



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER CIRKOVIC

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/250)**

Aboriginal Community Controlled Health Services Award 2010

Sydney

10.12 AM, WEDNESDAY, 8 FEBRUARY 2017

PN1

THE COMMISSIONER: Good morning. I'll take appearances, please.

PN2

MS R LIEBHABER: Liebhaber, from the Health Services Union.

PN3

THE COMMISSIONER: Thank you.

PN4

MR S BULL: If the Commission pleases, my name's Bull. I appear for United Voice.

PN5

THE COMMISSIONER: Thank you.

PN6

MS L ISHO: If the Commission pleases, Isho, I-s-h-o, initial L, for AFEI.

PN7

THE COMMISSIONER: Thank you.

PN8

MR J MILJAK: If the Commission pleases, for AFEI, Miljak, M-i-l-j-a-k, initial J.

PN9

THE COMMISSIONER: Thank you.

PN10

MS J STEELE: If the Commission pleases, Steele, S-t-e-e-l-e, for NATSIHWA. I'm counsel and I seek leave to appear on behalf of NATSIHWA.

PN11

THE COMMISSIONER: Thank you, Ms Steele.

PN12

MS P FORSTER: If the Commission pleases, Forster, initial P, for NATSIHWA. I seek leave to appear.

PN13

THE COMMISSIONER: Thank you, Ms Forster.

PN14

MR S MOSTAFAVI: If the Commission pleases, Mostafavi, M-o-s-t-a-f-a-v-i, initial S, appearing for Australian Business Industrial and the New South Wales Business Chamber and I seek permission too.

PN15

THE COMMISSIONER: All right, thank you. Is it Mr Mostaf?

PN16

MR MOSTAFAVI: Mostafavi.

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THE COMMISSIONER: Mostafavi. Thank you. All right, and in the back we have? I'd just like to hear who's there.

PN18

MR J LE BLOND: Yes. My name is Justin Le Blond and I'm a solicitor at HWL Ebsworth Lawyers, the solicitor for NATSIHWA.

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THE COMMISSIONER: Thank you, but you won't be seeking - - -

PN20

MR LE BLOND: No, I won't be appearing today. With me is Karl Briscoe.

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THE COMMISSIONER: Mr Briscoe.

PN22

MR LE BLOND: Who's the chief executive officer at NATSIHWA.

PN23

THE COMMISSIONER: Thank you.

PN24

MR LE BLOND: Sitting next to Mr Briscoe is Josslyn Tully who's the chairperson of NATSIHWA.

PN25

THE COMMISSIONER: Thank you. Ms Steele, I'll start with you first. Have you sought permission previously in these proceedings?

PN26

MS STEELE: No, Commissioner.

PN27

THE COMMISSIONER: This is your first - - -

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MS STEELE: Of seeking. I did appear at the directions hearing and announced that I was counsel and there was no issue raised with respect to my leave.

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THE COMMISSIONER: But permission was not sought and granted - - -

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MS STEELE: No, no.

PN31

THE COMMISSIONER: - - - officially and formally at that time?

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MS STEELE: Yes.

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THE COMMISSIONER: The same with you, Mr Mostafavi?

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MR MOSTAFAVI: Yes, Commissioner, yes.

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THE COMMISSIONER: All right. Do any of the parties object to the representations?

PN36

MR BULL: We have no objection.

PN37

THE COMMISSIONER: No? Thank you. Ms Steele, on what grounds, if I could hear you briefly, do you seek permission?

PN38

MS STEELE: The grounds that seek permissions that we're seeking substantive changes to the Award and on that basis, my clients have requested that they have legal representation in order to put forward all of the changes that need to be made because they're quite complex. There are - - -

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THE COMMISSIONER: It's on the grounds that matters involve a degree of complexity and that permission - - -

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MS STEELE: Yes.

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THE COMMISSIONER: All right, thank you. Same?

PN42

MR MOSTAFAVI: Yes, Commissioner, on similar grounds in terms of complexity.

PN43

THE COMMISSIONER: Thank you. On that basis, permission is granted both to you, Ms Steele, and Mr Mostafavi. All right. Just a couple of preliminary matters before we proceed. This is a follow up conference following the hearing before the Full Bench on 6 December last year. The focus today will be on the summary submissions that have been circulated that I hope you all have had an opportunity to view and consider.

PN44

If not, I intend to go through that summary first to confirm its accuracy or any need for corrections, be that for errors, misunderstandings or the like. It may be that some matters in that summary, on further reflection, do not need to be pressed

so those matters will be dealt with and recorded and hopefully some matters then will be withdrawn and recorded as withdrawn.

PN45

The purpose of today really is then to further identify and narrow the issues between you and to that end, I anticipate that there will be a further conference so this is certainly not, by any means, intended to be the one and only conference between the parties. Conference is recorded so that, again in the event that there are any errors or misunderstandings, they can be clarified.

PN46

I intend to take it item by item and I'll hear from each of the parties on each of the items to the extent they need to be heard and we'll just process the matter that way. Are there any preliminary matters that any of the parties wish to raise? One other thing, I confirm that this is a technical and drafting only conference so that the summary of submissions I'm looking at is the technical and drafting submissions document.

PN47

There is a substantive, as I understand it, submissions document that exists. I'm putting that to one side, it's not part of today's conference. If there are any matters that arise out of today's conference that should form part of the substantive matters issue paper, then we'll deal with that and that will be recorded as such. Anything that anyone - - -

PN48

MS STEELE: Yes, yes, Commissioner.

PN49

THE COMMISSIONER: Thank you.

PN50

MS STEELE: If I may bring to your attention please, on 1 December 2016, NATSIHWA submitted an amended draft determination and I have a copy that I could hand up to you, Commissioner.

PN51

THE COMMISSIONER: Thank you. What date was that?

PN52

MS STEELE: 1 December 2016, so after the date of the summary submissions and the reason why I raise - - -

PN53

THE COMMISSIONER: I'm sorry, you say 1 December. I thought these submissions were after 1 December.

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MS STEELE: Yes.

PN55

THE COMMISSIONER: Do you mean before?

PN56

MS STEELE: Yes. Yes, Commissioner.

PN57

THE COMMISSIONER: Because you said after that's all. I just want to confirm that - - -

PN58

MS STEELE: Yes, apologies. That was incorrect.

PN59

THE COMMISSIONER: I don't mean it critically. I just want to make sure that I'm operating - - -

PN60

MS STEELE: Yes, thank you for clarifying that.

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THE COMMISSIONER: 1 December, so it's a submission that was before the actual hearing on the 6th?

