



Amended to update the speaker to Mr Eberhard in PN166, PN168, PN170, PN172, PN174, PN187 and PN189.

Further amended to update the speaker to Mr Eberhard in PN151 AND PN153, and to Mr Krajewski in PN215.

TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT GOSTENCNIK

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/280)
Plumbing and Fire Sprinklers Award 2010**

Melbourne

9.39 AM, MONDAY, 6 FEBRUARY 2017

PN1

THE DEPUTY PRESIDENT: Good morning. The conference this morning is being recorded and there will be a transcript produced so I might for the purposes of the record ask each of the parties represented to announce their appearance. I might begin with the parties in Sydney. Hello?

PN2

MS VAN DER LINDEN: I'm sorry, we're just having difficulty getting any audio from Adelaide.

PN3

THE DEPUTY PRESIDENT: Probably - the microphone is over here so we'll try that again. Is that better?

PN4

MS VAN DER LINDEN: Perfect, thank you.

PN5

THE DEPUTY PRESIDENT: I indicated that the conference is being recorded and a transcript will be produced so for the purposes of the record I might get each of the parties represented this morning to announce their appearance and I might begin with the parties in Sydney.

PN6

MS VALAIRE: Good morning, Master Plumbers' Association of New South Wales: we maintain our previous, earlier position so I don't have anything to add
- - -

PN7

THE DEPUTY PRESIDENT: No, no, I just want to know your name and who you represent at this stage.

PN8

MS O VALAIRE: Good - my name is, if Commission pleases, Valaire, initial O, for Master Plumbers' Association of New South Wales.

PN9

THE DEPUTY PRESIDENT: Yes, thank you, Ms Valaire.

PN10

MR R KRAJEWSKI: If the Commission pleases, Krajewski, initial R, Fire Protection Association Australia.

PN11

THE DEPUTY PRESIDENT: Yes, good morning, Mr Krajewski.

PN12

MS B PAUL: If the Commission pleases, Paul, initial B, from the Australian Industry Group.

PN13

THE DEPUTY PRESIDENT: Yes, thank you, Ms Paul.

PN14

MR Z DUNCALFE: If the Commission pleases, Duncalfe, initial Z, with Australian Workers' Union.

PN15

THE DEPUTY PRESIDENT: Yes, thank you, Mr Duncalfe. In Brisbane?

PN16

MS L HOGG: Yes, may it please the Commission, my name is Hogg, initial L, solicitor from Australian Business Lawyers and Advisors and I appear on behalf of Australian Business Industrial and New South Wales Business Chamber.

PN17

THE DEPUTY PRESIDENT: Yes, thank you, Ms Hogg. In Adelaide?

PN18

MS E VAN DER LINDEN: If it pleases the Commission, Van Der Linden, initial E, from the South Australian Chamber of Commerce and Industry trading as Business SA, and with me I have Klepper, initial C.

PN19

THE DEPUTY PRESIDENT: Yes, thank you, Ms Van Der Linden. In Melbourne?

PN20

MR COFFEY: Coffey - sorry - initial P.

PN21

THE DEPUTY PRESIDENT: You've got to be quick, Mr Coffey. Yes, thank you.

PN22

MS COAT: Carmel Coat, from the National Fire Industry Association.

PN23

THE DEPUTY PRESIDENT: Yes, thank you, Ms Coat.

PN24

MR EBERHARD: Eberhard, initial P, and (indistinct) is called the Master Plumbers Guild.

PN25

THE DEPUTY PRESIDENT: All right, thank you very much. Well, I'm assuming the parties have had an opportunity to examine the revised summary of submissions and positions so far as they concern the technical and drafting issues concerning this award. My proposal this morning is that we simply work through those matters that remain unresolved to see whether or not we can move matters along this morning and narrow the number of issues that remain outstanding. So does everybody have a copy of that document? The document that I'm working is the one that was published on 5 January 2017. Yes, all right.

PN26

All right, well, the first item on the list had been withdrawn or not pursued. Do I take it that the second and third items are no longer in dispute? Is that - yes, all right, excellent. All right, well, we'll move to item 4 then. It concerns the facility of provisions. Ms Hogg?

PN27

MS HOGG: Yes, thank you, Deputy President. Look, this is I suppose in my view a relatively simple issue. When going through the exposure draft we identified a number of clauses which appeared to create, I suppose, facilitative arrangements and what the facilitative provisions were aimed at creating agreement between the parties in circumstances where there's agreement between the employer and an individual or a group or a majority of employees. In our view there are a number of provisions in the exposure draft which haven't been identified in the table in clause 7.2.

PN28

So for ease of reference and to insure that everything is contained in the one spot we've gone through and identified those and it is our suggestion that they should be contained in clause 7.2.

PN29

THE DEPUTY PRESIDENT: Yes, all right. I take it that Business SA agree with that position?

PN30

MS VAN DER LINDEN: Yes.

PN31

THE DEPUTY PRESIDENT: Yes?

PN32

MS VAN DER LINDEN: That is correct, yes; we agree.

PN33

THE DEPUTY PRESIDENT: Mr Eberhard, likewise, your group?

PN34

MR EBERHARD: As is always the case, your Honour, when you bring an old file - I can't tell you. I've got to go off memory now but I don't think - we certainly didn't of itself oppose the - - -

PN35

THE DEPUTY PRESIDENT: According to my summary you agree.

PN36

MR EBERHARD: Yes.

PN37

THE DEPUTY PRESIDENT: All right. Now, Ms Paul, do you have a contrary view?

PN38

MS PAUL: Your Honour, we don't have an issue with including those terms. We don't see them as facilitative but we're not going to necessarily oppose it on that issue. It's more around the term of, "majority of employees." We're concerned that so long as it's clearly and effectively deals with the issue about this being able to be done with a small group as opposed to a majority, being the majority of everyone in the workplace, which I think when you look at the facilitative provisions at the moment it's either employees or majority of employees.

PN39

That isn't an appropriate reflection of what's in the respective clauses because the respective clauses use the words, "The employer and its employees." It doesn't necessarily stand that it's going to be the majority of its employees: it might be the majority of a group.

PN40

THE DEPUTY PRESIDENT: So your position is that presumably an appropriate wording would be, "Agreement with a majority of employees affected", or some such formulation.

PN41

MS PAUL: Yes, your Honour, and that is the basis of any objection we hold: it's more around that terminology being clear, that it could be a small group.

PN42

THE DEPUTY PRESIDENT: Yes, all right.

PN43

MR KRAJEWSKI: Your Honour - - -

PN44

THE DEPUTY PRESIDENT: Sorry, yes?

PN45

MR KRAJEWSKI: - - Krajewski, Fire Protection Association: I know we'll come to that in a moment, clause 15.3, but there seems to be a link between this particular provision and clause 15.3 and I just at this stage make a very brief comment on what we've said about that. We haven't got a problem with what's being suggested but perhaps when we come to 15.3 some examples might be given but I won't say any more about it than that because I think there is a bit of a link between those two provisions. If I'm wrong then I'm wrong.

PN46

THE DEPUTY PRESIDENT: That's item 13, is it?

PN47

MR KRAJEWSKI: Yes, your Honour.

PN48

THE DEPUTY PRESIDENT: All right. Well, perhaps we can - when we get to that item perhaps we can deal with that item and item 4 together.

PN49

MR KRAJEWSKI: Thank you.

PN50

THE DEPUTY PRESIDENT: All right. Item 5 has been withdrawn. Item 6 - Ms Van Der Linden?

PN51

MS VAN DER LINDEN: We had raised - I think a number of our members had had just difficulty in understanding the way that the daily hire should be calculated so in our original submission we just questioned whether or not this could be made any clearer. So it was more I think - I guess in a way a little bit of a fishing expedition to see whether or not other people agreed that it could be made clearer and other people agreed with our members. It's, I guess, one of those ones where we're open for discussion and to have discussions around to see what the other parties believe; specifically the ones which, I guess, are a lot more industry-based as well.

PN52

THE DEPUTY PRESIDENT: Yes.

PN53

MS VAN DER LINDEN: I note that some parties have certainly agreed that a change could be put forward to make it clearer but then others feel that it's clear as well so we would be interested to hear other parties' views on it.

PN54

THE DEPUTY PRESIDENT: Yes, all right. Ms Paul.

PN55

MS PAUL: Your Honour, our view is that it's - it reflects what's in the current award and within the framework of the current - of this process, being the technical drafting, we don't see any necessity to add the words in there. We're just concerned if there are provisions added it might in itself create some other levels of confusion. A daily-hire employee for the purposes is daily hire but all of their minimum rates, et cetera, are as set out in the award, as it would be for the purposes of a weekly employee, et cetera.

PN56

The only difference is really that a daily hire is employed on a daily basis. So we don't see there being any confusion about what to pay a daily-hire employee and our view is that to depart from the current award as it stands is - sets up a process that may add a level of confusion if not a level of error.

PN57

THE DEPUTY PRESIDENT: Yes, all right. Any other party wish to say anything about that issue?

PN58

MS VALAIRE: Your Honour - - -

PN59

THE DEPUTY PRESIDENT: Yes.

PN60

MS VALAIRE: - - your Honour, we agreed with AIG position and we think that the current award is reasonably clear and there is no need for additional clarification.

PN61

THE DEPUTY PRESIDENT: Yes, all right, thank you. Mr Eberhard, were you going to say something different?

PN62

MR EBERHARD: Master Plumbers of New South Wales - I think it's compulsory, your Honour. Look, I don't think we're necessarily saying that there has to be a change but if there is we make the suggestion that the words we propose that are reflected in the document would be the words that we would suggest be inserted into the award.

PN63

MS PAUL: Sorry, your Honour, if I may - I think we would have - I think this would illustrate the point of why we say there should be no change made. Essentially, by putting the lost-time loading and the minimum rate this would be the only class of employees we're actually cross-referencing. In effect, the award is structured so that the rates of pay in the particular section and allowances, et cetera, in another without needing to have the debate around what is the daily hire's minimum employment terms, et cetera out of the context of what's in the award.

