



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**ACTING PRESIDENT HATCHER  
DEPUTY PRESIDENT CROSS  
COMMISSIONER RIORDAN**

**B2022/1749**

**s.240 - Application to deal with a bargaining dispute**

**Application by Sydney Trains  
(B2022/1749)**

**B2022/1750**

**s.240 - Application to deal with a bargaining dispute**

**Application by NSW Trains  
(B2022/1750)**

**C2022/8265**

**s.739 – Application to deal with a dispute**

**Application by Australian Rail, Tram and Bus Industry Union, The Association of Professional Engineers, Scientists and Managers Australia, Australian Municipal, Administrative, Clerical and Services Union, Australian Manufacturing Workers' Union, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia and The Australian Workers' Union  
(C2022/8265)**

**C2023/571**

**s.739 – Application to deal with a dispute**

**Application by Australian Rail, Tram and Bus Industry Union, The Association of Professional Engineers, Scientists and Managers Australia, Australian Municipal, Administrative, Clerical and Services Union, Australian Manufacturing Workers'**

**Union, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing  
and Allied Services Union of Australia and The Australian Workers' Union  
(C2023/571)**

**AG2023/240**

**s.185 – Application for approval of a single-enterprise agreement**

**Application by Sydney Trains  
(AG2023/240)**

**Sydney**

**10.00 AM, THURSDAY, 9 FEBRUARY 2023**

**Continued from 08/02/2023**

PN821

ACTING PRESIDENT HATCHER: Mr Shariff?

PN822

MR SHARIFF: Yes. I thank the Commission for supplying to the parties the document overnight. We have considered and got some questions about it, but perhaps now is not the time to raise those.

PN823

ACTING PRESIDENT HATCHER: You mean the information note?

PN824

MR SHARIFF: The information note.

PN825

ACTING PRESIDENT HATCHER: Yes.

PN826

MR SHARIFF: I think I've understood it in the last table, table 2, on the last page. I take it that what the Full Bench is seeking to convey in item 5 is that the differential of negative 9.4 per cent is where employees would end up if having received 2.53 and 3.03 respectively increases in base rate of pay relative to where they would end up if they followed the current projections on inflation. That negative 9.4, as I understand it, doesn't account for the 4500-dollar one-off payment at all.

PN827

ACTING PRESIDENT HATCHER: No, because it's a one-off payment so it's not there.

PN828

MR SHARIFF: It has been ignored.

PN829

ACTING PRESIDENT HATCHER: Well, it has not been ignored.

PN830

MR SHARIFF: Yes. I just wanted to understand the document because we have had to get some instructions about it from Mr Houston.

PN831

ACTING PRESIDENT HATCHER: To be clear, all I want is a response as to whether it's mathematically correct.

PN832

MR SHARIFF: Yes.

PN833

ACTING PRESIDENT HATCHER: That is, the data is correct and the mathematics is correct. What conclusion you draw from it is a completely different thing.

PN834

MR SHARIFF: No, I understand. I think I'm going to have to take Mr Houston through this in some chief, just so that the Bench has the evidence that it's asking for. Yesterday I think a question was asked about the purpose of the one-off payment. Could I just provide a document to the Commission. It is an FAQ document supplied in combination with the seeking of approval of the enterprise agreement.

PN835

If I can take the Bench to the third page of the document, about point 5 on the page – or just below point 5, 'Financial benefits and payments. What is the pay increase?' At the fourth bullet point the Commission will see a description of the purpose of the one-off payment and I seek to tender that document.

PN836

ACTING PRESIDENT HATCHER: Right. Is there any objection, Mr Taylor?

PN837

MR TAYLOR: No.

PN838

ACTING PRESIDENT HATCHER: All right. The document entitled 'Transport FAQs' will be marked exhibit 17.

PN839

MR SHARIFF: May it please.

**EXHIBIT #17 DOCUMENT ENTITLED 'TRANSPORT FAQs'**

PN840

I think we have got Dr Stanford available. I still have to read the balance of the statements and tender them in my side's case in respect of the witnesses who haven't been required for cross-examination. Perhaps I can do that later.

PN841

ACTING PRESIDENT HATCHER: Yes, all right. Mr Taylor, do you want to call Dr Stanford?

PN842

MR TAYLOR: Yes, if it please.

PN843

THE ASSOCIATE: Dr Stanford, can you hear and see me?

PN844

DR STANFORD: Good morning. Yes, I hear and see you, thank you.

PN845

THE ASSOCIATE: Thank you, Dr Stanford. I understand that you have agreed to take an affirmation for the purposes of being sworn in this morning.

PN846

DR STANFORD: Yes, I have, thank you.

PN847

THE ASSOCIATE: Could you please state your full name and address for the record.

PN848

DR STANFORD: James Stanford. My Australian address is (address supplied).

**<JAMES STANFORD, AFFIRMED** [10.13 AM]

**EXAMINATION-IN-CHIEF BY MR TAYLOR** [10.13 AM]

PN849

MR TAYLOR: Good morning, Dr Stanford, or good afternoon where you are. I just have some introductory questions to confirm your evidence. Your name is Jim Stanford and you are the director of the Centre for Future Work at the Australia Institute?---Yes.

PN850

Dr Stanford, we are blessed with a volume that is pretty high here, so there is certainly no need for you to speak up. That microphone is working very well, so just a normal voice will be fine until at least the Commission turns it down at our end. For the purpose of these proceedings you have prepared two reports and you have signed statements annexing those two reports; is that right?---Yes.

PN851

The first of those reports is annexed to a statement of 20 January 2003 and the second annexed to a statement of 3 February 2003. Do you have copies of those statements and their annexed reports with you?---Yes, I do.

PN852

Do you say that the contents of the first statement are true and correct to the best of your knowledge and belief?---Yes, I do.

PN853

Similarly with respect to the second statement, do you say the contents of that statement are true and correct to the best of your knowledge and belief?---Yes, I do.

PN854

I tender those two statements with their annexed reports.

PN855

ACTING PRESIDENT HATCHER: All right. The statement and report of Dr Stanford, dated 20 January 2023, will be marked exhibit 18.

**EXHIBIT #18 STATEMENT AND REPORT OF JAMES STANFORD  
DATED 20/01/2023**

\*\*\* JAMES STANFORD

XN MR TAYLOR

PN856

The further statement and report, dated 20 February 2023, will be marked exhibit 19.

**EXHIBIT #19 STATEMENT AND REPORT OF JAMES STANFORD  
DATED 20/02/2023**

PN857

MR TAYLOR: Dr Stanford, before I sit down can I just confirm what other documents you have. You mention in your reports that you were provided with two reports written by Greg Houston that I'll simply refer to as reports number 1 and number 2. Are they documents which if necessary during the course of cross-examination you have available to refer to?---Yes, I have them in front of me.

PN858

Is it the case that this morning, possibly only in the last 15 minutes, you were sent an email that annexes two further documents and you're able to open those if someone wishes to bring either of those documents to your attention? That would have been an email from Mr Yapp annexing two documents, being a third Houston report and a further information note from the Fair Work Commission?---Yes, I have those on my computer.

PN859

Thank you. No further questions.

**CROSS-EXAMINATION BY MR SHARIFF**

**[10.16 AM]**

PN860

MR SHARIFF: Good morning, Dr Stanford. Could I invite you to take up your first report and go to page 58. It's numbered at the top right-hand corner of that report?---I have the report. I don't – your page numbering must be different than what I have.

PN861

Okay, Dr Stanford. Do you have annexures to that report? The first annexure is your CV, the second annexure is your letter of instructions?---Okay, yes, I do have those, as well.

PN862

All right. Could I invite you to go to the letter of instructions, please.

PN863

ACTING PRESIDENT HATCHER: Can you assist with the court book number?

PN864

MR TAYLOR: Yes.

PN865

DEPUTY PRESIDENT CROSS: 231.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN866

ACTING PRESIDENT HATCHER: 231.

PN867

MR TAYLOR: Yes, page 231. Thank you.

PN868

Dr Stanford, you just have to bear with us because there is a court book that has slightly different numbering and you don't appear to have any numbering. Could I invite you to go to the second page of that letter. You were given a set of assumptions by Unions New South Wales and they are set out in paragraphs 1 to 10; correct?---Yes.

PN869

Based upon those assumptions, at least one of the assumptions you were given was in assumption 5, being wage increases in the period 1 May 2018 to 30 April 2021; correct?---Yes.

PN870

Specifically there had been a wage increase to base rate of pays on 1 May 2020 from which the cohort of employees covered by the enterprise agreement got for the duration of that year?---Yes.

PN871

Correct?---Yes.

PN872

That has been the last wage increases you have been asked to assume the employees received; correct?---Yes.

PN873

All right. If I take you to the questions you have been asked on the next page of the document, question 4 asked you:

PN874

*What effect does real wage growth over time have on the economy?*

PN875

You see that?---Yes.

PN876

You would accept, wouldn't you, that the nature of that question invites you to examine what are the effects of real wage growth over a period of time; correct?---Yes.

PN877

You accept, I think, in your second report that employees within the Australian economy have experienced a period of real wage growth. Would you agree with that?---There has been real wage growth over history in Australia's economy, yes.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN878

All right?---Excuse me just for a moment. I'm going to wave my arms, this makes no sense, but it's my energy-efficient light bulbs. There we go, now the lights are back on. I apologise for that.

PN879

Okay. Thank you, Dr Stanford. It is certainly the case, isn't it, that you would accept that in the period post the global financial crisis in circa 2007, early 2008, the Australian economy has grown at a steady rate of gross domestic product? You would accept that?---There have been ups and downs in the rate of growth of domestic – of real gross domestic product and we did in fact experience a recession early in the period of the pandemic, so over the period since the GFC, as you ask, we have had good years and bad years.

PN880

Other than the period of the pandemic there has been no other period post GFC where the Australian economy has been in recession; that is, negative growth. You would accept that; correct?---Yes.

PN881

In the period since the global financial crisis you would accept that the Australian economy has experienced in relative terms low inflation?---Again, until the period of the pandemic inflation in Australia was relatively low, averaging about 2 per cent per year in consumer price terms.

PN882

You would accept that over that same period post global financial crisis and certainly in relative terms to the interest rates that applied in the economy in that period relative to subsequent periods, the Australian economy has experienced a sustained period – at least a decade – of low interest rates within the economy?---Again, interest rates rose and fell, but compared to longer run historical averages interest rates in Australia and other countries in the OECD have been low by historical standards.

PN883

Is it about right that at one point in the height of the global financial crisis the real cash rates and interest rates by mortgage lenders in the Australian economy read something in the order of 7 per cent?---Could you repeat that question. I'm sorry, I missed the year at the beginning.

PN884

Circa 2007/2008, do you recall now what the interest rates were in the Australian economy?---Before the GFC hit, yes. I do not remember the specific number. I could consult it, but in the order of 6 or 7 per cent sounds about right.

PN885

And are you aware now as a result of the most recent RBA increase to the cash rate what the current interest rates are in the economy?---Yes, the cash rate was increased this week and now stands at 3.5 per cent, I believe.

\*\*\* JAMES STANFORD

XXN MR SHARIFF



PN886

So you would accept, wouldn't you, that post global financial crisis the Australian economy has experienced a period of, as you say until pandemic times, CPI rates of about 2 per cent per year and interest rates which were roughly half of what they were during the global financial crisis? You would accept that?---I would have to look at the historical series to see what the average interest rate was over that period. Again, the interest rate fluctuated. It was cut very low during the global financial crisis. It was then increased and reduced again in various periods in the intervening years, and then it was cut dramatically again when the pandemic hit. So I don't know what the average rate for the RBA's cash rate was during that period; I would have to check.

PN887

You're aware, aren't you, of the most recent cash rate increase that the RBA announced on Tuesday this week?---Yes.

PN888

It might have been Monday - - -

PN889

SPEAKER: Tuesday.

PN890

THE WITNESS: Yes.

PN891

MR TAYLOR: You're aware that that was heralded in one sense because it was historical as it amounted to eight successive increases in the cash rate in the Australian economy, in successive quarters?---(No audible reply)

PN892

You're not aware of that?---I am aware. In fact I think it was nine successive interest rate increases now through their monthly interest rate announcements, yes, and the pace of rising interest rates is historically unusual.

PN893

All right. If you look back to the questions you were asked, at question 10 you were asked to take into account the three increases set out in assumption 5 relating to real wage growth for particular periods; 1 May 2023 to 30 April 2024. You see that?---Yes.

PN894

Question 13 then asks you:

PN895

*What average yearly increases would be needed to achieve the level of wage growth you indicate is necessary in response to question 4 for the same periods.*

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN896

You see that?---Yes.

PN897

You would accept, wouldn't you, by the design of the questions all you were asked to do was to consider what are the effects of real wage growth over time in the economy? You then only look at what increases would be needed over the next three or four years to maintain wages to the rate of change in CPI. That's all you were asked to do; correct?---Could you repeat that question again, please.

PN898

Yes. All you were asked to do, Dr Stanford, was to examine what would be necessary to achieve real wage growth for the next three to four years; correct?---The level of real wage – the level of wage growth I indicate as necessary in response to question 4 and the response to question 4 was what affect does real wage growth over time have on the economy.

PN899

All right?---So I would interpret this question as being – and I think I did interpret this in my evidence – what would be required to ensure real wage growth over time in the economy and so - - -

PN900

When you say – I'm sorry, you go?---In my answer to question 13, I calculated what average yearly increase would be needed to achieve a level of wage growth that I defined above as normal and healthy. So my answer to question 13 is more than just keeping up with consumer prices, it's also building in a normal level of real wage growth as per the previous discussion.

PN901

In answering that you brought in your own – I don't mean this as a criticism – value judgment as to what you would regard as normal and healthy by reference to the types of matters you set out in answer to question 4; correct?---I brought in my own professional judgment as an economist as to the indicators of normal and healthy real wage growth over time.

PN902

In doing that you would accept, wouldn't you, you ignored an analysis of whether there had been, firstly, any real wage growth in the period prior to 1 May 2021 in the Australian economy? You would accept that?---I considered in answering question 13 the time frames specified in the questions, which began on 1 May 2020.

PN903

So is the answer to my question you ignored whether there had been a real wage growth prior to 1 May 2021?---With respect, sir, I wouldn't say that I ignored it. I would say that I wasn't asked about it and I responded to the questions I was asked.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN904

Therefore, the professional judgment you brought to bear in answering this question as an economist was to ignore by reason of the question formulated to you, firstly, whether there had been real wage growth in the economy prior to 1 May 2021. That's correct, isn't it?---Again, I don't accept your term 'ignore'. I was asked to provide an estimate of what wage growth over the period subsequent to 1 May 2020 would be necessary in light of consumer price inflation and in light of my professional judgment about what normal and healthy real wage growth would be.

PN905

Right?---So there is obviously history that occurs before any analysis, but I was asked to look at that period since 1 May 2020.

PN906

All right. I was asking you those questions firstly at the macroeconomic level and I take it you also then didn't consider, because of the way the question was formulated, whether there had been real wage growth for the employee cohort covered by these enterprises?---Based on the information that I was given in the questions I was asked, I could calculate whether there had been real wage growth for those workers or not in the period since 1 May 2020 based on the information provided about nominal wage increases over that period.

PN907

All right. You also in your first and second reports refer to a rate of productivity that you assert has been roughly 1 per cent over the last 25 years. Do you recall doing so in your reports?---Yes.

PN908

That is derived by you on some data at the macroeconomic level. That's true, isn't it?---Yes.

PN909

You weren't asked to consider, nor did you consider, any productivity gains within the enterprise at all; correct?---Within the enterprise covered by these enterprise agreements you mean?

PN910

Yes, yes?---No, I was not asked that.

PN911

Yet you express opinions in your report, don't you, as to what would be a suitable rate of increases by reference to an allowance for CPI changes and productivity; correct?---Yes.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN912

In doing that you would accept, wouldn't you, you were bringing a macroeconomic integer into play in your assessment of what you consider to be, to use your expression, healthy and appropriate at the enterprise level?---Yes, and in my professional judgment as an economist that is the appropriate dimension to consider in imaging normal and healthy real wage increases.

PN913

Well, could I take that up with you. You had no basis upon which to express any opinions as to whether there had been actually any productivity within the enterprise, did you?---Productivity growth you mean, sir?

PN914

Yes?---No, I was given no data about the parameters from which I or anyone else could calculate productivity growth within the enterprise and nor would I consider that necessarily relevant in determining a normal and healthy rate of real wage growth for workers in that enterprise.

PN915

All right. So your professional judgment is that in the setting of a wage rate for employees, one should ignore whether there had been any productivity within the enterprise at all. Is that what you're saying?---I wouldn't say that I would ignore the productivity conditions within the enterprise, but I would say that the level of productivity growth across the economy sets a relevant benchmark against which real wage progress in all parts of the economy should be attached.

PN916

Now, you have a copy of Mr Houston's report for 24 January 2023 available to you?---Yes, I do.

PN917

Could I ask you to return that report up.

PN918

ACTING PRESIDENT HATCHER: Sorry, Mr Shariff, which report is it?

PN919

MR SHARIFF: The first one. I'm sorry, your Honours, it commences at page 1273.

PN920

Just whilst everyone is turning that up, could I ask you this further about productivity – actually I withdraw the question. Have you got a copy of that report now?---Yes, I have a hardy copy of Mr Houston's report.

PN921

Could I invite you to, please, go to paragraph 28 of that report, section 2.2. Have you got that?---Yes, paragraph 28.

PN922

Yes. You see that there is a table, table 2.1, extracted by Mr Houston on that page?---Paragraph 28? The one that I have is talking about CPI inflation and has a chart of historical consumer price inflation below it.

PN923

Dr Stanford, you might be looking at the wrong report.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN924

ACTING PRESIDENT HATCHER: You said the first one, didn't you?

PN925

DEPUTY PRESIDENT CROSS: You said the first one. It's court book 1311.

PN926

MR SHARIFF: I'm sorry, I think I have misled everyone. Could I take everyone to the second report.

PN927

THE WITNESS: The second report?

PN928

MR SHARIFF: Sorry, the one dated 24 January 2023. Page 1309 it commences on. Do you have a copy of that report, Dr Stanford?---I do, and I am at paragraph 28 of that report and I do see what you're referring to, sir.

PN929

Yes. I do apologise, Dr Stanford. Just looking at the table, have you had occasion to read that table?---I have not, no.

PN930

All right. Could you take a moment now to read that?---Okay. Thank you.

PN931

Would you agree with Mr Houston's outline of the different data sets across different periods of time you relied upon for the various integers there mentioned?---Yes, I would.

PN932

So this is right, isn't it: by reason of the question you were asked, although you looked at things such as productivity growth historically based on wherever you derived it from over 25 years and inflation trends in New South Wales over the last six years, you only looked at what wage increases would be necessary in your opinion that were healthy and appropriate to be granted for the period from 2020 to 2024; correct?---That is the period I was asked to comment on in my instruction letter.

PN933

Right?---The period from 2020 to '24.

PN934

This is also the case, isn't it, that in the analysis you undertook you only looked at what the employees would receive by way of base rate of pay; correct?---I looked at the information provided in my instruction letter, which were those annual increments in base rate of pay, yes.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN935

When you came to read Mr Houston's first report you saw that he had included within the analysis of the way he went about the task based on different questions, allowances for, for example, overtime that might be paid to employees and other allowances.

PN936

MR TAYLOR: Objection. It has an assumption in it that hasn't been established. That is that this witness has read the Houston first report.

PN937

MR SHARIFF: Did you read Mr Houston's first report?---I have not comprehensively reviewed Mr Houston's first report. I looked at certain sections of it in response to questions I was set for my supplementary report.

PN938

You have prepared a report in reply, have you not, Dr Stanford?---I prepared a supplementary report in reply to two specific questions about Mr Houston's report.

PN939

You accept, don't you, in your report you – that is in your reply report – express a view about whether the one-off payment of \$4500 should be included within the calculus of what would be required to keep up with CPI?---Yes, that was one of the specific questions I was asked.

PN940

You also pointed out, did you not, that Mr Houston had looked at a value for overtime and average earnings for employees rather than increases to base rate of pay; correct?---Yes.

PN941

So your position is that in the analysis you had undertaken as is represented, for example, in your second report - at page 11 of that report at table 3 and table 4 – in the analysis you have undertaken there you have excluded any consideration of the one-off payment of \$4500 or the payment of any other allowances and conditions; correct?---In those tables which I believe were in my first report I do not include value for any additional payments that may have been received.

PN942

All right. Sorry, your first report – at table 3 of that first report, page 11, if you look at the row '2020' – have you got that?---Yes.

PN943

You also excluded from consideration the 3 per cent increase that employees got on 1 May 2020; correct?---Yes. The question I was asked said how did wages change from 1 May 2020 onward, so I used the 1 May wage which included that 3 per cent as the starting point for the analysis.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN944

But in real terms over that period employees got paid a wage increase. You would accept that?---The wage increase - - -

PN945

MR TAYLOR: Objection.

PN946

THE WITNESS: The wage increase - - -

PN947

MR TAYLOR: Objection, objection, objection. The question, with great respect, was unclear when my referred to 'the period'. It wasn't clear what period he was referring to.

PN948

MR SHARIFF: I'll be clear then.

PN949

On 1 May 2020 employees got a 3 per cent wage increase; correct?---Yes.

PN950

All other things being equal they, from that date, had an increased amount of money towards purchasing power; correct?---Increased relevant to 30 April 2020. I was asked in my question to see how their purchasing power changed from 1 May 2020 on and the starting point includes the 3 per cent.

PN951

All right. Likewise, when the employees get paid the \$4500 they will have an extra level of compensation towards purchasing power. Would you accept that?---Yes.

PN952

Likewise, if there have been increases in conditions and allowances they would have increased remuneration as a result of that, as a general proposition?---No, I would not accept that as a general proposition. Conditions do not necessarily translate into purchasing power at all.

PN953

Well, they would if they result in increase in income, wouldn't they?---I am not sure what sorts of conditions result in increased income.

PN954

If there is increase to the base rate of pay and employees – some group – I withdraw the question. The other aspect of your report that you don't address is – sorry, I withdraw the question. One of the things that you address in your reply report, if I can take you to that – that's the second report at section 4, 'Wage increases and credit ratings'. You see that?---Yes.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN955

You yourself have never worked for any of the credit rating agencies. That's correct, isn't it?---Yes, that is correct.

PN956

Having looked at your CV, you have never conducted any research into the manner by which credit rating agencies rate the performance of governments. That's true, isn't it?---Some of my research in the past has touched on credit ratings, their importance, how they're created and whether they're accurate or not; some of my research on fiscal policy and macroeconomic developments.

PN957

Right?---But I have not conducted detailed research on credit rating behaviour.

PN958

But the views you express in section 4 about how you think credit rating agencies would respond is based ultimately on surmise on your part, isn't it?---I have 30 years of professional experience in applied microeconomic policy where credit rating issues are a regular feature of our analysis, so I don't think it's based purely on surmise. I would say that's my professional judgment as an economist.

PN959

You have read the statement – well, I withdraw the question in light of the previous objection. Have you read the evidence of Sam Walker, representative New South Wales Treasury, filed in these proceedings?---No, I have not.

PN960

All right. Just give me a moment, Dr Stanford. From something that Mr Taylor said, I think you have been provided now with Mr Houston's third report?---I have been.

PN961

That is the further supplementary report, dated 7 February 2023.

PN962

MR TAYLOR: Does the Bench have it? It's not in the court book.

PN963

MR SHARIFF: I have been reminded by Mr Taylor that this document isn't in the court book, but I would assume the Bench had received it from something that - -  
-

PN964

ACTING PRESIDENT HATCHER: Yes, we have it. Just let me find it again. Yes.

PN965

MR SHARIFF: Thank you.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN966



Dr Stanford, have you read this report of Mr Houston?---I have not read it, but I have it open in front of me. I received it just before this hearing began today.

PN967

All right. If you go to paragraph 9 of that report you see Mr Houston sets out a table of cumulative changes in base rate of pay in CPI from the period 1 April 2010 to 30 April 2022; you see that?---Yes.

PN968

This might be an unfair question to ask you, but do you have just as you look at it any reason to doubt Mr Houston's analysis as contained in that table?---I have no reason to doubt the numerical information portrayed in that table. I think the relevant question is how would we interpret that data and what conclusions would we draw from it.

PN969

That might depend upon what question is being asked. Would you accept that?---Certainly, certainly.

PN970

Well, if you focus on the question I'm about to ask you, just if one accepts the arithmetical exercise you would accept, wouldn't you, that over that period of time the compounded or cumulative change in base rate of pay, assuming the facts to be so for this group of employees, proceeded ahead of cumulative inflation over the same period?---For a period beginning on 1 April 2010, I agree that the compound growth in base rate of pay has exceeded the compound growth in consumer price inflation.