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MS STEELE: Yes.

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THE COMMISSIONER: And before the drafting of, and circulation of, the revised summary of submissions?

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MS STEELE: I believe that the revised summary of submissions says that it was up to the date on or before 5.00 pm on 29 November 2016.

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THE COMMISSIONER: All right.

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MS STEELE: And it has - - -

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THE COMMISSIONER: There is a document though, and I'm hoping you're referring to that one, that is a revised document that includes feedback from the hearing on 6 December. The parties are - - -

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MS STEELE: Yes. Yes, I see that, Commissioner.

PN69

THE COMMISSIONER: Thank you.

PN70

MS STEELE: The point that I'm trying to make ineloquently is that since the summary of issues and the position that's reflected in some of these items, the

position of NATSIHWA, for instance, with respect to, first of all, item 1 which is the title, that's something that will be a substantive issue and I understand that that's not something that you wish to deal with today but we - - -

PN71

THE COMMISSIONER: I'll just record those things, Ms Steele, as we go. That's been - - -

PN72

MS STEELE: Yes. The other point that I would make is that with respect to the definitional matters, NATSIHWA is seeking to address those in a holistic manner and so it may be the definitions that are sought today are the definitions - or the definitions that NATSIHWA seeks are the definitions that are set out in that draft determination as opposed to the previous submissions and they are more extensive than what's set out there and I just raise that because it's an issue that affects a number of items. It affects items 5, 6, 7, 8 and 9, for instance.

PN73

THE COMMISSIONER: I think perhaps so that the process, we're all clear on the process, I think it might be - my preferred approach is that we go through these clause by clause, we have the morning set aside, and then I'll hear from you, on each clause I'll hear from the other parties and then the documents will be reflected to record, hopefully accurately, what's been put by everyone.

PN74

MS STEELE: Yes, Commissioner.

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THE COMMISSIONER: If that suits.

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MS STEELE: Yes.

PN77

THE COMMISSIONER: Thank you. Starting then with item 1. Were you going to say something, Mr Bull, I'm sorry?

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MR BULL: No, we're good. I was going to say, well we did have some discussion. I don't know what the process is precisely. I assume that your Honour is going to retain an interest in this Award in the sense that once we've finished the technical and drafting matters, we then go on to whether we have agreement about the substantive matters.

PN79

THE COMMISSIONER: My role in this part of the process is simply to look at the technical, simply, but to consider the technical and drafting submissions to ensure that those areas are narrowed and defined to the greatest extent possible. Hopefully a lot of the matters between you will be resolved, to identify if there's still any matters in those submissions or items that need to be moved to the

substantive issues documents. What takes place from there is not something that I'm - - -

PN80

MR BULL: Just we had a sort of informal meeting before today's conference and I think there's significant capacity for the parties to basically agree to things.

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THE COMMISSIONER: I think that's wonderful.

PN82

MR BULL: There's a number of substantive changes but I don't think they're going to be hard fought or arbitrations and so forth, so they're significant - - -

PN83

THE COMMISSIONER: I'm happy to do that. Having said that, if we could review the document, the technical and drafting document, go through those, if we can identify where everyone sits on those and update that document and have a document there that's narrowed and dealt with in the way I've described, if the parties want to move to the substantive document and wish to withdraw some things or have some agreement on some things, I'm happy to do that and advise the Amon(?) team that that's what's been done, if that's where you're going with it.

PN84

MR MILJAK: Commissioner, if I just may, maybe as we go through item by item, we can just maybe note then which one will be affected by substantive claim and put that one to the side if we can't deal with it.

PN85

THE COMMISSIONER: Yes, well that's absolutely what I intend to do. That is my intention. I'm just not sure, Mr Bull, if that's what you - - -

PN86

MR BULL: I'm just curious about what's - previously you did have, with these - I know this is stage four and there's been a bit of a hiatus but in some of the earlier tranches, there was a single Commissioner where you went through the substantive matters and where there was agreement, you indicated agreement. I obviously understand this is a review and it's not a party process and so forth. What we agree to doesn't necessarily - - -

PN87

THE COMMISSIONER: Correct. That's the thing - - -

PN88

MR BULL: - - - suggest what the Commission should determine is the appropriate outcome of the review but - - -

PN89

THE COMMISSIONER: Correct, and we're not at that stage yet, so the point - - -

PN90

MR BULL: I know. But I'm just indicating that it doesn't seem to be a process where there's significant - parties have a lot of capacity for agreement, that's all I'm indicating.

PN91

THE COMMISSIONER: I think to the extent that that exists today in the substantive issues, I'm happy to confirm that the parties today have expressed these views. I'm happy for the substantive document to reflect that but beyond that, I don't have the capacity to affect any - - -

PN92

MR BULL: No, I hear what you're saying. I'm just - so we've got to jump through the process.

PN93

THE COMMISSIONER: I simply have to jump through the process.

PN94

MR BULL: Yes, all right. We're all - - -

PN95

THE COMMISSIONER: Yes, yes. I'm in the same boat as you to that extent. If we can go on then, starting with item 1, Ms Steele, your position.

PN96

MS STEELE: Our position is that we seek to have the title of the award amended to be the Aboriginal and Torres Strait Islander Community Controlled Health Services Award on the exposure draft but in terms of our substantive changes, we'll be seeking to have it amended to be Aboriginal and Torres Strait Islander Health Services Award on the basis that NATSIHWA is seeking substantive change to extend coverage not just to aboriginal and Torres Strait Islander health workers in community controlled health centres but in private practice.

PN97

THE COMMISSIONER: To the extent that it's extending coverage, is that a matter that appears on the substantive part of the paradigm?

PN98

MS STEELE: Yes, it's a matter that appears in the draft determination that I've handed up to you earlier, Commissioner.

PN99

THE COMMISSIONER: Are you proposing it as a substantive change that you will require further submission, hearing, maybe the calling of witnesses?

PN100

MS STEELE: Yes.

PN101

THE COMMISSIONER: Is that the position you're taking on that issue?

PN102

MS STEELE: Yes.

PN103

THE COMMISSIONER: Thank you. The technical and drafting document will reflect your position in that regard. Is there anything else you need to say in relation to item 1?

PN104

MS STEELE: No, Commissioner.

PN105

THE COMMISSIONER: Thank you. Mr Bull or perhaps - - -

PN106

MR BULL: No, particularly, we reserve our position on the coverage issue.

PN107

THE COMMISSIONER: You reserve your position.

PN108

MR BULL: We're not prima facie antagonistic towards it. We just need to think about it.

