



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT CATANZARITI  
DEPUTY PRESIDENT GOSTENCNIK  
COMMISSIONER LEE  
COMMISSIONER CIRKOVIC**

**AM2014/250 and others**

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

**Four yearly review of modern awards  
(AM2014/250 and others)  
Groups 4A, 4B and 4C Awards**

**Sydney**

**10.08 AM, TUESDAY, 6 DECEMBER 2016**

PN1

JUSTICE ROSS: The Group 4A, B and C exposure drafts have been listed for hearing today to deal with some technical and drafting issues associated with the exposure drafts that have been released. The awards in those three groups have been grouped together. We're going to begin with the Group 4B awards, that is, the Airport Employees' Award, Airline Operations Ground Staff, the Air Pilots' Award and the Aircraft Cabin Crew Award. So I'll shortly be calling for appearances in relation to those four awards only. Please don't appear for the ones that appear later in the list. We'll come to each of them separately. Once we've got the appearances I'll ask you if there's anything you want to say.

PN2

In particular, what I want you to do is to focus on the summary of the submissions that have been circulated in respect of each of these awards, confirm whether they're accurate or whether there's any corrections or errors in them and when they have misunderstood what's been put. It may be that there are some matters that on reflection you've decided not to press and want to withdraw. And you may want to express, and we encourage you to express a view about matters that other parties may have raised with which you agree, so we can identify – and this is part of the process, trying to identify and narrow the issues between you – and also, I think at the Bar table you'll find those matters that have been referred, substantive matters that have are going to be referred to Full Benches.

PN3

If there are any matters in that summary of submissions on the technical and drafting issues that you think in fact raise a substantive issue then please draw my attention to that and we'll make sure they're in the substantive issue bucket, as it were, to go to a Full Bench. For example, there are some claims which appear to raise coverage issues and as you know, coverage is the one thing that excites all organisations so it's likely that a coverage issue, if it's contested, and I haven't seen one that isn't, then that's likely to go to a substantive Full Bench for a hearing.

PN4

In terms of the process from here, it's likely that in a number of these awards we'll look at a conference to seek to narrow the process. This is really the first part of the resolution of some of these technical and drafting issues. The exposure drafts currently do not contain the most recent annual wage review adjustments. They don't contain a number of the outcomes of the annual leave and toil. Decisions in subsequent drafts will pick up those issues as we move to complete the process. Are there any questions about what we're doing from those in that area? No? I note AI Group has made a number of general submissions across the awards, for example, under characterisation of penalty and loading issues. Those matters are also raised in the context of the Group 3 award, many of them, and we'll publish a decision on the Group 3 award in due course and that will deal with a number of those common matters.

PN5

Any that remain, but I can assure you this won't be a one hearing and we'll decide everything now type of process – those of you that have been involved in the

previous group processes will know that we'll take our time, we'll continue to issue revised exposure drafts, and we'll gradually narrow and resolve the issues in dispute and we usually get to a point where there might be one or two issues that are outstanding. Then we'll invite further submissions on those. Normally we deal with those on the papers but if parties want a hearing they can request one. All right. With that intro, can I take the appearances in the Group 4B awards. Can you indicate your name, organisation and which award you have an interest in, firstly in Sydney. There's no need to stand because for whatever reason the video camera gets a meltdown whenever everyone jumps up and down so - - -

PN6

MR M NICOLAIDES: Nicolaides, M, for the Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union. I'm appearing in respect of the Airports Award only.

PN7

JUSTICE ROSS: Is that the Airport Employees' Award, Mr Nicolaides?

PN8

MR NICOLAIDES: Yes, the Airport Employees' Award, yes, your Honour.

PN9

JUSTICE ROSS: Thank you.

PN10

MS J GHERJESTANI: If the Commission pleases, my name is Gherjestani, initial J. I appear for the Australian Workers' Union relation to the Airline Operations and Ground Staff Award only.

PN11

JUSTICE ROSS: Thank you.

PN12

MS T WALTON: Walton, initial T, for the Transport Workers' Union of Australia and our only interest is the Airline Operations Ground Staff Award.

PN13

JUSTICE ROSS: Thank you.

PN14

MR K BARLOW: If it please the Commission, Barlow, initial K, appearing for the CPSU and our interest is restricted to the Airport Employees' Award.

PN15

JUSTICE ROSS: Thank you.

PN16

MS R BHATT: If it pleases the Commission, Bhatt, initial R, appearing for the Australian Industry Group. We have an interest in the Airline Operations Ground Staff Award, the Air Pilots' Award and the Aircraft Cabin Crew Award.

PN17

JUSTICE ROSS: Thank you.

PN18

MS K SRDANOVIC: If it please the Commission, Srdanovic, initial K. I seek permission to appear on behalf of the Qantas Group and we have an interest in the Airline Operations Ground Staff Award, the Air Pilots' Award and the Aircraft Cabin Crew Award.

PN19

JUSTICE ROSS: And in relation to the Airport Employee's Award do I take it Qantas doesn't have an interest in that because that's an award that applies to the owners and operators of airports rather than the people who fly in and out.

PN20

MS SRDANOVIC: Correct.

PN21

JUSTICE ROSS: It's just that we don't appear to have any employer submissions directed to that award.

PN22

MS SRDANOVIC: Yes, it's one that Qantas doesn't have any employees within that particular industry.

PN23

JUSTICE ROSS: Thank you. Anyone else?

PN24

MS S TAYLOR: Thank you, your Honour, Taylor, initial S, appearing for the Australian Manufacturing Workers' Union in relation to the Airline Operations Ground Staff Award, with Mr Arjonilla, initial H, and we have an interest in the Surveying Award 2010.

PN25

JUSTICE ROSS: All right, well we'll come to that in due course. Are there different divisions of the AMWU that you're representing, Mr Nicolaides, or?

PN26

MR NICOLAIDES: No, I'm happy to record that I'm appearing for the AMWU as a whole, your Honour.

PN27

JUSTICE ROSS: All right. In relation to Melbourne, can I take the appearances from there please?

PN28

MR S MILLER: If it pleases Commission, my name is Miller, initial S. I appear on behalf of the Australian Federation of Air Pilots and our interest is in relation to the Air Pilots' Award.

PN29

JUSTICE ROSS: Thank you.

PN30

MR J COONEY: Yes, your Honour, Justin Cooney for the Australian Services Union in regard to the Airline Operations Ground Staff Award.

PN31

JUSTICE ROSS: Thank you, Mr Cooney. Anybody else? No? Well, can I go to the Airport Employees' Award and to the summary of submissions in respect of that award. Are there any comments, bearing in mind what I mentioned earlier, corrections, additions, withdrawals, of agreed items? Who'd like to go first. Mr Barlow?

PN32

MR BARLOW: Your Honour, I might just deal with, if it suits you and the Bench, when we walked in this morning there was that document from the Commission, the substantive - - -

PN33

JUSTICE ROSS: Yes, that's the substantive – yes, look that was really there just in case we were going to add anything to it, that's all.

PN34

MR BARLOW: Yes. I thought it might be useful to address. There's only one item for the Airport Employee's Award that we categorise as substantive and it's something which I don't believe is substantive, your Honour, so I may very well deal with that shortly.

PN35

JUSTICE ROSS: Sure, yes.

PN36

MR BARLOW: This is an issue which the Fair Work Ombudsman raised about technical issues back in about March last year. He did them for a bunch of awards including stage 3 and stage 4.

PN37

JUSTICE ROSS: Yes, I remember.

PN38

MR BARLOW: The CPSU put on submissions regarding the Fair Work Ombudsman in about November 2015.

PN39

JUSTICE ROSS: Yes.

PN40

MR BARLOW: And it addressed one issue that the Fair Work Ombudsman had raised in this award, and it dealt with a confusion the Fair Work Ombudsman felt between the provisions that dealt with ordinary hours of work and the shift work. I - - -

PN41

JUSTICE ROSS: So whether ordinary hours could be worked on, on a Saturday and - - -

PN42

MR BARLOW: Yes, on a Saturday.

PN43

JUSTICE ROSS: Yes.

PN44

MR BARLOW: That issue had already been determined as part of the award modernisation process, your Honour.

PN45

JUSTICE ROSS: All right.

PN46

MR BARLOW: And there's a – which we've dealt with in our submissions but there's a Full Bench led by Watson VP, I believe, who dealt with that issue and basically said, no, there's no ambiguity there. It's quite clear that one provides a penalty for working outside that, so the reference is - - -

PN47

JUSTICE ROSS: So the Full Bench has decided that issue - - -

PN48

MR BARLOW: Yes.

PN49

JUSTICE ROSS: After the FWO has made an error?

PN50

MR BARLOW: No, no, no, sorry. The Full Bench had determined that issue in 2010, your Honour.

PN51

JUSTICE ROSS: I see. All right.

PN52

MR BARLOW: But the FWO may not have realised that there was a decision about that provision.

PN53

JUSTICE ROSS: All right but just - - -

PN54

MR BARLOW: So I might just give you a reference for the transcript.

PN55

JUSTICE ROSS: Sure. No, thank you.

PN56

MR BARLOW: It's Airport Employee, or Re Airport Employees' Award [2010] FWA FB286.

PN57

JUSTICE ROSS: Well we'll move the FWO issue from the substantive to the technical and drafting.

PN58

MR BARLOW: Yes.

PN59

JUSTICE ROSS: Is there any objection to that course? No? And we'll note that decision and also update the summary to include a reference to your correspondence.

PN60

MR BARLOW: Thank you, your Honour. On the technical drafting, obviously there's those corrections that the CPSU wish to make and it does wish to clarify or withdraw its position regarding several items.

PN61

JUSTICE ROSS: Sure.

PN62

MR BARLOW: So if we turn to item 6 in the summary of submissions - - -

PN63

JUSTICE ROSS: Yes.

PN64

MR BARLOW: This is dealing with the reimbursement of airfares provision in the exposure draft's clause 20.3(f), Roman numeral – sorry, 20.3(d) - - -

PN65

JUSTICE ROSS: I'm sorry, can you just - - -

PN66

MR BARLOW: (d) - - -

PN67

JUSTICE ROSS: (d)5.

PN68

MR BARLOW: Yes, thank you.

PN69

JUSTICE ROSS: Yes.

PN70

MR BARLOW: In substance it was in response to a question from the Commission of whether or not a motor vehicle allowance should be included in the award.

PN71

JUSTICE ROSS: Yes.

PN72

MR BARLOW: I think both the CPSU and the AMWU simply weren't particularly minded, but the CPSU then put a submission saying it opposed – if there was to be one put there it opposed it being put at that provision.

PN73

JUSTICE ROSS: Yes.

PN74

MR BARLOW: And we now withdraw that submission, your Honour. If the Commission does decide to put a motor vehicle, or reference to a motor vehicle allowance in then we would support either of the proposals that the AMWU has put, which is in that second dot point of 20.3(d)(v). You could just include an explanation of the rate.

PN75

JUSTICE ROSS: All right. So your submission of 26 July in relation to this issue is withdrawn - - -

PN76

MR BARLOW: Yes.

PN77

JUSTICE ROSS: And you now support the position advanced by the AMWU?

PN78

MR BARLOW: Yes. Thank you, your Honour.

PN79

JUSTICE ROSS: All right. Yes, anything else?

PN80

MR BARLOW: Yes. Item 11, this is dealing with on-calls and standby.

PN81

JUSTICE ROSS: Yes.

PN82

MR BARLOW: The CFMEU advanced a submission, the 26 July submission that the formula for calculating overtime for the purposes of on-call had been omitted from that exposure draft. It has now been pointed out to me that it's now located in clause 22.3 which deals with overtime.

