



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT DEAN

AM2018/9

s.158 - Application to vary or revoke a modern award

**Application by Independent Education Union of Australia-New South Wales/Australian
Capital Territory Branch
(AM2018/9)
Educational Services (Teachers) Award 2020**

Sydney

11.00 AM, MONDAY, 24 MAY 2021

PN1

THE DEPUTY PRESIDENT: Okay. Good morning, everyone. We're on record so (indistinct). I think we might start perhaps with you, Mr Taylor because I think it was Ms Saunders who made the suggestion about the conference.

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MR I TAYLOR: Yes, of course. The first thing Ms Saunders wanted me in my opening to raise was - the Commission asked everyone to give an undertaking - - -

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THE DEPUTY PRESIDENT: Yes.

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MR TAYLOR: And that's before we proceeded.

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THE DEPUTY PRESIDENT: Yes.

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MR TAYLOR: I don't think anyone wants - - -

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THE DEPUTY PRESIDENT: I've got some.

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MR TAYLOR: You have got some? I don't know - we certainly, if we haven't already given that, will give that undertaking but it seemed important that before we proceed any further that anyone who hasn't given one does so.

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THE DEPUTY PRESIDENT: Yes. So - - -

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MR M CHAMPION: Might I chime in from Melbourne, from afar, Mark Champion. I'm here for the AEU today with Jack Kenchington-Evans. I'm on the screen. I'm not sure we've given an undertaking. The AEU does so.

PN11

THE DEPUTY PRESIDENT: So is everyone clear about the undertaking that we're talking about? And that is, to the extent that I'm assisting in these discussions, no one is going to my object to my continuing to be part of the Full Bench. So is there anyone who doesn't provide that undertaking who hasn't already?

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MR N WARD: No but it's probably better that we stay (indistinct).

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THE DEPUTY PRESIDENT: Yes.

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MR WARD: My clients will give the undertaking.

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THE DEPUTY PRESIDENT: Thank you.

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MR J GUNN: CCSA has given an undertaking.

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MR C OWENS: And on behalf of the Catholic Employment Relations we provided some (indistinct).

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THE DEPUTY PRESIDENT: Thank you. Is there anyone who hasn't?

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MS LO: The AFEI provides the undertaking.

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THE DEPUTY PRESIDENT: Thank you. And ACA?

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MR WARD: Yes, we - yes.

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THE DEPUTY PRESIDENT: Sorry, yes.

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MR WARD: Yes.

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THE DEPUTY PRESIDENT: Sorry. Okay. All right, thank you.

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MR TAYLOR: So it's said - and this is as we indicated, it was our client who suggested the discussion. The Commission had set the matter down for hearing but with the nature of the issues that need to be determined it seemed useful to identify through an initial process. There's been some exchange of queries and some of the issues that have been identified by one party have also been identified by another. But certainly what we haven't yet had is any response to the proposals including our proposal.

PN26

So for our part it seems useful today to do two things. One, to engage in some level of discussion about the issues and the proposed solutions, and then perhaps come up with a timetable between now and when we were otherwise coming back before you on 4 June which is only slightly less than two weeks. Just coming to that, what we thought might be useful so that everyone can be clear about what is being proposed, is that we actually get down to the nitty-gritty with some award clause variations, spelt out to some extent, for example, about the proposed change - proposed classification (indistinct) but it seems that what would be done is by the end of this week we - that is, the IEU, could in a sense provide

(indistinct) award that would identify our approach to the various issues that are raised by the parties, as they would appear in the award.

PN27

The parties would, if it's agreeable, provide a response either by their own proposal or by written documents, I would imagine in sufficient time so that we have at least a day to consider that before we're back before you on the 4th. That would allow the Commission to perhaps better understand where the issues are. And some point some timetable might need to be discussed as to preparations for the hearing but it seems premature to do that now. A lot of the issues appear to be issues which (indistinct) essentially if agreement can't be reached, I think will be dealt with by way of submissions rather than further evidence. But it may be that if agreement isn't reached on some issues, for example, the suggestion of phasing in, it may be that some evidence is sought to be led to try and explain to the Commission why from the employer's side that's a good idea.

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THE DEPUTY PRESIDENT: Yes.

PN29

MR TAYLOR: But these things might be able to be agreed to some extent so it's best to sort of consider that after 4 June or during the course if (indistinct). So that was the broader quotes(?) that we're suggesting as to what we can do today, and then to the extent to which we get into the actual detail we're in your hands as to how best you think that might be done, whether we deal with it issue by issue, or each party says something about it. (Indistinct 11.06.31) issues, I don't really have (indistinct).

PN30

THE DEPUTY PRESIDENT: All right. Well, I might just jump in then and we'll ask for everyone else's view but there's just a couple of things, quickly. To the extent that I'm in the room (indistinct).

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MR TAYLOR: Yes.

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THE DEPUTY PRESIDENT: If you want to have conversations off record, I'll go.

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MR TAYLOR: Yes.

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THE DEPUTY PRESIDENT: Unless there's a really particular need for me to be here. So that's the Bench's preference in terms of how today goes. But if there's a good chance that we actually rap everything up potentially today and we need some off record discussions to do that then we can accommodate that if need be. And so in the course of today you collectively will have discussions without me. We can certainly facilitate that and that can be done off record.

PN35

I think in terms of the way forward it's probably best to identify the key issues and at least have an agreed list and we'll start working through them one by one unless someone has a different view.

PN36

MR WARD: So we're comfortable with that. We're comfortable with the notion of seeing if we can resolve things. We are mindful when we started this that the Full Bench has invited commentary on some specific issues and we do appear to have - well, almost - at least, one submission seemed to suggest they want to re (indistinct) the case so we're just mindful of the scope of this conversation. But (indistinct). So we don't want to (indistinct) arguing the case or introducing a brand new issue.

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THE DEPUTY PRESIDENT: Nor do we. And if there's something that we've missed that's going to be a problem - - -

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MR WARD: That's different.

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THE DEPUTY PRESIDENT: Then - - -

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MR WARD: That's different.

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THE DEPUTY PRESIDENT: Obviously we'd prefer that that be identified.

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MR WARD: Absolutely.

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THE DEPUTY PRESIDENT: Yes.

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MR WARD: Yes.

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THE DEPUTY PRESIDENT: Yes. All right, does anyone else want to say anything before we - anything from Melbourne before we - Mr Champion?

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MR CHAMPION: Nothing at this stage.

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THE DEPUTY PRESIDENT: (Indistinct)?

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MR CHAMPION: No, nothing at this stage, Deputy President.

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THE DEPUTY PRESIDENT: Okay, thank you.

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MR CHAMPION: Thank you.

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THE DEPUTY PRESIDENT: All right. You look like you've got a nice table there, Mr Ward, your table.

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MR WARD: Yes, we have, yes. Well, the only problem is I've scribbled all over it.

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THE DEPUTY PRESIDENT: All right.

PN54

MR WARD: And in my (indistinct) I might have (indistinct) of it so - - -

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THE DEPUTY PRESIDENT: Fair enough.

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MR WARD: I'd be happy to (indistinct).

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THE DEPUTY PRESIDENT: I won't ask for it then.

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MR WARD: I thought we might have another copy here.

PN59

THE DEPUTY PRESIDENT: All right. Does anyone have a view about anyone's submissions, particularly, that cover all of the issues, because some cover some and not others, all different ones. Has anyone got a list already in terms of - otherwise we'll get one together now. No?

PN60

MR TAYLOR: I've marked up a list off issues by hand, by reference to the submissions but I don't have a document (indistinct).

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MR WARD: If you would like to ignore what I've written I'm happy to hand this (indistinct) if that helps.

PN62

THE DEPUTY PRESIDENT: Why don't you just read it out and well make a list.

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MR WARD: Definitely. So we've identified one, two, three - five issues and some sub issues, and issue number one relates to the classification levels and the

(indistinct) and it's then - it's six or seven questions inside that. Do you want me to actually read out - - -

PN64

THE DEPUTY PRESIDENT: Yes, let's do that and see if we can at least get agreement on the list.

PN65

MR WARD: So from the IEU's perspective I've got, "Replacing satisfactory service with service." I've got a proposition that says, "Level one needs to cover a wider range of instruments such as suitably qualified persons by (indistinct) and as defined." Thirdly, "Teachers of at least two years service who have left the industry should be deemed proficient." And fourthly, "The level five scope to be broadened to include (indistinct) service and masters degree." Then sixthly, "Parties' translation structure to go into the (indistinct)."

PN66

From the CCER's perspective we have - where the new classification starts is (indistinct). Modifications need to be made to the EST(?) Award to reflect the new classification structure.

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THE DEPUTY PRESIDENT: Say that one again?

PN68

MR WARD: Modifications need to be made to the EST Award to reflect the new classification structure. And then thirdly there seems to be that proposition as to whether or not (indistinct) the parties (indistinct) appropriate (indistinct).

PN69

MR KENCHINGTON-EVANS: I'm sorry to interrupt. It's Jack Kenchington-Evans from Melbourne. I just can't quite hear you guys at the table. If you're about to speak to the mic that might really assist.

PN70

MR WARD: My apologies. It's Monday and I've still got my weekend voice on. From an (indistinct) perspective we've got three propositions. There's a question mark over level 2 and the question is, what's the equivalency of accredited proficiency, and I presume in there that that's about non accredited, non regulated states.

PN71

In relation to levels 3 and 4, the question as to how satisfactory service is defined or assessed. Then there's a question mark again, at level 1 which we're not entirely clear about. We've written it this way. "Level 1 appears to translate to level 3 as a current award. How do year 2 and year 3 teachers translate?" Hopefully I've got that right. From the AEU we've got two propositions. One is that "satisfactory service" should be removed and "simple service" introduced. And then a general proposition that the proposal needs some refinement but without any further elaboration.

PN72

And from CCSA we have a proposition in these terms. Hopefully we've summarised it properly. "Loss of highly accomplished/lead(?) teacher", and 2 is able to revert back to level 3 or 4." So at least with the classification structure that's what we have on our table. And hopefully I've done most people justice. I don't know.

PN73

The next issue is phasing and without going into the minutiae of how that's put, ACA have raised the issue of phasing. Respectfully, and not surprisingly the IEU and AEU have not. Carol will be shocked (indistinct). CCER have raised the question of phasing and elaborated somewhat. And CCSA have dealt with it by proposing a commencement date of 1 July, 2022. There then seems to be - - -

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THE DEPUTY PRESIDENT: I think that was in line with the - what was that in line with?

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MR WARD: (Indistinct).

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THE DEPUTY PRESIDENT: (Indistinct).

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MR WARD: Yes. And the financial year. There's then a number of, what I've described as queries around translation to the new structure in overwriting (indistinct). And without going into those in fine detail, as I've said already, (indistinct)'s clients propose the translation structure. And the great majority of other queries around this concern mostly the application of the new structure in states or territories without accreditation. And that's a question of practicability.

PN78

There's then an issue raised by the AEU about part-time and casual employees, and the concern expressed by them that those persons will be disadvantaged if the proposal is based on satisfactory service, but no other comments on casual and part-time. And then there's some matters of inquiry about the educational leaders' allowance from ACA and the CCSA. I don't think they're controversial, more just trying to understand the relationship between that and the (indistinct) that are otherwise in the four-yearly review matters in the (indistinct) matters. That's what we've broadly got on our table. We'll see if we've got it right or wrong, very shortly.

PN79

THE DEPUTY PRESIDENT: Perhaps I can ask whether that list is not comprehensive, or whether there's anything else that anyone wants to add in terms of broad topics that need discussion.

PN80

MR TAYLOR: I think the broad headings are all right, and the first broad heading, classification levels and descriptions save a lot of potential subheadings.

One subheading that may not have been picked up is the point that we made at paragraph 7 of our document in respect to (indistinct) 3 and 4, and the proposal for change of language that in circumstances where we are in a transitional situation, rather than requiring people to be three years at a level before they move to the next level, and then another three years at the next level. That's the slight change which would simply be three years at each level, and then six years at the fifth level and sixth level (indistinct) to four, so that we avoid any potential lack of clarity, particularly on the transitional (indistinct) where some of them might, at the moment, be translated across as part way through that on the screen(?) but they then have to wait another three years to get to level 4, or do they get there because they're almost there already, with just (indistinct) was necessary to get six years of that. So it's a very minor drafting issue that comes under that heading of classification (indistinct).