PN109

THE COMMISSIONER: You need to think about it. You need to - and in the context of it being a matter that deals with coverage and a matter that will be dealt with as a substantive matter was - - -

PN110

MR BULL: We've got a similar claim, I think, in relation to the name, so.

PN111

THE COMMISSIONER: I think you do, yes, so I think it will pan out as being something that will be determined in that way. Anyone else?

PN112

MR MILJAK: Commissioner, to the extent that it's a substantive matter, we would reserve our position and seek to make comments at a later date, if required.

PN113

THE COMMISSIONER: All right the document then will reflect that and that will be something that is dealt with as a substantive matter ultimately, I imagine, and there'll be need for hearing, calling of witnesses and the like. Item 2.

PN114

MS LIEBHABER: Commissioner, I believe this is our claim. Essentially another Award exposure draft, there's (indistinct) the layouts make it easier to read so adding percentages and dollar signs both wrap it into some of the other which - - -

PN115

THE COMMISSIONER: I take it this is not a controversial matter, it's a formatting?

PN116

MS LIEBHABER: Yes, it is a formatting.

PN117

THE COMMISSIONER: Formatting matter which we can record as - does anyone have any particular issue with that matter?

PN118

MR MILJAK: AFEI doesn't oppose a change in principle. Just probably don't consider it to be particularly necessary.

PN119

THE COMMISSIONER: Having said that you don't oppose though - - -

PN120

MR MILJAK: Having said but we don't necessarily - - -

PN121

THE COMMISSIONER: I take that as - - -

PN122

MR MILJAK: Yes, we don't particularly oppose.

PN123

THE COMMISSIONER: It can happen and you won't object. Anyone else have an issue with the formatting? I'll record that as a formatting issue that really doesn't impact.

PN124

MS LIEBHABER: Yes, Commissioner.

PN125

THE COMMISSIONER: Thank you. Item 3.

PN126

MR BULL: That's the - - -

PN127

THE COMMISSIONER: Mr Bull, is that your - - -

PN128

MR BULL: That's the use of the ordinary hourly rate.

PN129

THE COMMISSIONER: That is the hourly rate, yes, so that's going to be form - let me just - - -

PN130

MR BULL: Just trying to work out what it is.

PN131

THE COMMISSIONER: That's not on the proposed substantive variations is it?

PN132

MR BULL: No. Just trying to work out - I didn't do the submission for the technical matters. Mustn't be important if we can't work out what it is but - - -

PN133

THE COMMISSIONER: It's very significant to you, it's so significant you're having difficulty working out its significance. Shall we - - -

PN134

MR BULL: Well I press but - - -

PN135

THE COMMISSIONER: Does anyone else have any view on this matter even though it hasn't yet been articulated?

PN136

MS LIEBHABER: It might have been the issue with ensuring that the ordinary hourly rate referred to the employee's level as well as classification. I think - - -

PN137

MR BULL: The all-purpose allowance.

PN138

MS LIEBHABER: And the allowances.

PN139

THE COMMISSIONER: If it's the all-purpose allowance issue, then that's something that is an issue in a number of these Awards, obviously, and - - -

PN140

MR MILJAK: If I may, Commissioner, just in relation to that, like it is our understanding that the most up to date exposure draft and the current Award don't necessarily talk about an ordinary hourly rate. We're not sure if it's required. We're not aware of any of the allowances actually being all purpose allowances, so I mean this might be an issue that might need further discussion.

PN141

THE COMMISSIONER: I think this is an issue that will, to the extent that it relates to, and I'm - - -

PN142

MR BULL: I think it's got to do with the - - -

PN143

THE COMMISSIONER: If it relates to the minimum and the ordinary rate, it's a matter that will require - - -

PN144

MR BULL: And the base rate. There's inconsistent language in a lot of the modern awards between what is the ordinary hourly rate and the base rate and so forth.

PN145

THE COMMISSIONER: There was, as far as I'm aware, a Full Bench determination in September 2015 on the general approach of the Commission to at least the casual loading as far as it relates to the ordinary and the - - -

PN146

MR BULL: The ordinary rate and so forth.

PN147

THE COMMISSIONER: And so forth, but I don't think that there's been anything beyond that and if I recalled that the preferred approach was that there would be some reconsideration of the issue on an award by award basis during this process, so to the extent that it relates to that issue, if it does, then I think the record, or the summary submissions, can record that that is a matter that will require further discussion between the parties, if the parties are happy to proceed on that basis. In the meantime, Mr Bull, if you find out that it's in - - -

PN148

MR BULL: I'll try and figure out - yes.

PN149

THE COMMISSIONER: - - - relation to another issue, then you can let us know.

PN150

MR BULL: I think that it is that fairly obscure issue about the fact that there's different language used for the same term.

PN151

THE COMMISSIONER: Thank you. I'll move to item 4 then, if that's - item 4.

PN152

MS LIEBHABER: Commissioner, so this is - also I think to make this a little consistent with how some of the awards have been re-drafted, our submission was that the definitions clause in clause 2 should contain definitions that are used and repeated throughout the document whereas definitions that are particular, that only appear in one clause, should stay in that one clause and that there shouldn't be double up of definitions. For example, definition of shift worker, I think, is the example we gave, should be in the shift worker clause because that's the only time it's used and other definitions should be in clause 2. We - - -

PN153

THE COMMISSIONER: I take it this is not a controversial matter though? That you're not proposing something that alters the definition, so to speak? What you're suggesting, it sounds to me, if I've understood your submission, that whatever the definition is, that it's applied consistently. Is that - - -

PN154

MS LIEBHABER: Yes, just the way that definitions appear in the document should be consistent and - - -

PN155

THE COMMISSIONER: There should be a consistent application of - - -

PN156

MS LIEBHABER: Yes, and we think that's consistent with what's happened in other modern awards.

PN157

THE COMMISSIONER: We'll update the summary of submissions then to note that. Does anyone have an objection to that in a holistic sense? All right, thank you. Item 5.

PN158

MS STEELE: Commissioner, this is a substantive issue and NATSIHWA's position should be updated to reflect its position as set out in its amended draft determination in clause 1.

PN159

THE COMMISSIONER: Thank you, Ms Steele. The document will be updated to reflect that. Anyone else have a position?

PN160

MR MILJAK: No, Commissioner, just to the extent that we reserve our position and right to comment at a later date for further conferencing or via submissions.

PN161

THE COMMISSIONER: At a later date, thank you. Item 6.

PN162

MS STEELE: NATSIHWA makes the same submission, that this is a substantive issue and that our position should be updated to reflect the position as set out in clause 1 of the amended draft determination dated 1 December 2016.