PN83

JUSTICE ROSS: Yes.

PN84

MR BARLOW: So on that basis it's unnecessary to reinclude the order - - -



PN85

JUSTICE ROSS: All right, so - - -

PN86

MR BARLOW: And so we withdraw that submission.

PN87

JUSTICE ROSS: Thank you.

PN88

MR BARLOW: Your Honour, those are the two corrections I wish to make.

PN89

JUSTICE ROSS: All right.

PN90

MR BARLOW: I may very well wait until I hear from Mr Nicolaides about there may or may not be some substantive issues in here that may need to be referred to conference, or not.

PN91

JUSTICE ROSS: Sure.

PN92

MR BARLOW: But if I can seek leave to comment after Mr Nicolaides.

PN93

JUSTICE ROSS: No, no, no, of course. Look, the identification of the substantive issues is really for referral to a separately constituted Full Bench.

PN94

MR BARLOW: Yes.

PN95

JUSTICE ROSS: Once we conclude the corrections and additions to the summary – well, Vice President Catanzariti will engage with us as to whether there should be a conference or not in relation to this matter and if so, where and all those sorts of things.

PN96

MR BARLOW: Thank you, your Honour.

PN97

JUSTICE ROSS: Mr Nicolaides?

PN98

MR NICOLAIDES: Yes. Thank you, your Honour. Having regard to your introductory comments and what Mr Barlow has just said in relation the summary we're satisfied with the summary as it now stands.

PN99

JUSTICE ROSS: Yes.

PN100

MR NICOLAIDES: And as amended by the CPSU and we would – we're satisfied with it and we would otherwise rely on the written submission that we've tendered.

PN101

JUSTICE ROSS: All right. Thank you. Anyone else? Do you think a conference would be useful to further seek to resolve these matters or?

PN102

MR BARLOW: I think a conference may be useful just to make sure that some of the more detail around the submissions is ironed out before a decision is made about the technical drafting, your Honour.

PN103

DEPUTY PRESIDENT GOSTENCNIK: Is there any merit in contacting some of the airport operators, given that it seems to be a one-sided debate?

PN104

MR BARLOW: That's an interesting comment. Most of them, or all the ones the CPSU deals with, have enterprise agreements in place so there may be some covered by this award in remote localities that don't but I couldn't comment upon those.

PN105

JUSTICE ROSS: Is there an employer organisation broadly that you engage with or do you deal directly with the operators?

PN106

MR BARLOW: I think there is actually an industry body but your Honour – and its name now eludes me. I received a submission from it some - - -

PN107

JUSTICE ROSS: One option might be, we'll do a search or have a search done of the enterprise agreements. That will identify the employer bodies and we will write to them and draw their attention to the fact that the process is taking place, and in the event that a conference is held, directly notify them. They are probably not a registered user and so they've – other than casually browsing our website for their own interests they may not stumble across the fact that this is taking place. So I think it would be worth the award review area corresponding with them, drawing their attention to the fact it's being reviewed, and letting them know what the process is and we'll see what response we get.

PN108

MR BARLOW: If it please the Commission.

PN109

JUSTICE ROSS: All right. But look, I take your point that – and it's not unusual for those areas that are heavily regulated by enterprise agreements for there to be either limited involvement from the union or the employer's side in the review

process, and that's just the nature of it. It's just the allocation of resources decision that organisations make. Anything further in relation to this? No?

PN110

MR BARLOW: No, your Honour.

PN111

JUSTICE ROSS: Look, what we'll do is, rather than take the time of the other parties, when we come to the end of these awards we'll adjourn for five minutes or so. And the Members who will be looking to convene conferences in respect of those awards will come back in and have a discussion with you about, well, where's the most suitable place for a conference, timing, those sorts of issues.

PN112

All right. Well, let's go to the next award, the Airline Operations Award and go through the same process. Who would like to begin there?

PN113

MS GHERJESTANI: If the Commission pleases?

PN114

JUSTICE ROSS: Yes, Ms Gherjestani.

PN115

MS GHERJESTANI: Your Honour, in relation to item number 17 it deals with clause 50.1(a)(i) of the exposure draft. The AWU wishes to withdraw that submission.

PN116

JUSTICE ROSS: Good news for Qantas. Yes?

PN117

MS GHERJESTANI: There's a number of submissions that the AWU made which was related to cross-referencing errors.

PN118

JUSTICE ROSS: Yes.

PN119

MS GHERJESTANI: I think all parties agree with that. I can go through that now.

PN120

JUSTICE ROSS: No, you don't need to. I think we'll sweep most of those up in a subsequent exposure draft, and we don't need to take your time with it. We've agreed there's a cross-referencing error. Obviously we'll check it but I think if everyone agrees it's likely it's just a simple transposition error, and we'll tidy those up as we go through. Was there anything else?

PN121

MS GHERJESTANI: Apart from that I didn't want to add anything at this stage.

PN122

JUSTICE ROSS: All right. Anyone else?

PN123

MS BHATT: If I may, your Honour?

PN124

JUSTICE ROSS: Certainly.

PN125

MS BHATT: Having reviewed the document there appear to us to be a number of matters that are agreed. I wonder if I can identify them for the Full Bench. If I'm mistaken I'm sure one of my colleagues will correct me.

PN126

JUSTICE ROSS: No, that would be helpful. Yes. You can perhaps just do that by reference to the item numbers.

PN127

MS BHATT: Yes, your Honour. Item number 1.

PN128

JUSTICE ROSS: Yes.

PN129

MS BHATT: If I can speak to this very briefly though because this relates to a number of other items that will later arise. I understand that it is agreed that the definition of permanent nightshift be deleted from clause 2. That clause 17.1(d) of the exposure draft also be deleted. That clause 17.4 of the exposure draft be replaced with the current clause 30.4. And that the necessary amendments be made to schedule B. I say that because the scheduled hourly rates will refer to permanent nightshifts. I think there's some agreement between the parties that that term ought not to be used. I'm not sure I'm able to assist your Honour with how it then should be referred to in the schedule itself.

PN130

JUSTICE ROSS: But I understand what you're putting as to the agreement and we can seek to give effect to it in a revised exposure draft.

PN131

MS BHATT: Yes.

PN132

JUSTICE ROSS: And it can be something that can be discussed at the conferences as we go through.

PN133

MS BHATT: Yes, your Honour. Thank you.

PN134

JUSTICE ROSS: All right.

PN135

MS BHATT: Item number 2 is agreed.

PN136

JUSTICE ROSS: Yes.

PN137

MS BHATT: Item 3 is agreed.

PN138

JUSTICE ROSS: Yes.

PN139

MS BHATT: Four is agreed. I think item 12 is agreed. Item 13 is agreed that clause 12.16(b) be deleted.

PN140

JUSTICE ROSS: Yes.

PN141

MS BHATT: I understand item 16 to be agreed. Eighteen will be resolved by virtue of what I've just said in relation to item 1.

PN142

JUSTICE ROSS: I'm sorry, you said 16 was agreed?

PN143

MS BHATT: I'm sorry, yes.

PN144

MS SRDANOVIC: In that respect, your Honour, I can indicate that the Qantas Group can withdraw its submission in respect of item 16.

PN145

JUSTICE ROSS: All right. Thank you. Yes?

PN146

MS BHATT: Item 18 is resolved by item 1. Item 21 is also resolved by item 1. Item 24 is agreed. Twenty-five is agreed. Twenty-six through to 29 are the matters just identified by Ms Gherjestani, as is item 31 and 32.

PN147

JUSTICE ROSS: I'm sorry, can you just repeat that?

PN148

MS BHATT: I'm sorry, your Honour.

PN149

JUSTICE ROSS: No, that's all right.

PN150

MS BHATT: Items 26 through to 29 are all agreed. They're the cross-referencing  
- - -

PN151

JUSTICE ROSS: Yes. Yes. Yes.

PN152

MS BHATT: The same applies to 31 and 32.

PN153

JUSTICE ROSS: Yes.

PN154

MS BHATT: Thirty-seven is agreed. Can I just identify though I think there are two matters. The first relates to how the allowance is expressed in the body of the award, and we agree with the AWU's submission. We have identified another issue that is there in the summary but it might be relevant for the next version of the exposure draft that's published. It appears to us that there are a series of allowances that don't appear in the schedule to the exposure draft, by virtue of which the manner in which those allowances are derived or calculated is no longer apparent.

PN155

JUSTICE ROSS: Yes.

PN156

MS BHATT: So if the Commission determines that that should be rectified then that being the matter.

PN157

JUSTICE ROSS: Yes, we'll take that up. Yes.

PN158

MS BHATT: Item 38 is agreed. Item 43 we say should be referred to the annual leave Full Bench.

PN159

JUSTICE ROSS: I was afraid you were going to say that.

PN160

MS BHATT: I think it falls squarely within the ambit of what was the ACTU claim.

PN161

JUSTICE ROSS: No, I'm afraid you're right. Yes.

PN162

MS BHATT: Yes. Item 46 agreed. Item 47 is resolved by item 1. I think that might be all, your Honour.

PN163

JUSTICE ROSS: All right.

PN164

MS SRDANOVIC: Your Honour, may I indicate that that's consistent with our understanding of the agreed items. And in addition, with respect to item 35, we could also add this one to the list as being agreed, in that, the Qantas Group can withdraw its submission about adding the tool allowance to that list because it's already appropriately referenced at clause 19.9(a).

PN165

JUSTICE ROSS: So item 35 is withdrawn.

PN166

MS SRDANOVIC: Yes. And the other comment we would also make in respect of substantive variations is that with respect to item 39 this deals with clause 21 of the exposure draft and the indemnity insurance amount and whether it should be indexed. To the extent that the AMWU and the AWU are pressing that we would see that as a substantive variation to the award and propose it be dealt with in accordance with the process for dealing with such variations.

PN167

JUSTICE ROSS: Are you content if that's determined and their positions clarified in the conference?

PN168

MS SRDANOVIC: Yes. That would be another way of dealing with it, your Honour.

PN169

JUSTICE ROSS: Anyone else on this award?

PN170

MS TAYLOR: Yes. Thank you, your Honour.

PN171

JUSTICE ROSS: Yes?

PN172

MS TAYLOR: If I could just clarify the AMWU's position at item 6, particularly in relation to clause 15.1 where we say that clause 15.1 as a whole should be included. Our submission there is actually that clause 15.1(a) and (b) should be included. It's not appropriate to include 15.1(c) as that is a majority only provision.

PN173

JUSTICE ROSS: All right. So we'll amend the summary document to reflect that.

PN174

MS TAYLOR: And also, your Honour, at that same item, the AMWU's submission is that clause 16.1(b) and 16.1(c) should be included. We withdraw 16.1(c).

PN175

JUSTICE ROSS: So it'll just read clause 16.1(b) should be included.

PN176

MS TAYLOR: That's correct, your Honour. At item 8 we support the AWU's proposal, however the reference at clause 7.4 should be restricted to 7.4(b), and the reference to 15.1 should be 15.1(a).

PN177

JUSTICE ROSS: So the reference to clause 7.4 - - -

PN178

MS TAYLOR: Yes, at the start of clause 10.2(b).

PN179

JUSTICE ROSS: Yes. Yes.

PN180

MS TAYLOR: Should be to 7.4(b), and that relates to the facilitative provision which enables the majority to agree to vary certain hours which then wrap up individuals, and then this relates back to part-time workers whose hours can only be varied by agreement.

PN181

JUSTICE ROSS: All right.

PN182

MS TAYLOR: So the proposal is to have 7.4(b) and 15.1(a) in the reference to 10.2(b).