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MR WARD: It's (indistinct) that's somebody might read what's currently proposed (indistinct) differently.

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MR TAYLOR: Indeed.

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MR WARD: (Indistinct).

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MR TAYLOR: But otherwise I think the issues that we have identified are already identified on each list.

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THE DEPUTY PRESIDENT: All right. Anyone else then?

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MR WARD: I'd just like to address the phrasing in the elaboration. In our submission there was a (indistinct) elaboration in relation to that which includes the costs of Catholic agencies and I'm not sure that that phrasing in with the elaboration covers those issues.

PN87

MR TAYLOR: I've got six dot points if you want me to read them out.

PN88

MR WARD: No.

PN89

MR TAYLOR: I should have realised, there is actually one issue that was alluded to under the heading, "phase in", but wasn't the - I think needs to be a separate heading identifying those (indistinct).

PN90

MR WARD: (Indistinct), yes.

PN91

MR TAYLOR: So it's related to phasing but it's a separate issue.

PN92

THE DEPUTY PRESIDENT: And a quick question, actually before (indistinct). Is anyone actually representing the association and its (indistinct) with that group? No? (Indistinct).

PN93

MS MATTHEWS: I don't know about this particular proceeding but I'm certainly aware of the proceedings in general, yes. (Indistinct).

PN94

THE DEPUTY PRESIDENT: All right. Sorry, I'll check in with (indistinct) in the room. So anything (indistinct)?

PN95

MR CHAMPION: Yes, we're listening attentively. That was a helpful list of issues. Nothing to add.

PN96

THE DEPUTY PRESIDENT: Thank you. I'm sorry I've got my back to you. I've just realised where the camera is. But I can't do much about that so - - -

PN97

MR CHAMPION: I understand, Deputy President. We can hear clearly.

PN98

THE DEPUTY PRESIDENT: Okay. All right, and so before I start do we think there's any benefit in the parties having a discussion off the record and without me, to talk to through some of these issues, or shall we just charge ahead?

PN99

MR TAYLOR: There is certainly benefit from the IEU's point of view in hearing what the employers think about the proposals that would (indistinct) but I mean, it's really for our part (indistinct) we have a view one way or the other, as to whether that's something that they would prefer to do with you, Deputy President.

PN100

THE DEPUTY PRESIDENT: All right.

PN101

MR TAYLOR: But we certainly would like to hear the response to proposals like the meetings weren't satisfactory; the proposed (indistinct) drafting classification structure and (indistinct) transition; and (indistinct).

PN102

THE DEPUTY PRESIDENT: Sometimes obviously we might want to have discussions that mean you talking about the proposals that you want to on a without prejudice basis rather than on record, so that's one of the options there for you.

PN103

MR TAYLOR: Yes. Look, I'm (indistinct). It might be - I don't want to (indistinct) but it might be useful if we, at least, provide our only response.

PN104

THE DEPUTY PRESIDENT: Sure.

PN105

MR TAYLOR: Given that (indistinct) my clients (indistinct) items that were (indistinct) hear our response collaboratively and then you can decide if you want to have a chat to us. So I'm happy to do it that way if you want.

PN106

THE DEPUTY PRESIDENT: Yes, that's fine.

PN107

MR TAYLOR: I'm in your hands on - - -

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THE DEPUTY PRESIDENT: Well, again I'm (indistinct). Whatever the process is that can hopefully get us to an outcome is - I don't have a particular view on the process.

PN109

MR TAYLOR: Okay.

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THE DEPUTY PRESIDENT: As in, you know, a fixed view. We're just going to do our best in terms of facilitating a discussion and hopefully we'll get to the (indistinct) conclusion. If not, (indistinct) some of the outstanding issues that (indistinct).

PN111

MR TAYLOR: That's fine. So why don't we start, if that's okay, with the parties. Why don't we start with satisfactory service, and what I'm about to say, hopefully will be as respectfully put as can be given I'm responding to something from the Commission, as much as responding to something from the Education Union.

PN112

We are currently struggling with the idea that deleting the reference to "satisfactory service" doesn't, as we read the decision - let me explain what I mean by that - if one follows the decision and the Commission decide to abandon annual increments on the basis that they're (indistinct) in the 650, but again (indistinct) the New South Wales structure in 655 to 656, but are anxious that the New South Wales structure is itself excessively (indistinct). And at the end of paragraph 656 the Commission then decides that some form of increment is appropriate and they appear to identify time and satisfactory service being a proxy for that they describe as the acquisition of additional skills and responsibility through experience.

PN113

So it seemed consistent with that proposition that not only would the person be in that classification for a period of time but they would satisfactorily perform to have acquired those additional skills and responsibilities from experience. So we would start by saying that our view about the (indistinct) satisfactory service is that it really is gleaned from what we understand to be the essence of the decision as to why (indistinct). It's not just service, it's not just time, it's the acquisition of more than that. So I have to say at the outset that as we read the decision it seemed to be a very natural thing to be put in the classification structure.

PN114

THE DEPUTY PRESIDENT: Yes.

PN115

MR TAYLOR: There are other awards which use phrases such as, "satisfactory service." There's quite a few. But we also would acknowledge that when you introduce that phrase for the first time in award there's some level of informative educative process that the industry needs to understand how to will apply. So that will be our opening response to "satisfactory service."

PN116

We have a very real issue with the idea that the first level of issues aimed at a graduate having completed their degree, is also going to apply to somebody otherwise described as "suitably qualified" under the (indistinct) rules. And let me just develop that simply this way. The accreditation and registration rules in relation to teacher ratios obviously are different everywhere. And by "different everywhere", I mean even when you have registration, say from Victoria to New South Wales, the registration system is not necessarily common between the two states. It might look it but it actually (indistinct). Certainly the (indistinct) and the actual way of assessing proficiency and all sorts of things is quite different.

PN117

It is quite possible that somebody at a childcare centre who is ticking the suitably qualified person box with a ratio requirement, and it might be a childcare worker who is studying to be a teacher, and the problem with that is simply this, that it could be more likely than not be the case that the work they're doing is the work of a childcare worker. And we're struggling with the idea that simply because they are counted for the purposes of a ratio regulation that if they're doing the work of a childcare worker, all of a sudden we have to pay for this graduate teacher. So we struggle with the concept from an actual work value perspective.

PN118

Now it might well be that that person is playing an educator role, that's true, as well, but it might well be that that person only is an administrator in the centre and actually not doing very much of anything while only having minimal contact with kids on a limited basis, so - but the concern we've got is just that we think that a very large proportion of people who tick that box are likely to be childcare workers studying to be a teacher. And therefore putting them in the level 1 does not reflect that (indistinct) they're actually performing that though. So we have a real problem with that (indistinct) and I am respectfully not sure that issue was really the subject of any consideration in the case.

PN119

As to the transitional structure I'm going to apologise. We haven't had a chance yet to really get our head around them. There is always going to be some level of attraction to assisting people in translation and we can't shy away from that because there is. What we haven't worked out yet is whether or not there's a degree of artificiality (indistinct). That is, is it right to assume that somebody at a level 7 will always be a level 3 proficient teacher, et cetera. So we haven't been able to work out yet whether or not there is too much artificiality in this way in the simplicity of assistance and we're doing that at the moment.

PN120

But I think it's best if we can say it this way, is if we (indistinct) that there is some assistance in translation is helpful but we'll have more of a look at what's being proposed. I think the broader, longer term anxiety of (indistinct) is that we wouldn't want to see this becoming the proxy for the Commission's proposal. In other words, we wouldn't want to be living in a world where people are not making proper assessments under the new structure but instead, just simply saying, you've got four years, you've already been here for six years, therefore you might (indistinct). So we see this as a useful - the idea of some kind of transitional aid is useful for transition but we don't think this is an ongoing process. There is a point at which you have to live under the new rules and assess people against those new rules.

PN121

So that's probably the best we can say at this stage. But we've raised the question of efficiency generally, all in the context of the states like Queensland where you can't have accreditation, which is probably a slightly different issue which we can come to later, is we're trying to get our head around how operations in Queensland will have to adopt, or it may or may not be the case in a state that has accreditation and apply it to their workers. There's a practical challenge we're trying to come to terms with and clearly some transitional aid might very well assist our (indistinct) superficially (indistinct).

PN122

We have some anxiety around the level 5 proposal because again it seems to be moving away from what the Bench assigned it and that is, there seems to be a proxy for, if you've got a higher degree and you get in straight away, you know, (indistinct). There seems to be a proxy for, if you've been in the industry a really, really long time you get in, no matter what. And with respect that seems to be flying against what the Commission provision (indistinct), so - - -

PN123

THE DEPUTY PRESIDENT: So are you talking about the (indistinct)?

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MR TAYLOR: Yes, so this, if you look at AEU proposal, the AEU proposal, and that is in the additions to level 5 - - -

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THE DEPUTY PRESIDENT: Right.

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MR TAYLOR: It would now read, "Potentially highly accomplished/lead teacher accreditations."

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THE DEPUTY PRESIDENT: Yes.

PN128

MR TAYLOR: "(Indistinct) or significant service at a proficient level and a master's degree and educational equivalent." Obviously we need to unpack to understand better what that really means. It's unclear what "significant service" would actually represent. Is that five years, is it 20 years, is it 30? I don't know. But it does seem again to be slightly inconsistent with where the Bench were heading with the original decision. So again we would need to understand a little bit more about what that's trying to achieve and how it would be applied.

PN129

I will just raise one other issues and I think it came from the AEU in response. I think the AEU put a proposal that said the Commission should make it a term of the decision that nobody should go backwards. But we don't cavil with that. We think it would be courageous of us to try and cavil with that. But we also would say that the normal flip side of that coin is not only that people don't go backwards but that the employer can absorb any increases into existing over award payments. And I just might add this proposition, that those two propositions normally go hand in glove if the Commission is minded to make those sorts of declarations in its final determination.

PN130

THE DEPUTY PRESIDENT: Just on that point, Mr Taylor, do you have instructions about that?

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SPEAKER: (Indistinct).

PN132

THE DEPUTY PRESIDENT: Okay.

PN133

MR TAYLOR: No, I did my analysing from something that came up.

PN134

THE DEPUTY PRESIDENT: Yes.

PN135

MR TAYLOR: But I don't know if that's enough to start with. Maybe it is. We will say this. We would be very keen, as much as possible, not to rehash it again. So we're very mindful that at least CCER has those possibilities reagitated (indistinct) that that does cause some alarm for us given we've been on this matter (indistinct) six years. It's a bit of an anxiety for us. I suspect it might be for some other parties, as well.

PN136

THE DEPUTY PRESIDENT: (Indistinct).

PN137

SPEAKER: (Indistinct) Deputy President Dean.

PN138

MR TAYLOR: I didn't have as much grey hair when we started, (indistinct) that.

PN139

MR WRIGHT: My son was in primary school. He's now in 7 year, yes.

PN140

MR TAYLOR: Yes, it's (indistinct), it is. Unless (indistinct) about another award (indistinct), as well. That's probably the best we can do at this stage.

PN141

THE DEPUTY PRESIDENT: Mr Taylor, significant service, what's your - can you explain what - - -

PN142

MR TAYLOR: (Indistinct) service, your Honour?

PN143

THE DEPUTY PRESIDENT: No, no, (indistinct) significant service (indistinct), sorry.

PN144

MR TAYLOR: As has been identified, and the AEU submission identified this, whilst the national accreditation findings are basically (indistinct) national there isn't, as a matter of practical reality, capacity for teachers in Victoria, WA and Tasmania to achieve the highly accomplished designation. However, it is consistent with the concept that there is a level 5, albeit it's a half (indistinct) service (indistinct), but that it shouldn't be in the national award that employees only in some states can access the highest level and not others. And so the proposal to ensure equivalents across the country is that the two criteria in which are the two criteria in which, in effect, permit someone in the states where you can go higher accomplished and become higher accomplished, is separately recognised as a criteria. So one is either a designated highly accomplished (indistinct) teacher or one has the equivalent, which is all one can get currently in most states, (indistinct) masters degree plus significant service.