PN64

So again, I guess we stress that our proposal is to leave the clause as is.

PN65

THE DEPUTY PRESIDENT: Yes, all right. Well, it's not the purpose today of a member of the Commission making a decision about the merits of those issues. It's to try and reach agreement and at this stage there are disparate views so it's really a question of whether the proposers want to maintain their proposal or drop off on it.

PN66

MS PAUL: Yes, look, we would be happy to withdraw it. As indicated before, it's certainly not one which we would be going in all guns firing. It's more that it had been raised by a couple of members as an area for potential clarification. So it's certainly not one that we'll be pushing very hard on so if there is fairly strong opposition from the other parties to say that they think that it should remain the same as what's in the award then we'd be happy to withdraw.

PN67

THE DEPUTY PRESIDENT: Yes, all right, thank you. Mr Eberhard, does that make your proposition fall away?

PN68

MR EBERHARD: It would, your Honour, yes.

PN69

THE DEPUTY PRESIDENT: Yes, all right, thank you. Well, I'll mark that item as withdrawn. Thank you. Item 7, Mr Duncalfe?

PN70

MR DUNCALFE: Yes, Deputy President: we would like to continue to pursue this item. Basically the current clause in reference to commencing times and not finishing times - employees may miss out on overtime they're entitled to if there is no finishing time specified.

PN71

THE DEPUTY PRESIDENT: So what precisely is it you're proposing? What amendment to clause 11.3 are you proposing?

PN72

MR DUNCALFE: Just something similar to the words in the exposure draft, clause 15(2)(c), that identifies ordinary hours for part-time employees.

PN73

THE DEPUTY PRESIDENT: Wouldn't that be for 8(a)?

PN74

MR DUNCALFE: I'm sorry, Deputy President: yes, that's item 8(a)(vii). We just submitted to add in the word, "finishing", into 11(3)(b). At the moment it just says, "Commencing." We propose in the agreement:

PN75

Before commencing a period of part-time employment the employee and the employer will agree in writing

PN76

11(3)(b):

PN77

upon the hours to be worked by the employee, the days upon which they will be worked and commencing

PN78

and then for us to add in, "and finishing times for the work", because we feel that could be construed as there is no ordinary finishing time and therefore they can - an employee can be taken advantage of.

PN79

THE DEPUTY PRESIDENT: All right. Does anybody else have a view about that proposal?

PN80

MS PAUL: Sorry, your Honour - certainly AI Group would oppose that. We don't believe that (a) it's necessary - it would be a new inclusion in the award. It's

not - the term matches what is in the current award and in fact it's not an unusual term to have in terms of just identifying the commencing hours of work as opposed to stipulating the spread of hours within that definition. We say this is not a matter that we could agree to.

PN81

THE DEPUTY PRESIDENT: All right, anybody else?

PN82

MS VALAIRE: Yes, your Honour, if I may?

PN83

THE DEPUTY PRESIDENT: Yes.

PN84

MS VALAIRE: It seems unnecessary because if we have commencing time agreed and hours to be worked it's not that hard to calculate the finishing time. So in my mind it will be a repetition if we have a commencing time and then hours worked. We wouldn't need a finishing time.

PN85

THE DEPUTY PRESIDENT: Yes, I understand the point. I think that's being made is that the hours of work might be the hours of work in a day or it might be the hours of work in a week and so, for example, a part-time employee and employer might agree that the employee would be engaged for 20 hours a week, starting at 7 am. From that one couldn't calculate a finishing time, presumably. I think that's the point.

PN86

MR DUNCALFE: That's correct, yes.

PN87

THE DEPUTY PRESIDENT: Yes, but as I said it's not my role today to determine the merits of the issue. The AIG and other employers appear to oppose the amendment and on that basis unless the AWU indicate that they don't wish to press the matter than that's an issue that will have to be determined separately.

PN88

MR DUNCALFE: I will continue to pursue that one.

PN89

THE DEPUTY PRESIDENT: Yes, all right. All right, Mr Duncalfe, we'll move to item 8(a).

PN90

MR DUNCALFE: In 8(a) the AWU has submitted that the span of hours for casuals is not specified and this is the one where we would like to see the wording of clause 15.2(c) to be inserted after 12.1, just so casual employees have a span of hours that are ordinary hours for them to work between, again, presumably for calculation of overtime.

PN91

THE DEPUTY PRESIDENT: Why wouldn't the general span of hours apply?

PN92

MR DUNCALFE: Actually can't answer that one, Deputy President. I've only had carriage of this one since Friday so I might put a hold on that one. I won't withdraw it. I'll talk to my colleague who drafted the submission and maybe we can work on that in-between ourselves.

PN93

THE DEPUTY PRESIDENT: All right, so can I just for present purposes simply mark that item as the AWU is revising or is considering whether it continues to press that item?

PN94

MR DUNCALFE: Yes, your Honour; thank you.

PN95

THE DEPUTY PRESIDENT: All right, thank you. Item 8(b), Ms Paul.

PN96

MS PAUL: Your Honour - sorry.

PN97

THE DEPUTY PRESIDENT: Sorry, that appears to be agreed now?

PN98

MS PAUL: Yes.

PN99

THE DEPUTY PRESIDENT: Yes, it goes to one of the - we're not letting you off the hook, Ms Paul: item 9.

PN100

MS PAUL: Thank you, your Honour. Your Honour, we're seeking the issue around - that the substantive change - sorry: the exposure draft, your Honour, deals with what we say is increasing monetary obligations; particularly if I may just - the exposure draft identifies, your Honour, that the casual employees to be paid on an hourly basis plus a loading of 25 per cent. We say the substantive change from the way the current award operates and we also indicate that that changes the terms because it is not hinged against the minimum hourly - minimum wage for an employee and more in terms of the additional hourly minimum rate.

PN101

So we believe that the provisions are set within the current award should be met and I think it's more about when you start talking around the loaded rate including all the extra allowances, et cetera, that are included as part of the ordinary rate as opposed to the hourly minimum rate. So the 25 per cent, your Honour, seems in the exposure draft that it's linked directly to the minimum weekly rate and therefore will provide an additional obligation or an additional cost to employers.

PN102

THE DEPUTY PRESIDENT: As a question, what would happen to the all-purpose allowances?

PN103

MS PAUL: Well, we say that the employee is still entitled to the all-purpose allowance, just not the all-purpose allowance on the loaded rate.

PN104

THE DEPUTY PRESIDENT: The all-purpose allowances are to be treated separately and they're not to be included in the casual loading?

PN105

MS PAUL: It's the minimum - the minimum rate plus casual loading becomes the casual's minimum hourly rate and then any additional allowance - sorry, when you calculate the all-purpose allowance you calculate it on the minimum rate, not on the loaded rate. We're saying the way it's - which is what appears in the current drafting, in the current award, it would appear that in the use of the words in the exposure draft in fact you're calculating the all-purpose rate on the actual loaded rate, which we say increases costs.

PN106

THE DEPUTY PRESIDENT: Is that because of the reference to the ordinary hourly rate?

PN107

MS PAUL: Yes, your Honour. The current award uses the terms:

PN108

In addition to the hourly minimum wage for a weekly hire - - -

PN109

- - yes, and that's why we say that there's a problem.

PN110

THE DEPUTY PRESIDENT: All right. Anybody else wish to say anything about that?

PN111

MS VALAIRE: We agree with AIG submissions on that point.

PN112

THE DEPUTY PRESIDENT: Yes, thank you.

PN113

MS VAN DER LINDEN: Business SA agrees with those submissions as well, your Honour.

PN114

MR KRAJEWSKI: We have no comment, we agree, your Honour.

PN115

MR DUNCALFE: Can I just clarify - are we saying that the 25 per cent loading is on top of the hourly rate but then all-purpose allowances are still - - -

PN116

MS PAUL: Are still paid.

PN117

MR DUNCALFE: - - paid, just not the 25 per cent on top of?

PN118

MS PAUL: Yes.

PN119

MR DUNCALFE: Okay, thank you.

PN120

THE DEPUTY PRESIDENT: Yes, Mr Duncalfe, do you wish to say anything about that issue?

PN121

MR DUNCALFE: I think I will leave it for now and I'll go through and talk to my colleague who prepared our submissions on this, thank you.

PN122

THE DEPUTY PRESIDENT: Mr Coffey.

PN123

MR COFFEY: Deputy President, I don't think - to be honest, I don't want to agree with some of the other parties but I don't think it was ever meant to be paid like that in the first place. We're happy with the words in the current award on that matter.

PN124

THE DEPUTY PRESIDENT: Well, Mr Duncalfe, can I leave it to you to consult and advise the AWU's position within seven days? It appears that all other parties agree that the proposed amendment is a bit of an over-reach.

PN125

MR DUNCALFE: Yes, I think we'll agree with it too.

PN126

THE DEPUTY PRESIDENT: So does that mean you don't need the seven days?

PN127

MR DUNCALFE: I don't need the seven days, thank you.

PN128

THE DEPUTY PRESIDENT: All right, thank you. All right, well, in those circumstances we'll note that all parties agree with AIG's position and the provisions in the existing award should be retained.

PN129

MS PAUL: Your Honour, that gives rise to one other issue which obviously the schedules will need to be amended accordingly - - -

PN130

THE DEPUTY PRESIDENT: Yes.

PN131

MS PAUL: - - schedule B will need to be amended accordingly.

PN132

THE DEPUTY PRESIDENT: Yes. Mr Duncalfe, item 10.

PN133

MR DUNCALFE: Yes, Deputy President - I'm just getting it here. Paragraph 9 - okay, yes: in the exposure draft at 13.8 we're just seeking more information be added underneath the hours for apprentices. Basically all that exists there now is, "will not exceed 38 hours." But there is no more guidance other than that. We're not suggesting any changes to the information, just to make that section more informative and easier to find for someone using the award. We're hoping to get cross-reference to clause 11, part-time employment; clause 15, hours of work and clause 13.9, which states that if you are under 18 you're not required to work overtime.