PN971

In your reply report you take issue with a datum point used by Mr Houston or (audio malfunction) to take up and you do so at page 5 of your reply report?---(No audible reply)

PN972

I'll give you a page reference, your Honours. That is at page 840 of the court book.

PN973

In doing so you accept that there has been a rise in real standard of living relative to the past?---'Relative to the past' is an imprecise term. Relative to 2010 there has been an increase in the standard of living. Relative to a different starting period, say 2018 even or 2020, there has been a decline in the standard of living.

PN974

But you haven't presented us with any of that analysis upon which we could interrogate the opinion you have just expressed. You would accept that, correct?---I believe my first and second reports presented evidence about the scale of the decline in real wages and hence the real standard of living of the workers since 2020.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN975

Yes, I think in answer to the antecedent question you referred to a part-time period from 2019. You haven't presented any data about that, have you?---No, I haven't, no. The 2018 reference was based on a look at Mr Houston's table in his third report and again assuming the data in that table is correct – and I would want to review that, but it's immediately clear to me that the compound rate of increase in base pay since 2018 reported in that table is less than the compound increase in consumer price inflation reported in that table since 1 May 2018. I can see that from his table.

PN976

All right. In the final paragraph on page 5 of your report in reply you express a view that in collective bargaining discussions focus would normally be placed on immediate economic trends and conditions affecting workers. Could I suggest to you that that's a very narrow view of what might occur in collective bargaining discussions because, for example, it ignores the interests of the employer. Do you accept that?---I'm just reviewing that sentence that you have cited. I think the relevance of that sentence is in the context of the overall question about looking at real wage changes since 2010 and my point was that in collective bargaining and designing an enterprise agreement which covers a certain period of time, a discussion that went back 10 or 15 years would not be generally considered a central focus. The point of my sentence there was not to say that nothing else matters other than the workers' interests. Certainly the wellbeing of the enterprise and other broader factors affecting collective bargaining would be relevant to the negotiations.

PN977

Such as those other relevant factors would include – would they not – productivity increases?---Productivity increases are regularly considered during collective bargaining, certainly.

PN978

Productivity trade offs with wage rate increases?---Um, that depends on the formulation of how wage increases are going to be paid for. I don't – in my experience I don't necessarily accept that there has to be a productivity trade off for a wage increase.

PN979

The value to the extent it can best be done to be given to other conditions and benefits, negotiated upon as part of the collective bargaining? That would be relevant, wouldn't it?---Yes.

PN980

The fact that the employer has fiscal discipline imposed upon it – that would be relevant, wouldn't it?---I don't understand what fiscal discipline imposed upon it means.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN981

A budget?---I wouldn't consider the term, 'budget', and, 'fiscal discipline imposed on it', as synonymous. Certainly any workplace has a budget and the features of the budget are relevant to collective bargaining.

PN982

But where the employer is a government enterprise, the fact of a budget, would fiscal discipline have any impacts on the availability of other public resources – that would be relevant, wouldn't it?---I don't see that as being any more or less relevant in a public sector setting than in any other workplace.

PN983

All right. Those are the questions.

PN984

ACTING PRESIDENT HATCHER: Any re-examination, Mr Taylor?

PN985

MR TAYLOR: No.

PN986

COMMISSIONER RIORDAN: Dr Stanford, a very unusual situation we have on the basis that we're looking at an enterprise agreement which is already basically halfway through its term and that two increases have already been identified as being payable. I'm just wondering why when you were doing your analysis you looked at CPI increases rather than the wage price index, which is published by the ABS on a regular basis? Let's say 2021 and 2022?---I'm not sure I understand the question. Could you repeat that?

PN987

I'm just wondering why when you are doing your review about what is the appropriate wage increase and the like – and I accept that there is a relevance of the maintenance of real wages – you'd hopefully be aware that the ABS produces a wage price index on a quarterly basis which reflects the increases in wages compared to prices over that quarter. I'm wondering why you didn't look at those figures when performing the analysis? It may be that your instructions didn't go to that?---Okay, thank you – I understand the question now. The wage price index does not compare the growth of wages to the growth of prices. The wage price index is a particular methodology for measuring growth in wages alone, not wages compared to prices, that controls for changes in the composition of employment. That's what makes the wage price index different from other measures of average wage growth, such as average weekly earnings, which are also published by the ABS. I did not consult the WPI data in my report because I was not asked any questions in my instructions for which the WPI data was relevant.

\*\*\* JAMES STANFORD

XXN MR SHARIFF

PN988

What it does show, though, is what occurs in relation to wage movements across a variety of sectors and across Australia as a whole. The question then becomes one of whether or not the transport industry or trains industry in New South Wales

should reflect what's occurring elsewhere in the country or it has some sort of uniqueness about it, does it not?---If I had been asked to compare the base wage increases for the workers covered by these enterprise agreements, with what was occurring in broader sectors of the transportation sector or the overall labour market, then the WPI and possibly other indicators of average wages in the overall labour market would have been a relevant data source to consult. But again, I was not asked to make that comparison in my instructions.

PN989

Thank you. Final question in relation to your role as an economist and some advice: when analysing figures, and statistics, and doing the comparisons, are we better off looking at base rates of pay or average rates of pay?---The answer to that depends on what the question is. If the question is to evaluate somehow the level of total compensation, at a point in time, then you may wish to include in addition to base pay the value of other forms of income such as overtime or allowances. If your purpose is to compare how compensation changed over time, then those additional payments may or may not be relevant, including overtime, for example, could affect the estimated trend in compensation over time in either direction, depending on whether overtime was more frequent or less frequent as the time period considered went by. So given the myriad of factors which influence other forms of compensation such as overtime or allowances of different kinds, I believe that looking at the core base rate of pay as the benchmark around which overall compensation is inherently tied is the more robust way to examine the underlying trend in compensation over a period of time.

PN990

Thank you.

PN991

ACTING PRESIDENT HATCHER: Mr Taylor.

**RE-EXAMINATION BY MR TAYLOR**

**[11.00 AM]**

\*\*\* JAMES STANFORD

RXN MR TAYLOR

PN992

MR TAYLOR: Yes. Dr Stanford, just a question – I just have one question arising out of some questions you might recall Mr Shariff asked you, about productivity and you will recall that he drew your attention to the fact that you had not been given data on any changes in productivity in respect of the two Trains entities but you nevertheless included in your answer to the question of what compound increases might be required to match inflation and productivity growth. You nevertheless included a figure for productivity. Why is it that you considered it appropriate to apply what you identified in your reports as a long-term, economy-wide annual productivity growth figure when determining appropriate wage growth to this particular enterprise?---The fundamental principle in economics that I tried to elucidate in my initial report is the notion that real wages in an economy where technology and skills and capital accumulation are allowing increased labour productivity. Real wages in that economy should grow over time, roughly in proportion to that increased productivity. And there are various reasons why you want real wages to grow with productivity in an

aggregate sense, including maintaining an equitable distribution of income between factors of production. If real wages do not keep pace with labour productivity then the labour share of GDP will shrink over time and that creates various issues of equality and fairness. Secondly, by increasing real wages in line with productivity we're in essence reinforcing an incentive for working people to identify with the goals in productivity growth because they can see that it will benefit their standard of living as well as those of their employers.

PN993

Now, this does not mean that the relationship between wages and productivity is instantaneous and there are obviously cyclical factors and shocks in the economy that will affect many of the indicators that go into measuring those aggregate figures. So in that regard, the expectation in labour economics is that a longer-run trend rate of productivity growth would be the relevant indicator against which you want to measure the growth of real wages. So in my initial report I suggested a 1 per cent annual rate of increase in labour productivity would be a benchmark against which an appropriate level of real wage growth could be measured. Now, in some years, productivity growth is higher than that and some years it's lower than that. On average over the last quarter century it's been slightly higher than that. So the 1 per cent annual number is conservative in that sense. And while you wouldn't expect a relationship between real wages and productivity to be set in stone on a month-to-month basis, given the volatility of those components that make up labour productivity and output and employment and consumer price inflation you would expect that relationship to hold over time in a more general sense and you would orient labour market policy towards maintaining that relationship.

PN994

And so as a goal for trying to ensure that over time real wages grow with labour productivity that makes sense and it is the aggregate economy-wide variable that I think is most appropriate. Productivity growth of course varies between different industries and different workplaces, depending on the nature of technology involved, management efficiency and skills of the workforce and other factors but in general, you wouldn't want to see large wage differentials for equivalent qualities of labour arise between different sectors and different workplaces on the basis of those workplaces having faster or slower productivity growth. The labour market – a well-functioning labour market – in theory would ensure that equivalent qualities of labour are compensated equally and goals of fairness would also suggest that we would want workers in all parts of the economy to see real wages growing at a gradual and sustainable pace. So that was my thinking of using long-run, economy-wide trend labour productivity growth as a benchmark for an appropriate target for real wage growth in the workers covered by these agreements and workers in other parts of the economy.

PN995

Thank you. No other questions.

PN996

ACTING PRESIDENT HATCHER: All right, thank you for your evidence, Dr Stanford. You're excused and you may now leave?---Thank you, Your Honour.

\*\*\* JAMES STANFORD

RXN MR TAYLOR

<THE WITNESS WITHDREW

[11.05 AM]

PN997

MR SHARIFF: Your Honour, the next witness is Mr Houston. He's got three reports, which I've blundered in identifying but perhaps I could just – with the assistance of my learned junior – could give the Bench the page references again. The first report, dated 20 January 2023, can be found at court book 1273. The second report, the reply report, can be found at court book page 2309 and of course the supplementary report is not in the court book. If Mr Houston can be called?

PN998

THE ASSOCIATE: Please state your full name and address for the record.

PN999

MR HOUSTON: Gregory John Houston – my business address is Level 40, 161 Castlereagh Street, Sydney.

<GREGORY JOHN HOUSTON, AFFIRMED

[11.06 AM]

EXAMINATION-IN-CHIEF BY MR SHARIFF

[11.06 AM]

PN1000

MR SHARIFF: Your full name is Gregory John Houston?---Yes.

PN1001

Your business address is on Castlereagh Street in Sydney?---Yes.

PN1002

You've prepared three reports for the purposes of these proceedings. You have a copy of them there?---I do.

PN1003

The first one is dated 23 January 2003?---Yes.

PN1004

The second, 3 February 2023?---Yes.

PN1005

And the final one dated 7 February 2023?---Yes.

PN1006

And in respect of each of those, you've subscribed to the expert witness code of conduct of the Federal Court?---Yes.

PN1007

Do you accept that the opinions that you've expressed in each of these reports are true and correct to the best of your knowledge and belief, based on your specialised learning, skills and experience?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XN MR SHARIFF

PN1008

I tender the three reports.

PN1009

ACTING PRESIDENT HATCHER: All right. The report of Mr Houston, dated 20 January 2023, will be marked exhibit 20.

**EXHIBIT #20 REPORT OF GREGORY HOUSTON DATED  
20/01/2023**

PN1010

The second report of Mr Houston, dated 3 February 2023 will be marked exhibit 21.

**EXHIBIT #21 REPORT OF GREGORY HOUSTON DATED  
03/02/2023**

PN1011

The third report, dated 7 February 2023, will be marked exhibit 22.

**EXHIBIT #22 REPORT OF GREGORY HOUSTON DATED  
07/02/2023**

PN1012

MR TAYLOR: With the Full Bench's leave could I ask Mr Houston some questions about a document; the information note?

PN1013

ACTING PRESIDENT HATCHER: Yes.

PN1014

MR TAYLOR: Mr Houston, you have got a copy of the information note provided to you I think yesterday evening?---Yes, I do.

PN1015

Could I take you in that information note first, Mr Houston, to the second page, section 1, 'Sydney CPI'; you see that?---Yes.

PN1016

You see it contains table 1 and a chart 1. Have you had occasion to look at those figures?---Yes, I have.

PN1017

Can you say they're accurate based upon what you've been able to determine?---Yes, they are.

\*\*\* GREGORY JOHN HOUSTON

XN MR SHARIFF

PN1018

ACTING PRESIDENT HATCHER: Can I just clarify one matter, Mr Houston. I understand the RBA projection is not a Sydney figure, it's an Australian figure; is

that correct?---That's correct, and this table has a – I mean, I think that is clear from this table.

PN1019

Yes?---But that is a useful observation to note.

PN1020

MR TAYLOR: That was one of the points you were making in relation to Dr Stanford's report in your reply report?---That's correct.

PN1021

ACTING PRESIDENT HATCHER: Can I just clarify this one further. I can't remember whether it was you or Dr Stanford, but the point was that there is no long run difference – no substantial long run difference between the Sydney CPI and the Australian CPI?---No, you wouldn't expect so and there isn't in practice. I mean, there are differences in the NEER term from quarter to quarter, yes.

PN1022

Yes. Thank you.

PN1023

MR TAYLOR: Thank you, Mr Houston. Could I take you to the final page of the document which contains a table. You see in row 2 there are nominated percentage changes to reflect based upon the annual data regarding CPI changes from section 1; what would be the percentage increases and then the outcome of those on annual wages in each subsequent year. Do you see that?---Yes.

PN1024

Have you had occasion to consider the data – that is the mathematics – of what's in items 1 and 2 in that table?---Yes, I have.

PN1025

Do you say that the maths adds up?---Yes, it does. Just to be clear what that relationship is, in the first row of the table we have annual remuneration if it was increased in the year in question from the previous year to address the annual change in inflation from that previous year. So, for example, the figure in the final right-hand top corner, \$139,388.52, is 4.2 per cent greater than the figure in the immediately preceding column at 1 May 2023.

PN1026

Items 3 and 4 seem to be self-explanatory. Have you had occasion to look at item 5 and the negative 9.4 per cent?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XN MR SHARIFF

PN1027

You have been able to determine whether that is accurate in terms of the maths underlying each?---It's an accurate calculation – or there is a calculation from this table that gives that number, although it's not readily apparent from the table precisely what that calculation is, but I can explain that if you wish. The 9.4 per cent is the increase – expresses a percentage represented by the difference between the 139,388 in the top row of that final column and the figure in the next



column back under 1 May 2023 of 126,272.78, so the 9.4 per cent is essentially the difference between 139,000 and 126,000. I would also observe that that percentage is expressed as a proportion of the 139,000 rather than the 126,000.

PN1028

Is there a significance to that? If it's the other way, what is it, 10.3 per cent I think?---Yes. If you flip it round, then it will be a higher number.

PN1029

At this stage we're just seeking to determine whether you accept the maths, the adding up, is correct, and you have - - -?---I do. Really the purpose of my explanation just then, it's not all that clear from – to me, anyway, from the words in the final row what exactly that total change was referring to.

PN1030

All right?---It's helpful to understand that.

PN1031

Is that because you don't accept the conclusion that that would be the total change in real value of annual remuneration or you have some other - - -?---I'm not sure there is any – well, the question of what conclusion one draws is a separate thing, but I just think the words on the page to me leave some room for interpretation as to what remuneration we're talking about, so - - -

PN1032

All right?--- - - - I think it's helpful to be clear about that.

PN1033

Okay. I have no further questions of this witness. That last explanation is a matter that perhaps the Full Bench might want to take up.

## **CROSS-EXAMINATION BY MR SAUNDERS**

**[11.14 AM]**

PN1034

MR SAUNDERS: Just staying on the information note for a moment, Mr Houston, looking at row 1 that reflects as I understand it – and tell me if your understanding is different – changes to the wage rate that existed at 1 May 2021 that would need to happen for it to effectively keep pace with CPI change; is that right?---Yes.

PN1035

The effect of that means that the change in real wage value between 139 at 2024 and the 119 at 2021 is zero?---I'm sorry, I didn't understand that question.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1036

Assuming that the limited approach that we take that change in real value of wages is driven by CPI, if all that has happened to the 119 is that it has been increased to effectively recover from CPI changes, the real value of that wage has remained constant?---Yes, I think that's right. I mean, the commentary in the second column there in row 1 is I think an accurate commentary. It's really that

row 1 is saying what would the annual remuneration need to be if it was increased by CPI over the previous year, so to keep pace with the CPI.

PN1037

So if we look at row 3, the third number - - -?---Yes.

PN1038

- - - 126,272, just mathematically what this table says is if that figure is the wage rate at 30 April 2024 the real value of wages has declined from the starting point of 2021 by 9.4 per cent. That's what it means?---No, that's not exactly what it means.

PN1039

It doesn't mean that?---What is your question exactly?

PN1040

Yes, sure. So for the value of real wages to remain constant to 30 April 2024, the nominal wage figure has to increase to 139,388; that's right?---Yes, that's right, although I would observe – because we've shifted to row 3 – that that figure of 138,388, just hypothetically if that was to be inserted in the final column of row 3  
- - -

PN1041

Sure?---If that was to be the case, then in drawing any conclusion from that one would not be placing any weight or giving any allowance for the purchasing power of the four and a half thousand one-off bonus.

PN1042

I'm not asking you about the bonus, I'm just asking you some specific questions about these numbers, so put the bonus out of your mind?---Well - - -

PN1043

Can you do that?---I will put the bonus out of my mind if your question permits me to do that.

PN1044

Yes, well, I'm telling you to assume the bonus doesn't exist. You understand that?---I'll make that assumption.

PN1045

Terrific. So leaving the bonus to one side, if the final figure in column 3 – if it remains 126,272, there has been a decline in the real value of wages since 1 May 2021. That basic proposition is correct, isn't it?---I just want to be absolutely sure I've heard your question. I'm sorry, could you just repeat it once more.

PN1046

Certainly. Okay, so row 3?---Yes.

PN1047

If the figure in the square that is currently blank - - -?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1048

- - - was 126,272.78 – you're following me?---Yes.

PN1049

Yes. That would represent a decline of some kind in the real value of wages since 1 May 2021. You can accept that basic proposition?---Yes.

PN1050

Yes?---If we were to assume that that was the level of pay at 30 April 2024.

PN1051

That's what the 9.4 per cent figure represents; the percentage value of that decline?---It does, but it's very important to be clear about what that percentage – when we say a percentage, we need to be very clear in our minds about a percentage of what. You know, percentage is one amount divided by another amount expressed as a percentage and your question earlier and now are not clear about which amounts represent that percentage. I explained that earlier to Mr Yaseen. That's why I'm hesitating in response to your question because you haven't been clear about what amounts we're comparing.

PN1052

We're comparing - - -?---I want to make sure we all understand what that 9.4 per cent represents.

PN1053

Me, too, so we're comparing 119,535. You understand that to be the starting wage at 1 May 2021?---Yes.

PN1054

And for the purposes of calculating a percentage that can be – that figure, it can be 100, it can be one. It's just the starting point; you understand that?---Yes, yes.

PN1055

Then you have the 139,388.52 which is the figure that needs to be the nominal wages for these employees if the percentage change by 30 April 2024 is to be zero per cent; that's right?---And assuming there is no one-off bonus planned.

PN1056

That's right?---Yes.

PN1057

DEPUTY PRESIDENT CROSS: Mr Saunders, isn't there a problem with this table though insofar as the proposed increases under the enterprise agreement were – there was supposed to be an increase in May '21, May '22 and May '23. There is no proposed increase that has been voted on by the employees about a proposed increase in April '24.

PN1058

MR SAUNDERS: Yes, that's right.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1059

DEPUTY PRESIDENT CROSS: From our past experience you know how enterprise agreements are negotiated and it's my understanding, and recollection, that the CPI increases that people look at in trying to calculate the first year of an agreement is the most recent CPI increase. So, in this circumstance for the May 2021 payment it would have been the March quarter of 2021 CPI figure that would have been front and centre of the parties' minds normally.

PN1060

MR SAUNDERS: There was no 1 May 2021 payment.

PN1061

DEPUTY PRESIDENT CROSS: I understand that. I'm just talking about typical negotiation. If you look at line 4, it identifies the second and third payments that were in the enterprise agreement.

PN1062

MR SAUNDERS: Yes.

PN1063

DEPUTY PRESIDENT CROSS: So I'm just wondering what is the relevance of the 30 April 2024 figure.

PN1064

MR SAUNDERS: I have to say, Commissioner, it's the Commission's table.

PN1065

DEPUTY PRESIDENT CROSS: I understand that.

PN1066

MR SAUNDERS: That's part of the difficulty with what starting point you take and whether you consider annual wage increases to be prospective looking or working on a repair basis.

PN1067

ACTING PRESIDENT HATCHER: Excuse me, I've got to take a call. It's fairly urgent, so can we take a short adjournment. I'm sorry, Mr Houston, you can remain there.

**SHORT ADJOURNMENT**

**[11.23 AM]**

**RESUMED**

**[11.31 AM]**

PN1068

ACTING PRESIDENT HATCHER: Yes, go ahead, Mr Saunders.

PN1069

MR SAUNDERS: Thank you. Commissioner, your question really is a matter that we propose to deal with in submissions as opposed to (indistinct) more than evidence.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1070

COMMISSIONER RIORDAN: Thank you.

PN1071

MR SAUNDERS: Mr Houston, do you still have the note in front of you?---Yes.

PN1072

Yes, just looking at the 9.4 per cent, assume that that is the change in real wages between 1 May 2021 to 30 April 2024. Does that make sense?---No.

PN1073

You accept that change in real wage value can be expressed as a percentage?---Well, as a percentage of what? I mean - - -

PN1074

(Indistinct)?---As I said, if we want to have a discussion about percentages, it's really helpful to be clear about what's the base and what's the amount we're comparing that base to and so that's why I had to answer no to your question before.

PN1075

I understand. Assume the base is 100. Does that make sense?---Yes.

PN1076

Okay. You reduce 100 by 9.4 per cent, you get to 90.6, is that right – the maths could be wrong - - -?---Correct.

PN1077

To increase 90.6 back to 100, you need a higher increase than 9.4 per cent – that's right, isn't it?---Yes, because you're expressing that increase on a lower base.

PN1078

Yes – it's something like 10.38 per cent?---I have a calculator but I'll take that as an assumption.

PN1079

Can you go to your first report, please – the last page – sorry, I think you've got just the three reports separate, is that right?---Yes.

PN1080

Yes, if you go to the last page of that, which is court book 1369 - - -?---I'm sorry, my first report?

PN1081

Sorry, I've misled you. It's not the last page of your report. It's in the unhelpfully unpaginated section. If you can go to page 58 of your actual report?

PN1082

ACTING PRESIDENT HATCHER: Are we still at 1369?

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1083

MR SAUNDERS: Yes – I'll just take Mr Houston where he needs to go?---I'm sorry I don't – I don't have a page - - -

PN1084

Could Mr Houston be provided with a copy of the court book, please? Thanks, Mr Houston. Put your separate reports to one side. If you can take those two folders you've just been handed down - - -?---I've got three, sorry.

PN1085

I'm using it electronically. Can I get you to look at the – I think the first volume. My friend will help me - - -

PN1086

MR SHARIFF: Volume 2.

PN1087

MR SAUNDERS: Volume 2, please?---Yes.

PN1088

Great – if you can go to page 1369 of that, the page numbers are at the top of each page in red?---Yes.

PN1089

You recognise this document?---Yes.

PN1090

This is – as I understand it – the entirety of the wages data you have been provided by the rail entities?---Yes.

PN1091

And these are the figures you've used to calculate firstly average remuneration for all employees covered by the agreement?---Yes.

PN1092

And then the particular remuneration of five classifications as at 1 May 2022 is the second exercise you've performed?---Yes, the – yes, well, the estimated average remuneration for those employees.

PN1093

Just looking at the data under the blue box, so I make sure we're on the same page, the first substantive column, the figure in bold in the third row, 89109, is the figure you understand to be average annual base pay across both entities?---Yes.

PN1094

Yes, across the entire workforce covered by the enterprise agreement?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1095

The next box, average overtime excluding superannuation – again, that bold figure, 9225. Your understanding is that that's the average overtime payment made across all – calculated across the entire workforce?---Yes.

PN1096

If these questions sound basic it's because they are but I take you understand that that figure was calculated by taking the total amount of overtime payments made and dividing it by the total number of full-time staff?---I didn't inquire as to how it was calculated - - -

PN1097

You'd assume that would be - - -?---That would be my assumption.

PN1098

Yes, simply because that's how you calculate an average?---Yes.

PN1099

And you understand the overtime to mean work done outside of an employee's ordinary time?---Yes.

PN1100

And the third box along, the same situation: the number involved is the average other payments made across the entire agreement-covered workforce?---Yes.

PN1101

And the sum total of the information you have about what that contains is penalties, allowances, et cetera ... ?---Yes.

PN1102

Some penalties are payable on an employee's ordinary time earnings, that's right? If you don't know, that's fine?---I don't know.

