



TRANSCRIPT OF PROCEEDINGS

*Fair Work Act 2009*

1058348

**JUSTICE ROSS, PRESIDENT**

**AM2020/103**

**s.157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective**

**Award Flexibility – Hospitality and Retail Sectors  
(AM2020/103)**

**General Retail Industry Award 2020**

**Melbourne**

**10.01 AM, FRIDAY, 18 DECEMBER 2020**

**Continued from 17/12/2020**

PN102

JUSTICE ROSS: Good morning. If I could go through the appearances that I have and once I've finished that, if I haven't mentioned your organisation - I won't cover each of the individuals for each organisation but if I haven't mentioned your organisation then let me know. In no particular order I have the Newsagents Association of NSW and the ACT. I have ACCI, Ms Lawrence. I have COSBOA and The Pharmacy Guild, Mr Harris. I have the Master Grocers Association. I have ABI and the NSW Business Chamber. The Australian Retailers Association. The National Retail Association. Mr Gotting for Ai Group. Ms Durbin for the Attorney-General's Department. For the various unions I have Mr Crawford for the AWU, Mr Kemppi for the ACTU, Mr Friend for the SDA, Mr Cullinan for RAFWU and I'm not sure if we have someone from AFEI, they weren't on the line earlier. Is AFEI here? No? All right.

PN103

Have I missed anyone? Anyone not mentioned? All right. Well, if we can get underway. Following a statement on 10 December and I attached a copy of the correspondence from the Minister, I indicated in the statement that it was appropriate that the Commission consider the request but ultimately it'll be a matter for the Commission to determine the process by which the issues raised are considered and whether any variations are necessary.

PN104

I identified at paragraph 14 the issues that would be covered in this morning's conference. At paragraph 16 of the statement I also asked the Department to provide a letter indicating how they would be able to support the process and the Department has provided that letter in a letter dated 15 December which has been posted on the website. To perhaps short circuit this process a little, in the proceedings yesterday involving the hospitality sector, I put a number of questions to the Department about the timeframe around which they could provide some of the information that they have identified in their letter.

PN105

In particular, they said that they expected to provide select data on working time arrangements, patterns of work, days worked per week and earnings in the hospitality and retail sectors. They would also provide some data on the incidents and coverage of loaded rates and federally approved registered enterprise agreements. It's expected that the - that will be an iterative process, the Department will commence providing that data around the third week in January and then later in January. There are obvious constraints in the data that can be provided to the award level because of the way the various surveys are conducted.

PN106

If I now go to the purpose or the agenda items for the conference. Broadly they fall into three categories; to get at least an initial response from the various parties around the level of interest in the issues that have been raised in the Minister's correspondence. To refresh your memory in that regard the Minister was directing attention to two particular things. One was the potential for simplified pay arrangements in the form of loaded rates and/or exemption rates and the

second was some streamlining of the present classification structures in the relevant awards.

PN107

As I indicated in the discussion in hospitality, when a number of parties raised some other potential issues or complexities in the award, by directing attention to the matters the Minister has raised, I'm not proposing to confine the issues that parties can raise in this process. Obviously at this stage in the process the issues any party raises will be on a without prejudice basis. I just want to get some assessment about what the level of interest is, in particular matters in the General Retail Award, and then whether there's any additional information that may assist the parties in their consideration of these issues. As you know we've published some information notes on exemption rates on loaded rates and on the classification structure in the retail award but there may be other bits of information in addition to what the Department has indicated that they can provide.

PN108

Then we'll discuss future programming. I think the - to give you a flavour of that, in the hospitality sectors the parties were going to provide some further material about the areas that they were proposing for change or any comments they wish to make by 27 January and there was to be a further conference in hospitality on 4 February. But let's go firstly to the issues raised in the Minister's letter and to get some comments from you in broad terms, about your reaction to that and proposals that you may have, that you wish to be considered.

PN109

Let me go to the employer organisations first. If I can go to, again in no particular order, the Australian Retailer's Association? Ms Visedo? Ms Visedo, can you hear me? Is the Australian Retailers Association on the line? They apparently haven't joined. The National Retailers Association?

PN110

MR MILLMAN: Thank you, President. We're still digesting the Minister's correspondence but, at this stage, the National Retailers Association and its members are probably leaning towards making a submission around exemption rates.