PN134

So no changes substantially; just a cross-reference to make that section a little bit more informative for someone who is looking at the apprenticeship section of the award.

PN135

THE DEPUTY PRESIDENT: Well, 13.9 deals with the overtime and shift work issue.

PN136

MR DUNCALFE: It does, yes. I think this submission of ours is just meant to reflect an ease of putting it all together in some section so if someone is looking through the apprenticeship part of the award it's all there and they don't have to go searching, even though 13.9 is the subclause directly after.

PN137

THE DEPUTY PRESIDENT: 13 deals with apprenticeships and what else are you suggesting should be there?

PN138

MR DUNCALFE: Clause 11, part-time employment, and clause 15, hours of work.

PN139

MS VALAIRE: Excuse me, your Honour.

PN140

THE DEPUTY PRESIDENT: Does any other party wish to say anything about that issue?

PN141

MS VALAIRE: Yes, your Honour: clause 13.4 clearly states that the apprenticeship could be only on a full-time basis so there is no apprentices on a part-time basis under this award.

PN142

THE DEPUTY PRESIDENT: That would seem to leave the hours issue, Mr Duncalfe - what specifically out of the hours do you - are you suggesting that there be a reference to where the ordinary hours of work are prescribed?

PN143

MR DUNCALFE: Yes, it's not a really - we're not chasing it too hard. I think it was just a suggestion, just to make that section more informative but as has been said part-time employment doesn't seem to apply to this award and 13.9 is under the clause 13 which deals with apprentices and hours of work - obviously it's general application so we're not going to pursue it too hard. I think it was just a suggestion, just for ease of finding information on apprentices. But it's - doesn't seem to be too hard.

PN144

THE DEPUTY PRESIDENT: All right. Can I mark that as withdrawn then?

PN145

MR DUNCALFE: Yes, you can.

PN146

THE DEPUTY PRESIDENT: Yes, thank you. Item 11, Ms Paul.

PN147

MS PAUL: Your Honour, (indistinct) into the AWU's provisions or requests, I guess, in terms of part-time employment and casual employment and apprentices. I believe that might be coming up a bit later around the daily hire employees.

PN148

THE DEPUTY PRESIDENT: Yes, when we get to item 13.

PN149

MS PAUL: Yes, your Honour.

PN150

THE DEPUTY PRESIDENT: All right, we'll deal with that then.

PN151

MR EBERHARD: Your Honour, can I just go back a step - - -

PN152

THE DEPUTY PRESIDENT: Yes.

PN153

MR EBERHARD: - - - and can I be a pain in the proverbial in the sense of if you read clause 13.4 and the reference to, "on a full-time basis", which is what the award says, if you go to schedule G, schedule G refers to a school-based

apprentice. I just wonder how the two correlate because in that particular instance is schedule D deemed to be completely separate to the provisions of clause 13 or is schedule G, a school-based apprentice, still read in conjunction with the provisions of clause 13? I apologise, I just looked at that there and then.

PN154

THE DEPUTY PRESIDENT: What page of the exposure draft?

PN155

MR EBERHARD: 115.

PN156

THE DEPUTY PRESIDENT: My copy has run out of pages, Mr Eberhard, so just let me see if I can find it in the current award. Thank you very much. For what it's worth, my reading of schedule G is that it operates independently of the other schedule. It's a special class of apprentice whose terms and conditions are dictated by that schedule only. That's the way I would read it. I understand your point, that that effectively means a part-time apprentice, but it's not an apprentice employed pursuant to - - -

PN157

MR EBERHARD: Clause 13.

PN158

THE DEPUTY PRESIDENT: - - - clause 13.

PN159

MR EBERHARD: That's why I asked, your Honour, in that sort of sense.

PN160

THE DEPUTY PRESIDENT: But that's just my view on the matter. Does anybody else have a view?

PN161

MR COFFEY: I'd agree with you there, Deputy President.

PN162

THE DEPUTY PRESIDENT: Yes, thank you, Mr Coffey. Is that satisfactory, Mr Eberhard?

PN163

MR EBERHARD: Yes, your Honour.

PN164

THE DEPUTY PRESIDENT: Yes, all right, thank you. Item 12 - who is leading the charge on that item: adult apprentices?

PN165

MR KRAJEWSKI: We think, your Honour - Krajewski from Fire Protection Association - your Honour, look, we don't think there ought to be any change in the provision. Perhaps people read more into it than should be the case. Comments have been made about discriminatory comments or references but,

look, I think the provision has been there for quite some time or the implied provision has been for quite a few years and we can't see why there ought to be any change. It doesn't discriminate, we don't think, between any category of employee so we think it should be retained as it is.

PN166

MR EBERHARD: If I could, your Honour: I think our position has been in regards to 13, 14(d), is that whilst they might be nice words to have in there they appear to us to be more aspirational rather than enforceable because the words, "where possible", I suppose from the employer's point of view we can simply say it isn't possible so therefore the question then becomes is - whether any of the remaining provisions of that particular clause become enforceable. So we question whether it is a provision that should be in the award because it isn't that enforcement of the provision. It is an aspirational provision.

PN167

MR KRAJEWSKI: Does it not provide some flexibility and some options to the employment of such employees?

PN168

MR EBERHARD: But all I'm saying is as an aspirational clause, should it be in the award in and of itself, because the award is meant to establish and determine the core minimum terms and conditions and if they aren't enforceable, what I say is what work does it do? Now, yes, they are great words in the sense of an employer should consider what is being said. But can an employee actually enforce that?

PN169

MR KRAJEWSKI: With respect, then, why do we have a flexibility provision in the award? Flexibility provision does provide for those sorts of opportunities and here is an exact opportunity for that to take place.

PN170

MR EBERHARD: I don't think this is about flexibility. This is about whether you offer an existing employee an apprenticeship or not. That's not about flexibility of the terms of the award.

PN171

MR KRAJEWSKI: I think the flexibility is whether the employer wants to provide for an adult apprenticeship or not to provide for an adult apprenticeship; a question of choice.

PN172

MR EBERHARD: But again, I'm saying that choice should be made exclusive of the award.

PN173

MR KRAJEWSKI: Well, subparagraph (ii) gives you or provides you with that flexibility and it doesn't provide any discriminatory or any awkward or alternative position.

PN174

MR EBERHARD: But isn't subparagraph (ii) subject to subparagraph (i), which is the discretionary type of situation, "where possible?"

PN175

MR KRAJEWSKI: I've made my comment. I don't think it's necessary to change it.

PN176

MS PAUL: Your Honour, our view is as per our submission: we believe that it has the risks of being a discriminatory clause. This is in reference to subparagraph (d)(ii). We say that that should be removed. Certainly (d)(ii) should be removed or amended in some form because it could be read to be discriminatory, your Honour. This level of lack of clarity, to be honest, when you read it, your Honour, in terms of - is it a reference to adult apprentices employed at the expense of other adult apprentices or at the expense of generally other apprentices and if it is the latter then we say that will definitely fall within the category of being a discriminatory clause and therefore not enforceable.

PN177

MS COAT: We would agree with that submission as well.

PN178

THE DEPUTY PRESIDENT: All right.

PN179

MS VAN DER LINDEN: Deputy President, Business SA would also agree with that position as detailed in our submissions.

PN180

THE DEPUTY PRESIDENT: All right, anybody else? Okay, well, that item will need to be dealt with elsewhere. Item 13, which encompasses the two earlier items that we - - -

PN181

MS PAUL: Yes, your Honour.

PN182

THE DEPUTY PRESIDENT: Was that you, Ms Paul, wanting to - - -

PN183

MS PAUL: Yes. Your Honour, I believe in relation to item 13 we just disagree with the AWU's position generally around the amendment of those - of their proposals, regarding part-time, daily hire and casual. It might be best if - are you maintaining your position in terms of that?

PN184

MR DUNCALFE: Are we looking at item 13 here?

PN185

MS PAUL: Sorry, sorry, your Honour. I'm in the wrong section. Yes, sorry, your Honour, I was looking at the wrong section.

PN186

THE DEPUTY PRESIDENT: That's all right.

PN187

MR EBERHARD: Your Honour, if I could - - -

PN188

THE DEPUTY PRESIDENT: Yes, Mr Eberhard.

PN189

MR EBERHARD: Our position has been that the word, "affected", should be included after the word, "its", and before the word, "employees", in the first line. But by agreement between the employer and its affected employees - the concerns that we have is that there can be numerous sites that could be operating under the one employer. Does the clause require each employee who is an employee of the organisation to agree to an early start, where really it may only be affecting one particular location? We say that those employees of that one particular location should be the ones that determine their own hours in that particular sense, rather than having employees from other locations having a say on whether or not they do or do not have that early start. So we say that the word, "affected", should be after the word, "its", and before, "employees."

PN190

MR COFFEY: We would agree with that too, Deputy President.

PN191

MS VALAIRE: Your Honour, we still maintain that it should be as an individual employee otherwise it could lead to some discriminatory action against people with some family responsibilities or some health requirement. For example, if one person on a site is having some health issue like he's got a diabetic and he needs to have an early injection, even if majority would agree to the early start, that person cannot comply with such a requirement. So we think early start must be on an individual, case-by-case basis.

PN192

MR EBERHARD: We would tend to agree with that, your Honour.

PN193

THE DEPUTY PRESIDENT: Mr Eberhard, you weren't suggesting a majority of employees, you were suggesting affected employees, which would mean that all employees affected would have to agree.

PN194

MR EBERHARD: If an employer had, say, three sites operating - - -

PN195

THE DEPUTY PRESIDENT: Yes.

PN196

MR EBERHARD: - - - and site one was the one that it was proposed to start early.

PN197

THE DEPUTY PRESIDENT: And there were 10 employees on that site it would be agreement with all 10 employees.