PN145

But I hear what's said about the word, "significant", and that's a word that's somewhat elastic but it's certainly understood that one would need to have some service that would permit you to have got beyond the four. We haven't got a significant number in mind but I hear that what we say (indistinct) when replaced with work related ration numbering. I don't have instructions as to what that (indistinct) has (indistinct) we support. Certainly to become a highly accomplished teacher you don't have to have a particular number of years, and so in order to then have national equivalence I (indistinct) you'd have a significant

number of (indistinct) but if for certainty purposes you need that (indistinct) what that number could be.

PN146

THE DEPUTY PRESIDENT: Hopefully someone could get their teaching qualifications without masters, straight away if they're finished within, you know, the second year of teaching, yes.

PN147

MR TAYLOR: Yes. I accept that, and they would not have significant service.

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THE DEPUTY PRESIDENT: And so then the question is, at what point do they -
- -

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MR TAYLOR: Correct.

PN150

THE DEPUTY PRESIDENT: Yes.

PN151

MR TAYLOR: But that's another issue.

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MR WARD: I think one of the (indistinct) challenges we've also got with that is (indistinct) concerns about states where the accreditation registration process doesn't quite fit. We have the same concerns about the notion of proficiency, say, in Queensland.

PN153

THE DEPUTY PRESIDENT: Yes.

PN154

MR WARD: So I think if we're not careful and we start adding things in, you could just keep adding things in and adding things in, and adding things in. Because the bottom line is that if you're in Victoria or Western Australia then if you had a teacher who would otherwise meet those requirements (indistinct) since you've classified them, just as in Queensland, you don't have any requirement to actually assess people as being proficient, well then Queensland is going to have to work out whether or not they are proficient to meet that requirement.

PN155

THE DEPUTY PRESIDENT: So do you know what they do in Queensland? How do they manage?

PN156

MS MATTHEWS: Early childhood teachers are not required to be registered as proficient.

PN157

THE DEPUTY PRESIDENT: Well, this isn't just early childhood though.

PN158

MS MATTHEWS: No, other teachers aren't. So teachers in sports, definitely.

PN159

THE DEPUTY PRESIDENT: Right.

PN160

MS MATTHEWS: (Indistinct).

PN161

THE DEPUTY PRESIDENT: So this is (indistinct) teachers in schools?

PN162

MS MATTHEWS: Yes.

PN163

THE DEPUTY PRESIDENT: Right.

PN164

MR WARD: So that's very much our problem.

PN165

MS MATTHEWS: (Indistinct).

PN166

MR WARD: Yes.

PN167

MR TAYLOR: I think that's a valid point generally that one has to consider (indistinct) classifications for all teachers. And so when Nigel said he had problems with that proposal for level 1, you've got to understand that there are not just graduate teachers out there, but people who are teachers and are recognised in the system (indistinct) the moment to change the definition of "other teachers" as defined (indistinct) defined expression and it would seem sensible if you could have a structure that would pick up every person for whom is deemed to be covered. So that's all that we're doing here, is we're picking up other teachers who are either currently covered by the award, that is, by their own classification structure, and we rather think that proficient accreditation equivalent is something that can be well understood in the other states, or in Queensland, in particular, except for - - -

PN168

THE DEPUTY PRESIDENT: (Indistinct) particularly (indistinct) with New South Wales (indistinct).

PN169

MR GUNN: And except that you have broadened the third way, saying now that - and I guess I'm repeating Mr Ward's comments here by saying somebody who's got conditional accreditation, that is, they are in their last year of their degree, at the moment they would not be covered by the Educational Services Teachers Award. They're not a teacher until they're a teacher. And what you're putting at your paragraph 6(a), I believe, is actually stemming that out to, for example, a

diploma qualified individual who has undertaken their teaching degree who may be counted for (indistinct) purposes as meeting that tick, but they're not a teacher and currently they would not be employed under the Educational Services Teachers Award, they'd be employed under the Children's Services Award.

PN170

MR TAYLOR: Yes. I was going to respond to (indistinct) but they're not the - they're the words that come from the decision.

PN171

MR GUNN: Yes. The decision says, "graduate teacher with provisional or conditional accreditation where applicable." That what was the Bench intended. I mean, I hear if you say - you may say that the Bench went too far there but we are doing no more or less than addressing what the Bench considered to be an appropriate course for everyone. And for our part we have some difficulty with the notion that when you merely tell the sector people are being held out as teachers for meeting (indistinct) requirements but are not prepared to be recognised as justifying a day's pay goes with it. I mean, that's just - - -

PN172

MR TAYLOR: I don't think we're holding them out as teachers. We're simply accepting that for administrative purposes they can be counted for a ratio, administrative ratio. We're certainly not - if a childcare worker is studying and they get (indistinct) of the ratio we're not holding them out to be a teacher, because they're not a teacher.

PN173

MR GUNN: It's the flipside of when a teacher is a teacher.

PN174

THE DEPUTY PRESIDENT: (Indistinct) about when is a teacher a teacher, so - is there a difference in your view about someone who could be from an early childhood centre who would be classified as a teacher but couldn't be a teacher in a school?

PN175

MR TAYLOR: Well, they're not - I mean, they are only a particular - they're not - so if they're not a teacher - - -

PN176

THE DEPUTY PRESIDENT: They're not a teacher.

PN177

MR TAYLOR: They're not a teacher. And the award definition is that a teacher is someone who is employed as such. So if they're not employed as a teacher then they're not going to be caught. That, I don't think, was an issue (indistinct).

PN178

THE DEPUTY PRESIDENT: So in New South Wales if you're an independent school you need to have a NESAS(?) number or the equivalent?

PN179

MR TAYLOR: Not necessarily - - -

PN180

MS MATTHEWS: Not necessarily.

PN181

MR TAYLOR: To be employed as a teacher. So if you don't teach a NESA subject you can still be employed as a teacher without having (indistinct).

PN182

MS MATTHEWS: So an example of that would be someone who teaches Arabic and then there's (indistinct) in school.

PN183

THE DEPUTY PRESIDENT: Right.

PN184

MS MATTHEWS: So Arabic in primary is not - or even in a secondary school except in 11 and 12, is not a NESA subjects.

PN185

THE DEPUTY PRESIDENT: Yes.

PN186

MS MATTHEWS: So if you teach Arabic or religious subjects, they're not NESA subjects and you don't need to be an accredited teacher with them

PN187

THE DEPUTY PRESIDENT: Right.

PN188

MS MATTHEWS: But I say that - well, you can also be additionally accredited which means that you have further study to do.

PN189

THE DEPUTY PRESIDENT: Yes.

PN190

MS MATTHEWS: And that's a quite common way to employ people even if they haven't finished their degree.

PN191

THE DEPUTY PRESIDENT: Yes.

PN192

MS MATTHEWS: And in Victoria, for example, that's called studying to teach. So that there are still people who have conditions attached to them - - -

PN193

THE DEPUTY PRESIDENT: Yes. But they can teach.

PN194

MS MATTHEWS: So they can teach, or alternatively they may not be required to be accredited, at all, certainly in New South Wales, because they're not teaching a NESAs approved subject.

PN195

THE DEPUTY PRESIDENT: Right.

PN196

MS MATTHEWS: And in some modern award schools, so that there are Islamic schools under the Modern Award, a few, and (indistinct).

PN197

THE DEPUTY PRESIDENT: Right. Okay, thank you. Sorry.

PN198

MR GUNN: I think what (indistinct) just said was we are not trying to suggest that childcare workers who are studying wouldn't be likely captured by this proposal. I think we're just - because you'd actually have to be an accredited teacher to be captured by this proposal, I don't know. I might inappropriately put words in his mouth so - - -

PN199

MR TAYLOR: Well, as I say, we're picking up the language of the award and we're picking up the language of the people who are teachers, and a teacher is someone who is employed as such. So if someone's not employed as a teacher then they're not going to be covered by the Teachers Award, and as such there is no need for a classification for them. But if they are employed as a teacher, and that is that they have sufficient qualifications but have only provisional additional accreditation then they're still going to be covered as a graduate teacher but they're just (indistinct) classification (indistinct) definitions in the (indistinct). So there's no suggestions in this award to (indistinct) employing people who aren't covered by it.

PN200

MR WARD: Well, they're (indistinct).

PN201

MR TAYLOR: That's (indistinct).

PN202

MR GUNN: Essentially where we're at is the actually working towards the requirements of the national (indistinct) for early childhood, is the dispute point. So you're taken for a purpose. That doesn't make you a teacher though.

PN203

MR TAYLOR: But that (indistinct). I mean, there's no suggestion people who are not yet teachers but are studying are (indistinct).

PN204

MS MATTHEWS: If you were working at a preschool and you were the person in charge of the room as a teacher, and you were held out to everybody as a teacher, the fact that you haven't completed your degree, I think is (indistinct) that the Teachers Award doesn't apply.

PN205

MR GUNN: It does at the moment.

PN206

MR TAYLOR: Well, not if you're employed as such. I mean, the question might be a question for (indistinct) that someone is being employed as a teacher, not - - -

PN207

MR GUNN: You're taken to meet - sorry, we're getting into a debate, I guess, but you're taken to meet the requirement of a regulation but that's not the same thing as you are a teacher. And this is the flipside of the IEU's, a teacher is a teacher type (indistinct) and you can't have it both ways.

PN208

MR WARD: But if you've employed someone as a teacher that's - - -

PN209

MR TAYLOR: That's what I'm saying. They're not employed as a teacher but for the purpose of another regulation you are taken to be compliant as the employer for the purposes of (indistinct) because you have someone who's actively working towards becoming a teacher.

PN210

MS MATTHEWS: Yes.

PN211

MR WARD: This might mean that some of the providers in this group are clear about whether they're employing someone as a teacher or not.

PN212

MR TAYLOR: Absolutely, yes.

PN213

MR WARD: It's certainly the evidence in this case that certain people were being held out to the world as teachers.

PN214

MR GUNN: But to the other thing there that where directed to, should be, yes. Yes. If I may, very quickly, so the (indistinct) view, the CCER's view is that we (indistinct) the EIU about that there is no whole process with accreditation, et cetera, for in New South Wales, for example, and NESA to the individuals who are determining whether teachers are making satisfactory progress to (indistinct) et cetera, that shouldn't need to come back onto the employer, so - sorry to be (indistinct).

PN215

MR TAYLOR: So how would you deal with that in Queensland?

PN216

MR GUNN: I'm sorry, that's the - the difficulty is - - -

PN217

MR TAYLOR: And all of the discussion we've had for the last 45 minutes has been the same problem. We don't have a nationally consistent system and on the high - the H-A-L-T side of it you've got to work out what to do with those states that don't have it so that those individual teachers can actually achieve the level 5 that is proposed by the Commission. On levels 1 through 4 you've got the states not having an accreditation system. In the absence of a national accreditation system you're going to have a problem at every level in trying to work out what to do with those states that don't have that aspect. It's just two sides of exactly the same coin.

PN218

THE DEPUTY PRESIDENT: Was there any proposals at any point to try to get some (indistinct)?

PN219

MS MATTHEWS: The ACT is actively (indistinct) teachers. That (indistinct) - -
-

PN220

THE DEPUTY PRESIDENT: (Indistinct) across the board?

PN221

MS MATTHEWS: In terms of?

PN222

THE DEPUTY PRESIDENT: Nationally?

PN223

MS MATTHEWS: Well, (indistinct) will have the national scheme.

PN224

THE DEPUTY PRESIDENT: Yes, (indistinct).

PN225

MS MATTHEWS: It's just that other states have chosen not to adopt - well - - -

PN226

THE DEPUTY PRESIDENT: The teachers don't - - -

PN227

MS MATTHEWS: Teachers at schools are all accredited or registered in terms of the teaching national standards.

PN228

THE DEPUTY PRESIDENT: Yes.

PN229

MS MATTHEWS: So everyone is under that system in schools.

PN230

THE DEPUTY PRESIDENT: Yes.

PN231

MS MATTHEWS: How it's actually implemented in term statement of facts maintenance accreditation (indistinct) between (indistinct). The (indistinct) the lead, that might change everything (indistinct) I've got no idea but early childhood teachers are at some - there are more differences that - my understanding is they are likely to be - to minimise to be coming in because there's been a national decision. The (indistinct) national decision taken that all states should mandate teacher accreditation for the childcare teachers. So it is - and ACT, I know is (indistinct) but I'm not so sure about Queensland.

PN232

THE DEPUTY PRESIDENT: Okay, and Tasmania? The other two are Tasmania and Victoria.