PN1103

Some allowances are incorporated as part of an individual's ordinary time earnings. Are you aware of that?---I'm not sure I – what - - -

PN1104

Is it possible that talking about what precise allowances are and how they're treated for taxation and superannuation purposes outside the area of your expertise?---Yes. I mean, I have just taken the figures on the page as they're presented to me. I haven't inquired as to the precise basis for those allowances.

PN1105

You've just worked with the data that you were given?---That's right.

PN1106

And all the data you were given excluded superannuation?---That's what it says here, yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1107

I just want to talk about what averages are, for a moment. Again if the question sounds simple, you're not missing anything. But an average is a type of central tendency measure, is that right?---I wouldn't put it – I mean, a central tendency measure is a statistical phrase and it's not the same as an average.

PN1108

But averages can be used as a central tendency measure, for statistical purposes?---Well, I think an average is an average. It's a very precise term in data. I'm not sure it's helpful to define it as something else.

PN1109

The data has to have actual real-world meaning, doesn't it, Mr Houston?---As I understand it, the data does come from the real world.

PN1110

What it represents here is a typical value for probabilistic distribution?---No, it is – an average is an average.

PN1111

It can be used in a statistical sense to indicate a likely outcome for any given person within the sample group. Do you agree with that?---Well, if your sample group was only the employees covered by this enterprise agreement, if you chose an employee at random and said what's their remuneration – if you did it enough times, the first omen you know, would be not – would be very unlikely to be the same as the average. If you did it – the whole idea of if you do it over and over again, eventually – and then you look at – take the average of your sample, that will eventually start to move towards the average of the population, which the population includes all the employees here.

PN1112

Assuming that an average is an appropriate measure to use to assess that probability distribution for the particular group?---That question – in terms of the statistical position that question doesn't make any sense.

PN1113

Let me take that – if you're using averages to look at real world outcomes, they do have limitations. You accept that?---Well, no, because as I understand these data, they are the real world outcomes. So an average is exactly that – (indistinct) as I understand it it's not a sample. It is the average of these employees.

PN1114

Sure, and what one does with that average is say that broadly speaking it is at least representative of what the cohort is paid. If you don't agree that's - - -?---You're combining – you're mixing up two different concepts here.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1115

Sure?---And I'll put it in this – in the statistics and the use of data we have what we refer to as the population, which is all of the people that are included in this case in the enterprise – covered by the enterprise agreement and then we might have a process of sampling by selecting employees at random and looking at their



remuneration and then if we sample enough we could look at their remuneration and we might use that to predict what was the average of the population. But here, as I understand this data, it's not the result of a sampling process; it is the average of all of the employees. So there's nothing uncertain about it. It is the average.

PN1116

I'm not suggesting it's not the actual average, Mr Houston. What I'm getting at is you use the average – it's one of the mechanisms that you can use to understand the characteristics of the population?---Well, an average is – certainly describes one characteristic of the population, yes.

PN1117

There are other measures that can be used: one is the example you gave of sampling?---If you know the population you don't need to sample.

PN1118

This is just an abstract concept: one of the ways that you can assess the characteristics of a particular population is by, for example, sampling?---Yes.

PN1119

Another way is by looking at the median?---Well, the median is – is a different measure of the population or of the sample than the average.

PN1120

Yes, but it's a way of measuring characteristics of the population – that's all I'm asking?---Yes, yes.

PN1121

Another would be to look at the mode, for example?---Yes.

PN1122

Each of these measures – sampling, averaging, median, mode – they all have their own particular limitations?---Well, just to be clear, sampling is not a measure. Sampling is a process. Average, median and mode are measures.

PN1123

Each of those measures have strengths and weaknesses, is one way to put it?---I wouldn't use those terms. Each of them is – tells you something quite specific about a population. What you do with that is a whole different question.

PN1124

Selecting which one to use, which one is going to tell you something meaningful about the population, does require you to understand something about the population and its characteristics, doesn't it?---Not necessarily – I mean, it depends what you want to with that. The average is a very precise thing and so is a median and so is a mode. Now, what they might be useful for, the questions they to which they may be useful answers, are different.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1125

Sorry – one of the limitations in respect of averages, what it can tell you and how useful it is – is that it's vulnerable to distortion by the presence of outliers in a particular population?---An average is affected by outliers both on the high side and the low side, so - - -

PN1126

You need to know if your data set has – a feature of your data set is that it has a number of high-end outliers. That is relevant in assessing how useful an average is?---Or low-end outliers.

PN1127

Yes, you need to know one way or the other?---Well, I'm not sure what you mean by the word, 'need'. It depends what you're wanting to do with that average, what you need to know.

PN1128

You need to know how useful the average is to whatever exercise it is you're (indistinct) how reliable it is as an indicator of the characteristics - - -?---It will depend – it depends what the exercise is.

PN1129

This is a general proposition, Mr Houston?---Yes.

PN1130

Yes, so you do need to understand the nature of the population the average is drawn from to assess how useful it is for whatever exercise it is you're - - -?---Not necessarily – it depends on the exercise.

PN1131

But for some exercises, that can be true?---I – it depends on the exercise.

PN1132

So the answer is sometimes yes?---Sometimes yes, sometimes no – I mean, the average is a very precise term and it's not – it's not here the result of an estimation process or a sampling process. It is the average.

PN1133

Also, its usefulness, its accuracy in how it represents the population, is affected by any skewed distribution within the relevant group. That's right, isn't it?---If the underlying population here, which is all of the employees covered by this agreement, if there was skewed – if it was – the distribution of the remuneration of those employees was strongly weighted towards one side or the other, sides being low and high, then that of course would affect the average.

PN1134

Yes, and to assess how significantly an average has been affected by either of those factors, you need to understand the parameters of the data set. That's right, isn't it?---You need to look at the data for all of the employees.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1135

Of course – you would need to as a very basic starting point know how many data points were in the set?---Not so much how many but it's what is the characteristics of - - -

PN1136

But I mean the size of the population is a significant (indistinct)?---Usually the larger population and the more you can perhaps make – draw conclusions from an average, if you have one, sure.

PN1137

ACTING PRESIDENT HATCHER: Mr Saunders, is this cross-examination directed to a point that the average used by Mr Houston is incorrect or that it is conceptually flawed or - - -

PN1138

MR SAUNDERS: Conceptually flawed, Your Honour – I'm sure that is the average figure?

PN1139

ACTING PRESIDENT HATCHER: What does that ultimately go to?

PN1140

MR SAUNDERS: The comparator exercise that my friend seeks to have you draw, particular in respect of the average overtime and penalty component.

PN1141

ACTING PRESIDENT HATCHER: All right. I mean, I'm just looking at the same page. There's – we have figures for a range of different classifications which might broadly be said to cover the field. Is that - - -

PN1142

MR SAUNDERS: Certainly not – they cover the field for the operational employees. They ignore maintenance, they ignore the structural workers, they ignore administration. But they're also used in a different way by Mr Houston, which will become apparent.

PN1143

ACTING PRESIDENT HATCHER: All right.

PN1144

MR SAUNDERS: The short question is, Mr Houston, you don't know – you don't have any underlying information about the number of employees, the range of different jobs or the range of different pay rates apart from the five classifications that make up this data set, do you?---I don't quite agree with the premise of the question. So the data set here has average earnings. That reflects all employees. Separately it has – as you can see – it says, 'Sample analysis of base pay', for several EA classifications.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1145

Are you aware of how many classifications are in the EA?---I don't recall exactly but I know there are many.

PN1146

It's over 300. Does that trigger any memories?---I – I don't recall specifically but I'm happy to - - -

PN1147

You understand that the amount of overtime that employees perform is – in this workplace – not something they are contractually entitled to?---I – look, I'm not a lawyer. I know what you say - - -

PN1148

If you don't know, that's – the question is whether you know or not?---No, I don't have the expertise to understand what level of overtime amounts to or otherwise a contractual entitlement, no.

PN1149

You equally wouldn't have the expertise to assess whether it was – whether it's something that's inherently variable year to year?---I don't have any information on that.

PN1150

So one of the ways you've used this data is to calculate the average total remuneration for all employees over a 12-year period, is that right?---Yes, to estimate that, yes.

PN1151

Can you go to 1356? You should have table A1.1?---Yes.

PN1152

This is the table that sets out the result of that calculation you performed – your estimate of average remuneration from 2010 to 30 April 2024?---Yes, it's an estimate, using – which is the result of a calculation which I explained.

PN1153

I want to take you through the calculation to make sure I understand it. The only piece of – the only numbers on this table in respect of wages that come from your instructions are the three cells in grey. Is that right? I'm sorry – and the one-off payments and the enhanced conditions. But the three cells in grey are the only wages data you've been given?---Well, the – I have a lot of wages data from the table that we've just been looking at.

PN1154

Let me put it a different way - - -?---And that data - - -

PN1155

This is the only data you've used to extrapolate wages, leaving aside bonuses, super, enhanced conditions for the 12-year period – those three figures?---Well, I've used the information I have, which does relate to the period of FY 2021/2022.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1156

And you've estimated all the other results using that data?---Well, no, using – well, using that data in combination with changes in base pay, which we have data on.

PN1157

Okay, so the starting point is to calculate for 1 May 2020 – will you just look at that line? So the first thing you've done is to add these three items together: base pay, overtime and other?---Yes.

PN1158

You've then worked out what the superannuation contribution to that would be and added that?---Yes.

PN1159

The third step – you didn't need to do it in this year but this is how the calculation works – is you check to see if there were any one-off payments and there were, added that?---Yes.

PN1160

Plus super - and again, not for this year but this is the exercise, you increased the amount that you were then at by any enhanced conditions?---Yes.

PN1161

The result is what we see under the heading, 'Remuneration' – the 131, 139?---Correct.

PN1162

Okay. The other data that you just referred to is you have been told what increases to base pay the agreement provided for in each period in your table?---Correct.

PN1163

So what you've done is in respect of the going forward, you've increased that by the 2.53 to get the 91.363?---I'm sorry, I just lost you on that last - - -

PN1164

I think I skipped a step. So base pay, you've taken base pay for 1 May 2020?---Yes.

PN1165

To get to the 1 May 2022 figure for base pay you've just increased that by the 2.53 wage increase that you've been instructed will be applied?---Yes.

PN1166

And going backwards, you've reduced that 89.109 figure by whatever the relevant increase was?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1167

Yes, and compounding down?---Well, not compounding down, but just stepping down.

PN1168

Yes, certainly.

PN1169

ACTING PRESIDENT HATCHER: Can I just ask a question about that, Mr Houston? So with the one-off payment of \$1,000, how was that entered at all into the remuneration change calculation?---So you can see that if you look at the final column of that table, you'll see for the – in the row that has the 1,000 one-off payment, you'll notice that the percentage change in that year is somewhat higher than the other years. It goes from 3.2 in the previous year to 3.03. Then in the following year when I take out the \$1,000, the percentage change is lower. So you can see it's 2.17. So that 1,000 is put in the calculation in that year and taken out in the following year and that alters the percentage change from one year to the next.

PN1170

In respect of the 4,500 – and this may be an error in your instructions – but as I understand the position it's actually payable this financial year, not next financial year?---Yes.

PN1171

So presumably that would result in different outcomes for the final two rows?---Yes, so – so at the time I – as I understand it the \$4,500 one-off payment was payable once the enterprise agreement had been agreed and at the time I produced this report it hadn't been agreed. So I was uncertain as to the timing and I think I explained in the report that I assumed in effect whether it was payable on (indistinct) 2023 or final after. Now, subsequently I understand that the circumstances is such that it in fact will be paid a little earlier than that – a month or two, a couple of months earlier. I think it may be around now or soon. So if that were the case, then this table – well, this table doesn't reflect that.

PN1172

And likewise, with the enhanced conditions, leaving aside the value assigned to it, as I understand it that the conditions which take effect upon the agreement being approved – which will be shortly – again they would in effect be booked as increases this financial year, not next one?---That's correct, so that adjustment would also need to be made.

PN1173

Yes, all right.

PN1174

MR SAUNDERS: Just going back to the 1 May 2022 figure – so we've worked out how you got the 91.363. To get that average overtime figure, what you've done is work out firstly what proportion that represented in respect of base pay in 2020 and just applied the same proportion in 2022?---That's correct.

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XXN MR SAUNDERS

PN1175

And the same with others?---Yes.

PN1176

So basically what it is, is increasing base pay by about 10 per cent and then by – sorry, by a figure that's about 10 per cent of it and then I figure that's about another 20 per cent of it?---Roughly speaking, yes.

PN1177

Yes, and that's the same exercise up and down the overtime and other columns?---Yes. As I say, it's an estimation exercise because we don't have the data.

PN1178

Just making sure I understand, Mr Houston. So the same effect would be achieved if you increased the 9225 just by 2.53 per cent or reduced it by the relevant wage increase?---I just want to make sure – I'm just trying to – see, the 9.225 is the overtime figure for the year in question. So just now that I've seen what that figure is, could you just repeat your question, please?

PN1179

So the exercise that's set out in your document that you performed to get the 9.458 in 2022, is that you've taken 9225 and worked out what percentage that is of 89109 and then applied that percentage to 91363?---Yes.

PN1180

Mathematically you get the same outcome if you just increase the overtime figure by the same wage increase you've applied to the base pay?---That's right.

PN1181

Yes, and so the overtime and other columns travel in perfect sync with base pay?---They do.

PN1182

They have no impact whatsoever on the percentage change?---That's – that's correct.

PN1183

By which I mean, by percentage change, I mean the final column?---Yes.

PN1184

Those numbers would be the same if - - -?---Well – sorry, I'll qualify that last statement. The percentage change is also altered by the one-off payment – the two one-off payments. And so the existence in this calculation of overtime and other, reduces the impact in percentage change terms of the two one-off payments because you're expanding the base level of – I won't call it base – you're expanding the underlying level of remuneration that you apply in those one-off – or that you're – for which you're expressing the two one-off payments as a percentage for the purposes of the percentage change calculation.

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XXN MR SAUNDERS

PN1185

The 2.1 per cent enhanced conditions, Mr Houston – you've applied that to base pay, overtime, and other in 2023, haven't you?---Yes, I think so. Yes.

PN1186

And you've also applied superannuation in every year to overtime and other, haven't you?---Yes. I have included superannuation, yes.

PN1187

Yes. And you weren't directly instructed to do that, were you?---No.

PN1188

You're aware and if you're not just say so that superannuation is not, in fact, paid on overtime?---I don't – I'm not aware of that. I mean – just to sort of talk you through the basis for my approach here – my estimated approach.

PN1189

The approach of applying superannuation on overtime or generally?---Well, generally and then specifically to that. The question I was asked was about the value of remuneration. I take that remuneration approved all items of monetary benefit to an employee. And so I take that to include the remuneration and then when I came to the information I had I was informed, as in seeking the table, that each of these three components were described to me as excluding superannuation.

PN1190

Yes?---And I applied my understanding of the superannuation – general superannuation law and added an amount for superannuation. So if that turns out to be wrong then adjustment is obviously needed.

PN1191

And in the same way that you can't – you don't know whether or not superannuation is payable on overtime. You couldn't possibly know whether it was payable on the other component?---Well, I am an employer in my - in one of my day jobs.

PN1192

Are you paying your employees superannuation on their overtime?---I'm paying our employees with superannuation on all of their remuneration. They don't have an explicit overtime payment but they – it's my understanding the superannuation laws it applies to all remuneration. But if I have that wrong then the calculation needs to be amended.

PN1193

Speaking of amended calculations you were sent earlier this week an Excel spreadsheet with some tables and it's by my instructors. Have you reviewed that?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1194



We'll come back to that in a minute. The 2.1 per cent the sole total of your instructions in this respect is that there is a 2.1 per cent enhancement in the conditions. That's correct?---Well, it was in my letter of instruction. I mean it is what it is. If we're having a discussion about it perhaps we should be - - -

PN1195

Certainly. If you want to go to page – court book 1366?---1366?

PN1196

Yes. This is the letter of instruction you were talking about Mr Houston?---Yes.

PN1197

The final paragraph is where your instructions in respect of the 2.1 per cent in-house conditions come from?---Yes.

PN1198

And the reason you've applied it to overtime and other as well as base pay is because you were instructed that it is an increase that applied to the average annual gross earnings of an employer?---Yes.

PN1199

Okay. And you don't know anything else about that 2.1 per cent?---I am just operating on the instruction that I have.

PN1200

I mean this is a fairly obvious proposition but if those instructions were wrong the table would have to be adjusted in some way?---Yes, it would.

PN1201

And of course if that 2.1 per cent in fact reflected a figure for employee related costs as opposed to moneys paid directly to an employee it would be wrong to include the total remuneration wouldn't it?---I don't really understand the nub of your question to able to answer that.

PN1202

I'll break it down. As an employer you're familiar with the concept of employee related costs?---No. Not precisely.

PN1203

It costs you money to employ staff?---That's a very general proposition.

PN1204

It's the component of employee related costs. There's a starting point. It costs your business money to employ staff. Do you agree with that?---Well, I don't disagree with it but I'm not – it's not a very clear question. It costs an employer money to employ staff because you have to pay them.

PN1205

Yes. You also have to - - -?---If you're talking about other costs.

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XXN MR SAUNDERS

PN1206

ACTING PRESIDENT HATCHER: This has been so Mr Houston – there are some enhancements to employee conditions which don't actually affect their remuneration but may benefit them in some other way. Correct?---I'm happy to – I accept that.

PN1207

But that may, nonetheless, bear a cost for the employer?---Yes.

PN1208

That is, there are some enhancement conditions which cost the employer something but don't necessarily increase employee remuneration but benefit them in some other way?---Biscuits in the tea room.

PN1209

Yes?---Yes.

PN1210

I think that's the point you're making Mr Saunders?

PN1211

MR SAUNDERS: That's all it is. You wouldn't include those amounts that are not paid directly to employees as part of their gross remuneration would you?---If it was biscuits in the tea room no I wouldn't.

PN1212

Can I show the witness a document? If I could just ask you to go back 1355 in the court book? And if I can draw your attention to paragraph one? That's 181?---Yes.

PN1213

Yes. That's the algebraic expression of the process we were discussing earlier. The steps you've taken to calculate gross remuneration in the way that you have?---Yes.

PN1214

You should just have been provided a document with three items on it?---Yes.

PN1215

The first one is a slightly amended version of what you set out at 1.181 – the changes in the final component – where you say one-off payments included to adjusted to include superannuation. An alternative way of expressing that is one-off payments times one plus superannuation percentage?---Yes.

PN1216

So that that is an equally accurate expression of the process you followed?---Yes. Yes.

PN1217

Okay. The second item – just take a moment to read it?---Sorry? Second item.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1218

No superannuation on overtime?---Yes.

PN1219

Take a moment to read it and then answer the question. That is how you would calculate gross remuneration if you didn't include superannuation on overtime?---Yes.

PN1220

And the third one, if you were going to not put superannuation on overtime and remove enhanced conditions amount – take a moment to read it that that's how you would express that algebraically?---Just a moment please. So that removes the enhanced conditions completely.

PN1221

Yes?---Yes.

PN1222

So if you're saying 'yes' you agree that that's – if you were to do that exercise that's how you'd do it?---That's the calculation that you would need to apply.

PN1223

The Vice President asked you – yes, if I could have that marked your Honour?

PN1224

ACTING PRESIDENT HATCHER: Marked as an exhibit?

PN1225

MR SAUNDERS: Yes, thanks.

PN1226

ACTING PRESIDENT HATCHER: Document headed 'Remuneration Calculations Various Assumptions' will be marked Exhibit 23.

**EXHIBIT #23 REMUNERATION CALCULATIONS VARIOUS ASSUMPTIONS**

PN1227

MR SAUNDERS: If you could just go back over the page, Mr Houston to 1356? Back to the table. The Vice President asked you some questions earlier about the 4500 payment. Out of interest when did you become aware that it would be paid before 30 April 2023?---In the last few days.

PN1228

Around the time you were preparing your supplementary statement?---Well, I have prepared two – I would say the – I have prepared two supplementary - - -

PN1229

Your second. Your second supplementary statement?---And it would be accurate to say it was more around the time of the second.

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XXN MR SAUNDERS

PN1230

And you weren't asked to recalculate this table at that time?---No.

PN1231

You weren't instructed that superannuation was payable on the \$1,000 one-off payment were you?---I think I recall that there was an oral advice but it was - - -

PN1232

The period – the reason the periods – sorry, the starting point is the 12 periods you've got there. They don't align with financial years?---No.

PN1233

Instead they align with the particular pay period for whatever enterprise agreement existed at the time?---That's right.

PN1234

So they're roughly even but there's some periods that are longer than others?---That's right.

PN1235

And in one occasion – 1 May 2020 – the third line from the bottom?---Yes.

PN1236

You've included two years in there?---Yes.

PN1237

And that's because you were – there was no wage increase in that entire – after 1 May 2020 up to 30 April 2022?---Well, I think it would be more accurate to describe that there's only one wage increase in that two-year period.

PN1238

Which took effect on the 1 May 2020?---Yes.

PN1239

As you understand things. You could have included a line that represented 1 May 2021 to 30 April 2022?---Yes, I could have.

PN1240

Yes. And that would have reflected a slight change – a slightly higher total remuneration figure, taking into account superannuation changes?---Yes, it would have. Yes.

PN1241

But only very slightly?---Yes. But instead I have used it wouldn't have evolved to that because I have used the weighted average of the superannuation rate.

PN1242

(Indistinct)?---I could have broken it down – yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1243

The only reason you've used these periods at all is because that's the data you were given?---Well, essentially the lines with the changes in the base pay.

PN1244

Yes. And that's the reason you have looked at it for 12 years because you were given 12 years of data?---Yes.

PN1245

There's no particular economic magic to it. It's just the information you had?---Well, I was asked about changes in the value of historic – I forget the exact words but historical remuneration. So I was asked about the past.

PN1246

Yes?---And I was given figures that went back to April 2010.

PN1247

Can you go to page 1333? You should have table 3.6 at the bottom of that page?---Yes.

PN1248

This is what you used the data you derive in that table 4. It's to track the change in full time employee remuneration compared with changes in the inflation rates?---Yes.

PN1249

And then you do that both on a year-on year basis and cumulatively?---Well, as we were talking before it's not quite year on year. It's sort of - - -

PN1250

You're quite right?---- - -pay period on pay period where pay period is the time by where there's a change in the base rate of pay.

PN1251

I mentioned the tables that you were provided. I am just going to give you a copy of those. Does the Bench need - - -

PN1252

ACTING PRESIDENT HATCHER: There's - - -

PN1253

MR SAUNDERS: The Excel spreadsheet was sent this morning.

PN1254

ACTING PRESIDENT HATCHER: No. We don't need more of them that's for sure.

PN1255

MR SAUNDERS: I mean there are more. I'm just making sure they're the right ones. You should have the Excel data - - -

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1256

ACTING PRESIDENT HATCHER: So we can cut to the chase Mr Saunders. The first document am I understanding correctly, a revision of Mr Houston's table using the three alternative methodologies identified in Exhibit 23? Is that - - -

PN1257

MR SAUNDERS: Yes. Amongst other things.

PN1258

ACTING PRESIDENT HATCHER: Among other things.

PN1259

MR SAUNDERS: Yes. Not very many other things and it's not mathematically any other things. When you say the first table, your Honour, would you mind holding on to the one you're referring to us?

PN1260

ACTING PRESIDENT HATCHER: It's the one headed '2010 to 2024'.

PN1261

MR SAUNDERS: Yes.

PN1262

ACTING PRESIDENT HATCHER: And I should add the second one's moved the one-off payment a year forward.

PN1263

MR SAUNDERS: Now, Mr Houston you've reviewed these tables I think you said?---Yes.

PN1264

Just so we're all clear if you just look up for a second, sir? You're looking at this one for the moment?---Yes, I have got four pages.

PN1265

So there should be one that says – that has four sets of tables on the first page. The single page and on the other side?---I've got a slightly different document. I've got one that has two tables and then one table on the other side.

PN1266

If I can hand up a copy of this? Thank you?---Sorry. I do have that one.

PN1267

Yes. Don't worry. If you've got it now. You've reviewed these tables before attending the Commission today?---Yes. So this is the tables. There was two sets of tables I was given. This is the second one.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1268

Yes. We'll come to the first one in a moment. Mathematically speaking the calculations in this table are correct?---Yes, they are. I mean I had a little bit of trouble with some of the descriptions which is limited to just the words following each figure.

PN1269

Well, let's look at figure two?---Yes.

PN1270

You understand the concept of calculating the gross remuneration without including superannuation on overtime?---Yes, well that's not only the calculation that's been applied here.

PN1271

What other calculations do you say has been applied?---Well, there's the no enhanced conditions on overtime from my review of this table is that that figure 2 that the heading – no super on overtime – is somewhat incomplete in terms of what it's describing the change because it also involves no application. It could be enhanced conditions assumption that I was given of 2.1 per cent was also applied by applying that to overtime. So that talks – that adjustment has also been made. It's in this figure 2.