PN163

THE COMMISSIONER: Thank you.

PN164

MS LIEBHABER: We would agree, Commissioner, that it's a substantive issue that would need to be addressed.

PN165

THE COMMISSIONER: Mr Bull?

PN166

MR BULL: We'd agree. We agree.

PN167

THE COMMISSIONER: All agree. That will be then the document be reflected to agree to confirm that position and the agreement of the other parties. Item 7.

PN168

MR BULL: Seeking removal of the note.

PN169

MS STEELE: Commissioner, NATSIHWA's position is that we support the removal of the note but our position is the same as with respect to items 5 and 6 that it's another substantive matter and that NATSIHWA's position is set out in clause 1.

PN170

THE COMMISSIONER: In the document in 1 December 2016.

PN171

MS STEELE: Yes.

PN172

THE COMMISSIONER: The removal of the word "itself" is not then affecting any substantive changes and there's no, as I understand it, opposition to that. It's to the extent that the remainder of the item affects other matters - - -

PN173

MS STEELE: Yes. Yes, Commissioner.

PN174

THE COMMISSIONER: - - - that you say that you reserve the position as outlined.

PN175

MR BULL: It's related to the earlier claim about the - - -

PN176

THE COMMISSIONER: To the earlier claim.

PN177

MS STEELE: Yes.

PN178

MR BULL: The note's not a substantive part anyway.

PN179

THE COMMISSIONER: Not an issue, all right.

PN180

MR BULL: I would have thought they're all registered. Isn't it national? APRA's a national system that - - -

PN181

MS STEELE: Yes.

PN182

MR BULL: No, it's probably a bit redundant because of the national health law. Anyway.

PN183

THE COMMISSIONER: Sure. Then the document will be updated to reflect that. Item 8.

PN184

MS STEELE: Item 8 is in a similar position to the previous items that it's a substantive issue and that NATSIHWA adopts the position as set out in the draft determination in clause 1.

PN185

THE COMMISSIONER: Thank you. Anyone else have a position in relation to item 8 that - - -

PN186

MR BULL: No.

PN187

THE COMMISSIONER: No?

PN188

MR BULL: They're all a bit of package deal around the substantive - - -

PN189

THE COMMISSIONER: They're all a bit of a package deal, okay. Item 9.

PN190

MR BULL: - - - classification change, so that's why we're nibbling around the edges but - - -

PN191

MS STEELE: Yes.

PN192

THE COMMISSIONER: Look, we're here. It is what it is, Mr Bull, I can't - - -

PN193

MR BULL: No, I'm not criticising. I'm just - - -

PN194

THE COMMISSIONER: No, I know. Your frustration is shared.

PN195

MR BULL: Yes.

PN196

THE COMMISSIONER: Item 9.

PN197

MS STEELE: Package deal, Commissioner.

PN198

THE COMMISSIONER: As above. If anyone else has a position that they wish to - no? Okay. Item 10. Does the HSU have a position there?

PN199

MS LIEBHABER: I'd like to say that refresh my memory on that one. I think it was just that the exposure draft has removed the term "appropriate certificate" but we don't think that affects anything.

PN200

THE COMMISSIONER: There is no opposition to the removal is there?

PN201

MS STEELE: No opposition.

PN202

THE COMMISSIONER: Ms Steele, no opposition to the removal?

PN203

MS STEELE: No opposition, Commissioner.

PN204

THE COMMISSIONER: That will be reflected in the document. Item 11.

PN205

MR BULL: We'd like the old word, which apparently makes them more accessible. The new word is "should be conveniently located".

PN206

THE COMMISSIONER: The current wording should be retained.

PN207

MR BULL: Correct.

PN208

THE COMMISSIONER: The other parties support the current wording. There's no other - doesn't seem to be any - okay.

PN209

MR MILJAK: AFEI would just like to comment that we would oppose re-introduction of the words "whichever makes them more accessible". That probably - - -

PN210

THE COMMISSIONER: You disagree with the position put by Mr Bull? On what - - -

PN211

MR MILJAK: Yes, because generally the Full Bench decided to remove that, delete that part, so - - -

PN212

MR BULL: The only issue is that you do have - the main area we have members is the Northern Territory. They are truly remote some of these workplaces. People drive around significant distances and so forth, so there is some case for perhaps departing - - -

PN213

THE COMMISSIONER: You're saying there is a case for the retention of the words - - -

PN214

MR BULL: Yes, look it's obviously not a particularly significant issue but we just like the old words. It's a matter for - I'll accept whatever you decide.

PN215

MR MILJAK: Look, at present there may well be, it may not be too contentious, but just - - -

PN216

THE COMMISSIONER: If it doesn't mean that much to anyone, there's no - - -

PN217

MR MILJAK: Commissioner, I'm just - - -

PN218

THE COMMISSIONER: That's the sense I get, that - - -

PN219

MR MILJAK: Commissioner, I've just been instructed to - - -

PN220

THE COMMISSIONER: But do you know why?

PN221

MR MILJAK: Yes, because - well if there's been a decision where those words have generally been taken away in other awards where it has come up.

PN222

MS ISHO: I think, Commissioner, just to clarify what my colleague is saying, from my understanding of that Full Bench decision, they found that the words "whichever makes them more accessible" placed an obligation on employers that was actually difficult to meet in practice and from my understanding, as a result of that decision, that extended wording was then placed into all the awards. I think it was just, and we'd need to maybe look back at this, but it may have just put a higher burden - yes.

PN223

MR MILJAK: It may have put an obligation, it may just impose an obligation on employers.

PN224

MS ISHO: Yes.

PN225

THE COMMISSIONER: That is unnecessary, okay. Maybe then if you have a look at that and perhaps if you need to, put in a brief submission on that matter before the next conference, and it could be that Mr Bull then - - -

PN226

MR BULL: We just like the old words and I suppose the reason to retain them or depart from the general principle is that these workplaces are - can be - accessibility is an issue because, especially from our experience in the Northern Territory, they're big workplaces in the sense that they're remote and so forth. And the workers drive - - -

PN227

THE COMMISSIONER: It may be that you'll be persuaded though when you - - -

PN228

MR BULL: Look, it's not a critical issue.

PN229

THE COMMISSIONER: Sure.

PN230

MS STEELE: Commissioner, NATSIHWA's position is that it reserves its position until it sees the submissions. At the moment it's said that it supports both of the proposals, which obviously is impossible to do. We'd like to seek to - - -

PN231

THE COMMISSIONER: Hedging your bets.

PN232

MS STEELE: Yes, hedging your bets.