PN198

MR EBERHARD: The majority of those 10 at that site one would be the determining factor as to whether there was an early start or not.

PN199

THE DEPUTY PRESIDENT: So it's not an agreement with its affected employees, it's an agreement with a majority of affected employees.

PN200

MS PAUL: Your Honour, we're actually having some trouble hearing you.

PN201

THE DEPUTY PRESIDENT: I'm sorry. I was just teasing out Mr Eberhard's proposal because he indicated earlier that the proposal was that it would be the affected - the agreement between the employer and its affected employees or something to that effect but I think it's clear that it's a majority of affected employees.

PN202

MR EBERHARD: And - sorry, your Honour - that's actually reflected in the summary as well.

PN203

THE DEPUTY PRESIDENT: Yes.

PN204

MR EBERHARD: The clause should read: "The majority of affected employees."

PN205

THE DEPUTY PRESIDENT: Yes.

PN206

MR EBERHARD: You are right, yes.

PN207

THE DEPUTY PRESIDENT: All right. Anybody else?

PN208

MS PAUL: Your Honour, we would suggest that the term, "its employees", should be read broadly to mean potentially a group of employees and not the majority of the employer's employees in that sense. Whether that resolves Mr Eberhard's issues - - -

PN209

MR EBERHARD: My concern is that if it's read broadly then to me it would mean all employees rather than a selection of employees at that particular site.

PN210

MR KRAJEWSKI: Your Honour, I don't know what the Commission's position is in terms of considering examples into exposure awards and I think it might be a limited area but I wonder in this particular instance, because of a number of examples that have been put forward, whether here is an opportunity of perhaps identifying some examples, the ones that Mr Eberhard has produced, what Ms Valaire has suggested. Whether in this case there may be some merit in picking up some generics of it in terms like you suggested but maybe provide a couple of examples. I don't know if that's workable or not but just a thought.

PN211

THE DEPUTY PRESIDENT: I personally don't have a particular problem with providing examples but I think the parties first need to agree on principle and I don't think there is agreement on principle at this stage. Mr - as I understand Mr Eberhard's position, he says an employer might have three sites operating. On one site, the employer needs an early start. He has 10 employees assigned to that site. That which is proposed is that six of those employees agree to an early start then there is an early start despite the views of the other four employees.

PN212

The view from Ms Valaire is that it should be an individual circumstance because - an individual agreement because individuals might have particular issues with an early start. That issue can be accommodated within a majority arrangement: for example, that an employee can refuse to work given particular circumstances, much like an employee can refuse to work unreasonable periods of overtime given. So those sorts of issues can be addressed. But I'm not sure we actually have agreement on what the current provision means and what should be the technical amendment. I think that's - - -

PN213

MR EBERHARD: That's the issue.

PN214

THE DEPUTY PRESIDENT: That's the issue: it's an interpretation, really, of what is currently required.

PN215

MR KRAJEWSKI: Your Honour, I accept what you're saying. I just wonder whether just as a further point whether one just inserts and combines what has been said and so that subject may be words along these lines: "Subject to clause 7" - I think it is - "flexibility provisions that the majority of affected employees", et cetera, et cetera, might be a proposition for some thought.

PN216

THE DEPUTY PRESIDENT: All right, does anybody else have a view?

PN217

MR DUNCALFE: We just think that employees, as a term, is ambiguous as to how it's supposed to apply. We're just after clarification on whether it would be majority of affected or individual or majority of entirely. We think it would be best if it is sorted out as to the application of what employees means in the award.

So we're open to discussion: we just don't know what employees is supposed to mean and how it's supposed to be read.

PN218

MS HOGG: Yes, look, we would probably share that view at Business SA. I don't think there's real clarity there in the award. In our view, "employees", tends to indicate something on a basis of more than an individual. I'm not opposed to Mr Eberhard's suggestion that it might be a majority of affected employees within different areas of the business. But I think it's meant to apply to at least a group of employees as opposed to an individual basis and I think if it's an individual basis it should be dealt with under the individual flexibility agreement. I don't think the intention of the clause is to be on a one-on-one for negotiation of those early start times.

PN219

MS PAUL: Your Honour, we would certainly agree with that proposition. In our view the word is - "and its employees", we say needs to not refer to majority because that could mean every employee as well. So we say that it is broadly more than one but it could be a small group, it could be an affected area: it needs to have that level of flexibility that's in the current award.

PN220

THE DEPUTY PRESIDENT: Flexibility achieved through ambiguity.

PN221

MS PAUL: Yes, your Honour: maybe it's the case that the parties can fight that one off on another day. But the current award terms seem to be based on the fact of using, "its employees."

PN222

THE DEPUTY PRESIDENT: Yes. All right, well, that leaves us in a position where, Mr Eberhard - do you want to press your proposal?

PN223

MR EBERHARD: If I remember, your Honour, this is actually a response to questions raised by the Commission in the draft itself. If I go - because it's picked up in the flexibility clause.

PN224

THE DEPUTY PRESIDENT: Earlier, yes.

PN225

MR EBERHARD: The Commission asked the question as to - I've forgotten what the exact words are but it's not something that we have raised.

PN226

THE DEPUTY PRESIDENT: Yes.

PN227

MR EBERHARD: It's a response to the question that has been raised by the Commission.

PN228

THE DEPUTY PRESIDENT: Yes.

PN229

MR EBERHARD: So I can either press it in that we maintain that position in response to the question that's being asked.

PN230

THE DEPUTY PRESIDENT: This is the question that's asked at the bottom of 7.2 in the exposure draft.

PN231

MR EBERHARD: Correct, yes.

PN232

THE DEPUTY PRESIDENT: Yes, I see.

PN233

MR EBERHARD: We've said - we've not only said that there should be - that the majority of affected employees but there should be some additions in there and we've maintained that throughout our submission but that's - as I said, it's not really a position that we have put forward: it's a response to the question from the Commission itself.

PN234

THE DEPUTY PRESIDENT: All right. Well, that kind of - that circles us back to item 4 and item 11, I guess. That is, what should the content of the facility provisions be because the issue arises at least in relation to early starts, because of the inclusion of early starts in the facility provision.

PN235

MR DUNCALFE: Then the question of whether or not it should be a majority of the employees in the other matters that are listed in clause 7 itself.

PN236

THE DEPUTY PRESIDENT: Yes. All right, I think the Fire Protection Association - was it the Fire Protection Association wanted item 4 deferred until now?

PN237

MR KRAJEWSKI: Yes, it was. Yes, I think so, your Honour. I think that it just provides some, I think, flexibility for all parties in relation to that we would just make that suggestion, that the provision can have that flexibility by referring back to that particular, fundamental clause, clause 7, that issues might arise on an individual basis but at the same time as Mr Eberhard has suggested, that majority of employees - affected employees could also be a very key phrase.

PN238

MS PAUL: Your Honour, we would raise a concern around adding those terms in clause 7 unless the parties are clear about what it is that we're adding because generally it's around majority or individual or even a group of individuals. But if

there is some concern that it doesn't go broad enough then I guess our position is the current award says, "its employees", which may have multiple meanings. It may not be appropriate to that within the clause 7 table, which merely is a table to cross-reference other parts of the award.

PN239

MS VALAIRE: Excuse me, your Honour - - -

PN240

THE DEPUTY PRESIDENT: So, Ms Paul, are you suggesting that clause 7(2) should be deleted all together? Is that your - - -

PN241

MS PAUL: Sorry, your Honour, I'm just going back to clause 7(2). It identifies - sorry, your Honour, I apologise - it identifies the agreement between an employer and the employees. It should be a reference to, "its employees."

PN242

THE DEPUTY PRESIDENT: Yes, I understand that.

PN243

MS PAUL: But if there is a dispute around what that actually means, it might be more sensible to have that removed if we work on the principle that I've addressed earlier, which is that parties can have a fight over this at another time in terms of interpretation.

PN244

THE DEPUTY PRESIDENT: Because the introductory words to the table in 7.1 don't make a reference to the way in which 15(3) is expressed currently.

PN245

MS PAUL: Yes.

PN246

THE DEPUTY PRESIDENT: I mean, it focusses on individual employees or a majority of employees but not its employees, whatever that may mean.

PN247

MS PAUL: Yes and that is the issue that we've had with the other proposition to add more clauses in here. I think that when the term, "its employees", is utilised - which is in a number of the clauses - one view which was our view is that it should contemplate a smaller group of employees and not necessarily a majority. But how that is phrased within the facilitative clause - the facilitative clause of course is misleading in that sense.

PN248

THE DEPUTY PRESIDENT: Well, if the purpose of clause 7 is really to alert the reader to where one finds facilitative provisions, one approach might be that the first sentence would simply read: "Facilitative provisions provide that the standard approach in an award provision may be departed from in certain circumstances." 7.2 would then read: "Facilitative provisions in this award are contained in the

following clauses", and columns one and two would remain but column three would be deleted.

PN249

MS PAUL: We would be happy with that, your Honour.

PN250

MS VALAIRE: We would be happy with that too as well, thank you.

PN251

MS HOGG: That would seem to deal with the issue of, "its employees", and leave the issue of interpretation for another day so we would be happy with that.

PN252

MR DUNCALFE: We'd agree as well.

PN253

MR COFFEY: I'm happy with that, Deputy President.

PN254

THE DEPUTY PRESIDENT: All right. Well - - -

PN255

MR DUNCALFE: But still - so it's still the, "its employees", is yet to be determined as how to be interpreted at a later date?

PN256

MR KRAJEWSKI: It's really in accordance with 7.1, isn't it?

PN257

THE DEPUTY PRESIDENT: Well, it's a facilitative provision, that much is agreed.

PN258

MS PAUL: Yes.