PN183

JUSTICE ROSS: Yes. Anything else?

PN184

MS TAYLOR: Yes, your Honour. At item 11, now I apologise for this, because this is the first time we have raised this issue, but as is the case when you start looking at these awards over and over again issues jump out to you.

PN185

JUSTICE ROSS: Sure.

PN186

MS TAYLOR: At 11.2 of the exposure draft relates to casuals' 25 per cent loading. And it indicates that the 25 per cent loading is in lieu of matters that casuals do not receive under the award and under the NES. That's true but it's not the whole truth because when the 25 per cent loading was inserted, and I think it was a decision in modern awards, a decision of the Fair Work Australia [2008] 1000, the Commission indicated that it was including the 25 per cent loading based on the decision that had been made by a Full Bench in the Metal Industry Award in relation to the loading.

PN187

JUSTICE ROSS: Yes.



PN188

MS TAYLOR: And the 2008 Full Bench said that the reasoning of that Full Bench remained current. The reasoning of the Full Bench in establishing the 25 per cent loading included matters outside of the award and the NES. So it included such matters as the nature of precarious employment.

PN189

JUSTICE ROSS: Yes.

PN190

MS TAYLOR: The reduced hours that casuals get and a whole variety of matters. So that sentence is not actually correct and we say it doesn't create a right or an obligation and in fact just clutters the award and it could provide unnecessary distraction at a time in the future when a party may go to increase that loading.

PN191

JUSTICE ROSS: I think we've generally adopted the process that where there's a term because we started including general terms that the casual loading replaces these matters and half the organisations thought that was a good idea on both sides and half didn't, and we ended up just including it if it was a common position in an award and agreed. And where it's been in the sub-committee contest we've just taken it out. So that may be the resolution in this instance but can I suggest you just send us a further short submission identifying the issue and the reason and what change you're actually seeking, and then we'll add it to the list and it can be dealt with at a subsequent conference.

PN192

MS TAYLOR: Thank you, your Honour. The only other item then would be item 49, and it's not clear, the AMWU is the only one who have made a submission about this, the summary of hourly rates of pay do not contain overtime rates for casuals, so we're not sure of the parties' positions on that; whether anyone is arguing that casuals don't get overtime or - - -

PN193

JUSTICE ROSS: Well, that's being dealt with in the casual and part-time Full Bench, isn't it?

PN194

MS TAYLOR: Well, I don't believe that that particular matter may be.

PN195

JUSTICE ROSS: I think it is.

PN196

MS TAYLOR: Okay.

PN197

JUSTICE ROSS: Overtime for casuals. At least in some awards and so we might wait and see what outcome they come out with and then we'll see where we go with that one. All right.

PN198

MS TAYLOR: Thank you, your Honour.

PN199

JUSTICE ROSS: Ms Bhatt, in relation to the change to item 6, does that change your position or is it a different point that you're making?

PN200

MS BHATT: I don't think it changes our position, your Honour.

PN201

JUSTICE ROSS: No, that's fine. Is there anything else anyone wants to say about this award? No. No dispute to the summary as to the agreed issues that Ms Bhatt helpfully provided? No? All right. Thank you. We will go to the Air Pilots Award.

PN202

We received I think correspondence from the AFAP today dealing with some, I think, substantive claims that are being pursued and we'll note those. Can we seek your comments as to the summary of the submissions document? Who'd like to go first?

PN203

MR MILLER: Yes, your Honour.

PN204

JUSTICE ROSS: Yes?

PN205

MR MILLER: I'm sorry, it's Mr Miller on behalf of the Australian Federal of Air Pilots here in Melbourne.

PN206

JUSTICE ROSS: Yes, Mr Miller.

PN207

MR MILLER: My apologies, your Honour, for the lateness of the submission, of our further submission. Unfortunately we were not alerted to this morning's hearing until late in the piece. But I just wanted to say in relation to that submission, which we provided to you and which we're very happy to file on other interested parties, that the submission effectively addresses each of the items that have been identified in the summary of submissions in our further submissions - - -

PN208

JUSTICE ROSS: I see. So it's not really a substantive claims issue. It's commenting on the summary of submissions document; is that right?

PN209

MR MILLER: That's correct, your Honour.

PN210

JUSTICE ROSS: All right.

PN211

MR MILLER: In that submission we either identify that proposed changes are substantive where we agree with particular submissions or where we maintain the position that we established in our earlier submissions.

PN212

DEPUTY PRESIDENT GOSTENCNIK: And you've identified the matters that you say can be dealt with in a conference?

PN213

MR MILLER: That's correct, your Honour.

PN214

DEPUTY PRESIDENT GOSTENCNIK: Yes.

PN215

MR MILLER: Where we believe that they're substantive, an order appropriately be dealt with in that forum.

PN216

JUSTICE ROSS: Yes. Well, we can update the summary of submissions to take account of your correspondence of 6 December and publish that. Was there anything you wish to say about the summary?

PN217

MR MILLER: Yes, your Honour. Just in relation to an additional matter. The exposure draft which was dated 7 June 2016 identified an issue on page 73 in relation to adjustment of expense related allowances.

PN218

JUSTICE ROSS: Yes.

PN219

MR MILLER: And a question was posed on that page as to whether the applicable consumer price index figure for the pilots' daily travelling allowance in clause D.6.6(c)(i) be included in the table in clause F3.1(b). We noted that that particular question wasn't picked up in the summary table. I wish to submit on behalf of the Federation that in our view the applicable consumer price index figure for the pilots' daily travelling allowance in clause D.6.6(c)(i) should be included.

PN220

JUSTICE ROSS: Thank you. Anything else? No?

PN221

MR MILLER: No. Thank you, your Honour.

PN222

MS BHATT: Your Honour, if I may? The Aerial Application Association of Australia has filed material which identifies a number of issues. It would appear

to us that some of those are potentially substantive in nature, that is, they don't necessarily - - -

PN223

DEPUTY PRESIDENT GOSTENCNIK: Some of the matters relate to changes that are foreshadowed and yet to take place; is that - - -

PN224

MS BHATT: That appears to be the case.

PN225

DEPUTY PRESIDENT GOSTENCNIK: Yes.

PN226

MS BHATT: Yes, Deputy President. My understanding is that the Association isn't appearing in today's proceedings.

PN227

JUSTICE ROSS: No.

PN228

MS BHATT: I think our organisation would benefit from a conference, for instance, where the matters that have been raised can be further ventilated.

PN229

JUSTICE ROSS: Yes. Well, you could just find out how many of them they're actually going to be pursuing. Yes.

PN230

MS BHATT: That would assist, your Honour. I also haven't seen the document that's been filed this morning by the Federation. I wonder if the way in which to proceed might be if the summary of submissions was updated to reflect that document and then if this award could be listed for conference. If the Association were in attendance I think we might be able to proceed through the matters in that way.

PN231

JUSTICE ROSS: That will be fine. And we'll make sure the AFAP's correspondence is posted on the relevant website page as well.

PN232

MS BHATT: Thank you, your Honour.

PN233

JUSTICE ROSS: All right. Qantas?

PN234

MS SRDANOVIC: Your Honour, we support this course of action as well. I should indicate just for the record that the Qantas Group has not made any submissions about the Aerial Agriculture obligations not having a relevant interest in those particular schedules of the award.

PN235

JUSTICE ROSS: No.

PN236

MS SRDANOVIC: But otherwise there are a few items where there is either agreement between the parties or there'll be matters appropriately dealt with in conference. Two particular matters which the Ai Group had advanced referenced at item 21 and 22 of the table, I can indicate that we support the position being advanced by AiG. And similar with item 23 of the table.

PN237

So they're points of clarification but otherwise the summary reflects the Qantas Group's position in respect of whether it agrees with the other variations that have been sought.

PN238

JUSTICE ROSS: All right. Thank you. Anything else on that award?

PN239

MS BHATT: I'm sorry, your Honour, if I may?

PN240

JUSTICE ROSS: Yes, sure.

PN241

MS BHATT: In relation to items 21 to 23 which my friend has just addressed I ought to have identified this earlier. These clauses are now the subject of the plain language redrafting of the standard clauses.

PN242

JUSTICE ROSS: Yes.

PN243

MS BHATT: It may be that these matters can now more appropriately be dealt with through that process.

PN244

JUSTICE ROSS: Yes.

PN245

MS BHATT: I'm not sure if the appropriate course is to refer them to that Full Bench or to simply note that the matters will - - -

PN246

JUSTICE ROSS: I think we can note it at this stage. I'm on both Benches so I'll pick it up on the – I think that's true of a number of the matters that are raised. I think some of the issues in this afternoon's awards are also being dealt with in the plain language Full Bench also.

PN247

MS BHATT: I think that's right, your Honour. Thank you.

PN248

JUSTICE ROSS: All right. Thank you. Can we go to the aircraft cabin crew? I suppose here we've got the opposite problem that we have in The Airport Employees Award in that there are no union submissions in relation to this which is a bit odd because there are established unions covering cabin crew.

PN249

MS SRDANOVIC: That's right, your Honour. I did see some correspondence filed by the iCabin Crew Connect with respect to their substantive variations.

PN250

JUSTICE ROSS: Yes.

PN251

MS SRDANOVIC: Including reference to the FAAA. I know that those matters have not yet been referred to a conference but perhaps that will be given opportunity to pick up any of these issues at that time.

PN252

JUSTICE ROSS: Yes. Well, are there any changes or corrections from either Qantas or Ai Group to the summary?

PN253

MS SRDANOVIC: Yes, your Honour. Just dealing with the correction, with respect to item 3 and the submissions which we made in respect of clause 11.1 and the definition of casual employee, we support AiG's submissions in that regard because the current definition is the opposite way around. It is – the exposure draft purports to change it. So where we've indicated that we did not agree with the AiG's submission we withdraw that.

PN254

JUSTICE ROSS: Yes.

PN255

DEPUTY PRESIDENT GOSTENCNIK: The effect of the current provision is that a person must be engaged as a casual to be a casual.

PN256

MS SRDANOVIC: Yes.

PN257

DEPUTY PRESIDENT GOSTENCNIK: That is as such, and the exposure draft you say doesn't do that? Is that the inclusion - - -

PN258

MS SRDANOVIC: It has the wording which has also been picked up in the Ground Staff Award around being engaged on a casual basis which is a change from the current award wording.

PN259

DEPUTY PRESIDENT GOSTENCNIK: All right.

PN260

JUSTICE ROSS: And there's also the recent I think Federal Circuit Court decision that says even if you are engaged as a casual under an award that may not mean you're a casual for the purpose of the NES. Just to add to the degree of difficulty, but - - -

PN261

MS SRDANOVIC: Yes, your Honour. And may I also indicate one matter which was not picked up in the summary table, and that's that we had made some submissions about clause A3.3 and B4.5(a).

PN262

JUSTICE ROSS: A3.3 and?

PN263

MS SRDANOVIC: B4.5(a).

PN264

JUSTICE ROSS: Yes. We'll update the table to reflect that.

PN265

MS SRDANOVIC: That's right, your Honour. And I think in the exposure draft their reference is being subject to clause 24 and that's where we've made some submissions about the appropriateness of that.

PN266

JUSTICE ROSS: All right. Well, in any conference notification as was the case with the airport operators we'll go to the relevant unions and they can engage in the process if they wish. All right.

PN267

MS SRDANOVIC: Thank you, your Honour.

PN268

JUSTICE ROSS: Anything further in relation to the four awards listed at 10? No? We'll adjourn until 11, but if the parties can remain in place and Vice President Catanzariti and Deputy President Gostencnik will come and discuss with you the conferencing of the matters raised in respect of these four awards. All right. Thanks. We'll adjourn.