PN1272

I see. So the change – what figure 2 is there's no super on overtime and also doesn't apply the enhanced conditions on overtime?---That's right.

PN1273

For that purpose it's an accurate calculation?---With that amended description, yes.

PN1274

Any other amendments or choosing notice with the description in the tables?---That's all.

PN1275

And so what we see with that is to take the Vice President's example at figure 3 if the bonus is correctly placed it has a significant effect on the final figure – the total change in employee remuneration – doesn't it?---I'm just going to make sure before I answer that question. I'm just fully – had a chance to make sure I know what we're talking about. The best way of understanding the impact is to compare. In the line – in figure – is to compare the numbers in the third last column.

PN1276

Is that the one headed 'Cumulative Percentage Changes' – the average employee, yes?---And to compare the figures in figure 3 and the figures in the corresponding column, figure 1 - - -

PN1277

So - - -?---So what - - -

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1278

I'm sorry. You finish?---What you can see is that by changing the four or inserting the one-off payment into the year commencing 1 May '22 then in the amended – in the figure 3 – that cumulative change goes from 6.6 per cent as calculated by me to 10.37. So that year cumulative change increases and then in the following year there is a corresponding decrease. So the 15.96 becomes 12.09 and that, I think, is the best – is the way I would describe fully the effect of – in this calculation moving the year in which the one-off payment is received.

PN1279

So we shouldn't just look at the final cumulative change figure to properly understand all of this data?---That's right. It would be giving a wrong impression.

PN1280

And that would be to give your calculations as well?---Sorry?

PN1281

I mean that - - -?---Which calculations?

PN1282

Well, you have performed this exercise. I withdraw the question. Over the period 2020 to 2024 not paying super on the enhanced conditions on overtime and placing the bonus where it is in fact going to be paid means that there is a cumulative change in average employee remuneration over the total period of 12.09 per cent. That's what that means?---Well, it changes the end point but it changes the mid point as well. So I am saying it means two things and - - -

PN1283

My question - - -?---- - -it might be wrong – excuse me – it would be wrong to just focus on one of those two things.

PN1284

My question, though, is it does in fact change the end point to 12.09 per cent?---It changes the end point and it changes the penultimate point as well. It changes them both.

PN1285

It changes the end point to 12.09 per cent from your calculation of 15.96 per cent?---It changes both. It changes. I don't know how many times I need to say this. It changes two of my calculations. The calculation for the year ended 30 April '23. And it also changes them for the year ended 30 April '24. I'm saying there's two.

PN1286

We see that affecting and in the end figure 4 which is no super on an overtime bonus correctly placed and the enhanced conditions removed. Do you see that, Mr Houston?---I see figure 4. Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1287



So what placing the bonus correctly there does, as you would say, is it first changes the '22 cumulative change figure?---So in figure 4?

PN1288

Yes?---So figure 4 the only difference between figure 4 and figure 3 is removal of the 2.1 per cent enhanced conditions in the May 2023 year. I think I just heard that actually those enhanced conditions apply from the previous year now. But in this figure 4 they have been removed completely.

PN1289

Yes. Well, the effect of that over the period has the effect on the second year calculation that you want to point out but it also significantly changes the end point from your calculation?---Well, let's just be clear at what the effect is. If we're comparing figure 3 to figure 4.

PN1290

No. We're comparing figure 1?---Right. So well we've just had a discussion about figure 3 and I think we're clear about what - - -

PN1291

We've moved on to figure 4. And so you're clear we're comparing your calculations at figure 1 to what happens at figure 4?---Yes. So in figure 4 in the penultimate year the numbers moves – compared to my calculation from 6.6 to 10.37.

PN1292

Yes?---And that is identical to the change that you can see in figure 3 as well.

PN1293

Yes?---Because that is the placing earlier of the one-off payment. And then in figure 4 you have – well this – I don't know whose it is but what's been removed is the 2.1 per cent enhanced conditions. And so the effect of that is best understood by comparing the number in figure 3 which is 12.09 with the new number in figure 4, which is 10.14.

PN1294

I'm terribly sorry. I must have confused you. I am asking you to compare figure 1 and figure 4. Focus on that for the moment?---I understand what you're asking me but I - - -

PN1295

And perhaps you could address that?---Well, figure 4 – okay. What I was trying to help the Commission understand is what is it that's distinct about figure 4 relative to the figure 3 and figure 1?

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1296

That's very helpful. I am asking you specific questions comparing figure 1 to figure 4. I will ask them again so we can just avoid any further confusion. What removing super on overtime at the enhanced conditions completely and placing the bonus correctly does means that over the 2020 to 2024 period employee wages

– the value of employee wages grows by 10.14 per cent and CPI drags their value down by (indistinct) per cent that's right, isn't it?---Well, figure 1 and figure 4 the consumer price effect is the same. Nothing changes.

PN1297

Yes?---In figure 4, as you have said, we have got two changes and those two changes affect the final and the penultimate figures relative to figure 1 for the change in average employee remuneration.

PN1298

Yes. And so - -?---And the penultimate figure goes from increases – relative to my calculations from 6.6 to 10.37.

PN1299

Yes?---And the final figure reduces from 15.96 to 10.14.

PN1300

Sure. And so the net effect – the effect of that is in figure 1 on your calculations adjusted for this period consumer price inflation has outstripped wage growth by about five per cent at the end of the period. That's what that means?---Sorry, in relation to figure 1?

PN1301

Yes?---Yes. And I just want to be clear while I'm focusing on net effect and the difference.

PN1302

Sure?---For the net effect.

PN1303

Sure. The question is applying your calculations, unadjusted to the 2020 to 2024 period which is figure 1, the outcome is that there is that the cumulative consumer price inflation outstrips wage growth by about five per cent. You agree with that proposition?---Yes. It's slightly less than five per cent. So from a point – just so it's actually quite important here to be accurate about what we're talking about. So from a point to point basis the consumer prices have gone up by 20.7 per cent and the remuneration has gone up by 15.96 under my thing. And the net – when we talk about the net effect – well, perhaps we'll come to that what we mean by net effect.

PN1304

Well, I'm interested when you're talking about point to point analysis?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1305

When you're measuring change it's always point to point analysis isn't it? The question is just which points you pick?---Yes, but if you're trying to measure the purchasing power of employee remuneration which is the concept that I have engaged in my report then a point to point analysis can in some instances be misleading and that is particularly the case here where we have a one-off payment. Because if you shift the one-off payment from the end point and shift it

back to a mid point. And the effect of that is, essentially to ignore the value of the one-off payment in terms of the purchasing power of the employees. And that is why you need to be quite careful to – if you're – or careful not to focus only on a point to point analysis.

PN1306

You have to ignore its value to their purchasing power in the third year, don't you, Mr Houston because they won't receive it?---Well, of course, if they receive it and whenever that – it has value in terms of purchasing power whenever it's received. And if it's received in an earlier year and, in fact, two and a half months earlier than what I have in my calculation. Because then it changes the end point but it doesn't change the purchasing power benefit of that payment at all. And that's why you need to be quite wary of focusing only on a point to point analysis because you're missing that payment that comes and then leaves.

PN1307

ACTING PRESIDENT HATCHER: But Mr Houston, if the exercise is to demonstrate changes in employee purchasing power?---Yes.

PN1308

Over a period of time and you're saying it's not just the end point but during the period?---Yes.

PN1309

Why do we include superannuation in the analysis as the increase in super has no benefit for an employee's purchasing power?---Yes. Well, that's a good question and in economics the theory goes that employee remuneration is what it is and then of that remuneration some will be concerned at the time, and some will be saved. That's the way that this sort of axiomatic economic principle. So some proportion of all employees remuneration is saved. Now we have a compulsory superannuation system which is essentially compulsory saving. And that the rules are that you can get the benefit in terms of purchasing power at a future time which is when you retire. Now there'll also be – now that's no different in principle in economics to the part of your income that you receive in cash that you are likely also to save some part of that and you will spend some. So when we say the purchasing power of remuneration we are setting aside the question of well what proportion of that remuneration is saved and what is actually used to purchase things? Does that make sense? So I am saying - - -

PN1310

I understand that in a notional sense?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1311

But in a practical sense if no doubt the proposition would simply be that an increase of super doesn't pay the groceries?---No. But of course it doesn't pay today's groceries bills but it pays the grocery bills in the future. So saving – the purpose of saving is deferred consumption. And so superannuation is a form of saving that employers fund, and although we express remuneration by reference to purchasing power the reality is that not all of that remuneration will turn into

purchasing in that year because some people defer their purchases. And I am simply suggesting that by the way I have treated superannuation you could regard it as deferred purchasing which is what it is. And it's deferred for quite some time obviously but the purpose of superannuation is to engage in purchasing later on. And some proportion of the non-super portion of remuneration will also be used to purchase later on as well because some people, on average, save a proportion of their income.

PN1312

I mean one can understand as a theoretical construct that what it means is that future purchasing power is applied to a situation where the inflation rate is currently seven per cent. That is you don't know what the future inflation rate at the time will be when that purchasing power is exercised?---That, of course, is correct. But remember that when people save, whether superannuation or some other form of savings they invest that saving as equal to investment. So that's invested either in the bank or in some other investments and that generates a return. And the purpose of that return whether it's bank and sort of is to help maintain the purchasing power of that saving. And that's the way the economy works. And all I am doing is approaching it from that sort of in-principle perspective.

PN1313

Right. Thank you.

PN1314

MR SAUNDERS: We'd like to tender the table.

PN1315

ACTING PRESIDENT HATCHER: What are we calling this, Mr Saunders?

PN1316

MR SAUNDERS: The first one Calculations 2010 to 2024.

PN1317

ACTING PRESIDENT HATCHER: All right. The document titled 'Calculations 2010 to 2024' will be marked Exhibit 24.

#### **EXHIBIT #24 CALCULATIONS 2010 TO 2024**

PN1318

MR SAUNDERS: Mr Houston, can I ask you to look at the second document that you have there which is four figures reflecting adjusted calculations for 2010 to 2024? I think you described this as the first spreadsheet. You have had the opportunity to review the underlying Excel data of this as well?---Yes. This is this one?

PN1319

That's right?---Yes.

PN1320

I assume that the same correction needs to be made in respect of figure 2 in that the 2.1 per cent is also excluded from overtime?---Yes. And that sort of cascades through to figure 3 and 4 as well.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1321

Well figure 3 and 4 wholly removed deliberately the 2.1 banner?---Yes.

PN1322

Okay. You're not suggesting that that's an error. That's just part of the calculation?---I'm not – I am suggesting there's any errors. I'm just suggesting - -  
-

PN1323

Actually, if there are any errors this is the moment to suggest them (indistinct). Is there anything else you have to - - -?---I haven't suggested there are any errors. No, I have simply suggested, as I mentioned earlier, that when I reviewed this without the benefit of any explanation that the headings at figure 2 were incomplete in terms of the changes that were made.

PN1324

And with that correction to the figure 2 heading are you able to confirm that mathematically these tables are (indistinct)?---I'm sorry mathematically?

PN1325

The tables are correct. The format has been correctly performed?---Yes. Although I would also add in terms of heading corrections that on figure 3 it says 'No super on overtime.' It also should say, 'No super on overtime or one-off payments.' And that cascades into figure 4 as well. So that's a difference between figure 3 and figure 2 – I was alluding to earlier.

PN1326

Right. With those two corrections are you happy to say the tables are correct just mathematically?---Yes. Well, we haven't yet got to figure 4 and I am puzzled by the calculation at figure 4 and I am not sure that I agree with that either mathematically or otherwise. Which is the reference to starting point zero.

PN1327

Sure. In the period 1 April 2010 to 31 March 2011 the base rate of pay in that period looked at in isolation where employees did not in fact change. Do you understand that?---So 1 April - - -

PN1328

2010?---Yes.

PN1329

Yes. What actually happened is that the amount employees were entitled to be paid on 1 April 2010 was increased from what it was on 31 March 2021?---Yes.

PN1330

Yes. And when you include four per cent as the change you're talking about the change from that previous starting point?---Well, I am talking about the change that started on 1 April.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1331

Yes. It's changing from something – an original data point – that's right, isn't it?---Well, it was changing from midnight on the - - -

PN1332

Yes?---I mean if we want to be very precise it's changing from midnight on the 1 April I guess what is calculating.

PN1333

So really your starting point is the 31 March 2010?---No. The starting point is the 1 April.

PN1334

Well, you're comparing it in terms of the 1 April – the figure is \$100. It's been – it's 3.5 per cent higher than what it was the day before but if we're starting on the 1 April repairs?---I care.

PN1335

Yes. Pretend you're not meant to?---Well, I am just talking about the – I am just talking – let me give you an example. Imagine - - -

PN1336

No. The question – no, I'm halfway through a question.

PN1337

ACTING PRESIDENT HATCHER: Mr Houston, can you give your example please?---Yes. Imagine if on the 1 April 2010 there was macro economic shock and the prices of all goods and services in the economy went up by 10 per cent on that day. Let's say there was a GST introduced. Now, under your approach you would exclude that the price change that took place on that day from the previous day and under my approach – because, in fact, in inflation which we're comparing this to inflation takes place every day of the year. And there was some inflation in prices on the 1 April 2010 I am sure. And my methodology includes the change in those prices that were placed on that day. And it includes the change in wages or bass pay that took place on that day. And this methodology includes one of those but not the other. And I say that that's inconsistent.

PN1338

But you say it's inconsistent. But leaving aside your views on the methodology if you do, in fact, apply that methodology that's the answer this table shows you?---Well, it's not a methodology. It's an overwriting of the assumptions. It's an overwriting of the formulas in the spreadsheet to be able to leave out that the wage increase that took place on that day.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1339

Yes. It's assuming that you're starting from a point that doesn't include an increase?---No. No. I'm just – that is not correct. So when we're talking – when we're doing statistical or numerical analysis we necessarily have to divide up. We have to put boundaries in. Yes? And here we've – the notional boundary, if you like, is midnight on the 1 April and so we're looking at everything that happened from that date of midnight. And just as the same as on that first day in April some prices would have gone up on that day that weren't increased the day before. The CPI includes those in its calculation and for the same reason you should be including the wage. If you're trying to get a comparison you should be including the wage base pay increase that also took place in that same day. And because if you want to exclude that you should put 2 April.

PN1340

MR SAUNDERS: So if this started from 2 April, if we had done that - - -?---Yes.

PN1341

- - -the answer would be 42.55 per cent change over the period?---Well, the principle we then have to adjust the inflation data as well, to remove one day of inflation. It might be small but you see my point? I mean if there had been a GST say that came in on the 1 April. And then all prices rose that day your methodology would exclude it.

PN1342

So what your methodology does - - -?---It's not my methodology. It's a standard.

PN1343

But the methodology that you have applied, Mr Houston, what it does is – have a look at figure 3. We'll use the figures for illustration. So just tracking the total remuneration figure. The first – the 1 April figure you've got is 97507?---I'm sorry I'm just – which figure are you asking me to look at?

PN1344

1 April 2010 remuneration figure?---Yes.

PN1345

Yes. That's - - -?---Are we 97507? Yes.

PN1346

I need to take this slowly I'm afraid otherwise (indistinct) - - -?---Yes.

PN1347

Go to the bottom of the column. Over the 12-year period that's increased to 138997. Are you with me?---No. I am not. I'm sorry.

PN1348

You see that - - -?---Just – could we just slow down?

PN1349

Certainly?---So are we talking about figure 3 or figure 4?

PN1350

Figure 3?---Figure 3. Yes.

PN1351

You can see the column headed 'Remuneration'?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1352

You can see the first entry in that column?---Yes.

PN1353

You can see that that's 97507?---Yes.

PN1354

And you can see the final entry in that column?---Yes.

PN1355

And you can see that it's 138997?---Yes.

PN1356

Okay. And you can see the column headed 'Cumulative change in average employee remuneration'?---Yes.

PN1357

And you can see the final percentage in that column?---In figure 3?

PN1358

Yes?---It's 48.25. Yes.

PN1359

Yes?---And that 48.25 - - -

PN1360

If I can just finish the chain of questioning. I don't want to get side-tracked. So what cumulative change in average remuneration as a concept tracks is how much weight has it increased from whatever starting point you have picked. Yes?---Yes.

PN1361

However because you have included the four per cent that took effect on 1 April 2010 138997 is not a 48.25 per cent increase on that 97507 figure. It's 48.25 on whatever the wages were on 31 March 2010 isn't it?---Correct. Because – and the best way to understand that is if you go to figure 3 and we've got the comment on cumulative percentage change. If we step left one we get the column of percentage change. Right? That's percentage change - - -

PN1362

Yes?---- - - for that year.

PN1363



Yes?---Now that year that percentage change applies to the previous year which it's not in this table but it's the year ended 31 March 2010. That's what that figure is and that's - - -

PN1364

And sorry - - -?---Excuse me.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1365

I need you to clarify something you've just said. Did you just say 'Applies to the previous year' and by that did you mean repairs the damage that has been done by inflation in that period?---No. I didn't mean that.

PN1366

(Indistinct)?---I didn't say that at all. So I just wanted to understand this column here and there's – I don't know how many entries there are – percentage change – we can see, if we look at the period in the second row – the 1 April 2011 to 31 March 2012 3.5 per cent. Do we see that in figure 3? That figure refers to the percentage change from the previous year.

PN1367

Yes?---And that's the same for each of the years in the sequence and by the same principle, in the first row, the percentage change in the year 1 April 2010 – 31 March 2011, of 4 per cent, is the percentage change from the previous year. That's how percentage changes work.

PN1368

Yes, exactly, Mr Houston – what you are tracking is the percentage change from the year before 1 April 2010?---And that is exactly the same for consumer price inflation, if we go to the final column.

PN1369

Well, that's not quite right, is it, Mr Houston – because that consumer price inflation figure is taken from the end of the period?---Well, it's the end of the period to the end of the previous period so it's June – we actually use June, because - - -

PN1370

(Indistinct) June?---It's June 2011 to – using June as a proxy for April so it's taken from June 2011 to June 2010. So it's effectually – it's the end of that period, relative to the end of the previous period.

PN1371

Sorry, that's - - -?---And that's why it is inconsistent to treat the percentage change in base pay or remuneration as zero in that first year.

PN1372

I think I misheard the dates you used so we're looking at the consumer price inflation over the period in figure 3 – 3.26, you can see that?---Yes.

PN1373

Yes, and that's the figure you said from which period?---Well, that is the – I'll put it in non-technical terms.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1374

If you could just tell me the date period it refers to?---I'll put it in non-technical terms. If you'd like me to elaborate I will. It's a percentage change from the last quarter in the year ended March 30, 2011 - - -

PN1375

Yes?--- - - - over the last quarter in the year ended March 2010.

PN1376

Yes, and so - - -?---It's the – it relates to the end of this period compared to the end of the previous period.

PN1377

I understand that. So, Mr Houston, it's the period that that's – so this is the – in very basic terms – the degree to which the cost of things has changed from the end of – a date point in 2010 to a date point in 2011. Is that right?---Correct.

PN1378

So the period is April 2010 to 31 March 2011?---No, no – the date point is March 2010 to March 2011 and that's where we're – I think we're not having a common understanding.

PN1379

Yes. When I said, 'period', I was looking at the first column on the table. Can you just turn your eyes to that?---Yes.

PN1380

So we're looking for action in the period 1 April 2010 to 31 March 2011?---It's not within the period. It's from the previous period. That's the point.

PN1381

The - - -

PN1382

MR SHARIFF: Your Honour, (indistinct) to rise – I'm conscious of the time. I don't think questioner and witness are going to come to any agreement about this. There is just a difference of views. Submissions can be made about this point. Tomorrow's hearing date has been vacated and we're anxious just to get on with this matter.

PN1383

ACTING PRESIDENT HATCHER: I think we've got a full understanding of the conceptual proposition and Mr Houston's disagreement with it. Leaving aside your conceptual difficulty with this notion of a zero starting point, do you have any other mathematical issue you wish to raise with either document?---No.

PN1384

Will we mark the second document as well, Mr Saunders?

PN1385

MR SAUNDERS: Yes, thank you.

PN1386

ACTING PRESIDENT HATCHER: All right, so we'll call that, 'Calculations 2020 to 2024', we'll mark exhibit 25.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

### **EXHIBIT #25 CALCULATIONS 2020 TO 2024**

PN1387

MR SAUNDERS: All right, well, the purpose of this calculation exercise that you've done, Mr Houston, is to ascertain the change in real wage value over the period you've been asked to look at, is that right?---Which exercise are you talking about?

PN1388

The mathematical exercise in your report that's been altered in these tables, of calculating the accumulative change in average employee remuneration and the cumulative consumer price (indistinct)?---Yes, so – well, the purpose was to look at the change in average, full-time employee remuneration compared with subsequent and forecast inflation.

PN1389

The point of this is to ascertain the change in real wage value over the period?---Well, the difference between those two things – employee remuneration and inflation – can be described as the value of real wages, yes.

PN1390

Do you prefer the term, 'purchasing power'?---Well, it depends what your – I think purchasing power is a more helpful description, from a sort of lay perspective.

PN1391

Okay, so we're talking about determining the – whether the purchasing power of the average Sydney Trains employee has grown or decreased since 2010. That's the point of the exercise?---That's a good description, yes.

PN1392

The purchasing power is a guide to their standard of living?---Yes.

PN1393

That is a – what we are tracking is effectively relative value. It's a relativity measure?---Putting it in different terms – I think it's very helpful to just stick with the accuracy of the terms that I've just described.

PN1394

What you do is you start at a baseline set of wages, whatever it is, nominal wages?---If you're trying to compare two things over time you have a starting point for both of them.

PN1395

And in a wage analysis the starting point is a sum of money?---Yes.

PN1396

The sum of money you've used is your calculation of the average price remuneration as at 1 April 2010? I'm not going to start asking you about what CPI represents. I'm just saying that's the first figure you've adjusted?---Adjusted? My analysis starts at 1 April 2010. I haven't adjusted any figures.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1397

Okay?---That's – my analysis starts on that date, at – in quite precise data terms at midnight.

PN1398

On the basis of a particular salary figure?---On the basis of an estimate of full-time employee remuneration.

PN1399

Yes, which is a dollar figure?---Yes.

PN1400

Then over the period tracks the two relative adjustments: one is the growth in nominal wages? That's right, isn't it?---Yes.

PN1401

In layman's terms, how much the number has gone up?---Well, for each – I'll put it in my terms, which will be more accurate: I have broken that 14-year period into items, not always corresponding exactly with one year but corresponding with the terms of the base pay changes in the enterprise agreements and in each period I have asked how much did employee remuneration change in that period compared to the previous period and I've asked correspondingly how much did the consumer prices change in that period, relative to the previous period and then I've summed them to get a cumulative estimate over time.

PN1402

Right?---So they're each compared on a like-for-like basis with the starting point of 1 April 2010.

PN1403

Okay, and can you just look at court book page 1333?---Yes.

PN1404

Make sure we're on the same page. Have you got the table 3.6?---I have it in front of me.

PN1405

So what you were just describing – the cumulative change process, that final figure, can you see in the third – sorry, the fourth column, the 56.82 figure in the final entry?---Yes.

PN1406

Yes, that – in very basic terms – is how much the salary figure in dollar terms has gone up over the period?---Well, strictly – I mean, it's relative to the salary level immediately prior to the period, so 31 March 2010.

PN1407

Yes, and so it's how much the salary figure has increased, how much money – of the change between the two figures. That's right, very simply?---It's a pretty loose description but - - -

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1408

I withdraw the question. What that growth in nominal wages represents is a growth by itself in the individual's purchasing power. You accept that?---Yes.

PN1409

Okay, on the other side of the ledger, purchasing power is reduced by the effect inflation has. That's right?---Yes.

PN1410

It's a drag on real value of wages?---If wages are staying constant, yes.

PN1411

Yes, or if they're not moving high enough to keep up with inflation?---Yes.

PN1412

Can you go to the next page, 1334? Do you see figure 3.5?---Yes.

PN1413

Okay, so what this table does is just set out two unconnected lines: the blue one is the tracked increase on how much the dollar figure is going up?---Could I just look at my own copy, because that copy has got some missing elements to it.

PN1414

It's at page 28 of your (indistinct)?---Yes, I'm sorry, I'm better equipped to answer your questions now.

PN1415

Right, so you understand the blue line just tracks the year-on-year pay increases?---Yes.

PN1416

And then the inflation increase, year on year?---Yes, relative to the starting point, which we might take as – for this discussion – 31 March 2010.

PN1417

You then have, over the next page, 3.6?---Yes.