PN259

THE DEPUTY PRESIDENT: You can have a fight about it - I'm not sure how many fights you've had about it thus far in an actual circumstance but essentially the 7.1 would now read - and I'm reading this for the purposes of the transcript:

PN260

A facilitative provision provides that the standard approach in an award provision may be departed from in certain circumstances

PN261

Full stop, deleting the words, "by agreement", and everything that follows thereafter until, "concerned", full stop, in 7.1. 7.2 would provide:

PN262

Facilitative provisions in this award are contained in the following clauses

PN263

and the table below that would remain, except the last column would be deleted in its entirety. So the table would be a two-column table; the first column indicating the clause reference, the second column indicating the heading to the provision. The only issue then is whether there are any other clauses in the award that should be identified as facilitative provisions and included in the table.

PN264

MS HOGG: We would submit that the three clauses which were raised in our initial submission, clauses 15.5(c), 15.5(e) and 15.5(f), should be included in that table.

PN265

THE DEPUTY PRESIDENT: Just bear with me. 15.5 - - -

PN266

MS HOGG: (c).

PN267

THE DEPUTY PRESIDENT: Yes, that's 15.5(c). What else?

PN268

MS HOGG: 15.5(e).

PN269

THE DEPUTY PRESIDENT: Yes.

PN270

MS HOGG: 15.5(f).

PN271

THE DEPUTY PRESIDENT: That's (ii) in each case?

PN272

MS HOGG: Correct.

PN273

THE DEPUTY PRESIDENT: Does any party have a view about that?

PN274

MS PAUL: We have no issues with that, your Honour.

PN275

MS VALAIRE: We agree with that.

PN276

MS VAN DER LINDEN: We don't have any issues with that, your Honour.

PN277

MR KRAJEWSKI: We don't have an issue, your Honour.

PN278

THE DEPUTY PRESIDENT: All right.

PN279

MR DUNCALFE: We support that, as well.

PN280

THE DEPUTY PRESIDENT: Okay. Thank you. In that case, the table to clause 7.3 would be amended to include reference respectively to clause 15.5(c) with the corresponding heading; 15.5(e)(ii) and corresponding heading; and 15.5(f)(ii) with the corresponding heading. All right. Does that then deal with item 4?

PN281

MS HOGG: I think so.

PN282

THE DEPUTY PRESIDENT: Yes, and item 13.

PN283

MR KRAJEWSKI: Yes, your Honour.

PN284

THE DEPUTY PRESIDENT: Ms Paul, why did we leave item 11 in that category?

PN285

MS PAUL: Your Honour, item 11 is in terms of the AWU's submissions regarding part-time employment, casual employment and apprentices. I'm not quite sure where else that has been dealt with. I understand the AWU is proposing to add - wanting further words put in regarding hours of work similar to the provision around apprentices at item 10 and above. I believe there is an outstanding issue around their view about daily hire employees, as well.

PN286

THE DEPUTY PRESIDENT: Mr Duncalfe, what is the remaining issue or issues in item 11 from the AWU's perspective?

PN287

MR DUNCALFE: Well, I personally can't see what the discussion is about. I don't know exactly what I'm supposed to respond to.

PN288

MS PAUL: We're responding to your application.

PN289

MR DUNCALFE: Which part of my application?

PN290

MS PAUL: The AWU's proposed ordinary hours clauses have been drafted incompletely. To give you an example - I think we've already dealt with the apprentice-type stuff and you have suggested amendments to 11.3(b), 12 and 13.8.

PN291

MR DUNCALFE: Your reference is to paragraphs 9 to 11 of our submission?

PN292

MS PAUL: Yes. We're just saying we don't agree with your proposition and the current clauses are fine.

PN293

MR DUNCALFE: Okay. So paragraph 9, we've already dealt with. That was the addition into the apprentice clauses.

PN294

MS PAUL: Yes. Just bear with me a sec and I'll get - - -

PN295

MR DUNCALFE: That's about the employment as adult apprentice.

PN296

MS PAUL: Yes.

PN297

MR DUNCALFE: In regard to they should be given preference over younger. Is that the one?

PN298

MS PAUL: No, I don't think so. I believe it's the AWU's submission around page 1 of the first submission; ordinary hours are incompletely drafted for part-time, casual and apprentice employees. I understand that you have now added - - -

PN299

MR DUNCALFE: Daily hire.

PN300

MS PAUL: - - - daily hire, as well. Ai Group's position is we don't agree with it.

PN301

MR DUNCALFE: I think we'll continue to pursue that. I'm going to have to look into that more.

PN302

THE DEPUTY PRESIDENT: All right. Which part of item 11, Mr Duncalfe? So much of it covers item 10. Item 10 has been withdrawn.

PN303

MR DUNCALFE: Yes, that was the apprenticeship, adding the references.

PN304

THE DEPUTY PRESIDENT: Yes.

PN305

MR DUNCALFE: That was 13.8, so that has been withdrawn.

PN306

THE DEPUTY PRESIDENT: Yes.

PN307

MR DUNCALFE: Now we're looking at 11.3(b) and 12. We're going to continue with our submissions, Deputy President. I'll have to look into that more, because at the moment I'm taking up too much of the time.

PN308

THE DEPUTY PRESIDENT: No, Mr Duncalfe, I understand. I just want you to identify which clauses remain outstanding. So 13.8 is withdrawn.

PN309

MR DUNCALFE: Is gone, yes.

PN310

THE DEPUTY PRESIDENT: Yes. So the other two remain outstanding?

PN311

MR DUNCALFE: The other to remain outstanding, yes.

PN312

THE DEPUTY PRESIDENT: Okay.

PN313

MR DUNCALFE: I think we've added daily hire, as well.

PN314

THE DEPUTY PRESIDENT: Plus daily hire - which is clause?

PN315

MR DUNCALFE: Clause 9.

PN316

THE DEPUTY PRESIDENT: Thank you. Mr Krajewski, is item 14 yours? I know it's in response to a question.

PN317

MS VALAIRE: It's in response to the question posed by Commission of overtime.

PN318

MR KRAJEWSKI: In relation to that, your Honour, we just simply say that it may be more appropriate just to consolidate those provisions and make them read a little bit better. That is that we move them to the overtime clause. Just a simple transition from one to the other and no change in the provision. Those provisions refer to overtime and whilst the overall clause refers to breaks, it just seems logical to move them under the overtime clause. Nothing really draws upon it, but it just seems to make a bit of sense, that's all.

PN319

MR DUNCALFE: We would agree with that, too, your Honour.

PN320

MS PAUL: We would agree with that, as well.

PN321

MS VALAIRE: If I may, talking with the members, for a layperson it's much easier to get access at one particular spot in the award rather than just to look around 45 pages.

PN322

THE DEPUTY PRESIDENT: All right. Is the consensus that the answer to the Commission's question is yes?

PN323

MR DUNCALFE: Yes.

PN324

MS VALAIRE: Yes.

PN325

MR KRAJEWSKI: Yes, your Honour.

PN326

THE DEPUTY PRESIDENT: Thank you. Item 16?

PN327

MS VALAIRE: Your Honour, we're quite happy with the "bank or similar transfer", because we think it does mean electronic means and there is no need for additional clarification.

PN328

MR KRAJEWSKI: We seem to slightly differ on that. Just by inserting the reference to electronic banking, it just adds to it, but either way we're not going to make any big song and dance about it, your Honour. I think we're saying the same thing.

PN329

MS HOGG: We're of the same view, as well. It's pretty much already covered in terms of the words "bank or similar transfer". However, you know, if people really want to put in for clarity "electronic transfer" to avoid ambiguity, we're not going to, you know, oppose it.

PN330

MS PAUL: We would be in the same position, as well. We believe that electronic transfers are already covered under the clause just by mentioning "bank or similar transfer" and that would be my guess that that's how most payments are made, anyway, but agreed that if people want clarification with "or electronic", we would certainly support that, as well.

PN331

THE DEPUTY PRESIDENT: Except those that are made in cash. All right. The consensus is that a change is unnecessary, but nobody is going to die in a ditch if "electronic funds transfer" or something that effect were added.

PN332

MR DUNCALFE: I think it would be nice if that was added, but, yes, we're not going to be too strong-handed about it.

PN333

THE DEPUTY PRESIDENT: All right.

PN334

MR KRAJEWSKI: Thank you, your Honour.

PN335

THE DEPUTY PRESIDENT: Thank you.

PN336

MS VALAIRE: Sorry, can I just add something, please?

PN337

THE DEPUTY PRESIDENT: Yes, of course.

PN338

MS VALAIRE: We are opposing the AWU submission to remove words "bank cheque" because we found that some of our members are still paying by bank cheque.

PN339

MR DUNCALFE: We have amended that position.

PN340

MS VALAIRE: Okay, good.

PN341

MR DUNCALFE: In the end, we're of the opinion that a reference to electronic funds transfer should be included, but no other method should be removed.

PN342

MS VALAIRE: Okay. Thank you.

PN343

THE DEPUTY PRESIDENT: All right. Thank you for that. Mr Krajewski, item 17 is yours.

PN344

MR KRAJEWSKI: Yes. Thank you, your Honour. We say that there should be some clarification in terms of who is - a distinction between an adult and an employee. In that regard, we suggest that the sprinkler fitter employee definition is quite broad, but we also think that there should be a distinction there by also adding an adult sprinkler fitter.

PN345

If I might just quickly refer to the award, in 20.3(f), it makes reference to adult fire sprinkler fitters employees, whereas there is no definition per se in the definitions clause. Again, a clarification. I don't think much swings on that, but it

might just clarify as to who in fact receives the payment if there is no definition for an adult sprinkler fitter, because - of course junior apprentices, adult apprentices as well as non-tradespeople.

PN346

It might be a definition along the lines of an adult sprinkler fitter employee means a sprinkler fitter who has completed their trade - who is a tradesman who has completed their trade or some general definition along those lines. We have definitions for a sprinkler fitter assistant and we have definitions for continuing shift workers, et cetera, but in terms of an adult sprinkler fitter which appears to be a key provision in this part of the award, it may just assist to have a definition set out.

PN347

THE DEPUTY PRESIDENT: I think the question really is aimed at whether or not the allowance is intended to be paid to any person who is qualified or just an adult who is qualified.