PN111

JUSTICE ROSS: Okay, thank you.

PN112

Let's then go to the Master Grocers?

PN113

MR DE BRUIN: Yes, Ross J. We're very supportive of a loaded rates approach, for family and private businesses, small business, and we'll be advocating for that. We would also like to talk to exemption rates, that we perhaps would not necessarily use them.

PN114

JUSTICE ROSS: Mr De Bruin, can I just tease out the loaded rates issue, and I'm not suggesting that the same considerations necessarily apply in retail. But during the hospitality discussion there was a general acknowledgement that there may not be a single loaded rate, because businesses operate at different times. There may be a loaded rate for Monday to Friday, there may be a loaded rate for weekends, et cetera.

PN115

The key to any sort of consideration of loaded rate is what sort of working patterns is the loaded rate intended to compensate for. So I'd ask, when we come to parties providing further information about their proposals, I'd ask you to give some consideration about, well, what sort of working patterns are you seeking to have covered by a loaded rate?

PN116

The other discussion was that the loaded rate may not be confined to, and this may be less of an issue in retail than hospitality, but it may not be confined to particular penalty rates but may also include certain allowances. So if you can give some thought to that, what did you intend it to - what penalty rates would be compensated for by the loaded rate, and what sort of working pattern did you envisage being covered by the loaded rate. But if you can give that some thought, we'll consider that on the next state, okay?

PN117

MR DE BRUIN: Thank you.

PN118

JUSTICE ROSS: All right. Let's go to ABI?

PN119

MR IZZO: Thank you, your Honour. ABI and NSWBC's principle interest pertains to exploring exemption rates, with respect to certain classifications or, potentially, the award generally. That's primarily the matter that is of interest to our clients, in relation to the matters raised by the Minister.

PN120

Our preference would be to work with the other employer organisations involved, so that by some point early next year, whether that's January, it's probably late January or very early February, we could present a unified proposal. That would be our preference. It's obviously, if there is a level of consensus, that are going to make for a more streamlined process for the Commission as well.

PN121

The only other matter that we'd probably address, at this point, relates to loaded rates. We're probably sitting on the fence on that one, for this reason. We have a level of hesitation associated with loaded rates and that, primarily, relates to the matters you've already raised, your Honour.

PN122

If you're going to set a loaded rate, one needs to think about how you strike the balance, what assumptions are built into that loaded rate, in order for it to meet the

Modern Awards objective. Our concern is that quite a high degree of care needs to go into it and if one gets it wrong it can have some adverse consequences.

PN123

So whilst we're not opposed to it, at this stage, we're conscious that there's a lot of moving parts that will go into a loaded rate. You might not be able to have one, you'd have to look at the assumptions that go into it. So, because of the complexity, we're not opposed, at this stage, but we're certainly not promoting it at this time.

PN124

JUSTICE ROSS: Okay. Can I go to COSBOA?

PN125

MR STRONG: Thank you, Ross J, it's Peter Strong, and I'm here actually in the same room with my chairman, Mark McKenzie, and I'll pass to him shortly and he'll talk about the principles that we've put together for loaded rates.

PN126

But if I can say, one of the things we've been saying, as I'm sure you're aware Ross J, is that we're a small business and small business employees, we want this to be simple, we want it to work. We want people to be able to understand it and, having understood it, then get back on with running their business and do so safely with the intent of keeping people employed.

PN127

What we'd like to do, as well, is reflect the normal, acceptable behaviour of people in the workplace. I know with part-timers, permanent part-time people, an employer might ring - call our across the shop, or the workshop, or wherever, and say, "Are you available to work Thursday as well?". And the employee will go, "Hang, on a minute", and he might come back and say, "Yeah, I can".

PN128

Now, none of them think, in retail, that there's any - most of them don't think there's any overtime involved because it doesn't make any sense at all, but there is. So we want to make this simple so everybody understands it and that any permanent part-time worker can actually work more hours, if that's what they want to do, instead of us having to put on casuals, which actually ends up cheaper quite often.

PN129

So we want a system that makes sense so that we can employ more people and do it safely, without fear of being caught out with something that makes no sense. I think what this pathway is a very important pathway to get to the simplicity in the award.