**SHORT ADJOURNMENT**

**[10.48 AM]**

**RESUMED**

**[11.08 AM]**

PN269

JUSTICE ROSS: I will shortly call on the awards in Group 4C and ask that you indicate which award you're appearing in relation to. Can I say something about the process this morning; that these proceedings that deal with technical issues that have arisen in the redrafting of the awards of their translation into the default framework we're particularly interested where the exposure draft may have changed the legal effect of a corresponding provision in an award.

PN270

What I'll ask you to do is, after taking the appearances as I call each award on, would be to focus on the summary of the submissions that's been published in relation to each of these awards and the technical drafting issues in them, identifying whether they're accurate or there are any errors and omissions. If you can indicate any issues that are no longer pressed, and if you can identify any issues in those summaries which you think may involve a substantive matter that may need to be transferred to the substantive issues list.

PN271

It may be that in a number of the awards they'll be a subject of a conference subsequently. This will be an iterative process, that is, that we'll continue to refine the exposure drafts. We will, in relation to these awards, publish a revised exposure draft picking up the agreed items, the updating, et cetera, or where errors have been made in relation to cross-referencing and the like. These exposure drafts, of course, don't include the 2016 annual wage review decision nor do they include the flow on effect of the annual leave decision or the time off in lieu of overtime decisions, so they'll need to be amended to reflect that over time.

PN272

This won't be a last opportunity to comment on the exposure draft is really the short point. That it's likely there'll be further revisions in each of these awards and you'll be given an opportunity to comment on those. Are there any questions about the process or what we're here for before we get under way? No? Could I have the appearances, please, in respect of the awards listed in Group 4C, that is, Hydrocarbons Field Geologists, Architect, Surveying, Electrical Electronic and Communications Contracting Award and Plumbing and Fire Sprinklers Award? I'll just go from left to right. Don't bother standing because the camera might have trouble tracking you.

PN273

MR H ARJONILLA: May it please, Arjonilla, initial H for the AMWU, our interest is in respect of the surveying award.

PN274

JUSTICE ROSS: Thank you.

PN275

MS R WALSH: If it pleases Walsh, initial R, for the Australian Workers' Union and we're here for the Plumbing and Fire Sprinklers Award.

PN276

JUSTICE ROSS: Thank you.

PN277

MR G NOBLE: Noble, initial G for the CEPU and our interest today is in the Electrical Electronic and Communications Contracting Award.

PN278



MS R BHATT: Bhatt, initial R, appearing for the Australian Industry Group in relation to the Electrical Electronic and Communications Contracting Award and the Plumbing and Fire Sprinklers Award.

PN279

JUSTICE ROSS: Thank you.

PN280

MR K JACK: Jack, initial K from the Australian Federation of Employers and Industries, here in respect of the Surveying award, the Electrical Electronic and Communications Contracting Award and the Plumbing and Fire Sprinklers Award.

PN281

JUSTICE ROSS: Thank you.

PN282

MR P EBERHARD: Eberhard, initial P, from the Masters Plumbers and Mechanical Services Association of Australia. I also appear on behalf of Master Plumbers ACT and Master Plumbers Association of Queensland, Master Plumbers of South Australia and the Master Plumbers Tasmania, and I appear on behalf of the Plumbing and Fire Sprinklers Award.

PN283

JUSTICE ROSS: Thank you. Are there no master plumbers in the Northern Territory, Mr Eberhard?

PN284

MR EBERHARD: No, I think the South Australian branch goes there, your Honour.

PN285

JUSTICE ROSS: Just ordinary plumbers? No. And the back row?

PN286

MS O VALAIRE: Valaire, initial O for Master Plumbers New South Wales in respect to the Plumbing and Fire Sprinklers Award.

PN287

JUSTICE ROSS: Thank you.

PN288

MR R KRAJEWSKI: Krajewski, initial R, Fire Protection Association of Australia. Our interests, your Honour, lies in the Electrical Contracting Award and the Plumbing and Fire Sprinklers Award.

PN289

JUSTICE ROSS: Thank you.

PN290

MR G JERVIS: Jervis, initial G, from National Electrical Contractors Association in respect of the Electrical Electronic and Communications Contracting Award.

PN291

JUSTICE ROSS: Yes. And no-one else in Sydney. In Melbourne?

PN292

MR M BUTLER: Yes, your Honour, M Butler, appearing for the Association for Professional Engineers Scientists and Managers Australia.

PN293

JUSTICE ROSS: Thanks, Mr Butler.

PN294

MS C COAT: Coat, Carmel for the National Fire Industry Association for the Plumbing and Fire Sprinklers Award.

PN295

JUSTICE ROSS: Thank you. Anyone else in Melbourne? No? Brisbane?

PN296

MR C YOUNG: If I may, Young, initial C on behalf of Master Electricians Australia here for the Electrical Electronic and Communications Contracting Award.

PN297

MS L HOGG: May it please the Commission, Hogg, initial L, solicitor at Australian Business Lawyers and Advisors representing Australian Business Industrial and the New South Wales Business Chamber in the Electrical Electronic and Communications Contracting Award and the Plumbing and Fire Sprinklers Award.

PN298

JUSTICE ROSS: Thank you. In Adelaide?

PN299

MS K VAN GORP: Van Gorp, initial K representing Business SA in the matters of the Electrical Electronic and Communications Contracting Award and the Plumbing and Fire Sprinklers Award.

PN300

JUSTICE ROSS: Thank you. Anybody else? No. Well, let's just go to the first, the award is the Hydrocarbon and Field Geologist. I don't think anyone announced an appearance in relation to that. In relation to that award - - -

PN301

MR BUTLER: Your Honour?

PN302

JUSTICE ROSS: Yes?

PN303

MR BUTLER: M Butler for APESMA I appear for - -

PN304

JUSTICE ROSS: Yes, I'm sorry, Mr Butler. Yes. Do you have any comments in relation to the summary of submissions in respect of this award?

PN305

MR BUTLER: Your Honour, the summary provided in APESMA's view an accurate summary of the submission that was put in response to the Commission's questions in respect of the exposure draft.

PN306

JUSTICE ROSS: Could you just speak up, Mr Butler? I'm just having a bit of trouble hearing you.

PN307

MR BUTLER: Sorry.

PN308

JUSTICE ROSS: But I understood you to say that you thought the summary was an accurate reflection.

PN309

MR BUTLER: Yes. So, your Honour, APESMA believes that the summary provided by the Commission is an accurate summary of the submission put forward by APESMA on 8 August in response to questions raised by the Commission in respect of the exposure draft.

PN310

JUSTICE ROSS: All right. Anyone else on this award? We'll publish a revised exposure draft dealing with the various responses put in by APESMA and then seek any further comments but it appears that that may resolve the matters in that award. In relation to the Architects Award we've received a request to have that matter listed or heard towards the end of the 11 am listings because someone, I've forgotten who, is on their way. So we might then turn to the Surveying Award and to the summary in relation to that award, and who would like to make whatever comments they wish about this? AMWU?

PN311

MR ARJONILLA: Yes, if I may, your Honour. I can confirm that firstly as far as the AMWU is concerned the summary of submissions accurately reflects our submissions. Those that are listed are, as it stands all pressed. I do note that there are two matters that haven't been dealt with. In the exposure draft there were two questions that sought comment from the parties. I note that our submissions didn't deal with those two matters. I'm not sure how the Bench would prefer us to deal with that, whether it be by written submission or - - -

PN312

JUSTICE ROSS: Probably just send in a short notice what your response would be in relation to those two matters.

PN313

MR ARJONILLA: Certainly.

PN314

JUSTICE ROSS: If you could do it by the end of the week, we'll post it on the website and update the summary to reflect that.

PN315

MR ARJONILLA: Will do.

PN316

JUSTICE ROSS: All right. APESMA?

PN317

MR BUTLER: Yes, your Honour, APESMA believes that the summary is an accurate summary of the submissions insofar as APESMA is concerned. The only matter that I draw the Commission's attention to is item 5 which deals with ordinary hours of work.

PN318

JUSTICE ROSS: Yes.

PN319

MR BUTLER: The question there related to the averaging of weekly hours. I'm in the hands of the Commission that that may very well be a substantive variation.

PN320

JUSTICE ROSS: All right. Anyone else in relation to this award? Is that the only one of those matters, Mr Butler, that you thought may raise a substantive issue?

PN321

MR BUTLER: Yes, your Honour.

PN322

JUSTICE ROSS: All right.

PN323

MR BUTLER: Yes, perhaps it might because our view on that particular provision is that 38 hours means 38 hours but, you know, there may very well be a difference of opinion on that.

PN324

JUSTICE ROSS: Yes. Are there any employer interests in this award?

PN325

MR JACK: Yes, AFEI is interested. Yes.

PN326

JUSTICE ROSS: Is there anything you want to say about the summary?

PN327

MR JACK: No. I believe that to be accurate and I'm of a similar view to APESMA that I believe item 5 could be a substantive issue.

PN328

JUSTICE ROSS: Well, can AFEI put in a submission indicating its attitude to each of the points that have been raised?

PN329

MR JACK: Yes.

PN330

JUSTICE ROSS: Then we'll update the summary and we'll get an idea of the scope of any disagreement between the parties. Once that's done, what's your timeframe, do you think, to do that?

PN331

MR JACK: Maybe in the next couple of weeks if possible.

PN332

JUSTICE ROSS: Can we say by the end of next week?

PN333

MR JACK: Yes.

PN334

JUSTICE ROSS: Otherwise, you know, we're moving into mission impossible land so if you could do that, we'll post it, and we'll update the summary, and then perhaps organise a conference in early February following from that. Does anyone disagree with any of that? No? All right. Anything else on the Surveying Award?

PN335

Well, we might go to the Electrical Electronic and Communications Contracting Award. Similarly, are there any – there was an earlier conferencing before Senior Deputy President Watson, and there is a summary of the submissions on the technical and drafting issues and we'll probably have at the Bar table what the substantive matters are in relation to this award as well. Who'd like to go first as to the accuracy or otherwise of this document and whether parties now want to withdraw particular items or whether they agree to the items advanced by others?

PN336

MS BHATT: If I may, your Honour?

PN337

JUSTICE ROSS: Yes, Ms Bhatt.

PN338

MS BHATT: In this award there's been considerable movement it seems - - -

PN339

JUSTICE ROSS: I'm sorry?

PN340

MS BHATT: In this award it seems that there's been considerable movement since the parties first filed their submissions. More recently there's been, I think, two proceedings listed before Deputy President Lawrence and the parties have been greatly assisted by that process. If I can very briefly work through the summary of submissions?

PN341

JUSTICE ROSS: Sure.

PN342

MS BHATT: My colleagues will, of course, correct me if my understanding is inaccurate.

PN343

JUSTICE ROSS: I'm sure they will.

PN344

MS BHATT: I understand item 1 to be withdrawn. Two is withdrawn. Three is withdrawn. Four is withdrawn. Five is withdrawn. I won't identify those that aren't agreed. I'll leave those.

PN345

JUSTICE ROSS: No, that's fine.

PN346

MS BHATT: Item 7 is agreed. Item 8 withdrawn. Item 9 all parties agree that clause 10.5 should refer to clauses 13.5 and clause 19.4(b). Item 11, all parties agree that the correct reference in clause 11.4 should be to clause 13.13.

PN347

JUSTICE ROSS: Yes.

PN348

MS BHATT: Item 12, all parties agree that the cross-reference should be to clause 16.4. Item 13 is agreed. Item 14 is withdrawn. Item 16, all parties agree that the provision should not be varied. Item 17 is agreed. Item 19, all parties agree that the term "crib time" should be retained.