PN348

MS PAUL: It's also worth noting, Deputy President, that apprentices are entitled to the allowance under clause 20.2(b)(3) of the current award on a percentage basis, as well, so we need to be careful about the wording to ensure that when reading the award people don't automatically discount the fact that apprentices might be entitled to a percentage of the allowance.

PN349

MR KRAJEWSKI: That's a fair comment.

PN350

MR EBERHARD: If I can, your Honour, I was going to raise exactly the same thing in the sense that if you go to clause 20.3(f) which is what we're talking about here, but if you then also go to on page 24, 18.2(c)(iii), that's talking about for sprinkler pipe-fitting apprentices, the industry disability allowance and space, height - they are the two allowances that are referenced on page 32 in (f). Our view is that the allowance is payable to an apprentice, but at the applicable apprentice rate.

PN351

THE DEPUTY PRESIDENT: Which is the percentage rate.

PN352

MR EBERHARD: Yes, not the adult rate of 100 per cent, but whatever is the first, second, third or fourth year apprentice rate. They get the applicable percentage of that. So (f) may well need to be changed in the sense of clarity, in the sense of, yes, the adult gets paid the 100 per cent rate but an apprentice gets paid in accordance with 18.2(c)(iii), the applicable percentage of that particular allowance that's expressed in the second column.

PN353

MR DUNCALFE: The AWU would agree with that submission. The word "adult" there is just there as a reference to the amount that an adult would get, as in the 100 per cent.

PN354

MS VAN DER LINDEN: Business SA would agree.

PN355

THE DEPUTY PRESIDENT: I'm sorry, what was the last comment?

PN356

MS VAN DER LINDEN: Sorry, Deputy President. I said, yes, Business SA would agree.

PN357

THE DEPUTY PRESIDENT: An apprentice is not a person who is a fire sprinkler fitter employee. Is that right?

PN358

MR DUNCALFE: No, an apprentice is - - -

PN359

THE DEPUTY PRESIDENT: By definition.

PN360

MR KRAJEWSKI: An apprentice is - well, they're not qualified.

PN361

THE DEPUTY PRESIDENT: Those words refer to someone who is qualified.

PN362

MR DUNCALFE: One would assume so, yes.

PN363

THE DEPUTY PRESIDENT: So the word "adult" actually adds nothing.

PN364

MR DUNCALFE: No.

PN365

THE DEPUTY PRESIDENT: An apprentice - - -

PN366

MR COFFEY: You could be an adult apprentice.

PN367

THE DEPUTY PRESIDENT: Yes, you might be an adult apprentice, but you wouldn't be an adult fire sprinkler fitter employee.

PN368

MR EBERHARD: You should just be a fire sprinkler fitter employee.

PN369

THE DEPUTY PRESIDENT: Yes, that is really, I think, the purpose of the question. That is the allowance that a qualified person gets. An apprentice, by reference to other provisions, gets a percentage of that allowance.

PN370

MR COFFEY: Which is clearly spelt out in the appropriate clause.

PN371

THE DEPUTY PRESIDENT: Is it then agreed that the word "adult" be deleted and the clause simply commence with the word "fire" capitalised?

PN372

MR EBERHARD: We would certainly support that, yes.

PN373

MR KRAJEWSKI: I think you're right, your Honour.

PN374

MR DUNCALFE: The AWU would support that, your Honour.

PN375

MS VALAIRE: Yes, we support that.

PN376

THE DEPUTY PRESIDENT: All right. Thank you for that. Item 19, Ms Paul?

PN377

MS PAUL: Again, your Honour, I think this is similar to what we have discussed previously. We say that the table needs to be amended so that the penalty is payable on minimum rates, not the ordinary rates. Again this is the issue we've had around the all-purpose rate somehow becoming the minimum rate payments.

PN378

THE DEPUTY PRESIDENT: Mr Duncalfe, that would seem to be right.

PN379

MR DUNCALFE: We're not opposed, your Honour.

PN380

MS VALAIRE: Excuse me, your Honour.

PN381

THE DEPUTY PRESIDENT: Yes.

PN382

MS VALAIRE: Can I raise an issue which is probably not within the scope of this conference, but I've got a general concern with clause 22.1 because I cannot see how under this award it can work. We have got under clause 15.2 the ordinary hours of work Monday to Friday, so there is no person can do ordinary hours on Saturday or Sunday. If we're going to the shift work clause, it's again ordinary hours Monday to Friday, so it's not possible under the award to do

ordinary hours on Saturday or Sunday, anyway, and it will be overtime in any circumstances.

PN383

MR EBERHARD: Can I say, your Honour, we disagree with those submissions in the sense that - and we have said this before - an employer can require an employee to work shift work which can be any of the seven days of the week. If they work shift work between Monday and Friday, they get paid a particular rate. If they work it on a Saturday, they get paid at a particular rate. If they work on a Sunday, they get paid a particular rate. If they work on a public holiday, they get paid a particular rate. A shift worker can work any seven of the days of the week.

PN384

Ordinary hours, if you would like to call it - and it's not expressed in the award, but I use that old vernacular of a day worker - yes, a day worker is limited in their ordinary hours to Monday to Friday, but I don't think that that of itself changes the provisions in regard to shift work in the sense that a shift worker by virtue of the way the award is written can work any seven of the days, but would be paid a penalty for working those particular days. We disagree with the comments of Master Plumbers New South Wales.

PN385

THE DEPUTY PRESIDENT: Which are the shift worker clauses, Mr Eberhard?

PN386

MR EBERHARD: If you go to clause 22 on page 54, it talks about penalty rates.

PN387

MS VALAIRE: Yes, but it stipulates the days Monday to Friday expressly.

PN388

MR EBERHARD: I'm just saying I think there is a different concept of - the employee who works Monday to Friday is not of itself necessarily a shift worker under the award. An employee can also work on a Saturday or a Sunday when they're working penalty rates - when they're working it - and my view is that when you look at it, they can work ordinary hours on the Saturday or the Sunday if they're working shift work.

PN389

Coincidentally, when you look at it, their actual rate coincidentally is the same as the overtime rate, but I think they still work ordinary hours on the Saturday and the Sunday.

PN390

MS VAN DER LINDEN: Business SA would agree with that, as well, that the ordinary hours aren't just limited for shift work Monday to Friday.

PN391

MS HOGG: I think that seems to be the correct position given the wording of the shift work clauses where you have got your penalties which are for your Monday

to Friday work, ordinary hours, and then separate penalties which apply for ordinary hours that are required to be worked on a Saturday and Sunday.

PN392

MR EBERHARD: If you couldn't work ordinary hours on a Saturday or a Sunday, clause 22 to me would have no work to do because all hours would be overtime. There is no point in having penalty rates in here, because, as I said, if you can't work ordinary hours on a Saturday or a Sunday which is expressly provided in a number of the provisions within clause 22, then you're going to be working overtime; so what work does clause 22 do?

PN393

MS VALAIRE: Clause 22 is a penalty rate and it consists of several subclauses. One is weekend work, which is 22.1, which in my opinion doesn't have any work to do. Clause 22.2, shift work, expressly stated that shift work is Monday to Friday for five days. 22.3 is public holidays - are penalty rates which has nothing to do with the shift work or weekend work.

PN394

THE DEPUTY PRESIDENT: Why then in clause 22.1(a):

PN395

An employee required to work ordinary hours on Saturday or Sunday will be paid in accordance with the following table -

PN396

why is the words "ordinary hours" in clause 22.1(a) for weekend work unless they can work ordinary hours on a weekend?

PN397

MS VALAIRE: That's what I'm saying, but ordinary hours of work under 15.2 - you have to read it in conjunction - is Monday to Friday inclusive. It again expressly stipulates ordinary working hours as Monday to Friday, so any work on weekends will be overtime. There is not any provision under this award which allows shift work on other days apart from Monday to Friday.

PN398

MR EBERHARD: And I just said - - -

PN399

MS VALAIRE: And it's stipulates for - - -

PN400

MR EBERHARD: Hang on. What does 22.1(a) do then?

PN401

MS VALAIRE: It doesn't do anything.

PN402

MR EBERHARD: Why is there a reference to ordinary hours in 22.1(a)?

PN403

MS VALAIRE: That's my point, that it doesn't have any work to do.

PN404

MR EBERHARD: I totally disagree.

PN405

MR KRAJEWSKI: Maybe that's the overtime provision and maybe you want to clarify it by putting a shift work clause.

PN406

THE DEPUTY PRESIDENT: Isn't the answer in 15.2(c)? The ordinary hours are subject to, amongst other things, clause 22. Clause 22 permits ordinary hours to be worked on Saturdays, Sundays, notwithstanding the ordinary hours being worked between 7 am and 6 pm Monday to Friday.

PN407

MR EBERHARD: Subject to the penalty that follows in clause 22 being made.

PN408

THE DEPUTY PRESIDENT: Subject to clause 22.

PN409

MR EBERHARD: Yes.

PN410

THE DEPUTY PRESIDENT: Clause 22 empowers an employer to require an employee to work on a weekend. I don't think there is any tension between the clauses. Getting back to the earlier point, Mr Duncalfe, do you agree with AIG's position in relation to the correct payment?

PN411

MR DUNCALFE: Item 19, your Honour?

PN412

THE DEPUTY PRESIDENT: Yes.

PN413

MR DUNCALFE: Yes, we don't oppose that. In the current award it does state minimum, not ordinary.

PN414

THE DEPUTY PRESIDENT: Mr Coffey?

PN415

MR COFFEY: We don't oppose that, Deputy President.

PN416

THE DEPUTY PRESIDENT: All right. On that issue, can I take it that all parties agree with AIG's position?

PN417

MS HOGG: No difficulty with the AIG's position.

PN418

THE DEPUTY PRESIDENT: Yes.

PN419

MS VALAIRE: Yes, we do agree.

PN420

MR EBERHARD: We agree, your Honour.