PN1418

I'm reading these correctly, again, they're unconnected lines. One shows – the blue one shows much the dollar figure has increased and the black one shows the change in inflation?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1419

Those don't measure – those just track the two factors that affect the value of the wage from whatever starting point you take?---Well, I'll put it this way: they – the change in purchasing power can be thought of as the size of the gap between those two lines. So at the very beginning – I don't know, it says January 2010 but in fact as we discussed it says – that's just a sort of product of the way the chart was created. But the starting point is the – is effectively withstanding, on 31 March 2010: 'We'll pay what we are at this amount and (indistinct) what we are today', and then we walk forward from there through to 2022. That's how wages have changed and purchasing power has changed and inflation has changed and the gap between those two lines is the purchasing power increase that's evolved. You can see that it gets bigger and then gets smaller.

PN1420

Can I show the witness a document?

PN1421

ACTING PRESIDENT HATCHER: Before we go into this, in effect, figure 3.6 is merely a pictorial representation of table 3.6, isn't it?---Correct.

PN1422

Why did we need to go into this?

PN1423

MR SAUNDERS: There's two questions.

PN1424

ACTING PRESIDENT HATCHER: Ask the questions. I mean, I don't think – speaking for myself – I don't think we need – if this is a point of the pictorial representation (indistinct) exhibits 24 and 25, I think we've got the point.

PN1425

MR SAUNDERS: No, it's not doing that. That's a feature but it's a slightly different - - -

PN1426

ACTING PRESIDENT HATCHER: All right.

PN1427

MR SAUNDERS: You've got a graph in front of you, Mr Houston?---Yes.

PN1428

I want you to ignore the fact that it says zero per cent. I want you to ideologically ignore the fact that it says zero per cent growth.

PN1429

ACTING PRESIDENT HATCHER: (Indistinct).

PN1430

MR SAUNDERS: All right, I withdraw the question. I want you to just accept for me that this particular table says zero per cent, 2010 to 2011. One way to understand the effect of the two integers we're talking about – growth in nominal wages and changes in inflation – is to apply it to a particular figure?---I'm really not sure how to answer that question.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1431

Well, to calculate real wage value, at change – you're looking at how it's (indistinct) and how much the value of that money has decreased due to inflation. That's right?---Yes.

PN1432

So what that looks like for this data, is a line like this?---What's that?

PN1433

Applying the two changes to each other – do you accept that that - - -?---As we've already explained, you're applying the change in prices on a different basis to the change in wages and therefore it's not a valid comparison.

PN1434

The conclusion that you reached that wages have increased by – there's been a cumulative wage change of 56.82 per cent, in terms of employee lived experience this is what that looks like over time?---I - - -

PN1435

If you don't agree, just say so?---Well, I've got no basis to understand what you mean by, 'employee lived experience'. But if you are talking about the change in purchasing power, then I stand by the analysis that's presented at chart or figure 3.6 in my report and at the table 3.6.

PN1436

ACTING PRESIDENT HATCHER: I note the time, Mr Saunders. How much longer do you think you need?

PN1437

MR SAUNDERS: Twenty minutes, assuming responsive answers.

PN1438

MR SHARIFF: Your Honour, may I be heard about this?

PN1439

ACTING PRESIDENT HATCHER: Yes.

PN1440

MR SHARIFF: I don't know how long then – that would be 20 minutes, we're going to come back at 2 o'clock, presumably, or intrude into the Full Bench's time over the luncheon adjournment.

PN1441

ACTING PRESIDENT HATCHER: Well, we need to deal with the enterprise agreement - - -

PN1442

MR SHARIFF: Exactly - - -

\*\*\*

GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1443

ACTING PRESIDENT HATCHER: I can indicate we've been sent what looks like a comprehensive response to the issues so it may not take that long. But we'll need probably 15 minutes, I would think.

PN1444

MR SHARIFF: Yes, so that's going to be further time, then we've go this afternoon. Mr Taylor, I assume, is going to go first. I have no idea at the moment how long he intends to be. I've got to respond and then undoubtedly he'll want to reply but in the nature of these things, I'm deprived of reply. We've got to get through all of this in a convenient time and tomorrow has been vacated and frankly, it's obvious that the questioner and the witness are at odds. What's the point of this? What is point of this? We've seen the submissions. There can't be any forensic value in terms of what the issues are before the Commission.

PN1445

ACTING PRESIDENT HATCHER: All right, well, that's noted. My personal span of hours extends to 6 pm so I'm not particularly fussed about it.

PN1446

MR SHARIFF: Well, there is such a thing as family responsibilities.

PN1447

ACTING PRESIDENT HATCHER: Yes, I understand that.

PN1448

MR SHARIFF: And I assume this Commission takes them seriously and what we would encourage is an indication of how long everyone is going to be. I've been given an estimate that Mr Houston would be an hour. I can accept that there are changes to that.

PN1449

ACTING PRESIDENT HATCHER: Can we proceed on this basis – and someone can tell me whether this intrudes with anybody's family responsibilities – we'll have an estimate of 2 to 2.15 to deal with the enterprise agreement. Mr Saunders, you'll be given another 15 minutes and then we'll allow an hour apiece for submissions.

PN1450

MR SHARIFF: An hour each?

PN1451

ACTING PRESIDENT HATCHER: An hour each.



PN1452

MR SHARIFF: With no replies on either side?

PN1453

ACTING PRESIDENT HATCHER: Well, if you want to extend that to replies, we'll see how it works out but that takes us to 4.30.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1454

MR SHARIFF: May it please.

PN1455

ACTING PRESIDENT HATCHER: All right, we'll now adjourn and we'll resume at 2.

**<THE WITNESS WITHDREW [1.05 PM]**

**LUNCHEON ADJOURNMENT [1.05 PM]**

**RESUMED [2.02 PM]**

PN1456

ACTING PRESIDENT HATCHER: I note your appearance, Mr Woods. We have received and perused your response to the checklist which we provided with you. I don't think we have any particular issues we wish to raise with you. The only query is whether the proposed undertakings have been sent to all the bargaining representatives, including the individual bargaining representatives.

PN1457

MR T WOODS: Yes, that should have been part of the email that – sent it in, we copied to everybody, my expectation was. I can double-check that.

PN1458

ACTING PRESIDENT HATCHER: All right. Mr Saunders, do you have any issue with the responses to the issues that have been raised?

PN1459

MR SAUNDERS: No.

PN1460

ACTING PRESIDENT HATCHER: What's your attitude towards the undertaking?

PN1461

MR SAUNDERS: We support it.

PN1462

ACTING PRESIDENT HATCHER: All right. The other thing is, Mr Woods, there's the issue about correcting the errors in the – is that the contents page?

PN1463

MR WOODS: Contents. Yes, that's the – yes, the F1 application in respect of those errors.

PN1464

ACTING PRESIDENT HATCHER: Presumably we can deal with that under the new provision, can't we?

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1465

MR WOODS: Where is it?

PN1466

ACTING PRESIDENT HATCHER: Section 218A.

PN1467

MR WOODS: Perhaps I was still stuck in the past and thinking about 217.

PN1468

ACTING PRESIDENT HATCHER: Can you do two things: firstly, send an email to all the bargaining representatives, including the individuals, to say that if they wish to give any response to the proposed undertakings they will need to do so by midday tomorrow?

PN1469

MR WOODS: Yes.

PN1470

ACTING PRESIDENT HATCHER: And secondly, can you provide and distribute to all the bargaining representatives a consolidated version of the agreement which includes the corrections?

PN1471

MR WOODS: Yes.

PN1472

ACTING PRESIDENT HATCHER: And send that to us?

PN1473

MR WOODS: Yes.

PN1474

ACTING PRESIDENT HATCHER: All right. I think that deals with all the issues, does it?

PN1475

MR WOODS: Yes. Thank you.

PN1476

ACTING PRESIDENT HATCHER: We're a bit ahead of schedule now, so if we can get Mr Houston back in the witness box?

<GREGORY JOHN HOUSTON, RECALLED

[2.04 PM]

CROSS-EXAMINATION BY MR SAUNDERS, CONTINUING

[2.04 PM]

PN1477

ACTING PRESIDENT HATCHER: Mr Houston, you remain under your former oath or affirmation?---Yes. Thank you.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1478

Mr Saunders.

PN1479

MR SAUNDERS: Thank you, your Honour. Mr Houston, could you go to court book 1359, please? Yes, you should see table A1.3 there?---Yes.

PN1480

In that table you have estimated, excluding superannuation, the gross remuneration as at 1 May 2022 for five classifications under the agreement. I've understood that table correctly?---Yes.

PN1481

The reason you've excluded superannuation here is because the ABS statistics that you compare them to in your report similarly exclude superannuation?---Yes.

PN1482

Can I hand the witness a bundle of documents, please? Mr Houston, you should have in front of you a marked up version of table A.13. Can you confirm you can see that?---Yes.

PN1483

The averages down the bottom, the figures in your calculation are the averages across the entire workforce, is that right?---No, they are the averages for the particular classifications that are given.

PN1484

Look at the unmarked A1.3 at page 1359?---Yes.

PN1485

You see the bottom row says 'Average?' Mr Houston, can you see the bottom - - - ?---Yes.

PN1486

Those figures in that row are fairly obviously not the average for the five classifications?---(Indistinct) I - - -

PN1487

Okay, you've got it?---Yes, fairly obviously - - -

PN1488

You've got - - -?---I also - - -

PN1489

Mr Houston, let me clarify - - -

PN1490

ACTING PRESIDENT HATCHER: Just to be clear, the heading says the average remuneration for full-time staff across the entities. Is that what it is, Mr Houston?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1491

MR SAUNDERS: Yes, that's all I'm asking you to clarify?---My query before is you used the term, 'entire workforce', and I just - - -

PN1492

Yes, the figures in the line with the title, 'Average', are the average figures across the entire workforce, not the five classifications; would you agree with that?---I'm sorry. I apologise. In my response to the earlier question, I thought that you were implying that these figures here for base pay for each of these classifications were the average across the entire workforce. I now realise - - -

PN1493

And you now agree - - -?--- - - - that you were referring to the figure at the bottom of this table. And just to be clear, to make sure I haven't misled anyone, you did ask me about superannuation before, and the status of superannuation in relation to this table 1.3 is explained at paragraph 197 on the previous page.

PN1494

Thank you?---I may have misled in response to the question on that point.

PN1495

So you have included superannuation on these figures?---Yes. Yes, it says it includes - assumes the superannuation of 10 per cent.

PN1496

That doesn't matter in particular. Can you look at the figure for 'Regional former country link for other', please?---Yes.

PN1497

Those three numbers, 88,000, 9000, 21,000, just as a basic mathematical exercise, I want to suggest to you, do not in fact add up to \$131,000?---Yes, that seems right.

PN1498

Yes. Can you please – can you go to page - - -?---That scenario there.

PN1499

Yes.

PN1500

ACTING PRESIDENT HATCHER: So have you added superannuation when you've done the total – that is, have you added base pay (indistinct), then applied superannuation?---Yes, I think that's the reason, yes.

PN1501

MR SAUNDERS: If we go to page 1342, and you go to the second page - - - ?---Sorry, page - - -?

PN1502

1342. You should see table 3.10. Do you have that?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1503

This is where we used these figures that you've calculated. You compare them to a comparator in Australia and NSW, that's right?---Yes.

PN1504

And the purpose of you doing this is to answer the question: what is the value of the current waged employees?---Yes.

PN1505

To get the NSW figure, as I understand it, you've simply taken the Australian comparator figure and increased it by 0.38 per cent? You can see that at paragraph 137, if you need to refresh your memory?---Yes.

PN1506

And that's the figures for NSW workers in this particular dataset are 0.38 higher than the all Australia figures?---Yes.

PN1507

The data you have used incorporates both public and private sector employees?---Yes. It's not limited to public sector.

PN1508

You're aware that these employees are in fact public sector employees?---Yes, the employees that are subject to the new enterprise agreement?

PN1509

The ones you are comparing, yes?---Yes.

PN1510

The dataset that you have used can in fact be broken down into public and private sector figures?---Yes.

PN1511

I want you to assume for me that that breakdown reveals that at the relevant time public sector salaries were 20 per cent higher than private sector salaries. Do you understand the assumption?---Public sector salaries were 20 per cent higher?

PN1512

Than their private sector equivalents. You understand the assumption I'm asking you to make?---In which – in general?

PN1513

In the dataset that you used for this period, I want you to assume for me that public sector salaries were 20 per cent thereabouts higher than their private sector equivalents. Do you understand the assumption I am asking you to make?---I'm not sure what dataset you're referring to.

PN1514

The ABS data that you used to get these figures, which is the '6302.0 average weekly earnings, Australia, May 2022', do you remember that now?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1515

You understand that data can be broken down into public sector and private sector figures?---Yes.

PN1516

For the average cash earnings for full-time adults that you have used? You agree, Mr Houston?---For the Australia – I'm - - -

PN1517

Across Australia. It can be broken down into private and public sector - - - ?---When you say, 'it', you mean - - -

PN1518

The dataset that you have used to produce these comparator figures?---(No audible reply).

PN1519

Yes. Thank you. The ABS does in fact publish data that compares the public sector to the private sector; you're aware of that?---Yes. In general it does, yes.

PN1520

I want you to assume that the public sector wages reported in the dataset that you use were 20 per cent higher than their private sector equivalents. Do you understand the assumption I am asking you to make?---Yes.

PN1521

Using the logic that you applied to get the NSW comparator figure, we should in fact increase the two comparator figures by 20 per cent, shouldn't we?---No, not necessarily.

PN1522

Can you look at the second page of the three documents that I have shown you? If you could look at the loose version of table 3.10 that I gave you earlier. Do you have both of them in front of you? Table A1.3, I'm sorry?---I'm sorry, I'm just a bit unclear what – I have table 3.10 with the handwritten amendments that you've just handed to me. I'm wondering what you want me to otherwise compare - - -

PN1523

Yes. I'm asking you to also look at, simultaneously, table A1.3, which is the first one we have looked at.

PN1524

ACTING PRESIDENT HATCHER: Which one, the handed - - -?

PN1525

MR SAUNDERS: The hand-amended one?---Yes, I have both of them in front of me.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1526

You can see that the figure that you calculated for 'Guard thereafter' in A1.3 is \$97,857?---Yes.

PN1527

And you see that the figure that you've recorded in 3.10 is \$107,643?---No, I can't - - -

PN1528

I'm sorry, I apologise. You see in the top line, 'Rail entities', in table 3.10?---Yes.

PN1529

Go to the second column, 'Guard thereafter', and you've recorded there, instead of the figure in table A1.3, '\$107,643.' You see that now?---Yes.

PN1530

That is a mistake, isn't it, Mr Houston?---Yes, so that – in table 3.10, it appears that the - - -

PN1531

It's just a transposition error, isn't it?---It looks that way. Yes, I just want to put some qualification – in this very minute I - - -

PN1532

Looking at table A1.3, the figure for 'Guard thereafter' in table 3.10 should actually be 97,857?---Yes.

PN1533

And that changes the comparison exercise, or the outcome of the comparison exercise?---Yes.

PN1534

The same with 'driver thereafter', looking at those two tables again you see that the figure calculated in A1.3 is 107,643, but it is recorded in 3.10 as 124,388. You see those two figures?---I'm just pausing to make sure I have this. Yes, I mean, that's right. It looks – there is obviously an inconsistency between the figure that is included here and the figure that is in table A1.3.

PN1535

Yes. The figure for 'driver thereafter' according to table A1.3 should in fact say 107,643?

PN1536

MR TAYLOR: It should be 113,000 I would have thought.

PN1537

ACTING PRESIDENT HATCHER: Yes. That doesn't add up to 107,643.

PN1538

MR SAUNDERS: I'm just quite literally reading the figure that is at table A1.3 and it doesn't add up either.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1539

MR TAYLOR: It should be 113,000.

PN1540

MR SAUNDERS: It's still 924.

PN1541

ACTING PRESIDENT HATCHER: No, but if you add super - - -

PN1542

MR SAUNDERS: Yes, but Mr Houston had indicated earlier in an answer to your Honour that the figures in remuneration had added super.

PN1543

ACTING PRESIDENT HATCHER: Had added super?

PN1544

MR SAUNDERS: Yes.

PN1545

THE WITNESS: That was discussed at – yes, I took you to the paragraph before.

PN1546

MR SAUNDERS: Yes.

PN1547

ACTING PRESIDENT HATCHER: What is the correct figure in A1.3 for remuneration for 'driver thereafter'?--I'm not sure that I can – until this moment I'm not aware of the possibility that some of these figures in table A1.3 may not be correct, but I can't sit here and tell you – verify whether that is or is not the case.

PN1548

MR SAUNDERS: Yes, indeed, Mr Houston. You can't tell us now whether it's the figures in table A1.3 that are incorrect or the figures in table 3.10?--Well, there is obviously some inconsistency and only one of them can be right, so I can't be sure sitting here which one is.



PN1549

If it's the figures in table A1.3, you would accept that the comparison graphs you have done overstate the relative position of at least 'guard thereafter' and 'driver thereafter'?---Well, there is table 3.10 and then there is a figure 3.10, and it appears on this item at least for 'guard' in the figure – I'm sorry, I will withdraw that. I'm just trying to understand whether the figure 3.10 reflects the numbers in table 3.10 or table 1.3.

PN1550

Yes, well, looking at the fact that the figure for 'guard' is all over \$100,000, it suggests that it is reflecting table 3.10?---That's right.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1551

Yes. My question, Mr Houston – and it's the last one on this issue – is you accept that if it's the figures in A1.3 that are correct, you have overstated the position in the comparison for at least 'guard thereafter' and 'driver thereafter'. Do you accept the proposition?---Well, if there is an error, and it seems that there is an error in at least one of these things, then the error needs to be corrected and that will give - the position as reflected in table 3.10 and figure 3.10 would not be accurate.

PN1552

So the answer to my question is yes?---Well, I haven't – well, your question was overstated. Yes, these figures are – if there is an error, and it seems there is - - -

PN1553

I want to talk – I'm sorry?---To overstate those two parameters, yes.

PN1554

Okay. When we talk about comparator, the comparator you have used is broad ABS industry classifications, isn't it?---Yes.

PN1555

You accept that these classifications are, to start with, not in any way specific to the rail industry?---Well, I'm not sure that's right. I say that they do not necessarily provide close comparisons to the enterprise agreement comparisons.

PN1556

Sure?---The classifications, that's slightly different from a completely different industry which I don't think is right.

PN1557

Okay, well, you have compared 'driver thereafter' to the entirety of the transport, postal and warehousing industry, haven't you?---Yes.

PN1558

Yes, and you would accept that that is significantly broader than rail operations?---Yes.

PN1559

ACTING PRESIDENT HATCHER: On my calculation, 124,388 is the correct number for 'driver thereafter'?---Yes (indistinct).

PN1560

MR SAUNDERS: If it's adjusted for super.

PN1561

ACTING PRESIDENT HATCHER: But you might have added the further criticism that super has been added to overtime payments, as well, again.

PN1562

MR SAUNDERS: Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1563

ACTING PRESIDENT HATCHER: But it seems to be, at least that one, the high figure is correct and not the lower figure.

PN1564

MR SAUNDERS: Yes.

PN1565

It is the case, Mr Houston, that these ABS statistics do not themselves include superannuation?---Yes. Actually I - - -

PN1566

So that is a 10 per cent difference?---Yes, I think that's right.

PN1567

Okay. Returning to the comparison exercise you have performed, you haven't been given any position descriptions for these classifications?---No.

PN1568

You have not interviewed any staff?---I don't claim any more for it than what I've stated here, which is a very cautious – a cautious description of this comparison exercise.

PN1569

You have not interviewed any staff? The answer to my question is, no, you haven't?---No, I haven't. I'm not sure how that would have altered that.

PN1570

You have at best a very limited understanding of what the work these people perform actually entails?---Yes.

PN1571

You are not really in a position to assess what an industry comparator for them would in fact be?---I'm in a position to make, I think, the reasonable assumption that the broader classification that I am drawing from the ABS encompasses the employees the subject of this enterprise agreement.

PN1572

Can I show the witness two documents, please. There are three for the Bench.

PN1573

Mr Houston, you have compared cleaning attendants to other services; the Australian and New Zealand Standard Industrial Classification?---I'm sorry, could you just - - -

PN1574

Sure. Have a look at page 1341?---Yes.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1575

You see there the comparator industry you have selected for train and station cleaners is 'other services'. You recall that?---Yes.

PN1576

Yes. Can you look at the first document in the two that you were handed. It should read, '7311, Building and other industrial cleaning services'?---Yes.

PN1577

If we see in the blue text what that scales down from, that's within the administrative and support services industry classification group?---I'm just trying to see where that is.

PN1578

At the top of the page, above the box that says 'Class'?---Yes.

PN1579

The blue text?---Yes, yes.

PN1580

You can see that building and other industrial cleaning services ultimately falls within administration and support services?---Yes.

PN1581

Can you go to the third page of that, please. You can see that the primary activities for this classification include, among other things, bathroom/toilet cleaning, building exterior and interior cleaning, janitorial services including transport equipment?---Yes.

PN1582

This is more likely to be the correct industry classification for train cleaners, isn't it, Mr Houston?---It may be, yes, but you would need to compare what that list says for other services, which I don't have in front of me.

PN1583

Based on that you would perhaps accept that not only have you compared cleaners to a broad collection of miscellaneous industries, there is a strong chance that it is the wrong industry group to begin with. If you don't agree, just say so?---Well, I

would – in answering that question I think it would be appropriate to look at the same list that sits in the 'other services' classification that I've drawn from.

PN1584

Yes. I want to suggest to you that that list, insofar as it deals with cleaning, relates to domestic and household cleaning. Can you make that assumption for me?---(No audible reply)

PN1585

I'm just asking you to assume that, yes?---Yes, I can make that assumption.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1586

If I'm right about that, you would accept that you have compared cleaners to the wrong industry group?---Well, I'm not even sure that these are mutually exclusive. Building and household cleaning – in here we've got in this one 'residential building'. I mean, these are encompassing classifications, they are not – I don't think they're necessarily exclusive and it could be that these particular employees hypothetically would fall into either.

PN1587

You actually just don't know because you have no idea what work these people do?---I haven't claimed that I do in any specific terms. I've taken the information that I have and - - -

PN1588

Okay. Can you look at the second document, which should in its large text say '7540, Justice'. Looking again at that blue text, we see that this is a subclassification that falls within public administration and safety?---Yes.

PN1589

Looking back a court book page 1341, you see that that is the industry grouping that you have compared train guards to?---Yes.

PN1590

Can I get you to go to the third page of that, you should see the heading 'Primary activities'?---Yes.

PN1591

Which you will see is including Arbitration Court operation and Industrial Relations Court operation?---Yes.

PN1592

Who in this room, apart from the people behind me, is an appropriate comparator for a train guard?---I'm sorry, can you just repeat that question again.

PN1593

Is it the Vice President, his associate - - -

PN1594

MR TAYLOR: Come on.

PN1595

MR SAUNDERS: I withdraw the question. I have nothing further for the witness.

PN1596

MR TAYLOR: Can this witness be excused.

PN1597

ACTING PRESIDENT HATCHER: Yes, all right.

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1598

Thank you for your evidence, Mr Houston. You are excused and you can go?---Thank you.

<THE WITNESS WITHDREW

[2.29 PM]

PN1599

MR TAYLOR: Could I now read the balance and tender the balance - - -

PN1600

MR SAUNDERS: I'm sorry, can I tender those documents that I handed up?

PN1601

ACTING PRESIDENT HATCHER: Yes. If there is no objection the ABS document, 7311, building and other industrial cleaning, will be marked exhibit 26.

**EXHIBIT #26 ABS 7311 - BUILDING AND OTHER INDUSTRIAL CLEANING**

PN1602

7540, Justice, will be marked exhibit 27.

**EXHIBIT #27 ABS 7540 - JUSTICE**

PN1603

So, firstly, Bradley Dixon?

PN1604

MR SHARIFF: Yes.

PN1605

ACTING PRESIDENT HATCHER: The statement of Bradley Dixon, dated 20 January 2023, will be marked exhibit 26(sic).

**EXHIBIT #28 STATEMENT OF BRADLEY DIXON DATED 20/01/2023**

PN1606

MR SHARIFF: There is a reply statement of Bradley Dixon.

PN1607

DEPUTY PRESIDENT CROSS: 26 or 28?

PN1608

ACTING PRESIDENT HATCHER: Sorry, yes, 28 – exhibit 28.

PN1609

MR SHARIFF: There's the reply statement of Bradley Dixon. Is it convenient for us to deal with it?

\*\*\* GREGORY JOHN HOUSTON

XXN MR SAUNDERS

PN1610

ACTING PRESIDENT HATCHER: What's the date of that, Mr Shariff?

PN1611

MR SHARIFF: February 3, 2023.

PN1612

ACTING PRESIDENT HATCHER: Reply statement of Bradley Dixon, dated 3 February 2023, will be marked exhibit 29.