PN349

JUSTICE ROSS: I'm sorry, that was item 19?

PN350

MS BHATT: Yes, your Honour. Item 22, all parties agree that the proposal put by the Commission in the exposure draft should be adopted. Item 23, Ai Group withdraws its submission. Item 24 is agreed. Item 25, Ai Group withdraws its submission. Item 27 is agreed. Item 29, there is agreement between the parties. If I might just read out for the record - - -

PN351

DEPUTY PRESIDENT GOSTENCNIK: Twenty-nine?

PN352

MS BHATT: I'm sorry, your Honour. Item 27.

PN353

JUSTICE ROSS: Yes.

PN354

MS BHATT: If I can just read out the agreed provision for the record. It's not in any of the parties' submissions. The provision should read:

PN355

*The timing of meal breaks will be at the discretion of the employer. Provided that an employee (other than a shift worker) must not be compelled to work).*

PN356

And then the provision remains as is. Item 30 relates to item 29. Item 31, all parties agree that the clause should remain as is. Item 34, all parties agree on the proper interpretation of the provision and no change to the clause has been advanced. Item 35, there are two issues; the first is a Business SA submission which I understand to be withdrawn. The second is a cross-referencing issue identified by Ai Group. It's my understanding that that's agreed. Item 36 is agreed. The Ai Group's submission there is no longer pressed. Item 40, all parties agree on the proper interpretation of the provision. Item 40. Item 41 is agreed. Item 43 is agreed. Item 44 I understand is withdrawn. Item 45 and 46, your Honour, these fall in the same categories identified this morning. They might be dealt with by the plain language drafting Full Bench. I have nothing further.

PN357

JUSTICE ROSS: Thank you.

PN358

MS BHATT: Thank you.

PN359

JUSTICE ROSS: Any dispute as to the summary that's been provided by Ms Bhatt?

PN360

MR KRAJEWSKI: Your Honour, if I might just quickly refer to, and I think it's item 16, with regards to rest breaks. The FPA would support, in fact, Master Electricians and EECA in that regard.

PN361

JUSTICE ROSS: All right. Any other comments?

PN362

MR NOBLE: Only that I thought item 10 was withdrawn as well; the part-time employment public holidays. I think it was your proposal?

PN363

MR KRAJEWSKI: Was it my proposal?

PN364

MR NOBLE: Yes.

PN365

MR KRAJEWSKI: Then we'll withdraw it.

PN366

JUSTICE ROSS: So item 10 is withdrawn?

PN367

MR KRAJEWSKI: Yes, your Honour.

PN368

JUSTICE ROSS: All right. Thank you. Any other comments? All right. Well, we'll update the summary and to the extent necessary reflected by the agreed items update the exposure draft. When we come to the completion of the awards in this section we'll adjourn, but Deputy President Gostencnik will return and discuss any conferencing in relation to this award. All right. Is there anything further that anyone wishes to say in relation to Electrical Electronic and Communications Contracting Award?

PN369

MR KRAJEWSKI: Your Honour, if I might just make a quick reference?

PN370

JUSTICE ROSS: Yes.

PN371

MR KRAJEWSKI: And it may be a matter that it's a substantive item or a technical item, and that is the matter of shift work which has been raised in conference between the parties, and the position generally being put is that it is a technical matter but there may be some substantive argument around that.

PN372

JUSTICE ROSS: Well, in the event that after the conference in relation to technical and drafting it appears to be a substantive matter and can be referred to the construction Full Bench that's probably got three weeks' listings in March next year.

PN373

MR KRAJEWSKI: Thank you.

PN374

JUSTICE ROSS: The conferences before Deputy President Lawrence, can you outline how many there have been and what's been – has the technical and drafting material been before him or it's just substantive claims?

PN375

MR KRAJEWSKI: Both have, your Honour.

PN376



JUSTICE ROSS: All right. Thanks. We might just need to work out how those are continued given the Deputy President's retirement is sort of relatively imminent. So we'll give some thought to that and Deputy President Gostencnik will come back when we adjourn to discuss that with you further.

PN377

DEPUTY PRESIDENT GOSTENCNIK: Unlike the code it's unlikely to get an extension of time.

PN378

JUSTICE ROSS: If we can go to the Plumbers and Fire Sprinklers Award and to the summary in respect of that award. In fact, there's some 28 items. Ms Bhatt, do you want to go through those?

PN379

MS BHATT: If I can endeavour to, your Honour. I'm afraid there's far less good news in relation to this award I think. Most of the matters though appear to be agreed.

PN380

JUSTICE ROSS: That's fine.

PN381

MS BHATT: Can I identify very briefly it's our understanding that item 1 is withdrawn. Items 2 and 3 Ai Group does not oppose Business SA's proposal. Item 8, there are two issues there; the first one is a submission of the AWU which is opposed by Ai Group. The second issue identified by Ai Group regarding the definition of casual employee, I understand that to be agreed. It would appear to me, your Honour, that the remaining matters are not agreed, but having said that it may be that there's imprints for agreement between the parties that there's an issue but there is an agreement as to how that ought to be addressed.

PN382

JUSTICE ROSS: Yes, I'm following.

PN383

MS BHATT: Which I think would appropriately be dealt with in a conference if the Commission was so minded.

PN384

JUSTICE ROSS: Anyone else wish to comment on the summary of submissions in relation to the Plumbing and Fire Sprinklers Award?

PN385

MR EBERHARD: If I can, your Honour.

PN386

JUSTICE ROSS: Certainly, Mr Eberhard.

PN387

MR EBERHARD: Given the Commission's decision from - - -

PN388

MS VAN GORP: If it please the Commission, I haven't been able to hear the parties in Sydney, but just one point at 5, Business SA will no longer press that particular item.

PN389

JUSTICE ROSS: So item 5 by Business SA is withdrawn. Thank you. Was there any other comments you wish to make on the summary document? Either you're thinking about it or you can't hear me? Can you hear me in South Australia?

PN390

MS VAN GORP: Not very well.

PN391

JUSTICE ROSS: We might just stand for a couple of minutes while we sort out the link. We'll just stand down for five minutes.

**SHORT ADJOURNMENT**

**[11.32 AM]**

**RESUMED**

**[11.36 AM]**

PN392

JUSTICE ROSS: Can you hear us now in South Australia?

PN393

MS VAN GORP: Yes. Thank you.

PN394

JUSTICE ROSS: All right. I think one of the issues is that occasionally if you're rustling papers near a microphone it'll create a problem for those trying to appear interstate, so if you could just bear that in mind. Having said that I'm probably the offender so I'll try to stop doing it. The last I heard from you, you were withdrawing item 5 in relation to the summary of the Plumbing and Fire Sprinklers Award; is that correct?

PN395

MS VAN GORP: Yes. Thank you. And if the Commission - - -

PN396

JUSTICE ROSS: All right. Were there any other corrections or additions you wanted to make to the summary?

PN397

MS VAN GORP: Yes, thank you. Item 15 is also no longer being pressed by the Business SA. And that is all we have at the moment.

PN398

JUSTICE ROSS: All right. Thank you. Any others interested in this award that wish to make any comments about the summary of submissions?

PN399

MR EBERHARD: Your Honour, if I could?

PN400

JUSTICE ROSS: Yes, Mr Eberhard?

PN401

MR EBERHARD: I think item 16 which deals with payment of wages. Given the Commission's decision of last Thursday that matter may well now be taken out of the hands of this particular proceedings and in to that particular Bench.

PN402

JUSTICE ROSS: Maybe.

PN403

MR EBERHARD: Yes. I'm saying it depends on what happens in regards to how that finalises itself.

PN404

JUSTICE ROSS: Is that because the clause, what, talks about bank or similar transfer rather than electronic funds transfer? What's the issue?

PN405

MR EBERHARD: The issue with the clause at the moment is that we've submitted that it's a very old clause in the sense that it's written more about cash, and it doesn't seem to refer to, or it doesn't directly provide for EFT, but it talks about releasing people to go so they can go to the bank. And we had issues with that because that's a rather old concept we submit. So we were suggesting that the clause should be updated and modernised.

PN406

JUSTICE ROSS: All right. Well, I don't think it needs to be – well, bearing in mind the payment of wages Full Bench has just expressed provisional views in relation to provisional model terms they'll need to go through a process before they're finalised and then we'll deal with the award by award insertion and tailoring and all those issues. So I think it's probably - we'll leave it here for the moment and the parties can discuss it in conference to see whether there's an agreement around that issue. Payment of wages Full Bench isn't really focused on inserting EFT provisions in. It's more about other issues, so let's see how you go here, and there'll be a report from the conference and I can make a decision at that point about which Bench deals with it, okay.

PN407

MR EBERHARD: Thanks, your Honour.

PN408

JUSTICE ROSS: Anybody else?

PN409

MS WALSH: Your Honour, the AWU wrote to the Commission yesterday just to withdraw item 18 in the summary of submissions.

PN410

JUSTICE ROSS: All right.

PN411

MS WALSH: And I also wanted to foreshadow, we have a claim about ordinary hours for part time, casual and apprentice employees and that's been split over various items according to the clauses that it affects; item 8, 10 and 7. It was our intention to extend that submission to also apply to daily hire employees, so that would be something that we'll shortly put in writing.

PN412

JUSTICE ROSS: All right.

PN413

MS WALSH: But that was all.

PN414

JUSTICE ROSS: The daily hire extension is that likely to be a matter that will be a substantive issue in this award?

PN415

MS WALSH: I don't know.

PN416

MR EBERHARD: I suppose, given that I don't know what the claim is - - -

PN417

JUSTICE ROSS: Yes, it's a bit hard to judge at the moment.

PN418

MR EBERHARD: - - -I can't really make a comment on that at the moment, your Honour.

PN419

JUSTICE ROSS: Yes, sure. No, that's fine. Well, put in the correspondence.

PN420

MS WALSH: Yes.

PN421

JUSTICE ROSS: And we'll have the conference and we'll see what the attitude of the parties is and then see how we progress it from there. Okay?

PN422

MS WALSH: Yes, your Honour.

PN423

JUSTICE ROSS: Anyone else on this award? No? No-one interstate? Can we go to the Architects Award which is the last one that we're dealing with in this group. There's a short summary of submissions. Are there any corrections or additions in relation to that summary?

PN424

MR BUTLER: Your Honour, on behalf of APESMA we consider that the summary is an accurate summary of the issues contained in our submission. The only clause that I refer to, your Honour, was item 3 which deals with clause 13.1(a).

PN425

JUSTICE ROSS: Yes.

PN426

MR BUTLER: There are different responses from the ACAA and ourselves in respect of the issue of time off instead of payment for overtime. That may or may not become a substantive issue. Also the other thing I should mention though, your Honour, just slightly off track, that there's a document on the Bar table titled Summary of Proposed Substantive Variations.

PN427

JUSTICE ROSS: Yes.

PN428

MR BUTLER: And there's a note on the first page of that document that says that there were no claims for substantive variations that are Hydrocarbons, Architects or Surveying Awards. There are substantive claims for the Architects Award, so, you know, it's a minor issue but I should point that out.

PN429

JUSTICE ROSS: No, no, that's fine. There are substantive claims for which award?

PN430

MR BUTLER: The Architects Award.

PN431

JUSTICE ROSS: And those are ones that you've put in your correspondence earlier?

PN432

MR BUTLER: In a different submission that was posted on the website.

PN433

JUSTICE ROSS: Do you have the date of that by any chance, Mr Butler?

PN434

MR BUTLER: No, your Honour. No, I didn't bring it with me.

