, we can simply proceed with that.

PN510

THE COMMISSIONER: For a moment I thought I was seeing things.

PN511

MR ROCEK: Thank you.

PN512

THE COMMISSIONER: Thank you. Item 15?

PN513

MS WISCHER: Commissioner, that was again a proposal by the Commission, with respect to further descriptions about the levels and responsibility. It is agreed that it is not appropriate at this time, so happy with the removal, as per the exposure draft at 18.3.

PN514

THE COMMISSIONER: Thank you. Item 16?

PN515

MS KNOPE: Commissioner, just the changes to the superannuation funds, as those funds have changed their names over time. So we think they're fine.

PN516

THE COMMISSIONER: Thank you. Item 17?

PN517

MS KNOPE: Commissioner, in terms of this particular clause, we just feel that clause 21.2 that it covers two different conditions. The first sentence says:

PN518

*This clause does not apply to teachers employed in early childhood services operating for at least 48 weeks per year, covered by schedule A.*

PN519

To us that's the end of a clause, or the sub-clause, that's the end of an idea, and we think that for the purpose of this clause that (a) and (b) deal with a different matter and should actually just be a separate clause. So that's all that we're seeking, it's really just a formatting. To us that makes the clause easier to read and just improves the formatting and I think it's also consistent with what's in the current award.

PN520

THE COMMISSIONER: Thank you. Any other submissions?

PN521

MS ZADEL: Commissioner, AFEI in Sydney, we withdraw our opposition in relation to this item. We didn't consider it was a necessary variation but it's not of significant concern.

PN522

THE COMMISSIONER: Given that it's probably a formatting issue, as such. Anybody else?

PN523

MR GUNN: Commissioner, Gunn for CCSA, we'd support the proposed change.



PN524

THE COMMISSIONER: Thank you. The next exposure draft will reflect that agreed position. Item 18?

PN525

MS WISCHER: Commissioner, that was the addition of the word "or" between 21.3(b)(i) and (b)(ii), which has been included in the exposure draft, so that matter is resolved in that respect.

PN526

THE COMMISSIONER: Thank you. Item 19?

PN527

MS WISCHER: That also was some additional wording and we're happy with the exposure draft as it is now.

PN528

THE COMMISSIONER: Thank you. Item 20?

PN529

MS WISCHER: Again some "ors" and "and" changes in clause 21.7. Those changes also meet our concerns.

PN530

THE COMMISSIONER: Thank you. Item 21?

PN531

MS WISCHER: That matter was resolved, I think, previously with simple confirmation that some referencing had been already fixed, so, yes, that matter is now resolved.

PN532

THE COMMISSIONER: Thank you. Item 22?

PN533

MS WISCHER: Yes, thank you, Commissioner, that's also been amended in the draft.

PN534

THE COMMISSIONER: Thank you. Item 23?

PN535

MR ODGERS: Somewhat regrettably we will have to consult further inside our organisation before we have that response to the background paper that was released last evening.

PN536

THE COMMISSIONER: And I anticipated, Mr Odgers, that that might be the case, given the time that you had to consider that and to consult.

PN537

MR ODGERS: Thank you, Commissioner.

PN538

THE COMMISSIONER: Do the other parties have any submission to make, in relation to that matter, at this stage, given that it will be flagged as a matter that at least one of the parties will be consulting about before the next conference?

PN539

MR ROCEK: Commissioner, I agree with that way of proceeding.

PN540

THE COMMISSIONER: Thank you. Everyone agree? Thank you. Item 24?

PN541

MS WISCHER: Commissioner, the parties have made a substantive application with respect to meal breaks in the body of the agreement and then at the last conference raised that there was a potential flow on to schedule A and have made a further submission, in relation to that, on 25 January.

PN542

THE COMMISSIONER: That's in terms of the matters, the substantive matters that are being determined?

PN543

MS WISCHER: Yes.

PN544

THE COMMISSIONER: Are they being determined - I could have mixed up my awards, but it's Johns C hearing those?

PN545

MS WISCHER: He seems to be.

PN546

THE COMMISSIONER: He seems to be.

PN547

MS WISCHER: We've only had a discussion, at this stage, about the annual leave matter, with respect to this award.

PN548

THE COMMISSIONER: All right. So I think that can then remain parked.

PN549

MS WISCHER: Yes. If it perhaps just is noted, because the substantive application is to the body of the agreement. This would, in some ways, then follow as a technical matter. But, yes, it does follow from that.

PN550

THE COMMISSIONER: Yes, that will be noted. Anybody else? Thank you. Item 25?

PN551

MS WISCHER: Commissioner, that matter relates to the previous discussion with respect to inclusion of an hourly rate, so I believe that that would also fall into a matter for submissions.

PN552

THE COMMISSIONER: Further submissions in relation to item 25. Item 26?

PN553

MS WISCHER: Yes, thank you, Commissioner, that note has been added. Yes, so nothing further on that matter.

PN554

THE COMMISSIONER: Thank you. Item 27?

PN555

MS WISCHER: Yes, we're happy with the amendment to the exposure draft.

PN556

THE COMMISSIONER: On that basis then, unless there is anything further from any of the parties that concludes the matter that need to be addressed in this conference. From here I intend to have these exposure drafts and documents amended further. I will away submissions from the parties on those matters that require submissions with a view to having another conference. In terms of dates, how are the parties placed towards late March? I have a series of other AMOD conferences that I presume some of the parties will be involved in any way in the week from 27 through to 31 March. They are actually in Sydney so if I was to list this matter, for example, either the afternoon of the 30th or the morning of 31 March, it may be that I would be sitting in Sydney and undertake it via video-link for the Melbourne parties, which I don't think makes much difference to anybody. But it's just that I will be doing other conferences in Sydney for that week. So at this stage I'd be looking at the 30th, in the afternoon, would the parties be amenable for - - -

PN557

MR ODGERS: We have no problem at all with that date, Commissioner.

PN558

MR ROBSON: Commissioner, United Voice is unavailable on the 31st.

PN559

THE COMMISSIONER: What about the afternoon of the 30th?

PN560

MR ROBSON: All clear for us, thank you.

PN561

THE COMMISSIONER: All right, thank you. On that basis, is there anything further from anybody else before I adjourn? All right, thank you all and I will adjourn until the afternoon of 30 March, thank you.

**ADJOURNED UNTIL THURSDAY, 30 MARCH 2017**

**[10.56 AM]**