PN130

So I'll just pass to my chairman now, to talk about the - before I do, there's one thing that we'd like to see, and that's we do know that big business and the unions can negotiate all sorts of things in their agreements, and they certainly negotiate loaded rates, which creates confusion again, in the marketplace. So I think if we

could make loaded rates for small to medium business and we could leave big business to do what they normally do, with the bigger unions.

PN131

Thank you, I'll pass to my chairman.

PN132

JUSTICE ROSS: Thank you. Mr McKenzie?

PN133

MR MCKENZIE: Thank you, your Honour.

PN134

I suppose really our approach, in terms of COSBOA, we're strong supporters of loaded rates and that has really been developed around five key principles. The first of that actually relates to simplicity. So one of the key challenges, obviously, for small business, is grappling with the various wage structures that are inherent in the award and, in some cases, we're talking about 21 different payment rates and penalties that could be applied. So our view is that loaded rates provide an opportunity for that simplicity.

PN135

As you indicated in your opening, and a number have already made reference to the different work hours suggest to us that there would need to be an opportunity to actually separate. We're probably talking about a regime of loaded rates that fits with the schedule, where our preference is for a separate week day and weekend rate. Even as flexible as going to an alternative where you might look to apply loaded rates over core retail hours, that might be something like 7 am to 10 pm.

PN136

So, in that sense, we're quite open to the implementation but we see an opportunity really to simplify the wage structures that can be used by small business.

PN137

The second principle, which is probably more dominant here than it was in the hospitality conversation of yesterday, is this issue of competitive neutrality. Most small businesses actually are award reliant. They have very little access to enterprise bargaining, just on the basis of they don't have a collective culture in their workplace. And they're too small to be able to afford the costs to actually go to negotiate, you need the (indistinct).

PN138

So loaded rates, in a lot of ways, give us an opportunity to neutralise the competitive advantage of this inherent, in big businesses actually moving to an EBA by providing an opportunity for them to access some of the wage efficiency structures that are actually enjoyed by big business. So, in that context, we see this as being an opportunity to create competitive neutrality between big and small. That might mean you look at even an implementation that might distinguish between, say, big and small businesses.

PN139

Our third point is very much around optional implementation. I suppose our key here is that this should be a choice of an employer about whether they adopt a loaded rate schedule or not. So we have a very strong preference for it to be optional, for both employers and employees. That would actually, we believe, ensure some fairness as well, in that employers could make their own decision to offer loaded rates to employees but, equally, employees should similarly be provided with a simple majority mechanism that allows them to opt in.

PN140

Our suggestion is that there should be some provision for a revocation mechanism where either the employer or the employees decide they want to actually exit the arrangement.

PN141

Symmetrical fairness was the other one that really was a case of saying we're not working on the basis that loaded rates should come at a cost to employees, it should be done on a basis that it is fair to all workers.

PN142

I suppose, in that context, really being careful to not let the conversation be distorted by outliers, which seems to have been the pattern of discussion around loaded rates, to really looking for the majority of people being covered by this, which brings that flexibility and the election mechanism I was talking about earlier.

PN143

I suppose the last point, obviously for small business, as we're looking at the new laws that are coming into place, in terms of facilitation of improved wage compliance, unloaded rate actually makes it a whole lot easier for small business that don't have an in-house payroll team to be able to comply with the law, in terms of wage compliance. One of the key things we've seen as a bit of a challenge in the small business community, is ensuring that penalties, in particular, and allowances, are dealt with appropriately. Our belief is that a loaded rate would actually assist in terms of improved compliance.

PN144

So, to that end, as the government is actually moving, quite rightly, to put wage compliance fairly and squarely on the agenda, our sense is that loaded rates could actually provide a mechanism for small business to be able to comply, more reasonably, with the new laws and avoid those costs.

PN145

I'll leave it there, your Honour, but it's really a case of they're the principles that, from COSBOA's perspective, we would like to see loaded rates advanced.

PN146

JUSTICE ROSS: All right. Thanks, Mr McKenzie. I might encourage you to have some discussions with Master Grocers, because I think the first thing we need to give some thought to is if you're looking to advance a loaded rate, is what

sort of working pattern are you seeking to have the loaded rate apply to and what penalties is it proposed that it compensate for?