PN233

MR BULL: You can't support both.

PN234

MS STEELE: No. We reserve our position.

PN235

THE COMMISSIONER: I think that's accepted.

PN236

MS STEELE: Yes.

PN237

MS LIEBHABER: We would support it as well. I think - - -

PN238

THE COMMISSIONER: I'm sorry, who are you supporting?

PN239

MS LIEBHABER: Our position also was opposing the removal of the words - - -

PN240

THE COMMISSIONER: You're supporting Mr Bull there and his - - -

PN241

MS LIEBHABER: Yes.

PN242

THE COMMISSIONER: In terms of opposing the removal.

PN243

MS LIEBHABER: Yes and I - - -

PN244

THE COMMISSIONER: That will be recorded. Mr Jakov will be providing a submission, put in a submission.

PN245

MR MILJAK: We'll make further comment on that.

PN246

THE COMMISSIONER: On that matter, and, Ms Steele, you will then decide which way you go.

PN247

MS STEELE: Yes, after comment. It's likely that we will support the retention - sorry, oppose the removal of the words "whichever makes them more accessible" but I need to get further instructions.

PN248

THE COMMISSIONER: Then we'll go from there. Thank you. We move then to item 12.

PN249

MS LIEBHABER: Commissioner, I think this is also a matter that's part of the substantive issues and we think would benefit from further conferences.

PN250

THE COMMISSIONER: In the substantive issues? The main - - -

PN251

MS LIEBHABER: In the substantive issues, yes.

PN252

THE COMMISSIONER: Thank you. Ms Steele, I note you support a proposal there. Is that - - -

PN253

MS STEELE: Yes, we've changed our position to say that it's part of the substantive issues.

PN254

THE COMMISSIONER: I see. You support it to that extent not the actual - - -

PN255

MS STEELE: Yes.

PN256

THE COMMISSIONER: Thank you. Mr Bull, you're happy for it to remain in the - - -

PN257

MR BULL: Yes, that's fine.

PN258

THE COMMISSIONER: Item 13.

PN259

MS LIEBHABER: Our proposal here was to alter the wording as we believed the entitlement has been changed with the exposure draft.

PN260

THE COMMISSIONER: If you could just put that microphone a bit lower perhaps.

PN261

MS LIEBHABER: Sure.

PN262

THE COMMISSIONER: Thank you.

PN263

MS LIEBHABER: We believe that the entitlement has been change in the exposure draft so we - let me just have a look.

PN264

THE COMMISSIONER: Are you suggesting that the change is a mere technical change or - I'm not sure I followed.

PN265

MS LIEBHABER: I think the issue is that the words - sorry, I just need to - - -

PN266

MS ISHO: I can assist you.

PN267

MS LIEBHABER: Sure.

PN268

MS ISHO: It's just that the exposure draft at the moment says "No more than 10 ordinary hours of work exclusive of meal breaks may be worked in any one day". Whilst the current award says "Not more than 10 ordinary hours of work exclusive of meal breaks are to be worked in any one day".

PN269

THE COMMISSIONER: Not more than 10 hours.

PN270

MS ISHO: Yes, that's the current one.

PN271

THE COMMISSIONER: Is the current award, not more than 10 hours.

PN272

MS ISHO: Yes.

PN273

THE COMMISSIONER: The exposure draft?

PN274

MS ISHO: It says "No more than 10 ordinary hours of work".

PN275

THE COMMISSIONER: It's the additional - - -

PN276

MS ISHO: Not. I think it's the - - -

PN277

THE COMMISSIONER: "And/or the ordinary hours", is that in the current award?

PN278

MS ISHO: The ordinary hours is in the current one.

PN279

THE COMMISSIONER: The distinction is between the word "not" and the word "no"?

PN280

MS ISHO: Yes.

PN281

THE COMMISSIONER: Is that what you're suggesting?

PN282

MS ISHO: Yes, and in the exposure draft it says "may be worked", the current award says "are to be worked". I think what you guys, the HSU, wants is something that says "No more than 10 ordinary hours of work exclusive of meal breaks can be worked in any one day". I mean, we don't have a position on it yet.

PN283

THE COMMISSIONER: Does it make a difference to anything?

PN284

MS ISHO: Look, I don't believe it does. I don't see why the current wording would need to be changed. I don't think there's anything sort of unclear about it.

PN285

MS FORSTER: I think that the way the exposure draft clause 13.2 is now drafted "No more than 10 ordinary hours of work is", et cetera, "can/may be worked in any one day" suggests that you might be able to work more than that amount of

time and somehow there wouldn't be any overtime payable. I thought that was sort of where the HSU was going with that submission by changing the word from "can" to "may". There's - - -

PN286

THE COMMISSIONER: Sorry, no more than 10 hours or whatever may be worked - - -

PN287

MS FORSTER: In any one day.

PN288

THE COMMISSIONER: - - - in any one day, may be worked in any one day.

PN289

MS FORSTER: Whereas the current clause says "Can be worked in any one day".

PN290

THE COMMISSIONER: It says "Not more".

PN291

MS FORSTER: Not more than 10 ordinary hours can be worked in any one day.

PN292

THE COMMISSIONER: Can be worked. It's the - - -

PN293

MS FORSTER: It's slightly - - -

PN294

THE COMMISSIONER: It's may and can and no and not, is that the - - -

PN295

MS FORSTER: Yes. I have had some reservations that changing the no and not and can and may - - -

PN296

MR MILJAK: Sorry, just - - -

PN297

MS FORSTER: - - - we just need clarification that you might be seeking to achieve.

PN298

MR MILJAK: It's what they want, can.

PN299

MS FORSTER: Yes, okay.

PN300

MR MILJAK: Commissioner, I think that - sorry, but I think that in the present award it's not can it's are and I think that what we had as the HSU's proposal was can. Not that can is in the current award but that can is - - -

PN301

THE COMMISSIONER: The current award is are.

PN302

MR MILJAK: Are.

PN303

THE COMMISSIONER: Are to be worked in, are.

PN304

MR MILJAK: Are to be worked.

PN305

THE COMMISSIONER: To be worked. Is there a not or a no?

PN306

MR MILJAK: It's a not.

PN307

THE COMMISSIONER: Not more - - -

PN308

MR MILJAK: Than 10 ordinary hours are.

PN309

THE COMMISSIONER: - - - than 10 ordinary hours are to be worked in any one day. The exposure draft says "No more than 10 hours" - - -

PN310

MR MILJAK: May.