PN435

JUSTICE ROSS: No, understandably enough. That's fine. We'll update it for the Architects APESMA substantive submissions.

PN436

MR BUTLER: Your Honour, I've just been advised by my colleague from the ACAA, it was 29 September.

PN437

JUSTICE ROSS: Thanks very much. Anyone else in relation to the Architects Award?

PN438

MR CORRIGAN: Yes, thank you. It's Michael Corrigan from ACA. Look, we agree with the summary. And again we do have some substantial claims that were put in on 4 October and appear on the website.

PN439

JUSTICE ROSS: No problem. We'll update the substantive claim document to reflect your claims.

PN440

MR CORRIGAN: Thank you.

PN441

JUSTICE ROSS: Anybody else? No? All right, is there anything further in relation to the awards listed, the Group 4C awards listed for hearing at 11 am? No? Well, we'll adjourn shortly and Deputy President Gostencnik will come back, so if you can remain in place, those who have an interest in the Electrical Electronic and Communications Contracting Award and the Plumbing and Fire Sprinklers Award, and the Deputy President will have a discussion with you about conferencing of those two. I've already indicated the position in the Surveying Award. We'll await the AFEI's comments. Once that's in we'll update the summary, update the exposure draft and then once I've got that material I'll organise a conference in early February.

PN442

Look, when organising conferences we'll also have regard to the calendar that's on the website as to when others matters are running but if, for some reason, we forget a party should draw that to our attention so that we don't require you to be in more than one place at a time. Okay. Thanks very much. We'll adjourn and return at 2 pm to deal with the Group 4A matters. Thank you very much.

**LUNCHEON ADJOURNMENT**

**[11.46 AM]**

**RESUMED**

**[1.59 PM]**

PN443

JUSTICE ROSS: So these proceedings are to deal with the technical and drafting issues that have arisen during the redrafting of the awards in Group 4, and in particular at the moment we're dealing with the awards in Group 4A.

PN444

The purpose then is to, once I've taken the appearances and asked you to indicate which organisation you appear for and which award you have an interest in I'll ask you to confirm the accuracy of the summaries of submissions that have been published and to identify any errors or omissions in those summaries. If you can identify any issues that have been withdrawn or subsequently agreed, and if there are any matters amongst those matters identified in the summary which you

believe should be referred to a separately constituted Full Bench because it raises a substantive issue then you should tell me that as well.

PN445

I think at the Bar table there's a summary of the materials that have thus far been referred or will be referred to separately constituted Full Benches because they deal with substantive changes. Just bear with me for a moment. If I can take the appearances in Sydney? Don't bother standing it'll be easier.

PN446

MR S BULL: If the Commission pleases my name is Bull, initial S, I appear for United Voice, and I appear in relation to all six awards in this tranche.

PN447

JUSTICE ROSS: Thanks, Mr Bull. Ms Svendsen?

PN448

MS L SVENDSEN: Your Honour, Svendsen, initial L, and with me is Liebhaber, initial R for the Health Services Union, and we appear in relation to Aboriginal Community Controlled Health Aged Care, Social, Community, Home Care and Disability Support Services and Supported Employment Services only.

PN449

JUSTICE ROSS: Thank you.

PN450

MS R BHATT: Your Honour, Bhatt, initial R, appearing for the Australian Industry Group in relation to the Children's Services Award, the Aged Care Award, and the Social, Community, Home Care and Disability Services Award.

PN451

JUSTICE ROSS: Thank you.

PN452

MS J ZADEL: If the Commission pleases, Zadel, initial J appearing on behalf of the Australia Federation of Employers and Industries. I appear in relation to the Aboriginal Community Controlled Health Services Award, the Education Services Teachers' Award, the Children's Award, the Aged Care Award, and the Social, Community, Home Care and Disability Services Industry Award.

PN453

JUSTICE ROSS: Thank you.

PN454

MS J STEELE: If the Commission pleases, Steele, initial J. I appear with Ms Stuckey-Clarke, initial P for NATSIHWA, the National Aboriginal and Torres Strait Islander Health Worker Association.

PN455

JUSTICE ROSS: Thank you. And which awards do you have an interest in? The first, and which of the others?

PN456

MS STEELE: Only in the NATSIHWA award.

PN457

JUSTICE ROSS: In the first one. Thank you. Yes?

PN458

MS E PATTON: Patton, initial E from Leading Aged Services Australia Limited. I am here on behalf or with my colleague Geoff Liggins who he'll mention shortly on behalf of Aged Care Employers and we are here for the Aged Care Award and the Social, Community, Home Care Disability Services Industry Award.

PN459

JUSTICE ROSS: Thank you.

PN460

MR G LIGGINS: Thank you, your Honour. Liggins, initial G from Aged and Community Services and throughout the documents we're referred with LASA as Aged Care Employers and for Aged Care and Social Community Award.

PN461

MR K SCOTT: If the Commission please, Scott, initial K, seeking permission to appear on behalf of Australian Business Industrial and the New South Wales Business Chamber Limited. My clients have an interest in all of the awards this afternoon.

PN462

JUSTICE ROSS: Anyone else in Sydney? No. In Melbourne?

PN463

MR J COONEY: Yes, your Honour. Justin Cooney for the Australian Services Union and Social, Community, Home Care Disability Services Industry Award.

PN464

MR A McCARTHY: If the Commission pleases, McCarthy, initial A from the ANMF in relation to the Aged Care Award.

PN465

JUSTICE ROSS: Thank you.

PN466

MS K WISCHER: If the Commission please, Wischer, W-i-s-c-h-e-r, initial K for the Independent Education Union in relation to the Educational Services Teachers' Award.

PN467

MS K KNOPP: If the Commission pleases, Knopp, initial K and I appear for six associations of independent schools of the States of New South Wales, South Australia, Western Australia, Queensland, Tasmania and Victoria and the award that we have an interest in is the Education Services Teachers Award 2010.



PN468

JUSTICE ROSS: Thank you.

PN469

MR M PEGG: If the Commission please, Pegg, initial M for Jobs Australia in relation to the Social, Community, Home Care and Disability Services Industry Award.

PN470

JUSTICE ROSS: Anyone else in Melbourne? No? In Brisbane?

PN471

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

PN472

JUSTICE ROSS: No other appearances? Any objections to the applications for leave to appear? No. Leave is granted. Let's deal with the first of the awards, the Aboriginal Community Controlled Health Services Award 2010. And if I can take you to the summary of the submissions in that award and invite those with an interest in that award to indicate whether the summary is accurate, whether there are any changes and where the matter is up to. There's no need to stand, sorry.

PN473

MS SVENDSEN: Your Honour, I can't exactly say anything in here that's not accurate as a summary.

PN474

JUSTICE ROSS: You sound disappointed, Ms Svendsen.

PN475

MS SVENDSEN: No. I'm not even vaguely disappointed.

PN476

DEPUTY PRESIDENT GOSTENCNIK: Is that another way of saying it is accurate?

PN477

MS SVENDSEN: No.

PN478

JUSTICE ROSS: You can't find inaccuracies.

PN479

MS SVENDSEN: Yes.

PN480

JUSTICE ROSS: Maybe we can say it's accurate. Anyone else?

PN481

MS STEELE: Yes, your Honour. There's nothing inaccurate from NATSIHWA's perspective other than from NATSIHWA's perspective we have recently sent in a

further draft of a determination which has changed the definitions that we're seeking with respect to the definition for Aboriginal and Torres Strait Islander health workers and other classifications.

PN482

JUSTICE ROSS: Is that an existing matter? If you look at the item numbers on the left?

PN483

MS STEELE: Yes.

PN484

JUSTICE ROSS: Has that issue been raised before but you've now changed the content of what you say?

PN485

MS STEELE: Yes. Yes.

PN486

JUSTICE ROSS: What's the issue number? Is it 4? Proposing some – no. Yes?

PN487

MS STEELE: It's the definition of the term.

PN488

JUSTICE ROSS: Where was that?

PN489

MS STEELE: The definition of Aboriginal health worker in clause 2 of the exposure draft.

PN490

DEPUTY PRESIDENT GOSTENCNIK: It's item 6.

PN491

JUSTICE ROSS: Yes.

PN492

MS STEELE: It actually I think, your Honour, relates to a couple of matters. The equality - - -

PN493

JUSTICE ROSS: I notice you've got item 9 as well.

PN494

MS STEELE: Yes.

PN495

JUSTICE ROSS: Yes.

PN496

MS STEELE: And also the classification definitions.

PN497

JUSTICE ROSS: Yes. All right. Well, we'll update the summary to reflect the most recent correspondence. When did that come in?

PN498

MS STEELE: That was amended on 1 December. We sent in an amended draft determination.

PN499

JUSTICE ROSS: Yes, that's fine. All right. Anything else from anybody else? Are there any matters in here that you think constitute substantive matters that would require evidence, et cetera and should go to a separately constituted Full Bench?

PN500

MS SVENDSEN: Your Honour, I think there are but I think that they could probably be conferenced and the majority could probably be agreed. From the point of view of HSU we've not really had the time to sit down with NATSIHWA and have some discussions about things like classification descriptors.

PN501

JUSTICE ROSS: Yes.

PN502

MS SVENDSEN: The one's we've just – and we would certainly be taking advice from them about descriptors and definitions, so I think that quite a lot of that could be fairly easily refined at conference.

PN503

JUSTICE ROSS: Yes.

PN504

MS SVENDSEN: And I'm not sure that much would be sent off to a Bench for determination.

PN505

JUSTICE ROSS: Yes. Well, I suppose we can conference these matters and see what's left at the end of it and make a judgement then. Is that the idea?

PN506

MS SVENDSEN: I think that would be a very good idea.

PN507

JUSTICE ROSS: Well, if there's nothing else in that award when we conclude the other awards the Bench will adjourn and Commissioners Cirkovic and Lee will come back. They've got responsibility for some of these awards and the conferencing of them and they'll talk to you about convenient locations, I mean, within Australia. And times that might - - -

PN508

MS SVENDSEN: Not Venice?

PN509

JUSTICE ROSS: - - - suit the parties as to when to do that and those sorts of issues. Okay.

PN510

MS SVENDSEN: Thank you.

PN511

JUSTICE ROSS: So we won't take up time for the moment. Anything else in relation to that award? No? Let's move to the Educational Services Teachers' Award and to the summary of submissions in relation to that award. Who would like to go first?

PN512

MS WISCHER: If the Commission pleases I'm happy to do that. The submission of 30 June is accurate save that I would like to just draw attention to two matters in that which relate to items 24 and 26.

PN513

JUSTICE ROSS: Just bear with me for a moment. Yes.

PN514

MS WISCHER: With respect to item 24 which relates to meal breaks in schedule 8.3.1(a) there is some - in the submission, at paragraphs 63 to 64 we would like to add some proposed wording for that schedule which would reflect, if our substantial application to vary clause - in the body of the agreement with respect to meal breaks is accepted, that this would be a consequential change to the schedule. So it straddles the substantive and the technical but if the Tribunal was minded to listen to the proposal as to the wording for the schedule then it would fit in today's discussion.

PN515

JUSTICE ROSS: No, that's fine. In fact, it might be, just so that we have got a record, and those who might have an interest in the award but aren't here can access it, if you could just send in some correspondence identifying that this is the proposed wording you would propose in relation to item 1 of the summary and we could update it that way.

PN516

MS WISCHER: Yes. Thank you, Commissioner. That would be for item 24 we will propose some wording.

PN517

JUSTICE ROSS: Yes. And what did you want to say about item 26?