PN147

Once you're able to provide that level of detail, it provides a proposition, at least for discussion, that various union interests can examine. It's difficult to deal with some of these issues, in abstract, but I'd encourage you to have that discussion, thank you.

PN148

MR MCKENZIE: Will do, your Honour.

PN149

JUSTICE ROSS: Thank you. Can I go to Mr Booth?

PN150

MR BOOTH: Thank you, your Honour.

PN151

Initially I suggest that - well, I'll state our position that, at best, our view, in relation to exemption rates, loaded rates and also a review of classifications, would be neutral. Initially we see no great benefit in exemption rates, as they apply to our sector of retail, and that has to do with the predominance of reliance on the award and the predominance of employment under levels 1 through to 4, under the award.

PN152

So based on our review of other awards where exemptions apply and also the information provided by the Commission, there is a great distance between that maximum, under level 4, and what, traditionally, may be an exemption rate, whether that be expressed in a dollar or percentage amount. So we don't particularly see any benefit to our sector in relation to those exemption rates.

PN153

In terms of loaded rates, our separate industry has the extended ordinary hours and we are different to most other sectors covered by the General Retail Industry Award in that our ordinary hours commence at 5 am and that is in itself a degree of flexibility which is already available to the sector and when certain rostering arrangements which will allow for up to 11 hours of working on one day at ordinary rates and up to nine hours a day on three other days of the week, it does offer employers a great deal of flexibility without having to even consider loaded rates.

PN154

Our experience is that our members organise their workforce in two distinct groups; those who work Monday to Fridays and those who work on the weekends when penalty rates - higher penalty rates may apply. So based on that configuration there is no appreciable benefit in a loaded rate since the industry is already sorting itself out. There would be one exception to that and that has to be with drivers. Some of those drivers who commence at ungodly early hours of the day, every day, some of those will be covered by shift arrangements, some of



them will be covered by casual rates. It just depends upon timing and other aspects which are particular to that classification or that type of employment.

PN155

In terms of classifications I mentioned earlier that you know the predominant range of engagement of employees from level 1 through to level 4, there's a high duty clause in the award which would - - -

PN156

JUSTICE ROSS: Sorry, just a moment. Sorry, just a moment, Mr Booth. Can I just ask everyone to mute their microphones because we're getting - we're picking up some conversation from somewhere else. Okay, yes, thanks Mr Booth, go on.

PN157

MR BOOTH: Thank you, your Honour. Yes, so whilst there may be some advantage in examining the classifications and the definitions and examples of different classifications contained in that schedule in the award, we don't see a great advantage.

PN158

JUSTICE ROSS: Okay. Look, Mr Booth it does raise something that came up also in hospital that it may be that there are different approaches for different sectors of the industry, and your comment neatly highlight one of those, so it may be that if at some point a loaded rate or an exemption rate proposition is advanced, that it is only advanced in relation to part of the or one or more of the sectors covered the general award.

PN159

The same proposition was made in hospitality. For example, there's not a lot of point in focusing on the casinos in the hospitality sector because by and large they're covered by agreements, whereas some other smaller business sectors are more likely to be award reliant and their issues might be very different. So it may be as it emerges that it's not any sort of single proposition that necessarily is going to apply to all sectors. Okay?

PN160

MR BOOTH: Yes, thank you, your Honour. We've had the opportunity of reviewing a transcript of yesterday's proceedings and we did note those comments in relation to different approaches for different sectors. From a principle position we don't oppose exemption rates or loaded rates or a review of classifications. You know, we wouldn't want to be seen standing in the way of other parties who may see an advantage in going down those paths. It's been suggested by other employer parties already that whatever the outcome is it should be an opt-in basis and we support that position. So where our members may see an advantage in going down an exemption rate or loaded rate paths and we doubt that that advantage exists, it should be an option open to them not an option which is forced onto them. Thank you, your Honour.

PN161

JUSTICE ROSS: All right, thanks Mr Booth. Ms Lawrence from ACCI.

PN162

MS LAWRENCE: Yes, thank you, your Honour. (Indistinct) does not currently intend on bringing forward any proposal ourselves. At this point we intend for our participation to be limited to any general matters of principle and construction that may arise. We do, however, wish to endorse the submissions made already by our affiliates, the National Retail Association, ABI and the NSW Business Chamber.