PN233

MS MATTHEWS: In Victoria the ECT would have to be registered as the Victorian - - -

PN234

MR TAYLOR: That's the higher one. It's not the (indistinct).

PN235

MS MATTHEWS: Yes.

PN236

MR GUNN: With proficient - - -

PN237

MS MATTHEWS: Yes.

PN238

THE DEPUTY PRESIDENT: Right. Sorry, yes.

PN239

MR GUNN: We've got - proficiencies are probably with the ACT because there's no requirement in a (indistinct) setting. It's not part of a school, so any privately run service (indistinct) not for profit.

PN240

MS MATTHEWS: Are (indistinct).

PN241

MR GUNN: Yes, but perhaps if they're moving towards it.

PN242

MR P. MONDO: South Australia's is a challenge, as well.

PN243

MR GUNN: Yes.

PN244

THE DEPUTY PRESIDENT: Why is that challenging?

PN245

Mr MONDO: Because to be registered in South Australia with the degrees for children, zero to five, zero to eight, the registration process - they can't be registered under that registration scheme (indistinct).

PN246

THE DEPUTY PRESIDENT: Okay.

PN247

MR WARD: It doesn't in any sense defeat what's being proposed, it just amplifies a challenge for the employer in one or two places, how they translate the (indistinct).

PN248

THE DEPUTY PRESIDENT: All right.

PN249

MR GUNN: Which is why we then followed that up. We're supportive of the approach that the EIU is doing. We hadn't put in our documentation. We didn't know what to (indistinct) the table. We've got a slightly different translation point, up by a year from you. But that same idea that there at least needs to be some idea to take us from level 1 to 12, at the moment, across (indistinct) level 1 to 4, with level 5 sitting off to one side with that issue around significant service, I guess, coming up again with a number or definition for that.

PN250

THE DEPUTY PRESIDENT: All right. Do you want to say anything?

PN251

MR OWENS: Not too much. To the extent that the CCER (indistinct) matters, we don't want to cause anyone any grey hairs so we're certainly flexible in relation to those. I think our main focus is on the phasing in of arrangements and the operative date. And the cost of that, well, that will be borne by Catholic Early Learning Centres. In relation to the classification criteria we're in somewhat agreement in respect of your submission on level 5, specifically I don't think there's enough definition in what the IEU has added in there. Proficient level is a level 2 teacher with significant service - we don't know what the quality of that service is. And the masters degree in education, again we don't know what the quality is of that education, whether it's someone with, you know, honours, or just barely passed. And so a highly accomplished and lead teacher accreditation is a significant accreditation for a teacher and I don't think just a level of service and a masters degree would (indistinct).

PN252

THE DEPUTY PRESIDENT: Are you going to propose that (indistinct)?

PN253

MR OWENS: I don't.

PN254

THE DEPUTY PRESIDENT: Does anyone else (indistinct)?

PN255

MR WARD: I would have presumed it was implicit in the logic of the decision that if you were technically accredited (indistinct) to that level it would be effectively the equivalent to what being accredited (indistinct) be. I just, without banging on about (indistinct) again, (indistinct) in childcare concerns, don't get into the whole proficiency debate. Their obligation under the (indistinct) is to (indistinct) and to adopt a criteria of proficiency. I would assume that in Victoria that if you were under the registered scheme and can't get to level 5, to then follow the same logic. If you're in Victoria, if somebody meets the requirements of accredited level 5 then you get there anyway under the classification structure.

PN256

So it is actually applying the criteria in a state where that is provided for and you apply that criteria. And if you meet that criteria you're (indistinct).

PN257

THE DEPUTY PRESIDENT: So the criteria for highly accomplished or lead teacher, is that the same (indistinct) that the different states or territories have? Is it the same?

PN258

MR OWENS: Yes. The difficulty is that you have individual certified authorities and the issue in the states as identified is that those states have not created a certifying authority to allow the process to be conducted.

PN259

THE DEPUTY PRESIDENT: All right.

PN260

MR WARD: No but by way of example we - I'm going to take some instructions but our presumption, and I mean, it would be nice to think that if you didn't have it in your state you're not going to get it, but let's not go there - our presumption would have been that where that doesn't easily apply from an accreditation perspective, we will just simply need to refresh ourselves of what those acquired standards are, and one would assume those acquired standards would apply largely across Australia.

PN261

THE DEPUTY PRESIDENT: Yes.

PN262

MR WARD: Now if that can be conveniently reduced to words to assist people, that's one thing. If the introduction of words is unhelpful or entirely superficial, that's a different thing and I think we'll refresh ourselves as to what those criteria are and then come back with it.

PN263

THE DEPUTY PRESIDENT: All right .

PN264

MR TAYLOR: I think from our point of view the broad notion, two broad notions that underpin the submissions, one is that level 5 ought to be accessible nationally on the same criteria, not different criteria depending on where you are; and secondly, that because in three states there isn't currently the capacity to be accredited highly accomplished that there needs to be some language which applies equally across the country to reflect the existence of the level at something that is equivalent to either the accomplished (indistinct) decision, and as (indistinct) the language as to how you do that.

PN265

MR WARD: One thing that you might recall from the hearing was that in those states which have the criteria there are relatively small numbers who have obtained that (indistinct) requirement, and that is in no small part because in order to satisfy the accreditation (indistinct) a series of qualifications and so it is a matter, if we're going to come up with something that applies nationally, where you are necessarily going to have to simplify those obligations to some degree, short of appointing members of the Commission a national accreditation person making accredited, if you like. So there's going to have to be some level of educating - so there would have to be some level. I think the board don't - and that's why we cannot (indistinct) and I hear that said about the (indistinct) significant service but it's something that we can go back to. And the AEU will inevitably take a lead in this area to some degree because it's a matter that affects their state (indistinct).

PN266

THE DEPUTY PRESIDENT: Yes.

PN267

MR WARD: But we will be conferring with them and in the proposal that I put at the very beginning we put some specific language as in (indistinct) clause but we certainly anticipated that in the process of doing that we'd be conferring with the AEU in (indistinct).

PN268

MR TAYLOR: I think essentially we'd look (indistinct) claims (indistinct) in that as (Indistinct) said a very modest number of people have been able to achieve this in regulated states.

PN269

THE DEPUTY PRESIDENT: Yes.

PN270

MR TAYLOR: We wouldn't want some relatively simplistic language going into the award which means (indistinct) you just walk into this.

PN271

THE DEPUTY PRESIDENT: Yes.

PN272

MR TAYLOR: I think that would be a legitimate concern that we would have (indistinct).

PN273

THE DEPUTY PRESIDENT: Yes, the bar would need to be consistent.

PN274

MR TAYLOR: Yes, the (indistinct), yes.

PN275

MR GUNN: And on that I have one further concern and that is that the wording as it is at the moment talks about an entry level to level 5. It doesn't have all the fairly onerous requirements for maintenance of that level of accreditation that exists, for example, here in New South Wales with NESAs for the maintenance of that - essentially the CBD(?) requirements, et cetera. So the language as it exists at the moment, I read as entry level rather than a maintenance requirement, as well, to reflect what would happen (indistinct). And also whether that is a substitute in states where only an accomplished and lead teacher is actually available should that be a substitute for - a substitute in the states that it's not a possibility. Because that would then start to work against what we're trying to achieve which with teacher standards, at least in New South Wales, by having HAIT knowledge where people can get paid an alternative way without paying application fees and being subject to the various accreditation requirements that are associated with that high level of recognition.

PN276

THE DEPUTY PRESIDENT: So I don't think you're suggesting that we would water down the requirements for the (indistinct)?

PN277

MR WARD: I think the expression, "water down", is somewhat subjective because it would vary but certainly we can anticipate realistically that if you are trying to come up with some criteria which is as close to an equivalent as "highly accomplished" as possible, without there being the entire application process attached to it to some body that doesn't currently exist, inevitably you're going to have to come up with a simplified version that some people might claim is watering it down. But that's where I'm - you know, it won't be the same process to get there. And I hear what's said about maintaining this, as well, but we'd just use the language to see what could be done, but it's not the intention to water it down but inevitably that's how it could be characterised, whatever language (indistinct), even short of the current process.

PN278

I think there'd certainly be value in that area in terms of only making it available in states where there wasn't the highly accomplished lead teacher approach available.

PN279

MR TAYLOR: Yes. I think that's where we might have a different view because we don't want to have different criteria in different - if there's somewhat

intermittent criteria in one state, someone in another state who can meet that exact criteria though doesn't (indistinct).

PN280

MR WARD: No, I understand. (Indistinct) there might be legal issues with that, as well.

PN281

MR TAYLOR: Yes. That's right. There's only two years (indistinct) between states and two years (indistinct).

PN282

MR WARD: Well, having lost an argument both ways now from (indistinct).

PN283

MR TAYLOR: Yes. Turning to a different, and perhaps minor issue but (indistinct) I think is responsible, our proposed minor changes to the definitions of point 3, the (indistinct) to void the notion that we need to have some - that you can't ever get to level 4 until you've been three years at level 3, which means that for a transition period people are sort of, you know, going backwards, we don't think it changes the intention of the (indistinct) in any way by the proposed changes. I haven't heard anyone speak against it and it's something though that people say to themselves, I'm going to have a problem with that if I've used (indistinct).

PN284

THE DEPUTY PRESIDENT: So this is the wording, so taking out reference to "satisfactory", that's the second - - -

PN285

MR TAYLOR: No, it's - - -

PN286

THE DEPUTY PRESIDENT: At a professional level.

PN287

MR TAYLOR: So at a professional level - - -

PN288

THE DEPUTY PRESIDENT: (Indistinct) level (indistinct) six years.

PN289

MR TAYLOR: Correct. I think - - -

PN290

THE DEPUTY PRESIDENT: Has anyone got a view about that?

PN291

MR GUNN: We support that.

PN292

MR TAYLOR: I think the issue of satisfactory service, we have responded (indistinct).

PN293

MR WARD: I just want - as to the concept, that is we wouldn't want people to read your (indistinct) literally and therefore say legally if you've been in the industry ten years you can only be a level 2. We'd (indistinct) assume that's the intention. I'll just (indistinct).

PN294

MR TAYLOR: (Indistinct).

PN295

MR GUNN: We're just - sorry.

PN296

MR TAYLOR: No, I just wanted to say that it might be one of those things where if we provide a specific draft (indistinct) which is some necessary alteration because I've been advised to make it even clearer then - - -

PN297

MR WARD: But if we did ultimately reach a position where you had a translation table to operate for those three years that disposes of that (indistinct).

PN298

MS MATTHEWS: Well, it doesn't totally because the issue that (indistinct) is (a) which is, I accept, a little bit (indistinct). If someone was on level 5, let's say we had someone who was a highly accomplished teacher but did not meet the requirements of level 4, under this model they could go to level 5 without going to level 4. However if for some reason they lost that accreditation it would make clear that the service as a proficient teacher (indistinct) service on a particular level, so that their service as a highly accomplished teacher would have forfeited (indistinct).

PN299

MR WARD: That's what I'm saying. That can be dealt with by a notation or something or that could be a notation explanation that (indistinct).

PN300

MS MATTHEWS: Well, we don't think it's just (indistinct) notation on it, anymore. We think that going forward it should be clear.

PN301

MR TAYLOR: And hence we suggested that that table 2 not just be there for three years. Because someone who's currently some time in the next three years - or sorry, currently on a career break then comes back in two years' time then the transition provision should still apply then. But if they've got - if at the time they left they were level 10 and they come back, they should be able to identify that they are on level 10, and in one year they'll go to level 11, not be faced with an award that simply says you've been on - you know, the table 1 (indistinct) you've been (indistinct). So it still needs that the reference point would need to be right.

PN302

THE DEPUTY PRESIDENT: Sorry, just so I understand that, if you've already got to level 10 you must have had a certain number of years of proficient service.

PN303

MR TAYLOR: Yes, so probably (indistinct) plus seven years of - - -

PN304

MR WARD: (Indistinct).

PN305

THE DEPUTY PRESIDENT: I'm just trying to sort out why you would still need the translation table.

PN306

MR TAYLOR: Because you're not - - -

PN307

THE DEPUTY PRESIDENT: So I'm a level 10 and I've had a couple of years off.

PN308

MR TAYLOR: Yes.