**EXHIBIT #29 REPLY STATEMENT OF BRADLEY DIXON DATED  
03/02/2023**

PN1613

The statement of Robert Joleski, dated 20 January 2023, will be marked exhibit 30.

**EXHIBIT #30 WITNESS STATEMENT OF ROBERT JOLESKI  
DATED 20/01/2023**

PN1614

MR SHARIFF: Then there's a reply statement of Mr Joleski, dated 3 February 2023.

PN1615

ACTING PRESIDENT HATCHER: Reply statement of Robert Joleski, dated 3 February 2023, will be marked exhibit 31.

**EXHIBIT #31 REPLY STATEMENT OF ROBERT JOLESKI DATED  
03/02/2023**

PN1616

MR SHARIFF: The statement of Sam Walker, dated 20 January 2023.

PN1617

ACTING PRESIDENT HATCHER: Statement of Sam Walker, dated 20 January 2023, we'll mark exhibit 32.

**EXHIBIT #32 WITNESS STATEMENT OF SAM WALKER DATED  
20/01/2023**

PN1618

MR SHARIFF: That's the evidence.

PN1619

ACTING PRESIDENT HATCHER: Thank you. Right, Mr Taylor.

PN1620

MR TAYLOR: Yes, if it please. Thank you. Can I start just by addressing the matter that, Your Honour the Acting President raised at the end of yesterday: that is, the issue of what matters under the statute would require you to take into account, given the nature of the proceedings – the Acting President raised with me directly 739, 240, and the like. I think given what happened today at 2 o'clock, one can work on a fairly safe assumption that the section 240 aspect is going to fall away and what the Bench is left with is the 730 applications which upon this agreement commencing will be given ongoing effect by clauses 3, 8A.1 and 11.1 and 124.4, pursuant to which the Bench is given the power by the consent of the parties to arbitrate these two questions.

PN1621

What we accept follows that from is that the objects of the sub part of the Act which deal with bargaining, in section 171, are not objects that the Commission is going to have to have particular regard to. What we're suggesting is that they don't include things, which the Bench may well have regard to, but there's no – we don't place any reliance on it, nor, we accept, are there any mandatory considerations such as those found in section 275, not least because section 275 applies if there is a workplace determination. I don't think we've ever suggested that they were mandatory in this context, even in the section 240, but we don't suggest that there are mandatory considerations in section 275 that need to be taken into account.

PN1622

Again, that's not to say that some of the considerations found in that section were not ones that the Commission might not given some thought to, particularly given the high level that they're identified, such as the merits of the case and the interests of the parties. Can I address one thing in particular, which I think might have been the focus of my friend's concern in this regard, or my friend's concerns in this regard in their reply submission, and that is that the aspect that arises in respect of bargaining disputes that the Commission would have regard to, whether the parties have bargained in good faith. One is clear I think at this stage of the proceedings is that at least in these proceedings, neither side is seeking to make – ask this Bench to make a finding that there has been a failure to bargain in good faith by the other.

PN1623

Mr Shariff I think has reacted somewhat to the evidence we filed with Mr Warnes in his first statement which did put on some material about the way in which Trains went about its bargaining. Can I just indicate that the purpose of that evidence was really prophylactic. It was to protect against any attempt by Trains to suggest that the delay in the ultimate agreement being reached, with the potential - subject to this arbitration – consequential effect of a zero per cent increase for 1 May 2021 is in some way the unions' fault, which is definitely is

not. But given neither side is looking to make that point, we accept that that material really goes no further than to demonstrate that there is no finding that this Commission would make to suggest that the reason why there is a zero per cent increase for 1 May 2021 is somehow to be laid at the feet of the unions in a manner which means that they should accept some adverse outcome in that regard. Finally on this issue of what matter should be taken into account, our friend's submissions draw attention, we say quite appropriately, to sections 577 and 578 of the Act; 577 dealing with the approach of determining matters in a manner which is fair and just and 578, particularly subsection B, that the Commission will proceed on the basis of equity, good conscience and the substantial merits of the matter.

PN1624

There is reference made by the Trains entities in their submissions to the objects of the Act. I think while he was on his feet Mr Shariff identified that those objects are directed to the national economy and I think there is something in the proposition that beyond what might be said to be the vibe of the objects – that is to ensure fairness as against between employers and employees – there is no particular objects, none of the particular subsections of the object of the Act have got direct relevance to the matters, in a manner that would be decisive to the outcome of this proceeding one way or the other, such that the Commission would want to pay particular regard to it.

PN1625

With that background, can I turn to the two questions? I'm going to take them out of order and deal with question 2 first: the claim that the unions put forward is that which is set out in the document which I think – I don't have a marking but I think it's marked MFI2. It might be – I'll just find a copy myself. The Commission will recall the document with, 'xx', in the top left-hand corner – exhibit 3. I thank my friend, it's exhibit 3. As the Commission is aware, exhibit 3 contains firstly a definition of hazardous waste and then contains text that recognises the nature of the work involved in cleaning hazardous waste, customer service attendants should be paid an allowance of \$1.19 per hour on any shift on which they're required to clean hazardous waste for all hours worked on said shift.

PN1626

What that translates to is the figure of \$9.52 for a shift in which they must do work involving the cleaning of hazardous waste.

PN1627

ACTING PRESIDENT HATCHER: Why would they get paid for the whole shift? I mean, cleaners clean for the whole shift.

PN1628

MR TAYLOR: Yes.

PN1629

ACTING PRESIDENT HATCHER: How does that logic apply to a CSA?

PN1630



MR TAYLOR: The nature of the cleaning allowance is – for the cleaners – an allowance for the whole shift, in circumstances where there is no suggestion that a cleaner for the whole shift is dealing with hazardous waste. They're cleaning for the whole shift but they're not dealing with cleaning hazardous waste for the whole shift. The nature of the allowance, albeit expressed as an hourly sum, is properly understood as a per shift payment that at some point in the shift, that work may arise and if it does, there's a payment which is, for cleaners, \$18 for the shift. That's their allowance. It's \$2.25 multiplied by their eight hours. So they get \$18. The claim is that where a CSA is doing cleaning which involves hazardous waste, they get \$9.52.

PN1631

It would be, if you were to pay them an allowance for the particular hour that they did the hazardous waste work, in our respectful submission that would mean you'd have to have a more significant payment than \$1.19. You don't need to see the graphic pictures to think you'd want to be paid more than \$1.19 to be doing that type of cleaning for a particular hour. We're talking about \$9.52 is the claim for a shift in which involved that work. That's effectively the nature of the claim. Can I say, quite frankly – and this text is based on a proposed – the proposed text put during the course of bargaining by Trains itself, albeit for cleaners rather than for CSAs, and can I ask the Bench to go to the court book and turn up page 1936?

PN1632

Page 1936 is a letter to Mr Toby Warnes from Mr McDonald. Page 1937 contains a proposal which contains a definition of hazardous waste and in A and in B, text as to when it would be paid. At this point in the negotiations, the offer that was being put by Trains was put on a per-shift basis. In this case it was \$5.92, reflecting a 74-cent-per-hour allowance but paid for each hour on a shift where the person is working. So the differences between the claim that we put forward and this proposal are firstly that it extends to CSAs; secondly, that the figure is \$9.52 and not \$5.92 and third and importantly, only on the shifts where the CSA actually does that work, whereas this proposal was that it be paid to CAs for all shifts where they were working, even if they didn't actually do the hazardous waste work. We move from the proposition that we think the Commission will have little difficulty accepting that it's entirely understandable that Trains would accept that there should be a further allowance recognising the nature of this particular work once you give some consideration of the nature of the work in question. It's clearly - - -

PN1633

ACTING PRESIDENT HATCHER: But it's not new work. This work has always been part of the work of CSAs.

PN1634

MR TAYLOR: It's always been part of the work of cleaning assistants and CSAs. What hasn't happened until the course of these negotiations is a recognition that there ought to be some allowance which recognises the nature of – the highly unpleasant nature of this work. Your Honour's statement is true. It's equally true for CAs. What our proposition is, is that there is nothing inherently surprising within the course of negotiation Trains would accept the proposition that it's appropriate that there be some allowance which recognises the nature –

the unpleasant nature of this work over and above, even though that work has been done. It's not a suggestion that it's new work. It's just work that hasn't been properly recognised and Fraser's recognised it.

PN1635

ACTING PRESIDENT HATCHER: Why do you say it hasn't been properly recognised? That would require some historical analysis of the rate of pay for CSAs, which is significantly higher than that for cleaning attendants.

PN1636

MR TAYLOR: Yes, I think when I say, 'properly recognised', I wasn't using that expression in a work value sense. I was using the expression in a practical sense, that it wasn't recognised by any specific allowance. I accept the proposition that it may or may not have been – there is no evidence one way or the other – recognised in the rate of pay in the past. All I'm identifying is that during the course of these negotiations, there was an acceptance that there ought to be a further amount paid to cleaning assistants because they do this work over and above what they'd previously been paid. The evidence - - -

PN1637

ACTING PRESIDENT HATCHER: So the difficulty I have – speaking for myself, Mr Taylor – is you're trying to piggy-back off something that was agreed between the parties to justify something which you want us to award as a matter of industrial merit.

PN1638

MR TAYLOR: Yes, and we say that the question is effectively a question of industrial fairness. We have a recognition that for cleaning assistants there ought to be – or there is – putting aside objective merits – there is an acceptance that there be an additional allowance for doing a particular type of work in circumstances where it is not in dispute that CSAs also do that work. They also clean hazardous waste.

PN1639

One doesn't need to rely only on the evidence of the union witnesses in that regard. Trains witnesses, Mr Dixon, who was not cross-examined, paragraph 22 to 30, and Mr Devitt, who was cross-examined, accept that CSAs also do this work, and that the safe work instruction applies in exactly the same manner, because they do the same work, in the same manner, using the same techniques and the like.

PN1640

The Bench will recall in particular Mr Devitt's evidence in cross-examination that the cleaning assistants will get a full allowance, a full \$2.25 or \$18 a shift, for every shift, whether they clean hazardous waste or not, notwithstanding that our station cleaners, they don't clean graffiti on a regular basis, they do not wear respirators; what they do do is clean hazardous waste on a semi-regular basis.

PN1641

So we have an allowance of \$18 for every day that a station cleaner is working regardless of whether they're in fact doing any of the three things on that

particular day, in circumstances where on his evidence the only one that they would do is clean hazardous waste, and even then on a semi-regular basis.

PN1642

That is to be compared to the customer service attendants, who, according to Mr Devitt's evidence, also do not clean graffiti as part of usual work, also do not wear respirators, also do clean hazardous waste. The only difference between a station cleaner and a CSA is that, on his evidence, a station cleaner does it on a semi-regular basis, whereas a CSA does it from time-to-time. That was the distinction.

PN1643

ACTING PRESIDENT HATCHER: But the way of expressing - that's as a flow-on argument, is it? I mean, the simple fact is that for every hour a CSA does cleaning duties, as compared to every hour that a cleaning attendant does cleaning duties, a CSA gets paid a much higher hourly rate to start off with.

PN1644

MR TAYLOR: Yes.

PN1645

ACTING PRESIDENT HATCHER: Doing the same work.

PN1646

MR TAYLOR: Yes. The difference being that – and so much of what your Honour has put to me I have no difficulty accepting, but one has to understand that the nature of the claim that's being put forward is one wherein this, what's effectively a hardship allowance, is only claimed when they're doing this task, not generally, in circumstances where, we say, it's industrially fair that they also get an allowance for doing the same work that is otherwise being recognised by way of the increased rolled-up allowance paid to cleaning assistants.

PN1647

And yes, I don't walk away from the fact that it can be characterised as a flow-on, but fundamentally the industrial fairness is, we say, evident, that is, if they're doing the same work, at least on the days that they have to do that work, it's appropriate that they too get an allowance which recognises the nature of that highly unpleasant work, in the nature of the hardship, at a rate which would be \$9.52 for the shift.

PN1648

Can I turn then to the first question? The parties have asked the Commission to determine what are fair and reasonable wage increases over the period 1 May 2021 through to the period ending 30 April 2023, effectively the period from when the previous enterprise agreement came to the end of its nominal term.

PN1649

During the course of my submission I will be making reference to the Commission's information note. I'm not sure whether that's been tendered into evidence, but it might be convenient if it were either marked or made an exhibit, if it hasn't been.

PN1650

ACTING PRESIDENT HATCHER: Are you - - -

PN1651

MR TAYLOR: I'm content to tender it.

PN1652

ACTING PRESIDENT HATCHER: - - - handling that, Mr - - -?

PN1653

SPEAKER: Yes.

PN1654

ACTING PRESIDENT HATCHER: Let me locate it then. It will be marked exhibit 33, the information note.

### **EXHIBIT #33 INFORMATION NOTE**

PN1655

MR TAYLOR: What that information note records, in a manner which we understand is not contentious between the parties, is a change in inflation over the period 1 May 2021 to 30 April 2024 of some 16.6 per cent, using the CPI Sydney standard extrapolated forward using the All Australia projections of the Reserve Bank.

PN1656

What's clear, so even if one has regard to in some manner, which I'll come back to, the \$4500 payment, the increases in the current enterprise agreement are insufficient to maintain real wages over that period, and that's before of course you contemplate any concept of productivity increase.

PN1657

So at its most fundamental level, we don't understand that Trains are in a position to contend otherwise than, as exhibit 33 identifies, the new(?) results of the increases in the current enterprise agreement will be insufficient to maintain real wages.

PN1658

As to a productivity increase, can I just remind the Commission of the evidence of Mr McDonald? Under the NSW wages policy, Trains, in circumstances where the submission is that the enterprise agreement is consistent with the wages policy, could not offer 3.5 per cent inclusive of super for the year 2023/24 unless there was a substantial employee contribution made to productivity-enhancing reforms.

PN1659

For our part, for the reasons set out in Dr Stanford's evidence and in our written submissions and opening, we do say that it is appropriate that when doing the exercise one has regard not only to changes in the cost of living, but also to the notion that it's appropriate that there be increases which have in mind some level of productivity increase, in circumstances where, as I've said, it would appear

Trains are proceeding on the basis that at least 0.5 per cent can be attributed to a substantial employee contribution to productivity-enhancing reforms.

PN1660

ACTING PRESIDENT HATCHER: Where does that 0.5 per cent turn up in the current wages position?

PN1661

MR TAYLOR: In the current wages policy?

PN1662

ACTING PRESIDENT HATCHER: Where does that 0.5 per cent turn up in the current wages provisions?

PN1663

MR TAYLOR: It's at 3.2. At 3.1 it indicates that the wages policy is 3 per cent for every year.

PN1664

ACTING PRESIDENT HATCHER: No, in - - -

PN1665

MR TAYLOR: I'm sorry, where is it in the enterprise agreement?

PN1666

ACTING PRESIDENT HATCHER: (Indistinct) currently provides for, where do we find that 0.5 per cent located?

PN1667

MR TAYLOR: We find it located as best one can infer from the increase commencing 1 May 2023 of 3.03 per cent, which is an amount after having regard to superannuation change, which equates to the 3.5 per cent for the purposes of the NSW government wages policy.

PN1668

ACTING PRESIDENT HATCHER: I thought the super change was taken into account in the 2022 increase.

PN1669

MR TAYLOR: Yes, and there's a further increase - - -

PN1670

ACTING PRESIDENT HATCHER: A further increase, all right.

PN1671

MR TAYLOR: The following year there's a further half per cent increase in superannuation, which is why we get that odd figure of 3.03, which is 3.03 plus super equals 3.5.

PN1672

ACTING PRESIDENT HATCHER: In exhibit 17, which appears to constitute an explanation agreement by the employers, which the employers appear to have accepted by voting for the agreement.

PN1673

MR TAYLOR: Yes.

PN1674

ACTING PRESIDENT HATCHER: On the page numbered 3, under 'Financial benefits and payments', it characterises the one-off payment as being – I hope you can see this; it's the fourth dot point, last sentence – 'in lieu of our people having not received a pay increase since expiry of the enterprise agreement on 1 May 2021.'

PN1675

MR TAYLOR: Yes.

PN1676

ACTING PRESIDENT HATCHER: Does that mean effectively the parties agree that the \$4500 in effect dealt with the lack of a nominated wage increase for 1 May 2021 to '22?

PN1677

MR TAYLOR: No such agreement can be inferred. With respect, what that indicates is that government has expressed through this document to employees a rationale that it says it's putting forward. On no view could that be said to be backpay referable to any particular calculation, not least because it's a flat sum paid to all employees regardless of their rate of pay, but also including regardless of whether they're full-time or part-time or indeed casual.

PN1678

It is simply a lump sum which the government has characterised as being for a certain purpose, but there's no evidence to suggest that the unions have accepted four-and-a-half thousand dollars as offsetting in some way the absence of a pay rise in the particular period, beyond - - -

PN1679

ACTING PRESIDENT HATCHER: But it was agreed to by the employees when they voted for it on the basis of that representation, wasn't it?

PN1680

MR TAYLOR: Yes.

PN1681

ACTING PRESIDENT HATCHER: Can't we take that as being the agreement?

PN1682

MR TAYLOR: At its highest, and I do want to come back to the 4-and-a-half per cent and how it's treated, if the Commission is going to have regard to it, at its highest one has regard to it in a manner of providing some level

of compensation in circumstances where there's no increase between after 1 May 2020 and until 1 May 2022.

PN1683

So there's a two-year period, but the suggestion that the Commission, as a result of this sentence, can pay no regard to the absence of any increase on 1 May 2023 is one we would suggest the Commission would not take, because on the figures that we have, including Mr Houston's own figures, the inflation for that period is substantially more than \$4,500 for the average remuneration.

PN1684

Clearly it varies, depending on the employee's actual rate of pay, and for some that figure will be higher – the percentage recognition will be higher, for some it will be lower. We're talking in Mr Houston's evidence as an average.

PN1685

But we don't accept the proposition that the Commission would, as a result of that payment, disregard the first year of a zero per cent increase in circumstances where, depending on whether one's looking forward or backwards - and I'll come to that; you're talking about inflation during that period of either 5.3 looking forward or 4.1 looking backwards – because if you do, the difficulty with a one-off payment is, as the Commission is very well-aware, it then means that in future – and that's that one-off payment continues - in future years there is a drop in the real value of the wages going forward, that needs to otherwise be addressed, in our respectful submission, by the Commission in its determination in respect of this matter.

PN1686

I will say something more about the \$4500 in a minute, but can I just turn for a moment to another offsetting factor that Trains urge upon the Commission, which we say the Commission would not have regard to, and that is the amount of 2.1 per cent said to be – asserted to be in submissions – an increase in overall remuneration.

PN1687

One thing I think is clear from the evidence of Mr Quaintance is that that 2.1 per cent was not an assessment of increases in remuneration, not just for any particular employee, but not in fact for all employees, but rather estimates, high level estimates, some might say guesstimates, of changes in employer-related costs. And that became perhaps clearest when he accepted the proposition that that figure included for example the increased amount that would be paid as a result of the decision to provide accommodation providers directly rather than paying the amounts to employees, which would have an increase in the cost to Trains, but of course did not increase the remuneration of employees.

PN1688

Similarly that the costings included new positions being created or additional work being done on weekends. It just demonstrated what we're not talking about here is 2.1 per cent increase in remuneration. Evidence further suggested that a number of the calculations were highly doubtful, including calculations done on assumption of changes when in fact there have been no changes, and questions as



to how the offsets were calculated in circumstances where they were not detailed in the statement and Mr Quaintance genuinely was unable to know whether certain offsets about which Trains witnesses have given evidence and were not cross-examined had or had not been taken into account at all.

PN1689

At its best one can say there is some portion which will increase, have the effect of increasing take home pay for some smaller subsets of employees, but even then there were some questions as to what extent these things would actually have the effect that's being costed. Mr Quaintance couldn't tell us for example whether the assumption upon which a one and a half per cent allowance for professional engineers had been done assumed all engineers or only a subset of them would be paid it.

PN1690

It is true that there will be some increases in employee related costs as a result of these changes, but it doesn't follow - it might be for the purpose of government wages policy that that's considered by Trains somehow relevant, but we say it's irrelevant to the assessment of whether wages are fair and reasonable given changes in the cost of living, and really the whole 2.1 per cent should be put aside.

PN1691

Before coming to how we say the Commission would assess the differences, including having regard to the \$4,500 can I just say some things about Mr Houston's evidence. The first thing is to say that whilst Mr Houston was in effect asked to look at a datum period that goes back to 2009, some 14 year period, the Commission we say would only in fact have regard to changes during the course of the nominal term of this agreement, or that is from the end of the nominal term of the last agreement.

PN1692

ACTING PRESIDENT HATCHER: So does that involve an acceptance that the effective date in point for analysis is 1 May 2021?

PN1693

MR TAYLOR: It is, except I do need to come to this notion that Commissioner Riordan raised as to whether on that date you're looking backwards or forwards, and for reasons I will come to it doesn't actually make any difference, but I just want to explain why it doesn't make a difference. But, yes, it does involve that acceptance.

PN1694

I have already addressed some of the other assumptions that Mr Houston's figures include, including the fact that whilst he had regard to \$4,500 it has been placed in the wrong year, and that does have quite a significant effect as the Commission's note, exhibit 33, demonstrates, that by placing it in the final year it makes the final year increase, which is critical to his overall conclusion, appear to be very significant. If you place it in the year it is being paid the net result as you see from page 3 of the Commission's note is that on the assumption of a starting point of an average remuneration of \$119,535, such an average remuneration will actually drop in the final year as a result of the \$4,500 being paid and then not



being paid after you apply the 3.03 per cent. So the placement of that is an important factor. His calculations of course include the 2.1 per cent that I have referred to.

PN1695

We have heard in cross-examination today that those calculations include errors, some fairly fundamental errors like including superannuation in the context of total remuneration based on amounts which are not superable, in particular overtime. The cross-examination today also identified that the Commission, we say, as a result of that cross-examination, and frankly as a result of just looking at section 3.3 of the report without cross-examination, would place no weight on Mr Houston's evidence of the comparison of rail workers' value of the five classifications against some notional all Australian rate for certain industries.

PN1696

I think what that evidence demonstrated is that whatever Mr Houston's qualities are labour market economist is not one of them. To take rail guards or other rail employees and compare them to the entire retail industry and say that there's some relevant or valid comparison that can be made is - and he has to be stated to be rejected. It didn't of course get any better when you found out that the figures for the rail workers were inflated by 10 per cent because they included super, and the ABS figures didn't. And by way of comparison, and of course the fact that as anyone looking at that ABS run will see, the stats are broken down private sector and public sector, and there is a substantial difference to the extent to which there's any validity of looking at the average cash rate of pay for a full-time worker in the retail industry and comparing that to a rail worker. You really have to compare public sector to public sector to have any valid comparison. I don't anticipate any weight will be placed (audio malfunction) Mr Houston's report by our learned friends.

PN1697

So coming to the increases that we say and how they should be calculated the starting point of course is that what we know, what is not in doubt is that the pay rises in the current enterprise agreement will lead to a reduction without any further action taken by the Commission in (audio malfunction) in real terms of employer remuneration over the period, and that is true whether one is looking backward or looking forward.

PN1698

Now, what I mean by looking backward and looking forward is just this; at times, and I think the way in which both parties evidence tended to focus in this case, the comparison is between the pay rise at the first day of the relevant period, so let's say 2.53 on 1 May 2022, and inflation expected for the following 12 months, and a comparison is made between the two, and to the extent to which the pay rise is not going to be sufficient then there will be on that forward looking basis employees can be said to be suffering a loss in real terms over that period.

PN1699

The alternate approach Commissioner Riordan raised at one point with Mr Saunders was taking that date of 1 May 2022 at 2.53 per cent and comparing it to inflation for the 12 months leading up to that. Both are approaches, but for the

reasons I am about to come to they both result in effectively the same outcome, because the increases on the first and last year are similar, and the inflation is also similar, but I will come to that clearly. But for our part we think the appropriate approach the Commission might adopt and would adopt is to look at the appropriate increase on the first day, 1 May, on the three occasions; 1 May 2021, 1 May 2022 and 1 May 2023.

PN1700

So starting with the first increase, 1 May 2021, we know that the enterprise agreement provides zero per cent. We know that inflation if you're looking forward, and I'm really relying here on exhibit 33, the Commission's note, is 5.3 per cent, although that figure is effectively the same in the two expert reports. So I don't think there's a distinction there. And we also know that the government wages policy at that time if applied to the maximum would have been 2.5 per cent. For our part we say there should be an adjustment for that year and the adjustment at a simple level is 5.3 per cent, that is the difference between zero and the inflation for that year going forward.

PN1701

DEPUTY PRESIDENT CROSS: That was the June 22 figure, wasn't it, not May?