PN518

MS WISCHER: Item 26 is really only a small matter in that the summary based on the submission refers to the note being added at the bottom for casual employees, the full day rates. On reflection the better place for the note would be at the end of the table relating to half-day and quarter-day rates as the note is with respect to quarter-day rates.

PN519

JUSTICE ROSS: All right. Well, we'll note that clarification of your position in the revised summary document.

PN520

MS WISCHER: As the Commission pleases.

PN521

JUSTICE ROSS: Are there any other comments in relation to the Educational Services Teachers' Award?

PN522

MS WISCHER: So there's a couple of matters that are opposed, whether it's appropriate now to go to those matters although certainly the IEU and AIS joint submission addresses all of those issues.

PN523

JUSTICE ROSS: Yes, they do. And look I think in the first instance there are also a number of matters which appear to be agreed.

PN524

MS WISCHER: Yes, that's correct.

PN525

JUSTICE ROSS: What we would probably do in relation to it is to organise a conference of the parties who had interest in this award and just go through our understanding of what's agreed and what's in dispute and there can also be some facilitated discussion at that conference about the matters that are in dispute with a view to trying to resolve those. Is that satisfactory to you?

PN526

MS WISCHER: Yes, thank you. It is, sir.

PN527

JUSTICE ROSS: Are there any other comments on this award?

PN528

MS KNOPP: If the Commission pleases, in relation to the Educational Services Teachers' Award 2010 we just have one other outstanding matter which relates to the common issue of annual leave. In the decision issued by the Commission on 23 May 2016, the matter was to be referred to a Full Bench at some point, so that's another matter that is as yet - it's still outstanding with respect to this award. It hasn't been referred, as I understand it. I'm not sure what the plans are for its referral, but it is just one of those matters still to be addressed.

PN529

JUSTICE ROSS: Yes, there are a couple of matters that are still to be concluded in relation to the annual leave matter. There are some airport issues as well, and it will probably depend on whether or not there are any other substantive issues in relation to this award, and then one Bench could conveniently deal with all of it. If there are not, then the Annual Leave Bench will deal with that issue in relation

to this award - unless there's some particular urgency to deal with the annual leave question in this award?

PN530

MS KNOPP: No, your Honour, I don't believe there is any urgent reason to deal with it. It was just a matter that's still part of this whole review process.

PN531

JUSTICE ROSS: Yes, I think we're still finalising a number of matters arising out of the annual leave decision and the award flexibility decision. But thanks for bringing that to my attention. We'll make a note on the summary of submissions as well to that effect that it has to be dealt with. I understand there's now also representation from Business SA, is that right?

PN532

MS K VAN GORP: Yes, thank you, if the Commission pleases - van Gorp, K, for Business SA, and the awards that we are attending, Children's Services Award, the Aged Care Award, and Social, Community, Home Care and Disability Services Award.

PN533

JUSTICE ROSS: We're now turning - was there anything else in the Education Services (Teachers) Award? No. We'll now turn to the Children's Services Award and to the summary of the submissions, if you'd like to comment.

PN534

MS BHATT: If I may, your Honour?

PN535

JUSTICE ROSS: Ms Bhatt.

PN536

MS BHATT: There appear to be some matters that are agreed, if I can identify those?

PN537

JUSTICE ROSS: Thank you.

PN538

MS BHATT: Item number 1. Item 2, it's agreed that the definition for ordinary hourly rates should be inserted in clause 2.

PN539

JUSTICE ROSS: Yes.

PN540

MS BHATT: If I can speak just briefly to item 5, there was a submission made by United Voice that the definition of the term, "all purpose," should not appear in both clause 2 and clause 17.2(a), which is the allowances provision. We made a submission at the time that said well the definition doesn't appear in clause 2 anyway, so we need not deal with this. It's just occurred to me that if a definition

of ordinary hourly rates is to be inserted in clause 2, that definition uses the term, "all purpose."

PN541

JUSTICE ROSS: It does.

PN542

MS BHATT: Our view would be that therefore the definition of "all purpose" should also be inserted in clause 2.

PN543

JUSTICE ROSS: United Voice? Is that something you're particularly agitated about?

PN544

MR BULL: Not particularly, no.

PN545

JUSTICE ROSS: No, I didn't think so. We can wait and see whether the consequence flows, Ms Bhatt, and we'll deal with it then.

PN546

MS BHATT: Thank you, your Honour. Item 7 appears to be a substantive issue.

PN547

JUSTICE ROSS: The coverage question?

PN548

MS BHATT: Yes.

PN549

JUSTICE ROSS: Yes. Would you agree with that?

PN550

MR BULL: I'd agree with that. We've been a bit cheeky by putting that in to this stage of draft.

PN551

JUSTICE ROSS: Is it the sort of matter that you think is worthwhile leaving here for the moment and see what other issues can be resolved, and it may be that you're able to - there might be some movement in this question as well, and then at the end of the conference in process, once we've dealt with the technical and drafting issues in this award, then we'll see what's left over and that can be referred to a separate Full Bench? I'm just conscious that we're getting quite cluttered in the first half of the year. Most of the Group 3 substantive Full Benches will be starting to be heard and determined in the first quarter, and I don't really want to add another one to it at this point. I had envisaged establishing a Substantive Issue Full Benches in the Group 3 awards, probably after the conferencing process.

PN552

MR BULL: This will be a more involved - this will be a reasonably complex conference.

PN553

JUSTICE ROSS: Yes.

PN554

MR BULL: And there'll be a few arbitrations, or matters that will need to be arbitrated that come out of it.

PN555

JUSTICE ROSS: Yes, no doubt. Yes, Ms Bhatt?

PN556

MS BHATT: Without wanting to complicate the matter further, the Clerks Award I understand is part of Group 3. There is a substantive claim that has been mounted or identified to vary the Clerks Award in relation to the interaction between that award and the Children's Services Award.

PN557

JUSTICE ROSS: So do you think the coverage question should be referred to the same Bench?

PN558

MS BHATT: That might be a possible outcome. There may be some relationship between the two that I haven't thought through yet, but it may be relevant to your Honour's consideration as to how the matter is dealt with.

PN559

JUSTICE ROSS: Yes - - -

PN560

MR BULL: It's an issue which I think is peculiar to this award. I was across it when I drafted the claim. I'm just looking at the coverage clause. It probably should remain with this award.

PN561

JUSTICE ROSS: It's open to you once the other matter starts its proceedings to have a closer look at what is proposed here, and any party can write to my Chambers seeking to have this matter referred to the other Full Bench. Let's just see how it emerges, all right?

PN562

MS BHATT: Yes, your Honour. Item 8 is agreed. Item 13 is agreed. Item 17 is agreed. I have nothing further.

PN563

JUSTICE ROSS: Thank you. Anything - - -?

PN564

MR BULL: I don't wish to add anything.



PN565

JUSTICE ROSS: All right, ABI?

PN566

MR SCOTT: No, thank you.

PN567

JUSTICE ROSS: AFEI?

PN568

MS ZADEL: Nothing further.

PN569

JUSTICE ROSS: Anybody else?

PN570

MR P COOPER: Your Honour, it's Cooper from Livingstones in Brisbane. We appear on behalf of G8 Education. Our client has made application to amend the award. It was originally listed at item 2 in the summary of proposed variations dated 24 February 2016. It appears to have fallen out of the subsequent summary. The essence of that application is that a provision in substantially the same terms as the Education Services (Teachers) Award be applied, which would allow for employees to have a limited time in which to provide their qualifications or evidence of their qualifications, such that if they didn't provide them at the relevant time there would be no obligation to back pay. We see this as being a fairly insignificant issue in the totality of the award and therefore we wouldn't necessarily see that it needs to be dealt with by a separately-constituted Full Bench, but we'd obviously be guided by you in that respect.

PN571

JUSTICE ROSS: What we might do is amend the summary of submissions to include your variation application. The range of issues can then be the subject of a conference, and arising from that conference we'll have a better idea as to the extent of opposition to the variation you're seeking and whether or not it should go to a separately-constituted Full Bench. I should say the movement from this Bench which is largely dealing with technical and drafting issues to separately-constituted Full Benches is really reserved for those cases that are likely to involve extensive argument and/or evidence. So if, for example, you're running work value case and you want to have a new classification and you were going to bring evidence, that's something that we'd probably send off to a separate Full Bench. That way I can ensure that there is at least someone on that Bench from the relevant panel within the Commission, and coverage issues invariably go, because they always seem to be hard-fought, and they do seem to, as you raised, Ms Bhatt, they'll often have an intersection with other awards, but certainly just because a matter's disputed doesn't mean that we wouldn't deal with it. We're particularly focussed on arguments whereby it's put that the transition from the current award into the new format has changed the meaning of a term, et cetera, or where there's an ambiguity about what a term means, then we'll deal with those sorts of issues. So, look, we'll see how you go in conference, and make your decision after that. Any other comments? No other comments on the Children's

Services Award? All right. We'll go to the Aged Care Award and we'll just go through the summary of submissions.

PN572

COMMISSIONER LEE: The first port of call on the Aged Care, having reviewed it there's a fair level of agreement on I'd say the majority on which there have been submissions. Ms Bhatt are you in a position to go through, as you've done with others, and give a summary of that?

PN573

MS BHATT: I can endeavour to, Commissioner. I should say, and I probably should have said this earlier in the day, I use the term "agreed" loosely. Sometimes it's the absence of any opposition and that subtly isn't lost on us, but I use "agreed" as the shorthand.

PN574

JUSTICE ROSS: That's all right. If no one objects we can proceed on the basis it's agreed. It'll be incorporated into a revised exposure draft and then we'll find out whether it was really agreed or not

PN575

MS BHATT: You will, thank you. Item 1, agreed. Item 2, agreed. Item 4, it is agreed that the definition of casual ordinary hourly rate should be deleted. Can I just identify this, for the purposes of the any revised document that's published, there's an AWU submission that appears on the fifth row, in item 4, that, in fact, relates to item 13 and the submission of the aged care employers, that appears two rows further down, that, too, relates to item 13.

PN576

COMMISSIONER LEE: The AIG reference?

PN577

MS BHATT: No, Commissioner. The submission of the aged care employers, it's the third from the bottom on page 3.

PN578

DEPUTY PRESIDENT GOSTENCNIK: Which is responsive to the AWU's submission.

PN579

MS BHATT: Yes, it is, Deputy President. Thank you. Item 8 is agreed to the extent that the HSU seeks the insertion of a reference to clauses 16.2 and 22.3. It remains disputed to the extent that the HSU seeks the insertion to a reference to any other provision.

PN580

Item 10 is agreed. Item 14 is agreed. Item 20 is agreed. Item 22 is agreed. Item 24 is agreed. Item 25 is agreed. Item 26 is agreed. Item 27 is agreed. Item 31 is agreed. Item 32 is agreed. At item 36, if I can just note that the AI Group submission is now withdrawn. Item 38 is agreed. Item 39 is agreed. Item 40 is agreed. Item 43 is agreed.

PN581

Item 44, it is agreed that clause 18.3(d)(iii) of the exposure draft should be replaced with the current clause 15.7(c). Item 45, it is agreed that clause 20.3 should refer to clause 20.1 and 20.2. Item 46, it is agreed that clause 21.2 of the exposure draft should be replaced with the current clause 26.1. Item 48 is agreed. Item 49 is agreed.

PN582

Item 55 is agreed. Item 60 is agreed. Item 62 and 64 will be resolved by the agreement between the parties, in relation to item 46.

PN583

JUSTICE ROSS: That is 62 and 64?

PN584

MS BHATT: Yes, your Honour. Can I just say this, in relation to some of the matters that the AI Group has raised, in relation to this schedule of hourly rates, we've identified an issue. There appears to be agreement that there is an issue but in our submissions we haven't necessarily proposed a solution. It seems to us it would be appropriate to discuss any such matters at a conference, if the Commission pleases. I have nothing further.