PN421

MS VAN DER LINDEN: We agree, as well.

PN422

THE DEPUTY PRESIDENT: In relation to the issue raised by Ms Valarie - Ms Valarie, do you accept that the effect of - - -

PN423

MS VALAIRE: Clause 15.2(c) which gives a resolution of that issue, I know that if you ring Fair Work Ombudsman they would disagree with that and they would advise that Saturday and Sunday is always overtime; so it maybe needs some clarification in the award.

PN424

THE DEPUTY PRESIDENT: It wouldn't be the first occasion that the Fair Work Ombudsman gave questionable advice. I'm not sure how much more clarification there can be. You start with 15.2(a), "Subject to the provisions of this clause." You read further "in this clause" and it leads you to "subject to clause 22", which tells you that an employer can require an employee to work ordinary hours on weekends at a penalty rate.

PN425

I'm not sure what further clarification can be had and if the Fair Work Ombudsman were to bring a prosecution for a breach of the award based on an employer requiring people to work ordinary hours based on clause 22, I would suggest to you strongly that they might be facing an award of costs.

PN426

MR COFFEY: Agree.

PN427

MS VALAIRE: Thank you, your Honour.

PN428

THE DEPUTY PRESIDENT: All right.

PN429

MR EBERHARD: Sorry, your Honour, can we - and I had to do this - quickly go back to point 17 just for a second?

PN430

THE DEPUTY PRESIDENT: Yes.

PN431

MR EBERHARD: In the sense of the words in the award at the moment are reference to sprinkler fitter employee.

PN432

THE DEPUTY PRESIDENT: Yes.

PN433

MR EBERHARD: They're actually not defined in the award and the question I pose is would it be better to have a reference to - because that allowance doesn't apply to a labourer who might be a fire sprinkler labourer, might it be better that we use the words, in that particular instance, sprinkler fitter tradesperson?

PN434

MR KRAJEWSKI: I think that was the point I was trying to make, but probably in a clumsy way, your Honour. On the one hand one might define a fire sprinkler fitter as being a tradesman, but if it requires clarification, then so be it. As we tried to say earlier, as an adult fire sprinkler fitter employee, it might encompass the whole range of people notwithstanding the references to apprentices. If that assists the parties by referring to a trades position, then so be it and we would not have a problem with that.

PN435

MR EBERHARD: All I'm trying to do is pick up the words that are used in the classification structure in the award itself.

PN436

THE DEPUTY PRESIDENT: Yes.

PN437

MS VAN DER LINDEN: We would have no issue with that suggestion, your Honour.

PN438

THE DEPUTY PRESIDENT: Yes, all right. What words are being proposed?
Fire sprinkler - - -

PN439

MR COFFEY: Tradesperson.

PN440

THE DEPUTY PRESIDENT: Tradesperson.

PN441

MR COFFEY: Instead of "employee". Is that right?

PN442

MR EBERHARD: No, it's sprinkler fitter tradesperson. That's how it's referenced.

PN443

MR COFFEY: Yes.

PN444

MR EBERHARD: If you have a look at the employee classification in clause 18 on page 22, it's sprinkler fitter tradesperson.

PN445

THE DEPUTY PRESIDENT: Will that amendment require amendment elsewhere for consistency?

PN446

MR EBERHARD: I don't think so.

PN447

MR COFFEY: I suppose if you look at (g), it has got "sprinkler fitters adjustment." To be honest, your Honour, we would have to go back and have a look, because again it's only something that has been just sort of - - -

PN448

MR EBERHARD: We could have a look at that.

PN449

THE DEPUTY PRESIDENT: All right. It would read, "Fire sprinkler fitter tradespersons."

PN450

MR EBERHARD: No, it's just sprinkler fitter.

PN451

THE DEPUTY PRESIDENT: Sorry, sprinkler fitter.

PN452

MR EBERHARD: Yes, sprinkler fitter tradesperson.

PN453

THE DEPUTY PRESIDENT: Tradesperson. A corresponding amendment at least in the heading - - -

PN454

MR EBERHARD: We will undertake to go through the award with the union and correspond to the Commission and others - - -

PN455

THE DEPUTY PRESIDENT: Mr Eberhard, if you and Mr Coffey and Mr Duncalfe confer and review the award to see whether there are any other necessary changes to be made based on that amendment for consistency, perhaps send something to my chambers within say 14 days.

PN456

MR EBERHARD: Yes, your Honour.

PN457

THE DEPUTY PRESIDENT: Then we will put anything you put up on the web site for comment, but as a matter of general principle it's agreed that the

amendment to clause 23(f) will be to delete the words "adult fire" and instead have "sprinkler fitter", and delete "employees" and insert "tradesperson". Yes?

PN458

MR EBERHARD: Yes.

PN459

THE DEPUTY PRESIDENT: All right.

PN460

MR DUNCALFE: Will that preclude apprentices from accessing those allowances?

PN461

MR EBERHARD: No.

PN462

MR DUNCALFE: If we say "tradesperson"?

PN463

MR EBERHARD: No.

PN464

MR DUNCALFE: No?

PN465

MR COFFEY: They still get it on a percentage rate of their apprenticeship.

PN466

MR EBERHARD: That's provided elsewhere in the award.

PN467

MR DUNCALFE: Okay, cool. Yes, I was just - - -

PN468

MR COFFEY: Yes, that's provided elsewhere.

PN469

MR DUNCALFE: "Employees" is a broad term. Yes, okay.

PN470

THE DEPUTY PRESIDENT: You might have a look at how those two clauses marry up given the amendment.

PN471

MR KRAJEWSKI: Your Honour, we'll have a look at that, as well, and collaborate with the others.

PN472

THE DEPUTY PRESIDENT: Yes, all right. I appreciate that. Thank you. Item 20. Is that you, Ms Hogg?

PN473

MS HOGG: Yes, it is. I think that actually relates to - - -

PN474

MS VAN DER LINDEN: 21.

PN475

MS HOGG: - - - the AWU's submission in respect of shift work. That is a submission in reply which we have made.

PN476

THE DEPUTY PRESIDENT: Yes.

PN477

MS HOGG: Yes, in our view the proposed submission or changes of the AWU is a substantive change and the current wording should be retained.

PN478

THE DEPUTY PRESIDENT: Mr Duncalfe, does the AWU press its amendment?

PN479

MR DUNCALFE: We do to a certain extent. We don't believe that it is a substantive change because it is information that's still in the award. It's just in the footnotes in schedules C and D. All our submission is, is that this information that is contained in the footnotes - because they're just a little bit more informative than what is under 22.2 - all we were hoping for is to get this information put underneath that clause.

PN480

There is also reference in those footnotes to shift workers who are undertaking less than five consecutive shifts. That's also in the current award, but it's now not included in 22.2 in the exposure draft.

PN481

THE DEPUTY PRESIDENT: Anybody else wish to say anything about that issue?

PN482

MR EBERHARD: No, your Honour.

PN483

MS PAUL: No, your Honour. I just refer to the next point. I think it's the area that we had some concerns.

PN484

THE DEPUTY PRESIDENT: Item 21?

PN485

MS PAUL: Yes, your Honour, which is probably the two issues that - I think items 20 and 21 should be read together, your Honour. Our view was around this issue about replacing the words "midnight on Sunday to midnight on Friday" to being Monday to Friday. Also the fact that paragraph (a)(2) provides a higher

penalty than in the current award. Again based on the issue we have raised previously, it should be paid on a minimum as opposed to the hourly rate. I haven't specifically addressed the AWU's submission, your Honour. Which submission is that in? Reply or - - -

PN486

MR DUNCALFE: I'm pretty sure it was the reply. No, it's the initial submission. 21 onwards.

PN487

MS PAUL: Okay. Your Honour, we haven't addressed that issue raised by the union. I would just seek a bit of time to re-look at that and we can get back to the parties and obviously the Commission.

PN488

THE DEPUTY PRESIDENT: Yes, all right. Ms Paul, how long do you want?

PN489

MS PAUL: I should be able to get it to you by the end of the week, your Honour.

PN490

THE DEPUTY PRESIDENT: All right. The remainder of 21 deals with the change relating to midnight on Sunday, et cetera.

PN491

MS PAUL: Yes, your Honour.

PN492

THE DEPUTY PRESIDENT: Your position is that the Monday to Friday references remain?

PN493

MS PAUL: Your Honour, our position is that the current award provision should be retained, which is midnight on Sunday and midnight on Friday.

PN494

THE DEPUTY PRESIDENT: Sorry, yes.

PN495

MS PAUL: But additionally we also say that the calculation of the penalty rate needs to be adjusted, as well, as penalties should be paid on a minimum hourly rate and not the ordinary rate.

PN496

THE DEPUTY PRESIDENT: So that latter point is the same as essentially you have raised in relation to weekend work and other - - -

PN497

MS PAUL: Yes, your Honour.

PN498

THE DEPUTY PRESIDENT: All right. If we deal with that issue separately, Mr Duncalfe and Mr Coffey, that would seem to be right?

PN499

MR COFFEY: Yes, it would.

PN500

MR DUNCALFE: Yes, your Honour.

PN501

THE DEPUTY PRESIDENT: Yes, all right. Does any party wish to express a view about the Monday to Friday reference?

PN502

MR EBERHARD: No, your Honour.

PN503

MS VAN DER LINDEN: Business SA agrees with Ai Group that the original wording "midnight on Sunday to midnight on Friday" should be retained and not replaced with "Monday to Friday".

PN504

MS HOGG: ABI also agrees with that position.

PN505

MS VALAIRE: Yes, we agree, as well. It will be clearer.

PN506

THE DEPUTY PRESIDENT: All right. Mr Coffey?

PN507

MR COFFEY: I don't oppose that, Deputy President. It's the original words in the award, yes.

PN508

THE DEPUTY PRESIDENT: Mr Duncalfe?

PN509

MR DUNCALFE: We have no strong feelings either way, nor with the original words retained.