PN1702

MR TAYLOR: Yes. The figure itself is drawn from data for the year ending June. I don't understand that it's suggested that the difference between the period May and June would be significant in that regard.

PN1703

ACTING PRESIDENT HATCHER: I thought both experts accepted it as June, the June figures as close as you can get.

PN1704

MR TAYLOR: Yes. The difference between those two figures at its simple level is 5.3 per cent. Then the following year commencing 1 May 2022 the enterprise agreement provides an increase of 2.53 per cent, and the inflation for that year 6.3 per cent. So there's something in the order of a little under 4 per cent difference.

PN1705

Now, regard we say does not have to be had to the \$4,500 because it is not back pay, it's not said to be back pay, notwithstanding exhibit 17's explanation to why it's been paid, but if it is to have regard it's not something which we say offsets the entire amount for the year commencing 1 May 2021. Mr Houston estimated it based on average pay to be 3.21 per cent, clearly less than 5.3 per cent.

PN1706

But more importantly as Dr Stanford said if you're going to have regard to it you wouldn't have to spread its effect over the three years, and so we're talking about something substantially less than for that year 3.21 per cent, something more like the 1 per cent effect. And the other thing one has to be very careful about with respect to this amount is that it being a one off payment the danger of placing too much weight on it is the flow on effect it has for the final pay, and the flow on effect it has on comparing the change in real value of annual remuneration.

PN1707

One thing of course the Commission is mindful of it's going to be paid in one financial year, but according to exhibit 17 it's referable to the earlier financial year if one is looking forward. Clearly of course if the Commission is going to have regard to it it's only going to have regard to it once.

PN1708

The final increase, 1 May 2023, the enterprise agreement has an increase of 3.03 per cent, and if one is looking forward the inflation for that year is 4.2 per cent. So again there is a difference, and in this case the difference is 1.17 per cent. So before you have regard to the \$4,500 payment and making, I accept, a slightly broad approach of simply adding those figures together, one is reaching a figure of a little over 10 per cent difference between the amounts in the enterprise agreement, zero, 2.53 and 3.03, and inflation 5.3, 6.3 and 4.2, need to be achieved in order to bring the remuneration back to a level which is consistent with the increase in CPI.

PN1709

And just pausing for a moment the document, the Commission note document, this became clear in the cross-examination of Mr Houston, it records a difference of minus 9.4 per cent, but as Mr Houston accepted, for an employee to be lifted – for the average employee to be lifted to \$139,388, an increase of more than 9.4 per cent is required. The increase has to be 10.38 per cent. That's just a matter of maths. Commissioner Riordan, the question about looking backwards identified the same outcome is going to be – on our analysis – the same approach will – the approach is going to lead to broadly the same outcome. If on 1 May 2021, where there was a zero per cent increase, you don't look forwards, you look backwards. According to the Commission note, albeit this figure is taken from a diagram on the second page, inflation for that was 4.1 per cent for that year ending effectively on that day so the difference between the two – the difference between zero per cent and minus 4.1 – and 4.1 per cent is of course minus 4.1 per cent.

PN1710

The following year you are now saying there is a 2.53 per cent increase under the enterprise agreement and you compare that to the previous 12 months of inflation – 5.3 – and again you have a difference – in this case the difference is minus 2.77 and then in the final year an increase on 1 May 2023 of 3.03 per cent can be compared to the inflation up to that date for the previous 12 months of 6.3 per cent – a negative of minus 3.27. So again, if both of these calculations put aside the \$4,500, again you're getting to a cumulative difference of around a little over 10 per cent. So the figures work out much the same way in this particular situation and hence - - -

PN1711

COMMISSIONER RIORDAN: The issue is though, Mr Taylor, that if you go back to 2021, the big spike was in the June quarter for CPI in 2021. In the March quarter of 2021 my recollection is that the inflation rate was 0.9 per cent.

PN1712

MR TAYLOR: Yes, there was - - -

PN1713

COMMISSIONER RIORDAN: So it jumped.

PN1714

MR TAYLOR: It was a very volatile period and hence at that point, there was perhaps a greater reliance on the true meaning of the headline inflation. But the headline inflation figure for the year ending was 4.1. So if you are going backwards – I mean, there is no doubt, Commissioner Riordan, if the parties on 1 May 2021 were negotiating, the unions would be focused on the last three months and the employers would be saying, 'Well, what about the first nine months of the last year'? But if one is taking the same approach – which is all I'm doing in a broad sense – 4.1 per cent, you'd end up with much the same thing.

PN1715

COMMISSIONER RIORDAN: I was working on the March quarter figures on the basis that the end of March is closer to the end of April than the end of June.

PN1716

MR TAYLOR: I haven't done that calculation so I'm unable to assist you.

PN1717

COMMISSIONER RIORDAN: That's (indistinct). That's just the figure I worked on based on where it fell and what (indistinct).

PN1718

MR TAYLOR: Yes.

PN1719

COMMISSIONER RIORDAN: Now, I need to ask you a question, Mr Taylor - -  
-

PN1720

MR TAYLOR: Yes.

PN1721

COMMISSIONER RIORDAN: - - - based on a comment that Mr Shariff made yesterday in relation to my involvement in this arbitration and my obvious involvement in the numerous meetings of conciliation that they undertook, in relation to what information that I should carry with me into the arbitration?

PN1722

MR TAYLOR: I'm sure Mr Shariff – notwithstanding any thought that popped into his head while he was on his feet – was not suggesting, Commissioner, that you would have regard to any material that was raised off the record in conciliation but would only have regard to the evidence that was before the – is before the Commission in these proceedings. I'm sure he is not suggesting otherwise.

PN1723

COMMISSIONER RIORDAN: That's not what he said.

PN1724

MR SHARIFF: I'll speak for myself.

PN1725

MR TAYLOR: Certainly, that would be our view – that would be our view, Commissioner. Clearly there would be all sorts of procedural fairness issues raised if parties started to ask members of the Bench to have regard to things that they heard off the record in conciliation and certainly for our part we say that no member of this Commission would have matters that aren't part of the evidence and submissions heard during the course of these proceedings.

PN1726

COMMISSIONER RIORDAN: Perfect.

PN1727

MR TAYLOR: Can I say this: the figures that we identified in the submissions I've just been making amount over that course of something as I said it would require an increase something in the order of 10.4 per cent, and (indistinct) wages back to where they would be nearly to take account of inflation. We say that in addition the Commission ought to be – consistent with long-run macro-economic data – setting wages on an assumption that a further 1 per cent per annum referable, as Dr Stanford said, as a conservative figure, to ongoing improvements in productivity is appropriate and fair and the effect of that is captured by the proposed outcome in our written submission at paragraph 48. That is, once you have regard to changes in the cost of living and the further 1 per cent per annum, you end up with – on our submission – amounts which if smoothed over the course of the three years – to 6 per cent per annum from which of course one would take the amounts that are otherwise being paid and award the difference.

PN1728

That remains our position upon which we urge the Commission to conclude. Can I say one further thing in light of Mr Shariff's suggestion – that the Bench ought to provide some notice to the parties as to what it's thinking from a procedural fairness point of view. For our part, so long as the Commission is not minded to go outside of the parameters of zero through to our claim, the parties have no need for any further information in advance of the outcome of the decision in order to provide procedural fairness. I think both parties proceed on the basis that the issue is joined in that regard and it's certainly unclear why if the Bench were, for example, considering variations which may include increases different to that which the unions have proposed but nevertheless increases, that the Trains entities must be given some notice of that and opportunity to put further submissions on that, unless of course the Commission is minded to consider amounts over and above that which the unions have been seeking.

PN1729

Can I just – before I sit down – congratulate Your Honour the President of the Fair Work Commission for your appointment - - -

PN1730

ACTING PRESIDENT HATCHER: Thank you.

PN1731

MR TAYLOR: - - - which has come to my attention while I was on my feet.

PN1732

ACTING PRESIDENT HATCHER: You shouldn't have done that before I asked you a question. I was just going to say, what was the unions' wages position in the negotiations? Did they advance a figure either in the original log or subsequently?

PN1733

MR TAYLOR: My recollection – and I accept I'm giving evidence from the bar table – my recollection from the good faith bargaining proceedings is that there were a variety of positions put at various points during the course of negotiations. The negotiations commenced, of course, some 18 months or more from the time that they concluded, during which time inflation considerably increased and so one wouldn't, we say, place any particular weight on a starting point in negotiations. Ultimately it's what is fair and reasonable in light of what is in fact the evidence before the Commission. As to what the precise positions were at various times – I've been given a note but I'm not sure I understand it. Let me just get some – I can deal with that.

PN1734

Is the Commission looking for some evidence as to what the respective positions of the parties were at various points in time or only at key points in time?

PN1735

ACTING PRESIDENT HATCHER: I'm just curious as to whether the – having regard to the submissions, where the rail entities appeared not to know that the union's claim was 666, as it were. I'm just wondering was that the claim advanced at some point in negotiations?

PN1736

MR TAYLOR: No. I'll turn up the reference but what I've been given is a note which is referable to some material in Mr Warne's evidence statements which were annexed to his first statement, that the union's position in negotiations was 3.5 per cent per year plus a further 4 per cent supplement per year, referable to inflation; so 7.5 per cent inflation, recognising a change in inflation. So there was a – and the 4 per cent referable in negotiations to amounts that have been achieved by nurses in Queensland. I'll have to turn that up. I'm not – my recollection is 3.5 per cent plus some amount for inflation but as I said, the amount for inflation is something that necessarily would need to change if inflation figures became better known.

PN1737

But I think there is some (indistinct words) I'll just have to find the reference. It may be that I need to correct what I said.

PN1738

ACTING PRESIDENT HATCHER: Thank you. Mr Shariff.

PN1739

MR SHARIFF: Yes, thank you. Could I commence my first order of business by congratulating Your Honour for your appointment as President - - -

PN1740

ACTING PRESIDENT HATCHER: Thank you.

PN1741

MR SHARIFF: - - - and Your Honour has two members of the Bar Council here appearing before Your Honour and we'd like to extend – and I'm sure we'll do it more formally – our congratulations on behalf of the Bar Council.

PN1742

ACTING PRESIDENT HATCHER: Thank you.

PN1743

MR SHARIFF: Now that I've said that, can I turn to, Your Honour, a series of matter that we think are essential for determination before one gets to the question of what the fair and reasonable outcome should be on question 1. I'll deal with question 1 and question 2 later. I said yesterday that the matter before the Full Bench raises an important question of principle because it is novel in the sense that on our research the Commission has never before determined what wages ought to apply for the purpose of an enterprise agreement as I recall it and on the basis of the researches we've done.

PN1744

ACTING PRESIDENT HATCHER: I think it has occurred but the problem is that under the previous legislation the outcomes were not published. I certainly participated in arbitration about wages (indistinct).

PN1745

MR SHARIFF: Yes, that's why I'm saying based on our research we haven't been able to find it, which begs the question, what is the normative standard or yardstick by which one determines these questions for resolution, particularly question 1? I said yesterday that one has to start with the objects of the Act. The objects of the Act, as I said yesterday, and Mr Taylor accepts, apply to the national economy but that doesn't mean that they're entirely irrelevant. The objects of the Act need to be considered and I'll come to that. We've also said that sections 577 and 578 have a role to play, and I'll come to those.

PN1746

As is the structure of the Act and the structure by which wages are set within the parameters of the Act, we know that wages are set through the minimum wage, national wage orders, through modern awards and they're to be bargained for through the process of enterprise bargaining. To look at each of those in a calibrated fashion, we say, is the appropriate way for the Commission to approach the task. By having made those initial observations, take Your Honours to section 3 of the Act and in particular emphasise that in subsection B, part of the objects of the Act are to ensure a guaranteed safety net of a fair and relevant enforceable minimum terms and conditions. That has been done. The process of enterprise bargaining isn't directed to determining safety net standards and yesterday, I took you with reliance upon the annals of industrial history as being irrelevant to the



questions currently before this Commission. Likewise, in relation to subparagraph (c) of section 3, what is more relevant to the task of the Commission is subsection (f).

PN1747

An object of the Act is to achieve productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good-faith bargaining obligations. Clearly an object of the Act is to encourage enterprise bargaining. An object of the Act is to encourage productivity being achieved through the process of enterprise bargaining. So whilst the Commission has had jurisdiction conferred upon it by the consent of the parties the Commission is doing that which the parties have failed to do, which is to agree on a set of remuneration having regard to these objects of achieving productivity and fairness. Fairness cuts both ways. It cuts both for the employees and for the employer, and in this instance where the employer is a public sector employer (audio malfunction) the interest of the public at large as well.

PN1748

Coupled with that section 578 of the Act drives attention back to the objects of the Act. That's manifested in subsection (a):

PN1749

*In performing the functions or exercising powers in relation to a matter the Commission must take into account the object of the Act, and any objects of the part of the Act, and of course equity, good conscience and the merits of the matter.*

PN1750

In relation to the merits of the matter the whole of our learned friend's address orally has addressed itself to the merits of the remuneration ignoring all other conditions under the enterprise agreement. One doesn't take a myopic look at wages divorced from all under conditions as part of the package of terms and conditions and (indistinct) and so on delivered by the enterprise agreement through a process of bargaining of a period of something in the order of 18 months. So when one looks at those merits one has got to take into account that disagreement does deliver, as Mr Warnes accepted, a good deal and a lot of the matters that were claimed for in the log of claims advanced by the union.

PN1751

Relevant to the exercise of the Commission's powers here is the exercise of the Commission's functions in setting the Fair Work minimum wage. Could I provide to the Commission an annual wage review from 2021/22, and just to frame the discussion at the time that the Commission was dealing with the annual wage review the effects of inflation and increases in headline and other (audio malfunction) in the inflation was well advanced. The impacts of interest rises had started to be seen. And the Commission at the time of making its decision in June was clearly concerned with ensuring that the lowest paid in the economy were compensated to increase their living standards not just above the poverty line, but to keep in touch and keep pace with inflationary pressures within the economy.

PN1752



Within the decision could I take your Honours to paragraph 35 and following which deals with - what the Full Bench recorded was the trend in wages growth measured by the wage price index. The wage price index, as the Commission observed, had reached 2.4 per cent over the year to March quarter 2022, and had been grown again by below 3 per cent and then .7 per cent in the quarter, the second in a row, which is the highest quarterly growth since the March quarter of 2014.

PN1753

Then the Commission sets out in paragraph 36 what the wage price index and average annual growth of wages have been in a sectorial analysis. Concluding in paragraph 37 that over the 10 years to the December quarter 2021 the national minimum wage in the modern award minimum wages have increased by more than the wage price index and have closely matched growth in average weekly ordinary earnings.

PN1754

An important aspect of that is the recognition by this Commission that there has been growth within the economy in wages, including across all sectors. In relation to inflation can I invite the Commission to turn to paragraph 42 and following where picking up the points that Commissioner Riordan has observed with our learned friend, and in particular in the chart at chart 7 noting the increases and the spikes in underlying inflation.

PN1755

There is no doubt and we accept that there has been inflationary pressure within the state economy over the last 12 (audio malfunction) months. Having considered those matters the Commission also noted what the trends were in enterprise bargaining. In that respect could I take the Full Bench to paragraphs 80 to 82 of the judgment. Relying upon data published by the Attorney-General's Department the Commission notes:

PN1756

*For agreements in the private sector the AAWI was 2.7 per cent in the December quarter and has been around 2.6 to 2.7 per cent since the September quarter 2020 and then in the public sector it has been roughly 2.3 per cent.*

PN1757

Now, that data undoubtedly members of the Commission would be aware would accord with your experience in the approval of enterprise agreements as an average. I'm not saying in each (audio malfunction) scenario of the types of wage increases one has seen across the economy through collective bargaining.

PN1758

ACTING PRESIDENT HATCHER: Well, it's obviously increased since then.

PN1759

MR SHARIFF: Well, it's increased since then, and I think there's been - I think I saw some recent report that it had increased to something in the order of 3 per cent. But what we haven't seen is the extraordinary claim made here of 6 per cent for each year.

PN1760

ACTING PRESIDENT HATCHER: There's some (indistinct) of comparisons because these agreements which are locking in agreements over a period of three, four year - - -

PN1761

MR SHARIFF: Yes.

PN1762

ACTING PRESIDENT HATCHER: - - - increases for three or four years ahead at a time when perhaps optimistically RBA says we'll be back to 2.5 per cent in two years. Whereas this case is an element of looking back upon a period of (indistinct) inflation.

PN1763

MR SHARIFF: I think the ultimate point I'm making is the rival position between the parties could be stated in this way, and I will put my pejorative spin on it, which is ignore all the other conditions under the enterprise agreement, ignore the fact that we're giving you a one off payment of \$4,500, as a matter of principle this Commission ought to maintain wages, that is impose wages in the enterprise agreement that keep track with CPI in such a way that you must maintain the real wages of these employees, and that's really - and we say we accept - I think Mr Taylor invited this at one point - we accept that if one (audio malfunction) accepts the position we have put forward there would be a differential between if the current forecast comes to pass what CPI will be at the end of the period of the agreement and what the wage rates will do. We accept that.

PN1764

A question really is, is it the role of this Commission to plug the gap by way of process of forced arbitration to deliver employees a fundamental necessary that they must have real wage growth over the period of the agreement. That question can only be answered by reference to some normative standard, some yardstick that says, well it is necessary in a collective bargain that we must maintain real wage growth for employees. And the force of what I am putting through the course of the examination of the decision of the Full Bench is that this Commission doesn't even take that approach in the setting of the Federal minimum wage.

PN1765

It doesn't even take that approach when it sets minimum wages and changes to minimum wages in the modern awards. Yet the combined rail unions invite this Commission to impose that outcome, not on the lowest paid, not on the minimum safety net, but on what ought to have been a bargained outcome. And as I said yesterday this Commission I would invite would be wary of the additional jurisdiction it has recently picked up in respect of intractable bargaining disputes.

PN1766

Let me try and tease that out. It is no small thing for parties to come to the Commission having had a period of prolonged industrial disputation and say we can't agree, you fix it. And if that is the case they come along and by reference to some decision issued here in this dispute, parties come along and say, well you've

set the bar, you've set the standard. We are entitled to come along and ensure by process of arbitration of an intractable bargaining dispute or a dispute brought under the provisions of enterprise agreement that you the Commission must maintain real wage growth for us. And on the unions' position forget productivity, forget any other conditions, as long as we get real wage parity over the course of the agreement, and that's what's being called on by the unions by way of outcome in these proceedings.

PN1767

Just returning to the decision to make good the point if I then take the Commission to paragraph 166 where the Commission draws on the major economic parameters stipulated in the budget (indistinct) of last year, and you will see in table 1.1 the budget set out forecasts of both consumer price index and the wage price index. In other words the projections in the budget, and as your Honours will appreciate made variously by the RBA over time, had inbuilt with them projections about wage growth.

PN1768

So the projections of inflation necessarily consider what type of wage growth there will be, and here we see in the consumer price index for the estimates, the forward estimates, are based on particular assumptions and forecasts about where the wage price index will be; nowhere near 6 per cent.

PN1769

ACTING PRESIDENT HATCHER: Mr Shariff, if my recollection serves me correctly the original version of the wages policy which provided for a cap of 2.5 per cent, it had a very specific (audio malfunction) is that was the mid point of the target range, the Reserve Bank's inflation target range; that is the rationale for the policy was that it would in fact maintain real wages, albeit over the longer term.

PN1770

MR SHARIFF: I can't assist your Honour on that. If that's your Honour's recollection I don't have any reason to say yay or nay to it. What I can say about the wages policy is that we haven't said in our submissions that we have applied the policy. We've said we've acted consistently with it. And we have adduced evidence through Mr Walker about the types of outcomes others, that is other employees within the New South Wales broader public sector in terms of the outcomes they've achieved.

PN1771

To point out that although the wages policy does not apply *stricto sensu* here, that is the New South Wales government has (indistinct) and adhered to it within the parameters of the fact that it is collectively bargaining in the Federal system and not in the New South Wales system. We have said we've tried to act consistently with it and that's the force of the submissions made.

PN1772

But just going back to the decision that I was taking your Honours through at paragraph 180 - sorry, at paragraph 178 to 180, having taken into account the various indicia of inflation the amount of the increase awarded was 5.2 per cent in respect of the national minimum wage, which was expressed by the Commission

being an increase to protect the real value of the wages of lowest paid workers. When you then go to what percentage increase was made to minimum wages in the modern awards, you will find that at paragraph 192, the amount was 4.6 per cent.

PN1773

In other words what the Commission doesn't do, as I have said, and hasn't done in Fair Work minimum wage reviews and national minimum wage reviews, is to slavishly apply the rate of inflation to the increase to wages for those who are the most low paid within the economy or who are awarded (indistinct). It's not done that. Even in years gone by, and members of the Bench are probably more familiar with and were alive when these things occurred, there wasn't such a slavish acceptance of simply passing on the rate of inflation.

PN1774

ACTING PRESIDENT HATCHER: Tragically, Mr Shariff, when I used to follow national wage cases in high school the tradition - - -

PN1775

MR SHARIFF: I think that must have been part of the job description to be appointed as President.

PN1776

ACTING PRESIDENT HATCHER: The practice was to give an increase which was sort of like CPI, but less of it.

PN1777

MR SHARIFF: Yes, but then it changed, didn't it, to, as we all know, the structural efficiency principle, and it changed again with the introduction of enterprise bargaining.

PN1778

So we come full circle to where I started at, but the role of enterprise bargaining and, we say, the role of the Commission in enterprise bargaining resolution of disputes, isn't to do that which it would do in its award-making functions, it's to do that which is consistent with the objects of the Act and the fairness and equity and good conscience of the case.

PN1779

That means examining all the facts, not just adopting some slot machine type justice to say, 'Well, that's the rate of inflation. It must be passed on.' It's got to be right, because if that were to occur, then, as I'm saying, yes, I am using a floodgates argument, or it opens the door.

PN1780

It opens the door to all parties within the economy, contrary to the objects of the Act to facilitate collective bargaining, to get entrenched in their positions. 'Well, we must have the CPI irrespective of productivity as our wage claim. We'll take industrial action. We'll prolong it for a period of 18 months', and, 'We can't resolve our disputes. The nine months have ticked over. Let's go get an order and

let's get in there and determine it, because we know the Full Bench will give us CPI. It will maintain real wages.'

PN1781

That would be the antithesis of facilitating collective bargaining, and for all our learned friend's submissions and criticisms of economists and the like, they don't (indistinct) their submissions or their position by reference to principle enshrined within, we say, the structure of the Act and the carefully collaborated way under the provisions of this Act that the Commission enters into the fray of setting wages.

PN1782

So we know that neither the national minimum wage or minimum rates in modern awards are linked to necessarily increases in CPI, yet the combined rail unions come along and say, 'We're somewhat more special. We must have our real wages protected', because as Mr Taylor said in this opening salvos yesterday, well, people have entered into mortgages, there's a decline in the value of their earnings.

PN1783

Well, we're all in the same position in the economy as a result of that, but the difference is there is here evidence suggesting that over a period of economic prosperity over the last decade, the employees have received wage increases that were ahead of CPI.

PN1784

In that regard, could I take the Full Bench to the further supplementary report of Mr Houston, which isn't in the court book, to table 2.1. It doesn't much matter if one goes back to April 2010 or some other period. The point of this exercise was to demonstrate, we thought, consistent with fundamentals of the Australian economy over the last 13 or so years, that it has been, and in particular in this enterprise, a case of wage rises ahead of the CPI for those respective periods.

PN1785

Yes, we accept, as I have earlier, we are now in a cyclical period where if one accepts the New South Wales government's position here, there will be a period where the wage rises won't match with CPI, and so it is. That is the cyclical trend. There are swings and roundabouts.

PN1786

I'm not talking about the particular individual who joined yesterday or joined last year and doesn't have the benefit - I'm talking at the microeconomic level of the enterprise rather than the individual, but what I'm not doing is importing the qualities of macroeconomic analysis, as Dr Stanford has done, into the microeconomic enterprise level.

PN1787

But that's what this enterprise has been experiencing. What you haven't seen is a jot of evidence from the combine rail unions that there has been productivity growth in this enterprise.

PN1788

In fact, one can see it from the claim in relation to CSAs wanting an additional allowance. There's been no change in their duties, no additional work value, but a grab for an additional allowance, opportunistically, once the allowance had been locked in for cleaners. There is not a jot of evidence about any productivity growth within this enterprise to justify in this cyclical period a maintenance of real wages.

PN1789

Your Honours also received as part of the approval process forms, in the usual course, doing a BOOT analysis, indicating, as I recall it, that the wage rates in this agreement as proposed - I think it was done by comparison to wage rates as proposed. It was something in the order of 3.9 to 20 per cent above the modern award rate.