PN309

THE DEPUTY PRESIDENT: Why would I not go back to that?

PN310

MR WRIGHT: You might be transitioning from a DEC, for example, and you don't actually have a particular place on the structure, currently.

PN311

MS MATTHEWS: Or alternatively, (indistinct).

PN312

MR WRIGHT: Sorry, the state government. You're under the State Teachers Award.

PN313

THE DEPUTY PRESIDENT: Right.

PN314

MR WRIGHT: You don't have any (indistinct) under the modern award if you go to a modern award employer, so why would you do that?

PN315

THE DEPUTY PRESIDENT: Sorry, why would teachers, why would public school teachers not have an (indistinct)? Don't they have to be proficient?

PN316

MR WRIGHT: No but they wouldn't have a modern award level, they wouldn't be under the modern award structure.

PN317

THE DEPUTY PRESIDENT: But wouldn't their length of service at - doesn't (indistinct)?

PN318

MS MATTHEWS: It would but one example in that case (indistinct) - - -

PN319

THE DEPUTY PRESIDENT: I'm just trying to understand.

PN320

MS MATTHEWS: Yes. One where there would be a problem is if the person had relinquished their proficient status. So in other words to be proficient in any state you'd have to maintain the teacher registration, which means you (indistinct).

PN321

THE DEPUTY PRESIDENT: Yes.

PN322

MS MATTHEWS: Let's say you've relinquished that.

PN323

THE DEPUTY PRESIDENT: Yes.

PN324

MS MATTHEWS: You would then go back to having graduate status.

PN325

THE DEPUTY PRESIDENT: Don't they still look at your history? Can't your clients (indistinct)?

PN326

MS MATTHEWS: You can easily then (indistinct) that you initially came out as a graduate.

PN327

THE DEPUTY PRESIDENT: Yes but you can apply for a position straight away, couldn't you?

PN328

MS MATTHEWS: Yes but then you'd be at the bottom. So the question would be whether your prior service - so that's one of the reasons why we've got (indistinct). But if you've relinquished the - so if you have to come up (indistinct) - - -

PN329

THE DEPUTY PRESIDENT: If I've done 20 years in a department school, in a public school and then I have five years off, and then I haven't kept my teacher registration, what can you say I would be coming back in, if I identified with (indistinct)?

PN330

MS MATTHEWS: Okay, what happens in our enterprise agreements is that they have deeming provisions which protect people in that situation so that their status does not only reflect their teacher accreditations so that - because they come in at the bottom. So they're provisionally accredited when they first go back into the workforce (indistinct).

PN331

THE DEPUTY PRESIDENT: But isn't that only for a very short period of time until they satisfy NESAs that (indistinct)?

PN332

MS MATTHEWS: Yes but you have to be clear that that works like that, I suppose. That's what we're saying. We just want to make sure that that does work like that.

PN333

THE DEPUTY PRESIDENT: But doesn't it work like that?

PN334

MR GUNN: Well, there is a - there's a (indistinct) so you can get the provision right.

PN335

MS MATTHEWS: Well, because one of the problems is retaining proficiency. One of the problems is if you have to regain proficiency and (indistinct) service asks you to regain proficiency only that counts.

PN336

THE DEPUTY PRESIDENT: So is that like the - whatever that 2013 date is? Because somewhere there was some (indistinct).

PN337

MS MATTHEWS: Yes. One of the issues would be that if you lost proficiency and regained it then you don't want to start on level 2.

PN338

THE DEPUTY PRESIDENT: I understand that.

PN339

MS MATTHEWS: Yes.

PN340

THE DEPUTY PRESIDENT: But I'm still struggling to understand why you would start on level 2.

PN341

MR TAYLOR: Only that just a literal reading of table 1, alone. So if you - table 1 alone, level 2, a teacher with provisional accreditations - - -

PN342

THE DEPUTY PRESIDENT: Yes.

PN343

MR TAYLOR: Table 3 is you have to have a provisional accreditation after three years service. We want to be clear that when you come back, having got it again (indistinct) the earlier service, and we wouldn't - I just wanted to be clear about that, less (indistinct) to say, well, your most recent (indistinct) - in a sense it's a break of service type concept, your most recent accreditation was only last month, so you don't have the capacity to be level 2 or level 4 because you don't meet the strict definition of three years service at that level.

PN344

So the definition is just dealing with surplus (indistinct).

PN345

THE DEPUTY PRESIDENT: (Indistinct).

PN346

MR TAYLOR: To be clear, it's just to be clear that - - -

PN347

THE DEPUTY PRESIDENT: It's a timing(?) issue. I see.

PN348

MR TAYLOR: That when you are considering the years - I mean, another way of dealing with it might be to come up with a definition of "years of service", that the years of service count prior to any break in the period when you were not holding a proficiency accreditation. To be clear - - -

PN349

MR WARD: If we accept your language (indistinct) of moving to the 3 and 6 concept - - -

PN350

MR TAYLOR: Mm-hm.

PN351

MR WARD: Doesn't that deal with all those issues? Tell me if I'm wrong but if I was a teacher and I - either way, even if I let my registration go, I'd come back and I can demonstrate that I've held proficient status for - - -

PN352

THE DEPUTY PRESIDENT: Ten years.

PN353

MR WARD: Five years or ten years, or whatever, doesn't that then deal with that?

PN354

THE DEPUTY PRESIDENT: That's probably what I'm still trying to get my head around because - - -

PN355

MR WARD: (Indistinct).

PN356

THE DEPUTY PRESIDENT: Because I - - -

PN357

MR TAYLOR: Certainly that's what we - - -

PN358

THE DEPUTY PRESIDENT: Because if a teacher's had ten years' service and they might have had a two year break and they didn't pay their registration (indistinct) they've still got ten years' service, proficient service.

PN359

MR TAYLOR: It might be a matter of defining "service" to ensure that it picks up earlier periods. There's no amount of clarity that levels 3 and 4 are not continuous proficient accreditation. It's not dealing with that (indistinct). And then as long as we're on the same page.

PN360

MR WARD: And so can I just ask (indistinct) a question?

PN361

THE DEPUTY PRESIDENT: Yes.

PN362

MR WARD: Can you hold tertiary(?) registration, not to mention - - -

PN363

MS MATTHEWS: Yes.

PN364

MR WARD: How long for?

PN365

MS MATTHEWS: Well, as long as you're prepared to keep paying. That's all.

PN366

MR GUNN: It has to be the education (indistinct).

PN367

MS MATTHEWS: A proficient teacher? No, sorry - - -

PN368

MR WARD: So it's like (indistinct) - - -

PN369

MS MATTHEWS: A proficient teacher could be a provisional teacher, which is the new graduate, so then you'd keep paying for that and get that (indistinct) but - but for a proficient teacher you'd have to satisfy the maintenance of teacher (indistinct).

PN370

MR WARD: Okay.

PN371

MS MATTHEWS: At that point (indistinct).

PN372

MR WARD: That's true.

PN373

MS MATTHEWS: Because - - -

PN374

THE DEPUTY PRESIDENT: But wouldn't you also need it just to get proficiency, in the first place, just to be teaching?

PN375

MS MATTHEWS: Not yet.

PN376

THE DEPUTY PRESIDENT: So that you'd actually have to be teaching because you've got to have all of the - - -

PN377

MR TAYLOR: Yes.

PN378

MS MATTHEWS: You've got to demonstrate a sort of (indistinct) capacity, yes.

PN379

MR GUNN: So the question arises, how long can you actually take a break from teaching and still be, you know, proficient. You know, if you've taken a break back in 2010 and you're coming in now in 2021, the entire EYLF(?) has come into early childhood and you have neither learnt nor practised under that. What's a reasonable break that someone should have before they would go back and re-start again?

PN380

MR WARD: Wouldn't the issue be, they have to go and get accredited?

PN381

MR GUNN: Well, they have to get proficiency and they've got two years to do that. But then the question is, at that point do they continue from having completed level 1 now, they're now proficient so do they go to level 2, or do they go to back (indistinct) ten years and they go to level 4? How big a break can you have before that starts to come (indistinct)? And the other thing that's been raised in this discussion and it alludes back to what, the other day, he was raising, is what is meant by "years of service" in terms of their (indistinct)? I think elsewhere in the award it talks about ordinary years of service, and in terms of our part-time and our casual staff, are we talking about three years' full-time equivalent service rather than three calendar years of service in moving onto the next level?

PN382

MR TAYLOR: Maybe that's the AEU's point about casuals and part-timers being disadvantaged.

PN383

MR GUNN: Yes.

PN384

MR CHAMPION: Might I chime in from Melbourne on that basis.

PN385

THE DEPUTY PRESIDENT: (Indistinct).

PN386

MR CHAMPION: No, we're listening carefully. Obviously we're concerned that casuals and part-timers not be disadvantaged. At a practical level, just if someone was 0.3 EFT and you had a notion of full-time - equivalency to full-time service that's going to take acknowledging that we're moving away from a service based increment award that's going to take nine years to get from one level to the next if you're 0.3 EFT, we don't see that as an appropriate recognition of accrued and increased skills over time. For obvious reasons we're attracted to just a - our first position is just to have calendar years of service but we do see that the existing service provisions in the award's 14.2(b) and following would need to be revisited. And I do note for the purpose of the conversation the Children's Services Award at clause 14.2 has a kind of a fault line for someone who is either side of .5 EFT. But if you're .5 EFT or greater, your service accrues at the same rate as a full-timer, but if you're less than .5 EFT you'll have to do two years of service to complete one year of service for the purpose of that award. So there's - - -

PN387

THE DEPUTY PRESIDENT: Is that just for part-times or does that include casuals?

PN388

MR CHAMPION: I'm not sure. Jack, unfair question? I don't know so I'd have to take that on notice but I - look, I don't know, Deputy President, what the answer to your question is on that. I'd have to check whether - - -

PN389

THE DEPUTY PRESIDENT: And is your view to say that about casuals then Mr Champion? Because I suppose my question is if I'm a casual teacher but I only work the equivalent of four weeks a year - - -

PN390

MR CHAMPION: Well, as a matter of principle it seems that one ought to be in lock step. But if you only work four weeks a year as a casual, Deputy President, it would be a hard argument for me to say that was the equivalent of a year's service. But I suppose if you are working four weeks a year as a casual, you'll never advance under this if you have to do 13 years to do the equivalent of a full-time year. So that would consign such a person never to achieving a wage increment. But the default position in the Children's Services Award seems to

have some level of practical appeal to try and be recognised that part-timers actually provide less actual hours of service than full-timers. But nor should they confront a situation where they can never advance from one increment to the next. But it was just only that when we reviewed the decision we'd read in the New South Wales award that the Commission referred to that there was a notion of full-time equivalency, and from the AEU's point of view we were concerned that that not reverberate to the disadvantage of part-timers where my understanding is that certainly in the early childhood sector there's a very significant percentage of part-timers who would advance very slowly from level 2 to level 3, for example. And that was why we raised it as an issue.

PN391

THE DEPUTY PRESIDENT: Thank you. Does anyone have anything else to say about part-timers and casuals in the service?

PN392

MR WARD: To be honest, not today. Obviously the only thing we'd say today is that there needs to be some clarity as to what the rule is. But as to offering a proposal on any rule or a new rule, no, I don't have that today.

PN393

THE DEPUTY PRESIDENT: All right.

PN394

MR TAYLOR: I'll just identify that as I think has just been noted, the award currently does deal with recognition of prior service and (indistinct) is pro rata (indistinct) to 90 per cent and it's - no (indistinct) can be (indistinct) for casuals.

PN395

THE DEPUTY PRESIDENT: Right, okay.

PN396

MR TAYLOR: Two hundred hours (indistinct).

PN397

MR GUNN: You mean 200 days.

PN398

MR TAYLOR: Sorry, 200 days. Two hundred days would be - - - -

PN399

THE DEPUTY PRESIDENT: Okay.

PN400

MR TAYLOR: Two hundred days - - -

PN401

THE DEPUTY PRESIDENT: (Indistinct) your calculation that wasn't (indistinct).

PN402

MR TAYLOR: As being (indistinct) the equivalent of (indistinct). But I hear what the AEU say, that the Full Bench may not have thought through the implications as to whether it is in fact right that someone who was teaching at .3 would take more than three years to gain - sorry, more than nine years to gain the necessary skills and experience to go the next level. But that would, as the AEU has identified, mean that (indistinct) on the terms as currently drafted. (Indistinct) 40.2, it seems to be sort of a fairly considered formulation of that (indistinct).