PN510

THE DEPUTY PRESIDENT: The agreed position seems to be we will retain the original words and the penalties to be expressed as payable on minimum hourly rate, not ordinary hourly rate. As to the other issue, AIG will review its position vis-a-vis the AWU's suggestion and revert to the Commission and the parties by close of business Friday.

PN511

MS PAUL: Yes, your Honour.

PN512

THE DEPUTY PRESIDENT: Item 22. This is where I get into difficulty, my copy of the draft not having the schedules. Just hang on a sec.

PN513

MS VAN DER LINDEN: Deputy President, I could probably help out here. I think that Business SA had a different view from everyone else in this matter and we have gone back and revised our view, and we're happy to withdraw our submissions for this, so I think - and correct me if I'm wrong - that if we withdraw our submissions, then everybody else is in agreement.

PN514

MR EBERHARD: I think that's the case. Yes, your Honour.

PN515

MR COFFEY: Yes, I think that's the case. It was just a question asked by - - -

PN516

THE DEPUTY PRESIDENT: I know. Thank you. All right. Ms Paul, item 23.

PN517

MS PAUL: Your Honour, I think that's dealt with, as we flagged that in terms that the loading should be calculated on a minimum hourly rate and not the ordinary rate, which was discussed previously. It's more about updating the schedules to reflect that. Additionally, I think we've noted at certain tables - at C.1.6, 1.7 and D similarly - the penalty and shift work rates are calculated by adding them to the casual loading.

PN518

THE DEPUTY PRESIDENT: All right. Those tables need to reflect the earlier agreements in relation to the calculation of various rates.

PN519

MS PAUL: Yes, your Honour.

PN520

THE DEPUTY PRESIDENT: Yes, all right. I'm assuming that's agreed by all parties.

PN521

MS VAN DER LINDEN: Yes.

PN522

MR COFFEY: Yes.

PN523

MR DUNCALFE: Yes, your Honour.

PN524

THE DEPUTY PRESIDENT: Thank you. Item 24. Mr Duncalfe?

PN525

MR EBERHARD: Your Honour, for clarity sake, I think we put an alternative proposition or an alternative position to what AIG had said, but I can't remember why, so I'm happy to withdraw that.

PN526

THE DEPUTY PRESIDENT: This is in relation to item 23.

PN527

MR EBERHARD: In regard to 23.

PN528

THE DEPUTY PRESIDENT: Yes, okay. Thank you, Mr Eberhard. Mr Duncalfe?

PN529

MR DUNCALFE: Yes, your Honour. I'm just getting schedule E. The submission was just to add another column to the table for shift work rates for the apprentice hourly rates. Again, I think this is just for ease of navigation through the award. It's not going to change anything or the amount to pay. We were just hoping for the addition of the two extra tables so the calculation is already made and done, and it's obvious to anyone looking at these schedules what the shift work rates are.

PN530

THE DEPUTY PRESIDENT: Mr Eberhard, you tend to support that?

PN531

MR EBERHARD: I do, yes, your Honour, just in the sense I think for completeness sake.

PN532

MS VALAIRE: We would support the AWU submission.

PN533

THE DEPUTY PRESIDENT: Yes, thank you.

PN534

MS VAN DER LINDEN: Business SA doesn't oppose it either.

PN535

THE DEPUTY PRESIDENT: Thank you.

PN536

MR KRAJEWSKI: Nor does the FPA.

PN537

THE DEPUTY PRESIDENT: Ms Paul, that kind of leaves you isolated.

PN538

MS PAUL: Yes, your Honour. We will withdraw the objection, your Honour. It was on the basis that that was just another schedule the parties would need to ensure - - -

PN539

THE DEPUTY PRESIDENT: It's always best to give away that which doesn't hurt.

PN540

MS PAUL: Yes, your Honour.

PN541

THE DEPUTY PRESIDENT: Thank you. Item 25?

PN542

MS VALAIRE: We believe that this list is up to date.

PN543

MR DUNCALFE: We would agree with that.

PN544

THE DEPUTY PRESIDENT: Sorry, I missed the first bit.

PN545

MS VALAIRE: We think that the list is up to date.

PN546

THE DEPUTY PRESIDENT: You think the list is up to date?

PN547

MS VALAIRE: Yes.

PN548

THE DEPUTY PRESIDENT: Yes. Thank you. That appears to be the consensus view. Item 26. Mr Eberhard?

PN549

MR EBERHARD: Our position is that the training for a plumber hasn't changed since 1997, or whenever it is, in the sense that they're still required to be an apprentice. Nothing has changed in that particular regard.

PN550

THE DEPUTY PRESIDENT: So it's agreed.

PN551

MR COFFEY: Yes.

PN552

THE DEPUTY PRESIDENT: Yes. Thank you. Item 27. Mr Eberhard?

PN553

MR EBERHARD: Look, it's more just a question of whether there is the need for all the other training packages given that the construction, plumbing and services training package - which I think is the current wording of the package - would be the only applicable package for a plumber. Whether we need all the other references in regard to the table in clause I.7 is questionable, but the Commission

seems to be of the view in other awards that everything gets published rather than just the relevant package in that particular sense. That's all we were really saying in that particular question - or in that particular statement.

PN554

THE DEPUTY PRESIDENT: Mr Coffey?

PN555

MR COFFEY: I agree with what Mr Eberhard just said. It's generally not to do with plumbing, but it's in there at the moment so we're quite happy to just leave it there.

PN556

THE DEPUTY PRESIDENT: All right.

PN557

MR COFFEY: Yes.

PN558

THE DEPUTY PRESIDENT: Thank you. Does anybody else wish to say anything about that matter?

PN559

MS PAUL: No, your Honour.

PN560

MR DUNCALFE: No, your Honour.

PN561

MS VAN DER LINDEN: No, your Honour.

PN562

THE DEPUTY PRESIDENT: Thank you. Mr Krajewski, item 28.

PN563

MR KRAJEWSKI: Thank you, your Honour. There has been no discussion between the parties in relation to this particular matter. As much as I feel that there is value in having a clause of this particular nature in the award, it might be in these circumstances that we don't pursue that. I think if for no other reason and the timing of that, it would probably just delay and prolong this exercise.

PN564

I must say that I disagree with the views expressed by Business SA and AIG that this is a substantive clause, but, in saying that, I think that in the circumstances and whilst it's the AWU that supports the proposition - I think in the circumstances of this particular case it might be that we don't progress with it. Unless there is support from other parties in this conference, then at this point in time I think it may make sense not to proceed with a separate clause of this nature.

PN565

THE DEPUTY PRESIDENT: Does any other party wish to say anything about that position?

PN566

MR DUNCALFE: The AWU would just like to say that we support the proposition and we made a similar invitation in our submission and were interested in chasing it, but obviously maybe it's too big to take on for now.

PN567

MS HOGG: ABI and the New South Wales Business Chamber would support the position of AIG and Business SA.

PN568

MS VALAIRE: We would be quite happy to participate in discussion, if there is one.

PN569

MS VAN DER LINDEN: Deputy President, whilst Business SA does oppose it, I guess it's also on the basis that we haven't really seen anything substantial as far as proposed wording or anything like that. If the parties did want to go ahead with it, we would of course be willing to participate in the discussions, but without really having a proposal or knowing to what extent the application is going to be - you know, as I said, we would be willing to participate if it was to be pursued, but without having any information, it's hard to know whether it's going to be a substantial change to the award or not.

PN570

THE DEPUTY PRESIDENT: Yes. Mr Krajewski, that's not an unreasonable position. If you have got something or would like to circulate something, perhaps that might sway various parties' views about whether a discussion is worthwhile.

PN571

MR KRAJEWSKI: Thank you, your Honour. On the basis of the comments that have been made, if the Commission is amenable to it, I would endeavour to have a proposition circulated within a week. I don't know if that's enough time - either too short or too long - but I'll endeavour to have a proposition to the parties by next Monday. If there is any delay, then I will get in contact with the Commission and the other parties and advise.

PN572

THE DEPUTY PRESIDENT: Perhaps what you might consider is this: you might have a discussion with your co-sponsors, the AWU and perhaps the CEPU, and see whether you can reach agreement at that level. If you can, then circulate something say within the next fortnight and, once we put it up, the parties can indicate whether they're prepared to have a discussion or not and that will resolve the fate of it. Is that a sensible course?

PN573

MR KRAJEWSKI: It is, your Honour. Thank you very much.

PN574

MR DUNCALFE: Yes, your Honour.

PN575

MR COFFEY: Yes, Deputy President.

PN576

MR EBERHARD: Sorry, can I just say given the penalty rates provisions that exist within the award already, I sort of wonder what work this clause would do. We haven't commented on it (indistinct) of itself necessarily seen a clause. The other thing is that the Master Plumbers group have proposed a variation to the penalty rates provision, not to change the provisions but to, in our view, hopefully simplify that. We have put that forward before and we maintain that, but that's not in the technical issues. That's in the substantive issues, so I don't want to raise that or go into that any further than what has been said there.

PN577

THE DEPUTY PRESIDENT: Yes, all right. Thank you. Well, there are a couple of items that various parties have undertaken to either consider their positions further and advise or circulate a proposal. Otherwise, I think we have made substantive headway into resolving most of the outstanding technical issues. I will have published, as soon as practicable, a revised schedule.

PN578

There are some matters that will require determinations elsewhere and we'll advise the parties in due course about how those matters are to be resolved. Could I thank everybody for their participation in the conference this morning. Before we adjourn, is there any other matter that we haven't attended to that we should?

PN579

MS VALAIRE: No, your Honour.

PN580

MR DUNCALFE: No, your Honour.

PN581

MS HOGG: No, your Honour.

PN582

MS VAN DER LINDEN: No, your Honour.

PN583

THE DEPUTY PRESIDENT: All right. Thank you very much and have a good day. We are adjourned.

PN584

MR DUNCALFE: Thank you, your Honour.

ADJOURNED INDEFINITELY

[11.45 AM]