PN163

The only other thing that we'd like to add is that we completely concur with the sentiments in the Minister's letter with respect to administrative simplicity and the need to avoid complex processes. We believe that as far as possible if there can be a focus on this on any solution it will lead to greater business confidence, greater business compliance and in turn greater employment. That's it from us, thank you, your Honour.

PN164

JUSTICE ROSS: All right, thank you. Mr Gotting from Ai Group.

PN165

MR GOTTING: Your Honour, the focus of the Australian Industry Group proposal will be on exemption rates. I anticipate there will be two clauses proposed; the first a salary absorption clause and the second an annualised salary clause. In terms of the salary absorption clause, it will be optional not compulsory. It will address levels for and above the award and it would provide for a salary at a specified percentage above the weekly minimum rate multiplied by 52. In return there would be the non-application specified clauses and obviously there's an acceptance of a need to specify a suitable percentage.

PN166

In terms of the annualised salary clause, that would be optional not compulsory and it would apply to employees at a level 3 and above. Once again it would pay a salary at a specified percentage above the minimum weekly rate but in return there would be the non-application of overtime and penalty rate clauses only. There is it's recognised a reconciliation requirement in other awards but the position of the Australian Industry Group will be that the reconciliation requirement should not be onerous because if they are too onerous that will preclude the practical uptake of the annualised salary clause. There is a particular concern over the requirement in some other awards over employees countersigning or acknowledging hours. The Australian Industry Group will be proposing some alternative arrangements to the countersigning or acknowledgement proposals.

PN167

There will be no Australian Industry Group proposal directed at loaded rates. The Australian Industry Group is currently considered its position in terms of the classification system but it may address a streamlining of the classification system. The Australian Industry Group will consult with the other employer associations in January so that there can hopefully be a uniform position put forward to the unions. We are happy to proceed to a timetable whereby we put our proposals by 27 January and for there to be a conference in early February.

PN168

JUSTICE ROSS: Mr Gotting, can I just raise - I encourage you to have those discussions with the other employer organisations. The annualised salary issue was the subject of extensive proceedings before a separate Full Bench that established the range of principles. If Ai Group wanted to pursue annualised salaries in this award, why didn't it make an application in those proceedings?

PN169

MR GOTTING: I'm not in a position, I'm sorry, to answer that question at the moment. My instructions don't extend that far.

PN170

JUSTICE ROSS: Well, look, if I can make this sort of observation that I think one issue that if you wish to pursue annualised salaries you're going to have to confront is the decision in that Full Bench. If you're wanting to modify - my inclination would if you make an application to vary on annualised salaries, I'd send it back to the same Full Bench and no doubt they'll have the same questions of you. If it was so pressing why didn't Ai Group raise it earlier? So I understand you're not in a position to answer it but it does raise - well I guess it's not one of the issues identified in the Minister's correspondence but it's also against a background of extensive proceedings covering I think around a dozen other awards. So you might reflect on that in the lead up to when the material is to be filed as well, Mr Gotting.

PN171

MR GOTTING: I'll take that on board, your Honour, thank you.

PN172

JUSTICE ROSS: Thank you. Are there any employers that I've missed before I go to the SDA? No? All right. Well, can I go to you, Mr Friend.

PN173

MR FRIEND: Thank you, your Honour. Obviously from the SDA's perspective we have to see what ends up being proposed by the employers. We're certainly prepared to consider anything that's proposed. We note that the Minister in his letter said that the ownership is that no one is financially worse off. He said over time and the big question will be how longer that period of time is, and we've also noted this morning Mr McKenzie I think it was saying there might be some desire to ignore outliers and we would have some concern about that I'm sure.

PN174

The loaded rates issue was the subject of some discussions between the parties some years ago as it appears from the papers prepared by the Commission. It does seem to be a very difficult thing to get over the line so we'll be interested to see what happens in regard to that. As to exemptions, we'll have to look at the proposals as they come forward. Not much has been said about the other stream, the question of classifications in the Minister's suggestions in relation to that and broad-banding. The GRIA really is broad-banded already so I don't see there's much scope for doing anything about that and I don't see that anyone's really been putting something forward at this stage about that. So from the SDA's perspective it's really got to be wait and see at this stage.

PN175

JUSTICE ROSS: No, no, I can certainly appreciate that, Mr Friend. Look, on the classifications my impression at least from the hospitality discussions was that was largely focused on the Restaurant Award.