PN403

THE DEPUTY PRESIDENT: Yes.

PN404

MR GUNN: We would take it with the wording that's there at the moment is that it would take that length of time. Essentially that's what happens at the moment to move from level 1 to level 2, or level 7 to level 8, or whatever, is it's based on a full-time - essentially a full-time equivalent except not using that terminology. But in terms of the actual years of service - - -

PN405

MR TAYLOR: Yes.

PN406

MR GUNN: That's the practical effect on the ground at the moment.

PN407

THE DEPUTY PRESIDENT: Yes.

PN408

MR GUNN: And essentially given that we are working in what were individual blocks and then putting a larger dollar amount for three years on it, no particular issue but it then takes time to get to that next level because you'd still have the benefit of that higher rate the whole way through as you've gone, in comparison to - if you do a direct comparison to what we're now talking about, if we're suddenly talking about this (indistinct) calendar years that's actually a significant move away from the current award in terms of how that operates. And I think that would be a significant change. I've no particular opinion on whether that's better or worse but it would be a significant change from the way we operate at the moment, at least in early childhood.

PN409

MR TAYLOR: If it's possible could I identify - we identified in our paragraph 12 about the submission on the notion that there should be some, in effect, deeming provision to ensure that it was understood that people moved to the next level on the basis of not more than two years plus the number of years of service. To pick up the notion that in some cases, or in fact many cases, the national accreditation only occurring in more recent years, people have been actually registered as proficient for as many years as they've been teaching. (Indistinct) there needs to be some recognition if someone has been teaching for 20 years, (indistinct) one who's proficient plus eight years, they're actually proficient plus 18 years because they have in fact been (indistinct). But when the accreditation system came in teachers were deemed to be proficient but they weren't deemed to have a certain

number of years of proficient status. So there would need to be something there which means that if you became proficient after one year then (indistinct) years. But if you're deemed to be proficient when the system came in then you're (indistinct) status and not since then but goes back to pick up the earlier years of service, as well.

PN410

THE DEPUTY PRESIDENT: So when was the last lot of proficiency accreditation - - -

PN411

MS MATTHEWS: (Indistinct) from New South Wales (indistinct) schools - - -

PN412

MR TAYLOR: New South Wales.

PN413

MS MATTHEWS: (Indistinct) were deemed to be proficient in 2018.

PN414

THE DEPUTY PRESIDENT: In 2018?

PN415

MS MATTHEWS: Well, existing teachers who were employed in 2014(?) were deemed to be proficient in 2018. Only titled teachers were deemed in 2016.

PN416

MR GUNN: 18 July, 2016.

PN417

MS MATTHEWS: Yes.

PN418

MR GUNN: But they were deemed at that time so - and they're probably the more relevant ones because we're talking about national system employers that we need to worry about here in that perspective. But if we end up with an operative date by (indistinct) lapse of time in the middle of next year that will - that's six years, we'll have got there. The issue is probably for what happens for states where accreditation is now introduced and what the deeming provisions (indistinct). Well, the existing states where there is accreditation I don't think it will be an issue because six years (indistinct) would have gone by for anyone who was full time.

PN419

MR WARD: My assumption was that if you were in an unaccredited state or if you were in a state that's only been recently accredited, if you just apply - kind of assume it's always been accredited test and work out where somebody sits, so - I had assumed some of the problems (indistinct) by email would not have been problems because that's how they would have been applied.

PN420

THE DEPUTY PRESIDENT: Yes but I suppose - - -

PN421

MR WARD: Yes.

PN422

MR TAYLOR: Hang on, I need to be - - -

PN423

MR WARD: (Indistinct) - - -

PN424

MR TAYLOR: No, no, just - but not every - - -

PN425

MR WARD: But not every early childhood teacher is going to be calling (indistinct) to work out what it means so - - -

PN426

MR TAYLOR: Well, very few call him. Most people (indistinct) but the clearer the language is - but I don't think we have disagreement as to what's intended. It's just that we need to be sure but - that there isn't - - -

PN427

THE DEPUTY PRESIDENT: (Indistinct) you're going for.

PN428

MR WARD: There isn't some owner(?) that said, show me your proof of status, I see you were (indistinct) provision in 2019 so on the award I'm going to pay you (indistinct).

PN429

MR TAYLOR: No, no, I'm not - I don't think we're (indistinct). You would appreciate that the minute we'd start doing then it would have been deemed to be something. I just need to be very comfortable in what the indications are (indistinct).

PN430

MR WARD: And (indistinct).

PN431

MR TAYLOR: Perhaps if we suggest that the language(?) be here so everyone can check on them.

PN432

MR GUNN: The only thing I'm not certain of is, in New South Wales it will add up to three years to get to your complete completion to being proficient. I don't know what it is in the other states. I don't know whether three, rather than two, and it could be that the other states use only two. I'm not sure. Here in New South Wales it is three, the period.

PN433

MS MATTHEWS: I think those are maximums.

PN434

MR GUNN: Yes, yes, it is. Yes.

PN435

MS MATTHEWS: So this is, I suppose, (indistinct).

PN436

MR GUNN: Yes.

PN437

MS MATTHEWS: And under the decision the idea was that you progress immediately on the same proficiency, so we picked two years as a rule of thumb, period. But yes, in New South Wales the maximum is three years.

PN438

MR GUNN: But the (indistinct) is two years.

PN439

MS MATTHEWS: But typically under the (indistinct) in New South Wales - - -

PN440

MR GUNN: Yes, you would hope that most people would get their (indistinct), yes.

PN441

MS MATTHEWS: It's a two year requirement. And I think that's referred to in the decision, two years required at the (indistinct).

PN442

MR GUNN: Yes.

PN443

MS MATTHEWS: Which I think is consistent with (Indistinct).

PN444

MR GUNN: Yes.

PN445

THE DEPUTY PRESIDENT: So I suppose what I'd like to get back to now is, what can we actually usefully potentially get done today, as opposed to discussing the issues? What could be actually (indistinct) in terms of getting a resolution possibly on some of the issues? Are there some matters that have been identified that we could actually get into a little bit more detail? We've raised all really matters that it's useful to understand each other's positions but not get into the detail.

PN446

MR WARD: Well, there probably are.

PN447

THE DEPUTY PRESIDENT: Because I just think it's going to be more beneficial (indistinct) - - -

PN448

MR WARD: There are probably some issues that we haven't got to yet whereas people - one party's expressed a view but the response hasn't yet come. It might be useful to get back into some of those.

PN449

MR TAYLOR: I was going to say our - and I don't want anyone to be offended by this proposition but our propensity to be co-operative obviously concerns the totality of the issues, and in particular, phasing an (indistinct).

PN450

THE DEPUTY PRESIDENT: Is it worthwhile having a discussion about those now?

PN451

MR TAYLOR: Well, we've heard nothing from the unions about that and we presumed that this coincides with (indistinct) hearing anything that we will oppose them.

PN452

MR GUNN: There's not a (indistinct) operative date.

PN453

MR TAYLOR: You know what I mean. You know what I mean. Our submission was prospective operative.

PN454

MR GUNN: Yes.

PN455

MR TAYLOR: (Indistinct).

PN456

MR GUNN: Well, we have the opposite view about an operative date, that it should be backdated, certainly from the time of the decision and also then whenever we finally get it in, there ought to be some provision in which we ensure that people are being paid in accordance with the Commission's decision and are not being underpaid. And as you say, we're to inclined to agree to phasing in - I hear what you say, Nigel, about everyone's having these discussions (indistinct), and so I don't want to close off the capacity for the unions to have discussions about these issues but certainly to the extent to which we have, as we didn't identify a response on those things that (indistinct) our view about (indistinct).

PN457

THE DEPUTY PRESIDENT: So, sorry, your view is no (indistinct) against a prospective operative day, is that right?

PN458

MR GUNN: Correct.

PN459

THE DEPUTY PRESIDENT: Mr Champion, is that your view, as well?

PN460

MR CHAMPION: Yes, the unions are as one on that.

PN461

THE DEPUTY PRESIDENT: Okay, thank you.

PN462

MR GUNN: And that is an issue which, I don't think we need to explore it now but on the next occasion it might be worth identifying whether there is any party who seeks something other than - who seeks phasing in or seeks a (indistinct) operative date who are content to lead evidence to that effect so that we understand whether it's going to be based on material (indistinct).

PN463

THE DEPUTY PRESIDENT: Perhaps I can just check then with the employers about what your thoughts are. I think you've said - - -

PN464

MR WARD: Well, just as you say, put forward the idea of a date on 1 July for the reasons you said it.

PN465

THE DEPUTY PRESIDENT: Yes.

PN466

MR WARD: In terms of phasing though, we've done a little bit of work. Remembering that teachers are not actually the majority of employees - and we're coming from your childhood perspective, they're not the majority of employees in your childhood - when we've gone through and looked at the ratios in New South Wales which has the highest teacher to child ratios in the country, the impact is about - depending on whether you're talking about preschool or on day care, somewhere between \$2.40 and \$2.88 per place, per day across the year, the cost of these (indistinct), so basically 20 places are covered by each ECT.

PN467

THE DEPUTY PRESIDENT: Yes.

PN468

MR WARD: And you're in New South Wales and when you look at the sort of increases we're looking at which is up to, using a similar table to what the AEU produced (indistinct) about 11,000 and to perhaps extend - provide that by 20 places, the number of days, et cetera. We're not looking at, compared to somewhere between, in pre-schools, \$40 to \$60 a day, while in day care it's up to \$150 a day, we're talking very minor amounts. We don't see that phasing will be (indistinct) particularly if it has to coincide with the changes to CCS, and the Commonwealth's aide memoir was for (indistinct) to come out again on Friday to remind us that they actually paid a proportion anyway of whatever parents will do, subject to the \$12.20 cap (indistinct). I'm sorry, a long-winded explanation but we

wouldn't be supporting phasing. We think we could have it immediately once there is an operative date determined.

PN469

THE DEPUTY PRESIDENT: All right, so no phasing but operative date.

PN470

MR WARD: We had put forward an operative dates(sic) and saw there were benefits to that and - - -

PN471

THE DEPUTY PRESIDENT: Yes.

PN472

MR WARD: But we said we certainly wouldn't die in a ditch over that, Deputy President.

PN473

MR TAYLOR: Yes, and it wasn't a typo in your submission that it's not July this year, you want the date as - - -

PN474

MS MATTHEWS: Next year.

PN475

MR WARD: It will be July next year to coincide with - - -

PN476

MR TAYLOR: So 15, 16 months after the decision?

PN477

MR WARD: To coincide with some increasing.

PN478

MR TAYLOR: (Indistinct).

PN479

MR WARD: We're assuming there's got to be a decision made in - yes, August or later, but if that is - if the Commission wouldn't mind to make it immediate, yes? Again, it's not a huge amount of money, it's the implementation of it, not the - there's going to be more effort required to grade people correctly and pay them correctly than there will be in actually making (indistinct).

PN480

MR GUNN: Given the IEU and the AEU's position we would simply say we anticipate likely being heard on the matter and we will more likely than not educe further evidence.

PN481

THE DEPUTY PRESIDENT: More likely than not?

PN482

MR GUNN: Yes. True.

PN483

MR TAYLOR: I wasn't sure if it was a double negative in there. Sorry, I genuinely didn't understand. You're more likely than not to educe evidence?

PN484

MR GUNN: (Indistinct).

PN485

MR TAYLOR: I just - I thought you said not to educe.

PN486

MR GUNN: No, that's all right. I think we're in the same position but - - -

PN487

THE DEPUTY PRESIDENT: Sorry, same position as Mr Ward?

PN488

MR GUNN: Yes. We would need to lead further evidence but I think that will depend on - at this stage we're not clear what the cost will be to the Catholic agencies of an increase. So it may be that the evidence might point one way or another way. I think at this stage we'll be considering leading further evidence about those costs.

PN489

MR TAYLOR: Going back to Nigel, the submissions, otherwise there was (indistinct) that we haven't yet discussed and (indistinct) education (indistinct).

PN490

THE DEPUTY PRESIDENT: (Indistinct) as a satisfactory service. I don't think we'll (indistinct).