PN311

THE COMMISSIONER: - - - "may be worked in any one day" and the proposal of the HSU is not more than 10 hours can be worked in any one day. Is that - - -

PN312

MS LIEBHABER: Yes, Commissioner.

PN313

THE COMMISSIONER: I finally have that right?

PN314

MR MILJAK: Think so, yes.

PN315

THE COMMISSIONER: All right. Ms Steele, what is your position in relation to this now that I've understood?

PN316

MS FORSTER: If I may, Commissioner.

PN317

THE COMMISSIONER: I'm sorry, yes.

PN318

MS FORSTER: I think the clarification would be - I think that the intention is not to change the entitlement there and the HSU's concern, please correct me, is that they don't want the change in wording to affect the entitlement. I would suggest that the additional words at the end of that sentence be included so that it reads "Can be worked in any one day without the payment of overtime" because I think the issue is - - -

PN319

THE COMMISSIONER: You agree with the HSU?

PN320

MS FORSTER: Agree with the HSU but I would add the additional words at the end of that sentence "without payment for overtime" because I understand that the real issue is not wanting to change the entitlement to overtime where more than 10 hours are worked in a day. Not the permission to work so to speak.

PN321

THE COMMISSIONER: I understand.

PN322

MS FORSTER: If the parties agree that that's the way the current award provision operates, I wouldn't anticipate that there be an issue with those additional words.

PN323

THE COMMISSIONER: Any issue with it. I understand that.

PN324

MR MILJAK: Are the initial words necessary though? I mean, because if the clause just states "No more than 10 ordinary hours of work can be worked in any one day" and that reflects the meaning that - are initial words necessary? I don't know. Like in terms of - - -

PN325

THE COMMISSIONER: I think it's being put by Ms Forster as a matter of certainty, if I've understood your submissions so that there's absolutely no doubt that that's what's being intended, if I've understood you.

PN326

MS FORSTER: Yes. Unless there's more than construction of the way the existing provision operates.

PN327

MR MILJAK: Sorry, if I just may, so the additional words would be just at the end of the clause?

PN328

THE COMMISSIONER: That's the way it's being put, as I understand it, that it would be "Not more than 10 hours of" is it ordinary?

PN329

MR MILJAK: Ordinary, yes.

PN330

THE COMMISSIONER: "Ordinary".

PN331

MR MILJAK: Hours worked.

PN332

THE COMMISSIONER: "Hours worked in any one day without payment of overtime", is that - - -

PN333

MR MILJAK: Without payment of overtime, that's not what it says in the current award. In the current award it just says that not more than 10 ordinary hours of work are to be worked in any one day and it just makes it clear, yes, and anything other than that won't be ordinary hours.

PN334

MS FORSTER: I appreciate I've just raised something that parties haven't had the opportunity to consider so perhaps if that position is reflected in the updated table.

PN335

THE COMMISSIONER: Yes. Thank you, we'll do that then and that will then give you an opportunity. I'm sorry, is it Ms - how do you pronounce your name?

PN336

MS LIEBHABER: Liebhaber.

PN337

THE COMMISSIONER: Liebhaber, thank you. That will give you perhaps an opportunity to consider your position a bit further.

PN338

MS LIEBHABER: Thank you, Commissioner.

PN339

THE COMMISSIONER: Thank you.

PN340

MS LIEBHABER: Commissioner, the next issue with the span of hours, we think it is important that the heading Span of Hours is retained in the exposure draft. That's because span of hours is actually referenced in the overtime clause and if you remove span of hours from this clause, then there's no reference to what the span of hours actually means.

PN341

THE COMMISSIONER: That was taken out was it?

PN342

MS LIEBHABER: Yes, the heading Span of Hours has been taken out in the exposure draft. It was previously - - -

PN343

THE COMMISSIONER: Was that an error or was that in response to someone's submission?

PN344

MS FORSTER: I think that that just happened as a result of the re-drafting process but it does seem to have been omitted - - -

PN345

THE COMMISSIONER: Amended.

PN346

MS FORSTER: - - - and it was useful.

PN347

THE COMMISSIONER: You'd agree with the position put by - thank you. Anyone else?

PN348

MR MILJAK: Don't oppose.

PN349

THE COMMISSIONER: In that case, the document will be reflected and the exposure draft amended to rectify what appears to be an error. Item 15.

PN350

MS STEELE: The next exposure draft, there's been a cross-reference to the consultation clause in clause 28 and the HSU submits this should be removed because it's not actually accurate. That - - -

PN351

THE COMMISSIONER: There's been an error in how the exposure draft has been updated to reflect what the intention was?

PN352

MS STEELE: Yes. We believe it's an error because - - -

PN353

THE COMMISSIONER: That should be non-controversial then.

PN354

MS STEELE: I think so, yes.

PN355

THE COMMISSIONER: Does anyone object to - - -

PN356

MR MILJAK: No.

PN357

MS LIEBHABER: No.

PN358

THE COMMISSIONER: Thank you. The document will be reflected then to rectify that as will be the exposure draft. Item 16.

PN359

MS LIEBHABER: Commissioner, the HSU propose that the clause be split into two sub-clauses as a matter of improving comprehension.

PN360

THE COMMISSIONER: Thank you for that. Does anyone - Ms Steele, do you have a - - -

PN361

MS STEELE: We support the proposal.

PN362

THE COMMISSIONER: It would make it clearer?

PN363

MS STEELE: Yes, yes.

PN364

THE COMMISSIONER: It's nothing more than a formatting issue?

PN365

MS STEELE: Yes. Yes, Commissioner.

PN366

MR MILJAK: No.

PN367

THE COMMISSIONER: The - - -

PN368

MS FORSTER: It appears that there's two alternatives in there.

PN369

THE COMMISSIONER: Ms Forster, did you want to say something?

PN370

MS FORSTER: Excuse me, Commissioner, it just would appear that there's two alternatives, 14.1(a) and it would make sense to break that down.

PN371

THE COMMISSIONER: To break it up?

PN372

MS FORSTER: Yes.

PN373

THE COMMISSIONER: Thank you. That's a formatting issue that can be dealt with fairly simply and the document and exposure draft will be amended to reflect that change. Item 17.

PN374

MS LIEBHABER: Commissioner, this is in response to a question raised by the Commission. The HSU proposed altered wording but we do recognise this is a substantive change and would need to be considered.

PN375

THE COMMISSIONER: This is one that goes into the substantive change basket?

PN376

MS LIEBHABER: Yes, we would say so.

PN377

THE COMMISSIONER: The parties agree with that?

PN378

MS STEELE: Yes.

PN379

MR BULL: Yes.