PN176

MR FRIEND: Yes.

PN177

JUSTICE ROSS: I've not had anyone particularly raise the General Retail Award and if I can make this observation, that it might be a case of being careful what you wish for with a sort of review of the classification structure in the GRIA award because it is a fairly general let's say loose structure around indicative tasks. It's not an overly prescriptive broad-banded structure, and I think once you start to unravel a bit of it knowing where that might end might be difficult. But as you've indicated there I think whilst the employer organisations have reserved their to look at it, most of the focus seems to be on the question of exemption rates and loaded rates, and I think there is an acknowledgement that with loaded rates the devil's in the detail. Over what roster period are you looking at? What does it compensate for and what sort of working pattern is it intended to address?

PN178

It may be that it makes more sense to start with a smaller focus on particular subsector rather than trying to come up with - I think at the other end you've got a single loaded rate that applies to everything and covers everything and that obviously has a degree of complexity and difficulty with it, because you can't always predict how it will operate. But I think as we go through the iterative process we'll see what emerges and I think once the ideas start to come in towards the end of January, you'll be in a better position to respond.

PN179

Could I ask you to give some thought when you're filing your material to - you heard Mr McKenzie talk about the issue of general principles and I think it's useful to start the discussion around those issues. A loaded rate obviously has to operate over some period of time and there has to be some degree of principle around it. So I'm sure we'd be assisted by the union's consideration of, well what sort of principles apply to it?

PN180

You've heard various propositions. I think most people have said it should be an opt in arrangement. There should be some mechanism to terminate the loaded rate arrangement, with notice, for example, on either side, and it may be that there are different loaded rates for a Monday to Friday scenario, as opposed to a weekend.

PN181

So any thoughts the unions have on those issues would be welcome, Mr Friend, if you can give some consideration to that?

PN182

MR FRIEND: We'll do that. And probably, if we can file something it would be confined to that type of material.

PN183

Can I make one observation thought that we have here a general award, which covers the whole industry. Trying to, in some ways, achieve some simplicity but on the path towards it we start to get into opt in, opt out, different schemes applying to different parts of the industry, or different patterns of work within the industry, and we might end up with something that's much more complicated.

PN184

JUSTICE ROSS: Look, I think that's a risk and a similar observation made in hospitality, and it may be that we try and have a more granulated approach. For example, if the most benefit for a loaded rate issue was to be in a particular sector of the industry and a particular employment size, then that might be where it begins, as a schedule, rather than something that seeks to cover the entire sector.

PN185

I mean we've heard from Mr Booth about the arrangements in his area and there's no doubt that one issue that promotes that there is some complexity in the award is there are different provisions applying in different areas, but that's largely historical and has been supported by all the parties and is there for good reason. So, yes, I agree, we don't want to make it overly complicated, but we'll see what propositions come forward, and then we'll all be in a better position to make an assessment about that.

PN186

MR FRIEND: Thank you, your Honour.

PN187

JUSTICE ROSS: Thank you. Mr Crawford, from the AWU?

PN188

MR CRAWFORD: Thank you, your Honour.

PN189

We support everything the SDA just said. I won't repeat it and I've got nothing additional to add.

PN190

JUSTICE ROSS: All right, thank you.

PN191

Can I go to Mr Cullinan, from RAFU?

PN192

MR CULLINAN: Thank you, your Honour.

PN193

So starting with the classification structures, we agree with some of the comments your Honour's made, as well as those from Mr Friend, that the classification

structure is, essentially, broad banded already and we don't see any value spending time on that issue.

PN194

In relation to the other two major issues, being the exemption rates and the loaded rates, we think it's important that the Fair Work Commission understand, and other parties understand, that the competitive advantage that was referred to earlier has somewhat evaporated, in our sector, over the last four years, as large enterprise agreements have been terminated or replaced.

PN195

There are now very few loaded rates at all operating in the sector and much fewer, once the very old agreements are terminated, or the zombie agreements are terminated. So we don't actually believe that the competitive, necessarily, still sits in the form of loaded rates, for the vast majority of the very large employers.