PN1790

So no one is suggesting here, and there is no evidence of it, that the workers covered by these agreements are on the poverty line or in financial distress or are not being remunerated above the fair minimum safety net that has been either enshrined in the Act or that which has been promulgated through decisions of this Commission.

PN1791

So going back to the objects, fair minimum safety net we say has been achieved. They're being paid above the award. They've had a period of real wage growth, we say, and they now stand to receive additional payments and compensation which we accept for this cyclical period will have a differential.

PN1792

Could I next turn to, having made those general observations about process and approach, the \$4,500 and what use can be made of that. We tendered the Frequently Asked Questions this morning. We embrace, to the extent that it was raised in argument, a characterisation that was placed upon it by you, President, in exchange with my learned friend.

PN1793

No one has suggested, and in fact there was no demur to the approval of the enterprise agreement on the basis that employees were misled. Mr Taylor's submission was, 'Well, the union didn't agree to it.' Well, last time we looked, it's not for the union to agree, it is for employees to cast a valid vote such that a valid majority of the employees vote in favour of the agreement.

PN1794

The idea that the union has to agree that it was so characterised is by the bye. The fact is, it's there in writing. Their members got the document. They have put forward to the Commission that the agreement should be approved on the basis of road shows and the other documents and so on, without, as I say, any demur on the veracity of the matters represented.

PN1795

So as a starting point, one could characterise it as a payment in lieu of back pay. Commissioner Riordan, you raised a question with my learned friend as to how should you, as an individual, proceed in the determination of this matter given your vast involvement in the conciliation process, and, for that matter, Deputy President Cross, your involvement.

PN1796

What I'd say to that is I mostly agree with my learned friend, but you'll be surprised to hear that I don't entirely agree. By reason of section 627 and its following provisions of the Act, Commissioners and Deputy Presidents are appointed to this Commission because of their experience, both in relation to law and workplace relations. There are, whether they remain in place or not, panels, and panels, via the Commission, draw upon the wealth of experience.

PN1797

Certainly, I'd say, Commissioner Riordan and Deputy President Cross, you're both highly experienced and you bring your experience to bear in the determination of these matters - industry experience. I'm not suggesting that either of you would take into account things said without prejudice or in the confines of conciliation, but your understanding of the industry, your understanding how the party evolved, couldn't be put to nought. That's my submission.

PN1798

COMMISSIONER RIORDAN: I did work for the railways for two weeks back in 1988.

PN1799

MR SHARIFF: Did you get paid an allowance?

PN1800

COMMISSIONER RIORDAN: I don't recall.

PN1801

MR SHARIFF: Yes.

PN1802

ACTING PRESIDENT HATCHER: And I catch the train every day.

PN1803

MR SHARIFF: To Wynyard, I assumed.

PN1804

ACTING PRESIDENT HATCHER: Town Hall.

PN1805

MR SHARIFF: So just going back to then the characterisation of the \$4,500 payment, I've said what I've said about that.

PN1806

If one looks at the document provided by the Commission, exhibit 34, and the table on the last page, I won't claim this to be my mathematics, but the mathematics of those of our team, including my instructors behind me who are



subject to the New South Wales government wages policy, is that the differential between 126 and 139 thousand dollars is \$13,000. That's just a mathematical figure, and it would be artificial in the highest to say that the \$4,500 doesn't make a contribution to the deficit in terms of purchasing power over that period of time.

PN1807

What is artificial is to allocate that amount to a particular year, be it 1 May 2021, if one's looking at its characterisation as back pay, or for its payment year, and then disregard its effect for future years. Just look at it as swings and roundabouts.

PN1808

If one accepts, as the parties do here, the second line item in this table, that inflation will run at 5.3 per cent and 6.3 per cent and 4.2 per cent, there's going to be on average a differential of \$13,000, and \$4,500 is being contributed to the deficit in that purchasing power. That doesn't require any fancy looking form of looking back, it just requires the reality of what's happening with the payment of the \$4,500.

PN1809

True it is, and we accept, that the \$4,500 doesn't have a permanence beyond the life of the agreement. It doesn't become a change in base rate of pay such that it becomes the datum point for future increases. We accept that, but the purpose of it, I've explained, is by way of compensation for back pay and gets allocated to the true differential in purchasing power over the life of the agreement.

PN1810

The other aspect of the \$4,500 that ought not to be neglected, is its regressive effect. Obviously the \$4,500 has more significance to those classifications who we saw in the data provided are on an average of \$55,000 per year in terms of base rate of pay as opposed to those on 119 or higher.

PN1811

As a percentage point, yes, Mr Houston, I think, calculated it was roughly 3.7 per cent, but that's just 4500 over 119.

PN1812

MR TAYLOR: (Indistinct).

PN1813

MR SHARIFF: Sorry?

PN1814

MR TAYLOR: I think you got the figure wrong, but it doesn't matter.

PN1815

MR SHARIFF: All right. It won't be the first figure I get wrong, but yes, as against the average, on my rough mathematics, is 3.7 per cent, but it has a differential effect, in that it is a more significant contribution by way of compensation to the differential to those who are, in relative terms, more lower paid, covered by the enterprise agreement, than, in relative terms, to those who are



more higher paid under the enterprise agreement. So it has that additional feature of it in terms of equity and fairness. What would be wrong is to disregard it altogether.

PN1816

ACTING PRESIDENT HATCHER: One of the things, once you're talking about differential between higher and lower paid, if I recall correctly, Mr Devitt said in his statement, and I don't think he was challenged about it, that one of the purposes, at least from your side's perspective, of agreement to the higher services allowance, was to simply boost the pay of the cleaners, who are the lowest paid. Shall we take that into account - - -

PN1817

MR SHARIFF: Yes. I was coming to that.

PN1818

ACTING PRESIDENT HATCHER: All right.

PN1819

MR SHARIFF: I'm coming to that in the 2.1 per cent.

PN1820

ACTING PRESIDENT HATCHER: Well, I mean, I'm not sure you can have it both ways. You can either count it as part of the 2.1 per cent or alternatively you could count it as part of the package which gave a disproportionate benefit to lower paid workers.

PN1821

MR SHARIFF: I'd embrace both. I don't think it is having it both ways. Can I try and explain? Those cleaner – can I use the paraphrase of cleaners – are going to get that allowance: \$2.25, 13-odd dollars per shift. On top of that they are going to get \$4,500 and they're going to get 2.53 per cent and 3.03 per cent.

PN1822

ACTING PRESIDENT HATCHER: When is the allowance operative? When the agreement takes effect?

PN1823

MR SHARIFF: Yes, and what it is - - -

PN1824

ACTING PRESIDENT HATCHER: Can you just check that? I'm told that it might already have been put in place. Anyway, go on.

PN1825

MR SHARIFF: I'll keep proceeding unless someone corrects me. But yes, that in relation to those employees – I'm instructed it hasn't been put in place yet but I'll get instructions (indistinct) come into effect. But for cleaners, of course, there's the – they have been paid the respirator allowance, albeit in a different way, and the graffiti allowance, albeit in a different way. It's now all bundled in together. So it's a differential in that. In addition to that, perhaps a matter close to

Commissioner Riordan's heart, all electricians – it doesn't matter who the universe is or what the universe is – are going to get an electricity safety allowance.

PN1826

There's a bundle of conditions in addition to the increases to wage rates that the employees are obtaining through it. I can see Commissioner Riordan, you - - -

PN1827

COMMISSIONER RIORDAN: What you said wasn't quite right, Mr Shariff. They've gone and had a look at the agreement but anyway, that's (indistinct).

PN1828

MR SHARIFF: But the electricity safety allowance, it is accepted, would be paid.

PN1829

COMMISSIONER RIORDAN: It would be paid but there are - - -

PN1830

MR SHARIFF: Conditions, yes.

PN1831

COMMISSIONER RIORDAN: - - - conditions and there's four rates, I think.

PN1832

MR SHARIFF: Yes, and much like the additional loading for engineers, it will be paid so long as the conditions are met and there may be people who don't meet the conditions. There may be people who meet the conditions. There might be people who meet both conditions. But the fact is that there is a package of conditions, all ignored by Dr Stanford and our friends. Now, taking a step back – one can understand that the 10.1 per cent figure put forward by Mr Quaintance and then relied upon by Mr Houston might have been better expressed as a measure of total employee additional costs of those conditions on a best-estimate basis.

PN1833

But there is a component of the 2.1 per cent that does result in additional remuneration for employees. But there is also a flip side of the coin that's been ignored by the union's position, which is the cost of the exercise. What our learned friend submit to the Commission is that all that matters here for the determination of question 1 is can we keep wages in real terms at the same relative value, plus the productivity increase of 1 per cent? What they don't take into account is the cost of business. An invitation to simply say, well, in this enterprise even though we get paid above and in some instances well above the modern award rate, we must have real wage growth through collective bargaining and don't worry about the cost of the employer.

PN1834

You know from the evidence of Mr Quaintance – not challenged other than in one respect – that the incremental cost of accepting the 6 per cent, the 6 per cent, the 6 per cent, is \$588 million. The only matter that was taken issue with was the

component of the \$588 million that could be characterised as a liability on annual leave or the differential in one. Let's call it \$500 million. The Commission is being invited to in effect, we say on our submission, compensate this group of employees as distinct to any other public sector employees within the state, more generously, differently to – as best we can do here in a manner consistent with wage policy – but that adds an impost to government of \$500 million which, in the circumstances outlined by Mr Walker in his statement and Mr Quaintance in his, where the state government has had to fund a number of matters in the course of the last 12 months: floods, and so on.

PN1835

So again, it's a myopic exercise to say, well, all that matters is what's fair to the employees; what's fair and reasonable to the employees, ignore everything else.

PN1836

ACTING PRESIDENT HATCHER: What's unusual about this case is, as far as I can tell, we have basically zero evidence about the financial position or the revenue position of the rail entities or in fact of the state government as a whole.

PN1837

MR SHARIFF: I think that's a matter - - -

PN1838

ACTING PRESIDENT HATCHER: I wouldn't know whether the state government budget is in surplus or deficit. I could Google it but it's not in the evidence. We don't know how much rail fares have increased, if at all. We don't know how much these entities are funded by the government. We don't know anything about - - -

PN1839

MR SHARIFF: Despite there not being rail fares for a period of time due to industrial action.

PN1840

ACTING PRESIDENT HATCHER: Well, yes, that's true. We're interested in the question of how that was allowed to come about. As I understand it that was by agreement for various periods of time.

PN1841

MR SHARIFF: Mr Walker gives some evidence about – if the Full Bench has it. Perhaps I'll just look at the references. Mr Walker addresses what the impact will be on the budget as they perceive it in terms of credit ratings, which is to go in – to find an additional \$500 million – or \$588 million – by fund will have an effect, undoubtedly. That's as high as I can put it on the evidence. But equally, it's interesting, Your Honour, that it's put that there is no evidence of that matter, but interestingly there is equally no evidence of what work, what productivity is being done to garner these increases. You get a bundle of a lot of claims – 300 claims or something – and members of the union more broadly are on the record – it can be searched for publicly – to say there's been a good outcome, as Mr Warnes accepted.

PN1842

So you get these bundle of conditions, no evidence of productivity, no evidence of work value but, 'We want real wages maintained and we're going to insist on it, despite, you know, no other public sector employee in the state having achieved that outcome'. So that's what I wish to say about the 2.1 per cent. We accept it's not a true value of the additional conditions but what it is is the best estimate measure of the cost of them and the Commission will proceed on the basis that an aspect of the cost of them will result in real benefits, including in terms of remuneration for some but not all. That's what one can conclude about that.

PN1843

I think I've addressed this point along the way: part of the unions' position that calls for an additional 1 per cent increase for productivity just has no evidentiary basis. The only evidentiary basis for that is an opinion expressed by Dr Stanford based upon historical data at the macro-economic level without any analysis of the enterprise and I think we say that can just simply be jettisoned. Could I say this: I think I was – if I could just have one moment? I just need to check that last matter that Mr Taylor informed Your Honours about being the 7.5 – I'm told, and I'm sure the parties can provide a short note for the Full Bench, that a position of 7.5 per cent or whatever was never put in bargaining.

PN1844

I must say, I might be wrong about this and if I am wrong someone will correct me: as we said in our submissions in opening, at the time that we filed our material here, we did not know what position the combined rail unions would be advancing to this Commission.

PN1845

ACTING PRESIDENT HATCHER: Well, presumably the parties at the time they agreed the arbitration knew they didn't agree about wages and had some understanding of each other's position. That's what I was trying to explore.

PN1846

MR SHARIFF: Yes.

PN1847

ACTING PRESIDENT HATCHER: Because ultimately, this is a 739 matter. We're here to resolve a dispute, we're not engaged in some abstract assessment of what's a fair and reasonable wage for a Sydney Trains worker. We're trying to resolve a particular dispute which operates within the parameters of the bargaining.

PN1848

MR SHARIFF: And perhaps that's why Commissioner Riordan ought not entirely, as I said, disregard all that's gone before. Mr Warnes' statement and Mr McDonald's statement do put before the Commission some evidence of the extent of bargaining. But the resolution of the dispute is, well, we know what the government's position is and now know that the union seeks 6 per cent each year. But simply on the basis – and no more – than that would be what is required to maintain real wages over the next two or three years, ignoring everything else I've said that that position ignores. But we had made the point in our opening

submissions that the way that the matter – and I'm not saying it shouldn't have proceeded this way by way of exchange of evidence and submissions at the time, meant that the formal position being put by the unions to the Commission we didn't know until we got their materials.

PN1849

All I was really saying by way of trying to alleviate my own anxiety yesterday was if the Commission was minded to do something exotic then we would wish to be heard. I'll just leave it at that. But I am inferring that if something exotic is on the cards, the parties will have an option to be heard. Now, that's all I really wish to say in respect of question 1. In relation to the criticisms of Mr Houston's evidence, often in these matters you have two economists with entirely different world views, both with professional qualifications and opinions. Often we find with economists they're caught up in their own view of the meaning of words but not lawyers' meanings of words if those were in the context of industrial relations way of looking at these things.

PN1850

We say what occurred in cross-examination is no more than that.

PN1851

We accept that there are some shortcomings in Mr Houston's report, but that is not to say that his fundamental analysis that if one is looking at real wage growth and the real wage impact of these employees, one has to look at a broader period, not just the immediate period.

PN1852

One has to look at how those wages have changed over time relative to CPI so that a workforce such as this, like employers in the economy, take the swings and roundabouts of cyclical changes within the economy. In times of economic prosperity, both employer and employee take the benefits, and in times of cyclical adverse circumstances, then those better times are used to defray the harder times.

PN1853

That kind of idea that only looks at these types of considerations through the lens of real wage outcomes for employees turns a blind eye to times of economic prosperity and its impact on business.

PN1854

As I say, that's a matter to give proper consideration to in light of the jurisdiction that the Commission has now acquired, and undoubtedly I would predict that the Commission may have to deal with more disputes of this type, where there's been a fundamental disagreement between the parties on wage claims.

PN1855

But other aspects of Mr Houston's analysis, we say, remain sound. For example, the best estimate of the average rate of pay of employees we say remains sound. One can accept that ultimately that's an averaging exercise, but we are looking at a whole cohort. We can't look at each individual.

PN1856

There's also Mr Houston's analysis of CPI. I think we've pretty much resolved that by reference to the document provided by the Commission, and his analysis in the further supplementary report about changes to base rate of pay relative to CPI. All those matters, we say, with respect, remain untouched in Mr Houston's analysis.

PN1857

Could I quickly then, unless there's any questions of me in relation to question 1, turn to question 2.

PN1858

ACTING PRESIDENT HATCHER: Yes.

PN1859

MR SHARIFF: We just say question 2 doesn't rise anywhere near the level of making good a claim for the payment of any additional allowance to CSAs. We have made this point in writing and we repeat it, but cleaning has always been part of the duties of CSAs but they are paid considerably more than cleaners.

PN1860

We accept that CSAs do perform cleaning work and it's sometimes unsavoury cleaning work. We accept that at stations where there are no cleaning staff or contract cleaners or turnaround cleaners, that the task of cleaning things like toilets and so on falls to CSAs.

PN1861

We accept that, but in the absence of the work value case and in the absence of any examination of relativities between the wage rates of cleaners and CSAs, we say the unions haven't made good their case. It's not one that would be countenanced.

PN1862

Moreover, the idea that the CSAs would just simply be paid what is expressed as an hourly allowance for the whole of the shift, irrespective of the time that it takes a CSA to attend to cleaning work, is ambitious. It has no regard to the other duties performed by CSAs, customer service, management of customers and other staff at stations, and elevates one aspect of the duty beyond others.

PN1863

Also, as we've said, the figure of \$1.19 hasn't been derived by any analysis of work value. It's simply the figure that they picked as the differential based upon a negotiated outcome. That's all it is. \$1.19 has no rhyme or reason to it other than it was derived from a negotiated outcome in respect of cleaners.

PN1864

We say that they simply haven't made out their case on question 2. It fell to them. They could have brought an evidentiary case of a different type. They didn't, and other than that, we repeat everything we've said in writing, unless I can be of any further assistance to the Commission.

PN1865

ACTING PRESIDENT HATCHER: No, thank you. So speaking for myself, I think we have a full understanding of the parties' positions. Do we need reply submissions?

PN1866

MR TAYLOR: There's a couple of things I do want to address, if I could.

PN1867

ACTING PRESIDENT HATCHER: If we allow five minutes for the party, is that sufficient?

PN1868

MR TAYLOR: That will be sufficient, yes, indeed.

PN1869

ACTING PRESIDENT HATCHER: All right.

PN1870

MR TAYLOR: Can I start with the proposition that, relying on exhibit 17, one would regard employees as having accepted that \$4,500 is in effect full compensation for an absence of pay rises.

PN1871

One has to recall that the employees voted for this enterprise agreement on the text of the enterprise agreement, which includes that this Commission would be determining the final pay raises for the period 1 May 21 through to 30 April 24.

PN1872

There's no reason why one would infer that the employees didn't vote for it on the understanding that the Commission is at large to determine what are appropriate rises, notwithstanding that 4,500, that there's anything implicit in a statement being put out by the employer that would mean that the employees have not, when voting for it, understood that part and parcel of this enterprise agreement is that the rates in the agreement, including the 4,500, is not the end point.

PN1873

Mr Shariff talked about this being a forced arbitration and that the Commission is doing what the parties have been unable to do, that is, reach agreement. That's not quite right. It's a consent arbitration, and the parties did reach agreement.

PN1874

The agreement they reached is that the final appropriate rates of pay would be as determined by this Commission. The submissions appear to be on the basis that there's some sort of forced nature and some onus being placed one way or the other on us.

PN1875

The Trains submissions from the outset had focused entirely on, we say quite appropriately, changes in cost of living, and yet in closing submissions there appears to be a suggestion that it's almost - I think the word 'extreme' was used, extreme or horrifying, to suggest the Commission would come up with an

outcome which would mean that rail workers would not actually get less pay at the end of this enterprise agreement than they do at the beginning.

PN1876

There's nothing extreme about that. To simply maintain real wages plus some small addition is not radical, and the Commission, by the parties' consent, has been given this authority.

PN1877

To go back to what's been done in the past in a different inflation environment is not particularly helpful, nor is it particularly helpful to point out, with great respect, what public sector workers have obtained in the state system, in circumstances where, as the Commission is well aware, the New South Wales Commission cannot award more than the wages policy.

PN1878

It has no capacity to recognise inflation above wages policy, and so it's not surprising that the outcomes there are lower. That's not a judgment of the merits of those cases on any view.

PN1879

A couple of minor matters. With great respect, Mr Walker does not give any evidence that a \$500 million increase in costs to Trains would have any effect on credit ratings, nor does he give any evidence as to what a change in credit ratings would actually mean in any real sense to the New South Wales budget or the like.

PN1880

Finally, there was reference to the 2021-22 annual wage review. That review needs to be understood in the context, as the Bench identified, of very high inflation at that time.

PN1881

It can be contrasted to the 2018-19 annual wage review, where the Commission did proceed on the basis that it was appropriate to award an increase which recognised CPI and increased it further, so that there was a real increase, an increase in real terms, which is, of course, the claim that we are seeking today.

PN1882

So, I mean, ultimately the parties agree that this Commission would have the right to determine what is ultimately the rates of pay to be paid to Trains employees, and from our client's point of view, there is nothing radical about a proposal that the Commission would ultimately determine that the final rates of pay would be no less in real terms than they were before this enterprise agreement was entered into - sorry, the end of the last enterprise agreement.

PN1883

Indeed, it's not radical to add some small amount, as was done in the 2018 annual wage review, in respect of low paid employees, and we urge the Commission to take such an approach.

PN1884



There is nothing in the evidence to suggest that that is unaffordable to Trains, or some other material which, on an evidentiary basis, would convince you that what otherwise seems to be an entirely, with great respect, sensible outcome is one that wouldn't be awarded in this case, and it's one in which the parties have conferred that power on the Commission against the background of the enterprise agreement, that parties otherwise have reached agreement on conditions and then asked the Commission to determine the final rates.

PN1885

Both parties proceeded - until Mr Shariff's, at least, closing submissions, both parties proceeded on the basis that changes in cost of living was the touchstone. That's all of the Trains' material in chief, their opening submissions, all about changes in cost of living. That ultimately, we say, is the guiding touchstone that the Commission would have regard to in determining the outcome of these proceedings. They're our submissions.

PN1886

ACTING PRESIDENT HATCHER: All right. Thank you. We thank counsel for their submissions. Subject to one matter I'm about to raise, we'll reserve our decision. The matter is simply this, that I think - and I meant to raise this with Mr Houston.

PN1887

I think the Reserve Bank is due to publish an updated economic forecast tomorrow, so in the event that there is some radical change in the inflation forecast, I might ask the parties to give us a further note about that, but unless it's radically different, the parties don't need to worry about that. On that basis, we'll now adjourn.

**ADJOURNED INDEFINITELY**

**[4.27 PM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

<b>EXHIBIT #17 DOCUMENT ENTITLED 'TRANSPORT FAQs'</b> .....	<b>PN839</b>
<b>JAMES STANFORD, AFFIRMED</b> .....	<b>PN848</b>
<b>EXAMINATION-IN-CHIEF BY MR TAYLOR</b> .....	<b>PN848</b>
<b>EXHIBIT #18 STATEMENT AND REPORT OF JAMES STANFORD DATED 20/01/2023</b> .....	<b>PN855</b>
<b>EXHIBIT #19 STATEMENT AND REPORT OF JAMES STANFORD DATED 20/02/2023</b> .....	<b>PN856</b>
<b>CROSS-EXAMINATION BY MR SHARIFF</b> .....	<b>PN859</b>
<b>RE-EXAMINATION BY MR TAYLOR</b> .....	<b>PN991</b>
<b>THE WITNESS WITHDREW</b> .....	<b>PN996</b>
<b>GREGORY JOHN HOUSTON, AFFIRMED</b> .....	<b>PN999</b>
<b>EXAMINATION-IN-CHIEF BY MR SHARIFF</b> .....	<b>PN999</b>
<b>EXHIBIT #20 REPORT OF GREGORY HOUSTON DATED 20/01/2023</b> ..	<b>PN1009</b>
<b>EXHIBIT #21 REPORT OF GREGORY HOUSTON DATED 03/02/2023</b> ..	<b>PN1010</b>
<b>EXHIBIT #22 REPORT OF GREGORY HOUSTON DATED 07/02/2023</b> ..	<b>PN1011</b>
<b>CROSS-EXAMINATION BY MR SAUNDERS</b> .....	<b>PN1033</b>
<b>EXHIBIT #23 REMUNERATION CALCULATIONS VARIOUS ASSUMPTIONS</b> .....	<b>PN1226</b>
<b>EXHIBIT #24 CALCULATIONS 2010 TO 2024</b> .....	<b>PN1317</b>
<b>EXHIBIT #25 CALCULATIONS 2020 TO 2024</b> .....	<b>PN1386</b>
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<b>EXHIBIT #26 ABS 7311 - BUILDING AND OTHER INDUSTRIAL CLEANING</b> .....	<b>PN1601</b>
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**EXHIBIT #28 STATEMENT OF BRADLEY DIXON DATED 20/01/2023..PN1605**

**EXHIBIT #29 REPLY STATEMENT OF BRADLEY DIXON DATED  
03/02/2023 ..... PN1612**

**EXHIBIT #30 WITNESS STATEMENT OF ROBERT JOLESKI DATED  
20/01/2023 ..... PN1613**

**EXHIBIT #31 REPLY STATEMENT OF ROBERT JOLESKI DATED  
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**EXHIBIT #32 WITNESS STATEMENT OF SAM WALKER DATED  
20/01/2023 ..... PN1617**

**EXHIBIT #33 INFORMATION NOTE ..... PN1654**