PN380

THE COMMISSIONER: Thank you. Item 18.

PN381

MS STEELE: NATSIHWA's position is that this is a substantive change and that NATSIHWA's position is set out in clause 12.3 of the draft determination.

PN382

THE COMMISSIONER: This is the same document that we - - -

PN383

MS STEELE: Yes, the same.

PN384

THE COMMISSIONER: - - - referred to earlier, the 1 December 2016?

PN385

MS STEELE: Yes.

PN386

THE COMMISSIONER: It's item 12.3 of that document?

PN387

MS STEELE: Yes.

PN388

MS FORSTER: The award currently doesn't have express guidance on how progression occurs between levels within grades and that is a matter that we've made substantive submissions to include clauses dealing with that.

PN389

THE COMMISSIONER: Dealing with that and then, of course the other parties will need to respond to that.

PN390

MS LIEBHABER: Commissioner, we would agree that there needs to be some provision for how to progress through levels and also that it's part of the substantive changes.

PN391

THE COMMISSIONER: Yes, and in terms of some of these, as it occurs to me, obvious, quite clearly as you go through these things, that some of these substantive matters actually you'd benefit from conferences on those matters. They're matters that don't necessarily need to go to submissions and hearing prior to that. I presume you all agree on that. Yes, all right, self-evident. Item 20.

PN392

MR BULL: Might need more qualifications.

PN393

MS FORSTER: The issue here in relation to 17.2 seems to be whether proof should be required of bi-lingual proficiency and the nature of that proof, and that's the questions proposed by the Commission.

PN394

THE COMMISSIONER: Sure.

PN395

MS FORSTER: Our position is that we don't support any changes to make it more difficult to establish that a person or a worker is proficient.

PN396

THE COMMISSIONER: Proficiency, okay.

PN397

MS FORSTER: We would oppose any changes to - --

PN398

THE COMMISSIONER: You're satisfied with the current arrangements and the current threshold?

PN399

MS FORSTER: Yes. Yes, that's our position. Yes.

PN400

THE COMMISSIONER: So to speak, and I take it, Mr Bull, you're not satisfied?

PN401

MS FORSTER: It may be a conference.

PN402

MR BULL: Maybe - - -

PN403

THE COMMISSIONER: Is it a matter that we'll table for further conferencing?

PN404

MR BULL: We can table it for further conferences but my instructions are that in the Northern Territory that apparently you can be recognised interpreting and translating services. I assume this is bi-lingual proficiency in English and aboriginal language, so I imagine there's some aboriginal languages that may be more difficult to get translating services because they're not big languages in terms of the people who speak them.

PN405

MS FORSTER: Proficiency isn't necessarily one that's regulated or accredited.

PN406

MR BULL: We're probably interested in Quest(?) level and looking after bureaucratic provisions in the Award placing onerous procedures to get the allowance which would be unrealistic.

PN407

THE COMMISSIONER: We'll table that for further conferencing then. Item 21.

PN408

MS LIEBHABER: Commissioner, this was our claim. Our submission is that the way the clause has been re-worded in the exposure draft shifts the onus and so we - - -

PN409

THE COMMISSIONER: There was a change to it that actually made a, in effect, substantive change to the operation of the clause. Is that the position?

PN410

MS LIEBHABER: Yes, so even though it seems like it makes it easier to read, it actually - - -

PN411

THE COMMISSIONER: It makes a big difference.

PN412

MS LIEBHABER: - - - diminishes the entitlement somewhat.

PN413

THE COMMISSIONER: You've proposed an alternative re-draft?

PN414

MS LIEBHABER: Yes, we have.

PN415

THE COMMISSIONER: That's supported, Ms Steele?

PN416

MS STEELE: Yes, it is, Commissioner.

PN417

THE COMMISSIONER: Do you have a position, Mr Jakov?

PN418

MR MILJAK: No, we don't oppose at this point.

PN419

THE COMMISSIONER: Good. Exposure draft will - the summary of issues will record that and the exposure draft amended accordingly. Item 23. That's yours again, I think.

PN420

MS LIEBHABER: Commissioner, yes. Commissioner, I think we missed 22 but that's similar to 21.

PN421

THE COMMISSIONER: Apologies, yes.

PN422

MS LIEBHABER: That's okay.

PN423

THE COMMISSIONER: Does that go into the 21 basket?

PN424

MS LIEBHABER: We think so. We - - -

PN425

THE COMMISSIONER: Thank you. Ms Steele?

PN426

MS STEELE: We support the HSU.

PN427

MR MILJAK: We've got no objection.

PN428

THE COMMISSIONER: Thank you. Item 23.

PN429

MS LIEBHABER: This is another issue where the words "not less than" have been removed and we believe that it does diminish the entitlement somewhat. In practice, it probably won't have a big effect but we think they should be retained.

PN430

THE COMMISSIONER: Ms Steele, you support - - -

PN431

MS STEELE: We support the HSU.

PN432

MR BULL: We support them too, so everyone agrees.

PN433

THE COMMISSIONER: Everyone agrees, Mr Jakov?

PN434

MR MILJAK: Yes, we probably don't think it's necessary but we don't oppose.

PN435

THE COMMISSIONER: I'll take that as a yes, thank you. Document will be reflected to record that. Item 24. It's you again.

PN436

MS LIEBHABER: Yes, Commissioner. I think the issue here was using the term "minimum hourly rate" which isn't defined in the award and, just find our submissions. The words "at their ordinary rate of pay" has been replaced with "at the minimum hourly rate" and we think that - - -

PN437

THE COMMISSIONER: That's a substantive - that's a real potential - - -

PN438

MS LIEBHABER: That's a change that affects the entitlement. Yes, ordinary rate of pay includes things such as allowances and classifications and grades which minimum hourly rate doesn't necessarily.

PN439

THE COMMISSIONER: Ms Steele.

PN440

MS STEELE: We would agree that it's a substantive change.

PN441

THE COMMISSIONER: Correct.

PN442

MR MILJAK: Yes, that's right. To the extent that dealing with that initial ordinary hourly pay should - yes.

PN443

THE COMMISSIONER: You'd agree with that, Mr Bull, no doubt?

PN444

MR BULL: Yes, we'd also say at a level which maybe just out of abundance of caution.

PN445

THE COMMISSIONER: The item will be recorded then as a substantive issue. Item 25.

PN446

MS LIEBHABER: Commissioner, I believe the summary in this document is not quite accurate. The HSU doesn't believe that the exposure draft alters the entitlement but we just proposed varied wording to make the clause a little easier to read.

PN447

THE COMMISSIONER: No substantive changes to it, purely comprehension.