PN196

We also think it's important that we don't get distracted by discussion, oft reported in the media, and reiterated by our federal government, that there's some kind of outliers responsible for difficulties in bargaining. That's simply untrue. The application of the BOOT, in our sectors, has - may have changed, but the BOOT, itself, never did, as your Honour pointed out in his address the Newcastle Industrial Relations Society.

PN197

We stand - our members have experienced decades of purported loaded rates, which saw millions of workers stripped of billions of dollars, and we stand firmly against the inclusion of any loaded rates or exemption rates in our award.

PN198

That's not just to be difficult, as everyone else on the call might expect, it's because we know that the highest paid rate won't be the loaded rate, or the exemption rate.

PN199

Certainly, in circumstances where other parties are talking about overtime rates being included, we know that it won't be a double time loaded rate, or a double time exemption rate and, therefore, to save time we just expect and we intend to be advocating, through this process, against the inclusion of loaded or exemption rates.

PN200

Thank you, your Honour.

PN201

JUSTICE ROSS: All right. Thanks, Mr Cullinan. It's touching that at least someone had read my address to the New South Wales Industrial Relations Society, or the Newcastle Industrial Relations Society.

PN202

Look, in relation to your point about the operation of loaded rates in the sector, just before I go to the ACTU, Ms Durban, can I just raise one issue with the Department? When you're looking at the workplace agreement database, it would be helpful if you could identify the extent of agreements that operate in the sector that have loaded rates and how many employees are covered by them, just so we can all be working off the same factual basis.

PN203

Okay.

PN204

Can I just go to the ACTU? Mr Kemppi?

PN205

MR KEMPPI: Thank you, your Honour.

PN206

Apologies to anyone who was on yesterday, my comments will be relatively similar to what I said yesterday.

PN207

At this point, our guiding principle throughout this process will, of course be, unsurprisingly, that we want to see no worker worse off, as a result of this change - these changes or proposed changes. And that becomes, of course, quite a complex exercise as we delve into subsectors, subindustries, small versus medium, or arch business and those sorts of questions, which then raises the point that I believe your Honour correctly described as the unknown unknowns factor which is, essentially, we're being a little bit blind here, we don't know what the specific proposals are.

PN208

It was good to hear some of the directions in which proposals might go but absent of having those actual proposals to then be able to make submissions on whether or not, in fact, there is any case for change at all, let alone the specific changes that are proposed. It's difficult for us to, of course, get into it and it's probably quite unproductive.

PN209

What I will add to that is that, of course, seeing the proposals will then determine not only our submissions, but also what information we might consider that we need and what sort of programming we might advocate for.

PN210

JUSTICE ROSS: All right, thank you. The point of that information, that's likely to be, as I indicated at the beginning, an iterative process. If, at any stage, any party is of the view that they would be assisted by information on a particular issue, they can just email my Chambers and we can take that up. There's no need to wait until we come back or anything like that.

PN211

Have I missed anybody in the go around? No.

PN212

All right. Well, in terms of the future process, I was proposing a similar timetable to that which we went with in hospitality. There'll be a slight variant, I'll give you slightly more time, that the various proposals and comments that different organisations wanted to advance should come in by 4 pm on Thursday, 28 January and we would have a further conference on Friday, 5 February.

PN213

That's the proposition, does anyone have any objection to that proposal? I should emphasise that, look, obviously with the material you're providing, the unions are constrained by not knowing what they're responding to, but I'd encourage them to give some thought to what general operating principles might be relevant. And with the various employer interests, I'd encourage them to have discussions amongst themselves and, where it's feasible, to advance a common position.

PN214

I'm not suggesting that by 28 January you need a particular draft variation determination, with grounds in support, or anything of that nature. If you have that, fine, but I think it's really trying to tease out, in a bit more detail, what you have in mind so that it can be properly considered by the other interests.

PN215

Does anyone have any objection to that timetable or proposal?

PN216

Does anyone have any final questions or comments they wish to make? No.

PN217

Well, if not, I wish you all the best for the festive season and I'll see you all again on 5 February. If something occurs to you between now and 28 January and you want clarification about something, or you're seeking some further information, I'll be around throughout the period, so don't hesitate to send me an email and I'll action it before the conference.

PN218

All right. Thank you very much for your attendance and for your contributions. We'll adjourn.

**ADJOURNED UNTIL FRIDAY, 05 FEBRUARY 2021**

**[10.50 AM]**