PN491

MR TAYLOR: Well, when it comes to service and satisfactory service we have had two - well, we've got our submissions. We have two responses essentially but there appears to be an issue drawn between Nigel and at least some others as to whether the word, "satisfactory", is (indistinct) that word.

PN492

THE DEPUTY PRESIDENT: I suppose before there's any potential agreement we can reach (indistinct).

PN493

MR TAYLOR: (Indistinct).

PN494

THE DEPUTY PRESIDENT: Okay.

PN495

MR TAYLOR: Well, our position is that that word (indistinct) in an early childhood context. It's going to just create more problems than solutions and - but

not (indistinct). It may well very literally operate as requiring a level of performance appraisal on (indistinct) basis that (indistinct) doesn't occur and if you don't - if you have to (indistinct) then you have to have some dispute resolution process as to how, what happens if they're not determined to a satisfactory - it's much simpler for it not to be there. The word as we read it was simply picked up because that's the way the New South Wales board operates, which is fine when you're talking about large public schools and independent schools with (indistinct). Educational (indistinct) and early childhood doesn't potentially allow for that process and we are, of course, dealing with teachers who have to maintain proficient service (indistinct) accreditation so it doesn't seem to be simple.

PN496

But the question really is then for our part, no, we're not going to drop off on the issue, but the question as to whether there is still an issue then (indistinct) I think maybe (indistinct) Nigel's client (indistinct) that position (indistinct). But certainly at this stage I think (indistinct).

PN497

THE DEPUTY PRESIDENT: Could you respond to - - -

PN498

MR WARD: Yes, we - - -

PN499

THE DEPUTY PRESIDENT: Is there potentially a relationship between satisfactory and maintaining proficiency?

PN500

MR WARD: Yes, there is an issue that we need to (indistinct). I think you do need to maintain proficient status in order to access - if there's an issue that must (indistinct) if someone is still being employed to teach and they've lost that proficient status that needs to be addressed.

PN501

MS MATTHEWS: If you lose your teacher accreditation you can't teach, except in very marginal areas. But you can't teach anywhere in Australia. So it's as much - it's quite a large (indistinct). If you don't maintain teacher accreditation, if you lose your accreditation if it's revoked or you lose it, it's almost impossible to get it back.

PN502

MR WARD: You'll never have to worry about your classification because you don't have a job.

PN503

MS MATTHEWS: You won't have a job anywhere.

PN504

MR GUNN: Yes, and the onus is on the employer not to engage. For the educational care centres the onus is on the employer not to engage someone in

that role who's not able to perform that role because of issues such as what Carol's just gone and - - -

PN505

THE DEPUTY PRESIDENT: So my question (indistinct) is to what extent is there a relationship between satisfactory service, and maintaining proficiency that might resolve this?

PN506

MR WARD: Well, the only - - -

PN507

THE DEPUTY PRESIDENT: It's a question for discussion perhaps, do you - - -

PN508

MR WARD: It might be - the only anxieties is that teachers in early childcare could be terminated on a regular basis for unsatisfactory performance but - - -

PN509

MR TAYLOR: Well, then they won't be proficient so - - -

PN510

MR WARD: Yes.

PN511

MR TAYLOR: Then they would - - -

PN512

MR WARD: But they're (indistinct) weren't proficient, but look, where we stand in respect of this, the Commission have expressed a preliminary view; we see some, with respect, sense in why that word is there in light of the broader decision; and in order for (indistinct) at this stage to concede it should (indistinct). Given the delightfully helpful position of the IEU on other matters we accept that.

PN513

MR TAYLOR: So I think then that there is this - I might be wrong but I think we've discussed that the issue other than perhaps the queries - dealing with the education leader allowance, I think - I understand that at least one of the queries was, is it intended that that allowance be paid to someone who is a director and is separately entitled to a director's allowance. The IEU's position is yes because they are two different roles. Some of those (indistinct) has the responsibility of director but has a separate education leader who's doing the education leader part then the obviously wouldn't get the allowance. But it's appropriate that if they're actually undertaking both roles they are appropriately compensated.

PN514

MR WARD: And my recollection is that there's evidence sufficient before the Commission already that identifies circumstances where there are directors within (indistinct) who are separate, and others who have both roles in that Department. But if I'm wrong about that then that's - if that goes beyond the query to some sort

of opposition, more active opposition this allowance, if not paid (indistinct) then it may be (indistinct) instead of the additional obligation (indistinct) education leaders.

PN515

MR TAYLOR: I think that our issue with due respect from what questions the Commission (indistinct) is, we're facing a not dissimilar client in another proceeding and I'm trying to understand whether or not (indistinct), or consistently it's probably the best way to put it.

PN516

THE DEPUTY PRESIDENT: What's the other proceeding?

PN517

MR WARD: Well, we've got a claim for an educator's allowance in the (indistinct) for childcare workers.

PN518

MS MATTHEWS: New South Wales (indistinct).

PN519

MR MONDO: That's a profoundly good question which I can't honestly recall. Where is this (indistinct)?

PN520

MS MATTHEWS: Do you know if this - - -

PN521

MR MONDO: No, I can't remember (indistinct) list - - -

PN522

MR WARD: (Indistinct) list of my (indistinct).

PN523

MS MATTHEWS: (Indistinct).

PN524

MR WARD: I'd simply (indistinct) this proposition that it doesn't seem to be - - -

PN525

MS LO: Is this inserted into the Childcare Award or is it (indistinct)?

PN526

MR WARD: Yes. It's also (indistinct).

PN527

THE DEPUTY PRESIDENT: I don't think it's dealing with that - - -

PN528

MR WARD: That's (indistinct).

PN529

MR TAYLOR: Yes. That's (indistinct).

PN530

MR WARD: Obviously with an educational letter it might be somebody either wants (indistinct) doesn't work out (indistinct) but that is the kind of thing (indistinct).

PN531

THE DEPUTY PRESIDENT: Okay, I'll follow that up.

PN532

MR WARD: Yes.

PN533

MR GUNN: In regards to the first issue the IEU raised, we raised that in our (indistinct) here but we were simply seeking confirmation. I don't disagree with your comments. So we're not opposition to it, we just wanted to clarity to be written in - if there is to be an educational leaders allowance in the Teachers Award there needs to be clarity as to whether that is a cumulative allowance or not. And for that matter, if it is an allowance in the form of a salary that it would therefore have to be taken into account with regard to things such as leave loading. We're not opposing or supporting any particular position, we just want clarity so that our members can actually apply it correctly.

PN534

MR TAYLOR: And on that same call for clarity your submission also wanted clarity as to whether it could also be included for the purposes of annual leave loading.

PN535

MR GUNN: Yes, so - - -

PN536

MR TAYLOR: And certainly our position would be that any allowance which is part of your normal remuneration for work you do that is normally there would naturally be included for (indistinct) purposes but - - -

PN537

MR GUNN: As per the director's allowance, yes.

PN538

MR TAYLOR: As per the other allowances.

PN539

MR GUNN: Yes.

PN540

MR TAYLOR: That's how they operate. But if there's a need for clarity then we're not just looking at the notion that's been (indistinct). It's not (indistinct).

PN541

MR WARD: I think the Commission can tell us what they intended.

PN542

THE DEPUTY PRESIDENT: I'm sure we can.

PN543

MR WARD: I'm sure you can.

PN544

THE DEPUTY PRESIDENT: At some later date.

PN545

MR WARD: Yes.

PN546

THE DEPUTY PRESIDENT: I prefer we (indistinct).

PN547

MR WARD: To remind oneself what was intended.

PN548

THE DEPUTY PRESIDENT: Yes. All right, so what else can we usefully do today, and what's the best way to go forward then in terms of potentially (indistinct) issues?

PN549

MR CHAMPION: Might I just mention one issue from the AEU's perspective which we raise, which hasn't been touched on. It's something that on behalf of Victorian members of the AEU are seeing, is among early childhood teachers is that there's been impractical or systemic barriers to advancing from provisional registration to full registration, or to proficient in a two year framework because of a situation on the ground that works this way, that one has to get a mentor but if one's working in a very small early childhood - in a school it's not a problem to find a mentor. Schools are big enough institutions as a rule that a mentor is regularly available and teachers in schools are able to advance from provisional to proficient accreditation in approximately a two year framework. But that is not happening amongst early childhood teachers because of system matters beyond their control. And one of those matters is that they don't have ready access to a mentor. Statistically, it was mentioned earlier that there is in New South Wales a requirement to achieve proficient accreditation within four years.

PN550

To the best of my knowledge, and Jack will correct me if I'm wrong, I'm not sure that applies in Victoria, but the 17,721 teachers in Victoria who hold provisional registration, and of that number some 4,256, so a quarter, have been provisionally registered for between three and six years, so there's a lot of teachers who are not advancing from - that's across schools, that's not an early childhood figure, we've not been able to drill down to what percentage of those figures are really childhood numbers, but if the AEU could have its ideal position there would be a softening of the barrier to advance from graduate teacher to - from level 1 to level 2 of the proposed structure. But alternatively I suppose I'm interested if there's any employer response on there being some level of employer obligation to do what is necessary to assist graduate teachers to achieve proficient accreditation

within a reasonable timeframe. Because otherwise there is a practical issue that EC teachers, through not fault of their own, are facing the situation where to advance from level 1 to level 2, can take longer than perhaps the Commission envisaged in its decision last month. And I wondered if around the table anyone else was seeing that as a real issue in that the responsibility seems very much to devolve to the individual EC teacher who may or may not be able to do much about that.

PN551

MR WARD: Well, we'll have to take it on notice. So Mr Mondo who's the president of ACA, operates in Victoria and knows Victoria very, very well and is head of the Victorian ACA, as well so - but we're not aware of that being an issue in childcare. We'll have to go and have a look.

PN552

MR TAYLOR: In fact the Victorian government has grants available to support employers, allowing for provisional teachers to move to full registration and that's been the case for last year and a bit and then continues to be the case.

PN553

MR WARD: So I'm not saying in any sense that Mr Champion's information is wrong, it's just it's not consistent necessarily with Mr Mondo's experience which is recently (indistinct) last year.

PN554

MR MONDO: Yes, I'll have to look into that.

PN555

MR CHAMPION: Thank you.

PN556

THE DEPUTY PRESIDENT: Do we know what the situation is in New South Wales?

PN557

MR GUNN: For us accreditation is a relatively new thing for ECT's but I'm unaware that any great delay is given. If that three year period is (indistinct) across I'm not aware of anything.

PN558

MS MATTHEWS: I don't think it's any more complex in the early childhood setting than it is in a school setting for some of the reasons the AEU have foreshadowed. But certainly our members are attaining accreditation, yes.

PN559

THE DEPUTY PRESIDENT: So is there - - -

PN560

MS MATTHEWS: Within the time limit.

PN561

THE DEPUTY PRESIDENT: So do they need a TAA(?)?

PN562

MS MATTHEWS: I think NESAs are their TAAs.

PN563

MR GUNN: Yes, this was the TAA.

PN564

MR WARD: So can I just, in relation to the educational leaders allowance can I just refer you to this, which my might assist giving you an explanation. It's a decision of the Full Bench, Justice (Indistinct), Deputy President Clancy and Commissioner Lee, AM2018/18.

PN565

THE DEPUTY PRESIDENT: Sorry - - -

PN566

MR WARD: Sorry, Ross, Clancy and Lee.

PN567

THE DEPUTY PRESIDENT: Yes.

PN568

MR WARD: AM2018/18, and at AM2018/20 a decision, Melbourne, 10 June, 2020. Paragraph 17 is in these terms:

PN569

During the course of the proceedings we invited the parties to comment on whether the educational leader allowance claim overlapped the proceedings in C2017/6233 and in 2018/(indistinct) these proceedings, those proceedings before a different (indistinct) Bench. We note that the parties have expressed a preference that we determine those matters before the other Full Bench. We note that the other Full Bench is (indistinct).

PN570

And I think the gist of that was if the educational leader allowance is going to be determined by this Bench then the parties will accept a decision in the other matters. But the (indistinct) might have a look at that decision and refresh what was actually put on the record by the parties.

PN571

THE DEPUTY PRESIDENT: Yes. Thank you.

PN572

MR WARD: That's fine.

PN573

THE DEPUTY PRESIDENT: All right, so back to my earlier question, what else can we usefully do today in terms of potentially (indistinct) the case that the discussion's useful and everyone needs to go away and consider their respective positions?