PN585

COMMISSIONER LEE: That's the end of the list of agreed matters. Are there any substantive matters that I couldn't see for myself and seemingly are left out, have you got a view about that?

PN586

MS BHATT: There are none that I have identified.

PN587

MS SVENDSEN: I would tend to agree with that, Commissioner. I think that the matters that are not agreed, there's quite a substantial number of them that sit very close though and it's more that there's been a slight conflict in what people have proposed as a solution and that just needs to be talked through and it will not take very long. Because quite a few of those are, as I go through, it's stuff which I relook at it and say, "Actually that's okay." So there's actually - and I think that's probably true for quite a few of the other matters that are not noted by Ms Bhatt at the moment.

PN588

COMMISSIONER LEE: You concur, there's nothing that's apparent that's a substantive issue that would need to go to another - or you'd be suggesting go to another Bench?

PN589

MS SVENDSEN: Not in the AG stuff, no. I couldn't really note anything that I think would be outstanding, from a conference process, quite frankly.

PN590

COMMISSIONER LEE: Good.

PN591

MS SVENDSEN: Yes, it might be too optimistic, but you never know. I'm prepared to be optimistic this afternoon.

PN592

JUSTICE ROSS: So it's a one-time only offer, Ms Svendsen?

PN593

MS SVENDSEN: It is, I think, or right at the moment.

PN594

COMMISSIONER LEE: Perhaps just going back to the employers side, any other parties that wanted to comment on the aged care summary? No?

PN595

MR LIGGINS: Aged care employers thought that our position was accurately reflected, to the extent that we didn't have a position on a particular issue we identified that was the fault of the AIG submission and also the Australian Business Industrial Commission and we certainly agree with the points that Ms Bhatt has indicated as being agreed and I would also agree with what Ms Svendsen said about a significant number of other issues which are pretty close to agreement, if we had a conference.

PN596

COMMISSIONER LEE: Anyone else on the employer side? Any other comments?

PN597

MR LIGGINS: No.

PN598

COMMISSIONER LEE: As his Honour indicated at the conclusion we'll return to talk about programming a conference.

PN599

JUSTICE ROSS: Is there anything further in relation to that order, the aged care order?

PN600

Let's go to the Supported Employment Services Award and go through the summary of submission. With the assessment tool proposed changes, that's still, as I understand it, before Booth DP, and it's a Full Bench - - -

PN601

MS SVENDSEN: In its entirety, in relation to the application to remove that we made in 2013, that United Voice and HSU made. Yes, that matter is still before them, but that's not dealt with in the proposals to remove those specific tools. Those specific tools that are noted are only in relation to ones that aren't used.

PN602

The other matter that relates, your Honour, to removal of something is the transitional provisions that are included in the ED, relating to the business

services wage assessment tool. That transitional period is now past and final. So there's certainly - - -

PN603

JUSTICE ROSS: There doesn't seem to be much utility in retaining that.

PN604

MS SVENDSEN: There doesn't seem to be any utility in retaining it.

PN605

DEPUTY PRESIDENT GOSTENCNIK: That's tool is also no longer in the award.

PN606

MS SVENDSEN: No, but there's a transitional provision for that removal as well, it's past.

PN607

DEPUTY PRESIDENT GOSTENCNIK: I don't know whether this is the place to raise this, but it is something that the applicant in the variation proceedings that Booth DP is dealing with, are considering folding the application into the four-yearly review of this particular award, because that would be an effective way to perhaps deal with the issue, so I just indicate that.

PN608

MS SVENDSEN: We are little bit unclear about that.

PN609

JUSTICE ROSS: Well, we'll see where we go. All right. Are there any changes, corrections or comments on the summary?

PN610

MS SVENDSEN: I'm a little bit unclear about whether matters are agreed or not agreed, even using Ms Bhatt's definition of not opposed - - -

PN611

JUSTICE ROSS: Yes.

PN612

MS SVENDSEN: - - - given that there are a number of matters that are not opposed. I am actually not sure that they would have been agreed if anyone had sat down and thought about it, and I suspect that some people have kind of not looked at this award.

PN613

JUSTICE ROSS: Yes.

PN614

MS SVENDSEN: I think the definition issues are, largely speaking, agreed, but the outcome of how that might be resolved might still be in dispute. Therefore, I think people agree that it should be in one spot and not in several, but which way

that should be resolved might be impacted upon by a general decision rather than separate provisions. That applies to (2), (3) and (4), I think.

PN615

JUSTICE ROSS: Yes.

PN616

MS SVENDSEN: That also applies to the coverage - that is, the definitions being split - but I think that is agreed.

PN617

JUSTICE ROSS: Yes.

PN618

MS SVENDSEN: But I say that with some degree of hesitancy.

PN619

JUSTICE ROSS: Well, in some of them it's clear. Most of the submissions that are advanced are advanced by the AWU or the HSU.

PN620

MS SVENDSEN: They are.

PN621

JUSTICE ROSS: ABI and NDS respond to some of those, but not all of them. It might be helpful if particularly ABI can respond to the other items in the summary of submissions and the HSU similarly where it, for example, doesn't provide any comment on some of the other proposals by the AWU or ABI. It need not be a very long response. I'm thinking in a week or so. Just sending a note saying, "Look, this is our position at this time."

PN622

I'm not going to hold you to it and then use it as a club to beat you to death with in the conference, but it will give us a better idea about the scope of the disagreement, the extent of the disagreement, in the award, and we can move it forward. Do you have any other comments on the accuracy of the summary document, Ms Svendsen, before I ask anyone else?

PN623

MS SVENDSEN: I didn't find anything that I thought was incorrect.

PN624

JUSTICE ROSS: Do you think it would be useful to have a conference in relation to this award?

PN625

MS SVENDSEN: Yes, I do. I think the majority of matters would be cleared away very quickly.

PN626

JUSTICE ROSS: Yes, they do seem to have that sort of look. Any other comments on this award and on the summary? Okay. Well, when we adjourn I'll

come back and talk to you about when we might do the conference, so if you can start to think about that. We might start to think now. I have a date in mind, because I've got to be here, anyway, in Sydney and I think most of the parties seems to be Sydney based - on the 15th. I think you do, too, Ms Svendsen.

PN627

MS SVENDSEN: Yes.

PN628

JUSTICE ROSS: Because of the Pharmacy Award matters in the morning.

PN629

MS SVENDSEN: Pharmacy Award, yes.

PN630

JUSTICE ROSS: So the afternoon to have a conference about this might be a useful time, but give that some thought before I come back and we'll see how we go. That is sort of predicated on in a week or so getting in your comments on the various items where you haven't already provided one and we'll see how much progress we can make at that initial conference. Okay? Shall we move to the last item and certainly not the list, the SACS Award.

PN631

COMMISSIONER LEE: I think a general assessment of this was that the level of agreement is not as apparent in respect to this award and I'm hoping that - and Ms Svendsen - equally apply to this - that it might be just with some re-thinking that there could be an assessment. Ms Bhatt, do you want to start on this? Have you got any views about whether there is some level of consensus - or Ms Svendsen.

PN632

MS SVENDSEN: I think there is around the definitions and coverage stuff, but again I would repeat what I said about the Supported Employment Services Award. I'm not sure that we have landed on what it should be, but I don't think that one is going to take very long. Does that do anything to cheer you up?

PN633

MS BHATT: I can endeavour to work through the document.

PN634

COMMISSIONER LEE: You have had some involvement in this, haven't you, Ms Bhatt?

PN635

MS BHATT: Yes, Commissioner.

PN636

COMMISSIONER LEE: Yes, sure, or in your view is there another one of the employee representatives that is in a better position?

PN637

MS BHATT: I'm content for anyone else, if - I don't mean to - - -

PN638

COMMISSIONER LEE: Anyone else can step up, if they want to.

PN639

MS BHATT: But, equally, I have identified matters that - - -

PN640

COMMISSIONER LEE: Sure.

PN641

MS BHATT: Our understanding is that they are agreed and I can identify those, unless there is any objection to that.

PN642

COMMISSIONER LEE: Go ahead.

PN643

MS BHATT: Item 3 is agreed. Item 5 is agreed. Item 6 is agreed. Item 15, in response to a question raised by the Commission, it appears that all parties agree on the interpretation of that clause.

PN644

COMMISSIONER LEE: Yes.

PN645

MS BHATT: Item 18, all parties agree with the proposal put by the Commission in the exposure draft. Item 19 is agreed. Item 23 is agreed.

PN646

MS SVENDSEN: I thought it wasn't.

PN647

JUSTICE ROSS: 23? AIG and the AFEI don't oppose your proposal.

PN648

MS SVENDSEN: Yes, I thought the matter was just quite strange and my memory was that it was - I know that the writing here is that it's essentially agreed, but it's - okay. ACE and ABI will make a comment if they think that it should be opposed.

PN649

MS BHATT: If there is any contention about that, we can take it off the list of agreed matters.

PN650

COMMISSIONER LEE: I thought 17 was agreed, Ms Bhatt.

PN651

MS SVENDSEN: 17? Yes.

PN652

COMMISSIONER LEE: 17 is agreed?



PN653

MS SVENDSEN: Yes.

PN654

MS BHATT: Yes, it appears so. Thank you.

PN655

COMMISSIONER LEE: I thought 18 was agreed.

PN656

MS SVENDSEN: Yes, we've got 18.

PN657

MS BHATT: Item 24, there appears to be agreement that the reference to mail and facsimile should remain. There is a proposal from the AWU to re-draft the clause to some degree. That is not agreed. Item 31, which appears at the top of page 18, is agreed. Item 33 is agreed that clause 17.2(b) of the exposure draft should be replaced with the current clause 20.4(b). At item 34, all parties agree that clause 17.2(c) of the exposure draft should be retained.

PN658

At item 39, it is agreed that clause 17.3(c)(iii) of the exposure draft should be replaced with the current clause 20.5(c). It's my understanding that item 43 - that there is agreement that clause 19.3 of the exposure draft should be replaced with the current clause 28.3. That would then also resolve items 44 and 45. Item 49 is agreed. I don't have anything further. Thank you.

PN659

COMMISSIONER LEE: Any differences of view from that just gone through?

PN660

MS ZADEL: Item 50 can then be agreed, as well.

PN661

COMMISSIONER LEE: Ms Svendsen, 50 is agreed?

PN662

MS SVENDSEN: Yes. It's our proposal.

PN663

COMMISSIONER LEE: All right. Any other views on the summary document's accuracy or any other comments from the employer groups here? No? Ms Svendsen?

PN664

MS SVENDSEN: No, I wouldn't - maybe this goes to the question I was raising before. I don't think there is anything that I disagree with in the summary, but I think there are some significant matters and this would benefit from conferencing to figure out whether those significant matters are going to be actually argued or whether there is room for agreement. Certainly some of the conflict that is identified is identified for resolution in separate ways and so it may well be that there will be consensus about how that's resolved.

PN665

COMMISSIONER LEE: Yes, all right. Mr Bull?

PN666

MR BULL: Nothing further to add.

PN667

COMMISSIONER LEE: Nothing further. Anyone else on the union side? All right. Again, we'll deal with that in terms of programming for the conference at the conclusion.

PN668

JUSTICE ROSS: Is there anything further in relation to any of the Group 4A awards? No? Well, we will adjourn, but a couple of us will be returning shortly to discuss the conferencing of some of these items. Thank you.

**ADJOURNED TO A DATE TO BE FIXED**

**[2.46 PM]**