PN574

MR WARD: Well, before we answer that it might be useful to take a very short break.

PN575

THE DEPUTY PRESIDENT: Sure.

PN576

MR TAYLOR: Yes, that sounds convenient and then we'll have a discussion about the approach that you were suggesting (indistinct) be considering be appropriate that we actually put some details to our proposal and the opportunity for people to respond to that when we (indistinct). I anticipate that we would be identifying what issues remain outstanding and to what extent the parties think that the parties actually think that they'll need to (indistinct) to go into those issues so that a timetable for that (indistinct), which doesn't foreclose for a discussion to take place - - -

PN577

THE DEPUTY PRESIDENT: No.

PN578

MR TAYLOR: (Indistinct) regular (indistinct). The only other thing is for the Commission to supply the Commonwealth (indistinct).

PN579

MR GUNN: I think they (indistinct). They made (indistinct).

PN580

MS MATTHEWS: What about the New South Wales government? Did one turn up?

PN581

MR WARD: Yes, well, he's no doubt turned up, yes.

PN582

MR GUNN: I think on that point that, as I said, that in terms of the Commonwealth and the state, because that was the other question that the Full Bench asked, the Commonwealth will very much stick to CCS as that's how they pay their proportion and parents will pay the remainder. The issue as we raised in ours is what time. One of the reasons we were looking towards July, 2022 was in terms of the idea that the normal budgetary processes that have stayed can go through to determine how you might increase the funding to pre-schools and kindergartens given they are a state responsibility. But the Commonwealth is (indistinct) towards it. They're going to go with CCS and that's it. And they will point to the fact that they're providing, even though it only supports a quarter of all families, the second child as an increase - it will go up to 95 per cent, that families will get increased amounts to offset whatever fee increase may come from this particular one cost out of all of the costs that are going to generate the increases for next year.

PN583

THE DEPUTY PRESIDENT: How long?

PN584

MR WARD: Literally ten minutes.

PN585

THE DEPUTY PRESIDENT: Okay. All right, I'll come back in ten minutes. Thanks.

SHORT ADJOURNMENT

[12.51 PM]

RESUMED

[1.04 PM]

PN586

THE DEPUTY PRESIDENT: Thank you.

PN587

MR WARD: You know, look, we - sorry, we sort of took ourselves in and out (indistinct) carried on a bit to answer your question and maybe we should let (indistinct) document. (Indistinct) the question if we could answer the question. On the foreseeable alternative debate, alternative debate as in the suitably qualified issue - - -

PN588

THE DEPUTY PRESIDENT: Right.

PN589

MR WARD: We took from the idea that that suitable qualified alternative person still have to be a teacher and we're just interested to understand as a matter of fact, how would that be the case? It could quite likely be in a childcare centre. And you don't have to answer that today but that would assist us. That would assist us because we're to quite sure, and least provisional or (indistinct) and perhaps they should be (indistinct).

PN590

MR TAYLOR: Salary? Salary, you mean?

PN591

MR WARD: No, I'm talking about the (indistinct). I'm talking about recognition of suitably qualified persons in (indistinct) so it would have to be a teacher anywhere (indistinct). I'm trying to understand who is it (indistinct) person. Who is a suitable qualified person (indistinct) ticking the box for the ratio.

PN592

MR TAYLOR: But they're the teacher, in any event.

PN593

MR WARD: But we're not sure who they are.

PN594

MR TAYLOR: Who is otherwise qualified as a teacher.

PN595

MR WARD: But we might have to (indistinct) something on his position.

PN596

MR TAYLOR: So you understand Nigel's question?

PN597

MS MATTHEWS: I understand his question.

PN598

MR TAYLOR: That's all right. I wasn't (indistinct) understand the question.

PN599

MR WARD: Because we said we think you're trying to catch the childcare workers (indistinct) no. No, it'd have to be a teacher anywhere.

PN600

THE DEPUTY PRESIDENT: Yes.

PN601

MR WARD: So I'm just trying to find out who they are.

PN602

THE DEPUTY PRESIDENT: Okay.

PN603

MR WARD: That was all.

PN604

MR GUNN: (Indistinct).

PN605

THE DEPUTY PRESIDENT: So in terms of - sorry?

PN606

MR GUNN: Sorry, your Honour, I could offer one individual that potentially comes under this and that is somebody who is a primary teacher who doesn't have an early childhood qualification but is taken to be a teacher because they have a primary teaching qualification, they have teacher registration or accreditation in New South Wales, and received or (indistinct) a primary level or higher education care qualification. So they're not an early childhood teacher, as such, but they are a primary teacher and they are taken to be an ECT.

PN607

MR WARD: But wouldn't they be a fully qualified teacher?

PN608

MS MATTHEWS: Yes but they're (indistinct) - - -

PN609

MR TAYLOR: No because - - -

PN610

MS MATTHEWS: It's the definition in the (indistinct).

PN611

MR TAYLOR: So they don't have a birth to eight, or a birth to five qualification?

PN612

MR WARD: Well, what I would ask is (indistinct) client produce its proposed clauses. It might consider how it ensures us to a satisfactory level, who is being captured by their proposal or not. Let me just say that.

PN613

THE DEPUTY PRESIDENT: All right, so in terms of between now and the 4th -
- -

PN614

MR TAYLOR: So our proposal is perhaps ambitious but we think we can do it, is that we provide to other parties the (indistinct) of all of it by the end of this week and we'll consult with the AEU during the course of the week. But I should say the AEU or may or may not - we're not going to necessarily say it is the AEU's agreed position. It's our position but we will consult with them in the meantime. And then with the view that the parties would, by the following Wednesday, giving us one clear day, provide some response to that document, whether that is marking up themselves, or simply as a dot point but that it is agreed, not agreed, and it's something that will allow us to consider each party's position prior to reconvening on the Friday. That's what we're proposing.

PN615

The other thing that I think that all parties will be doing and certainly we will be, is just putting together a document that reflects to some extent what Nigel did at the outside, and that is just what the issues are and what we understand and expect, and now what our position is on each of those issues. Now that'll be reflected, of course, in the drafting document but it just might be useful on the next occasion for us to (indistinct) that document which has those headings. And if it's helpful we can send a list of headings around at the same time as the award (indistinct) without trying to reflect each party's views about those things but just what they appear to be. The headings might not be sufficient and it might be necessary to send some material to everyone to flesh out what the headings refer to but that just might be a useful reference point on this occasion.

PN616

MR WARD: We'll send that document out.

PN617

MR TAYLOR: Yes, we can be in a position to (indistinct).

PN618

THE DEPUTY PRESIDENT: Okay. And so in terms of - do you want to provide us anything, the Bench anything before Friday, or not? Or on the day?

PN619

MR TAYLOR: On the day.

PN620

THE DEPUTY PRESIDENT: Okay.

PN621

MR TAYLOR: (Indistinct).

PN622

THE DEPUTY PRESIDENT: Sorry?

PN623

MR TAYLOR: Yes, that's the 31st?

PN624

MS MATTHEW: No, it isn't. It's the 28th.

PN625

MR TAYLOR: The 28th.

PN626

MS MATTHEW: We'd like to have our (indistinct).

PN627

THE DEPUTY PRESIDENT: Yes. Right, okay.

PN628

MR TAYLOR: So the file can be sent to us.

PN629

MS MATTHEW: (Indistinct).

PN630

MR TAYLOR: Just send it (indistinct).

PN631

MS MATTHEW: That's (indistinct).

PN632

MR TAYLOR: Yes. I think that's - - -

PN633

MS MATTHEW: So that's (indistinct).

PN634

MR TAYLOR: Well, I think it's - - -

PN635

MS MATTHEW: (Indistinct) it was sent (indistinct).

PN636

MR TAYLOR: Oh, well - - -

PN637

MS MATTHEW: Probably.

PN638

MR TAYLOR: That's my experience.

PN639

MR WARD: I don't think we're up to (indistinct).

PN640

THE DEPUTY PRESIDENT: No.

PN641

MR TAYLOR: I just think it would be helpful - - -

PN642

MR WARD: I got caught up in (indistinct) a couple of weeks ago.

PN643

MR TAYLOR: It would be helpful for you to have a copy of it just so that you can see the respective parties' positions (indistinct) on the next occasion but we weren't thinking (indistinct) the document.

PN644

MR WARD: No.

PN645

MR TAYLOR: No.

PN646

THE DEPUTY PRESIDENT: Can you send it to my chambers?

PN647

MR TAYLOR: Yes, we can, yes. And the same (indistinct)?

PN648

THE DEPUTY PRESIDENT: Just to my chambers.

PN649

MR TAYLOR: Yes.

PN650

THE DEPUTY PRESIDENT: No one else. And I'll share it with (indistinct) but it probably (indistinct) - - -

PN651

MR TAYLOR: Yes, that's fine. Excellent, yes.

PN652

MR WARD: And I've just realised - I've remember now, in the vast series of submissions that (indistinct) requested (indistinct). So it surprised me slightly. That's because it's (indistinct).

PN653

THE DEPUTY PRESIDENT: Yes. Even if it's filed (indistinct) submissions too. All right, so is there anything else then? Has anybody got a last question? These (indistinct) today. Is there anything in particular that you want the Full Bench, the rest of the members of the Full Bench (indistinct)?

PN654

MR TAYLOR: (Indistinct).

PN655

THE DEPUTY PRESIDENT: Right. Otherwise it'll just (indistinct).

PN656

MR TAYLOR: And I think the - not (indistinct) help the Full Bench but for our part we were discussing at the break that what we've heard so far would suggest that whilst there's a potential to take less time it does not seem that what we've heard so far would require any more than three days to see (indistinct).

PN657

THE DEPUTY PRESIDENT: Okay.

PN658

MR TAYLOR: And possibly less.

PN659

THE DEPUTY PRESIDENT: Okay.

PN660

MR TAYLOR: I think that's the only thing that the (indistinct) may be interested to know. Because essentially people have identified the (indistinct) references and it sounds like it's relatively confined.

PN661

THE DEPUTY PRESIDENT: Yes, okay.

PN662

MR TAYLOR: And otherwise it sounds like it's material to be dealt with in written submissions in advance and then spoken to briefly.

PN663

THE DEPUTY PRESIDENT: Okay. The fact that there is evidence, you'll identify that in a bit more detail on the - - -

PN664

MR WARD: I think on the 4th. On the 4th we'll be, I think, clear to what extent there are issues and then the question of, again asking questions (indistinct), and then the parties can lead evidence (indistinct). So far there's (indistinct) to lead evidence (indistinct).

PN665

THE DEPUTY PRESIDENT: And will you potentially have the capacity to accept that, you know, your (indistinct) draft (indistinct) that week, if you think that there's - - -

PN666

MR WARD: Before the Wednesday?

PN667

THE DEPUTY PRESIDENT: Before the - well, even before Friday for (indistinct).

PN668

MR WARD: On the 4th?

PN669

THE DEPUTY PRESIDENT: Yes, on the 4th. So prior to the 4th in terms of potentially (indistinct) in issues (indistinct).

PN670

MR TAYLOR: I - I'll - - -

PN671

THE DEPUTY PRESIDENT: Perhaps (indistinct) - - -

PN672

MR TAYLOR: Warmly embrace - it is harder, it's harder because there are so many parties, to co-ordinate a discussion.

PN673

THE DEPUTY PRESIDENT: Yes.

PN674

MR TAYLOR: A discussion (indistinct) but - - -

PN675

THE DEPUTY PRESIDENT: Perhaps I just say, if it's feasible to have some discussions that's fantastic.

PN676

MR TAYLOR: Yes. Yes.

PN677

THE DEPUTY PRESIDENT: If you can, great. If you can't, you can't.

PN678

MS MATTHEWS: Only if we're available, we're more than happy to.

PN679

THE DEPUTY PRESIDENT: Yes.

PN680

MR TAYLOR: Carol's waiting for the call.

PN681

MS MATTHEWS: (Indistinct).

PN682

THE DEPUTY PRESIDENT: All right, well, if there's - - -

PN683

MR TAYLOR: No, thank you.

PN684

THE DEPUTY PRESIDENT: Nothing further then. Thank you all for your participation. See you in a couple of weeks. Thank you.

ADJOURNED INDEFINITELY

[1.15 PM]