PN448

MS LIEBHABER: Yes, it was just for comprehension.

PN449

THE COMMISSIONER: Ms Steele, you don't oppose?

PN450

MS STEELE: No, we support it.

PN451

THE COMMISSIONER: Support it, all right. Mr Bull, you've no issue?

PN452

MR BULL: Fine.

PN453

THE COMMISSIONER: Exposure document will be amended accordingly. 26.

PN454

MS LIEBHABER: Commissioner, this relates to the issue about the span of hours which we previously discussed which, I think, is fixed if you replace the term "span of hours" in the previous clause.

PN455

THE COMMISSIONER: Yes. Once that earlier item is dealt with, then this, by definition, will be dealt with so you won't be pressing that once that happens?

PN456

MS LIEBHABER: Yes.

PN457

THE COMMISSIONER: No-one else has any objection to that? Item 27. HSU again.

PN458

MS LIEBHABER: Yes. This is a slight issue with the change of wording. That the word "their", the pronoun "their", has been removed before ordinary hours, so our - - -

PN459

THE COMMISSIONER: Was that a matter - do you believe an error, in error in -
- -

PN460

MS LIEBHABER: We think it might have been intended to simplify but it may actually alter the meaning because their ordinary hours - - -

PN461

THE COMMISSIONER: The word "their", t-h?

PN462

MS LIEBHABER: E-i-r.

PN463

THE COMMISSIONER: Has been?

PN464

MS LIEBHABER: Has been removed.

PN465

THE COMMISSIONER: Removed.

PN466

MS LIEBHABER: Before ordinary hours and their ordinary hours refers to the ordinary hours of a particular employee whereas ordinary hours could mean the ordinary hours in the workplace, so we think that could change the meaning and we would submit that should be retained.

PN467

THE COMMISSIONER: Understood.

PN468

MR MILJAK: Yes, look, to the extent that it may assist, we noted that it does say "their" in the current award and "their" is not in the exposure draft and we recognise the issue - - -

PN469

THE COMMISSIONER: It wasn't as a result of any submissions put by anybody and - - -

PN470

MR MILJAK: No, no. We would not oppose that.

PN471

THE COMMISSIONER: Sure, the re-insertion of it?

PN472

MR MILJAK: No, we wouldn't.

PN473

MS STEELE: We agree. We don't oppose it.

PN474

THE COMMISSIONER: I'll take that then. That will be reflected then. Item 28.

PN475

MS LIEBHABER: Our submission, Commissioner, just noted that the words "or part thereof" have been repeated. We don't necessarily think that that's necessary.

PN476

THE COMMISSIONER: The "or part thereof" words have been included in the exposure draft you say?

PN477

MS LIEBHABER: It's been duplicated so it's - - -

PN478

THE COMMISSIONER: Duplicated.

PN479

MS LIEBHABER: We think the second iteration of the phrase should be removed.

PN480

THE COMMISSIONER: Should be removed, that is unnecessary.

PN481

MS LIEBHABER: Yes.

PN482

THE COMMISSIONER: Doesn't alter the meaning.

PN483

MS LIEBHABER: Yes, we don't see how it changes the meaning but just it's confusing to have the duplication.

PN484

THE COMMISSIONER: Agree?

PN485

MR MILJAK: Yes, it just seems to be just a typographical, Commissioner.

PN486

MS STEELE: Yes, agreed.

PN487

THE COMMISSIONER: Typo then. Item 29.

PN488

MS LIEBHABER: Commissioner, our proposal was just to move the clause to the allowances heading as it is an allowance.

PN489

THE COMMISSIONER: It's in the wrong place you say?

PN490

MS LIEBHABER: Yes, that's - - -

PN491

MR MILJAK: Commissioner, it's just - having a look at this clause, it's set out in the exposure draft, the allowance, part of it seems to be constrained to the first part which deals with the on call allowances in 19.6(a)(i) and (ii). The parts after that don't seem to be allowances per se. Like they're penalties associated with work. The only part that the on call allowance is actually an allowance - - -

PN492

THE COMMISSIONER: You're saying an on call and recall overtime clause is not actually an allowance is the way you're putting it?

PN493

MR MILJAK: No, it is an allowance at 19.6(a)(i) and 19.6(a)(ii), so that would probably belong in the allowances section, don't disagree with that, but I'm just not sure about putting the whole clause in because the latter part of the clause doesn't seem to be dealing with an allowance per se. The allowance is dealt with in the first part at - - -

PN494

THE COMMISSIONER: There's some consideration needs to be given to what part of the clause you, as you put it, may not be properly placed in an allowance section of the award.

PN495

MR MILJAK: Correct, correct.

PN496

THE COMMISSIONER: It might be somewhere else.

PN497

MR MILJAK: Yes, so putting the whole 19.6 in the allowance clause might be misleading.

PN498

THE COMMISSIONER: Is that something that needs to be considered by you for further discussion?

PN499

MS STEELE: Yes. Yes, we need to consider that.

PN500

THE COMMISSIONER: We'll note that then. We'll note the respective positions and the document will be reflected that that's something that will be considered at a further conference. Item 30.

PN501

MS LIEBHABER: Commissioner, this is, again, just the change that we thought would make the clause easier to understand in re-ordering the clauses, so repayment entitlement comes first.

PN502

THE COMMISSIONER: It's an ordering of the clause simply that to make it clearer?

PN503

MS LIEBHABER: Yes.

PN504

MS STEELE: We agree. NATSIHWA agrees.

PN505

THE COMMISSIONER: Mr Jakov?

PN506

MR MILJAK: I'm not opposed.

PN507

THE COMMISSIONER: Mr Bull, you're quiet. I take it nothing to say?

PN508

MR BULL: Yes, that means I have nothing to say.

PN509

THE COMMISSIONER: Item 31.

PN510

MR BULL: We agree with the proposal. It's just clarifying that ceremonial leave (indistinct) bereavement leave, so there's already an additional entitlement. It's no substantive change.

PN511

THE COMMISSIONER: Yes.

PN512

MS STEELE: Commissioner, there has been a substantive change in the draft determination, the 1 December document, and NATSIHWA's position is set out at clause 18, and perhaps this is a matter, given that we've re-stated the position, that needs further consideration.

PN513

THE COMMISSIONER: Yes.

PN514

MS FORSTER: We suspect that that's probably one of the issues that we may be able to come to some agreement on.

PN515

THE COMMISSIONER: Agreement on, in a substantive - - -

PN516

MS FORSTER: Conferencing.

PN517

THE COMMISSIONER: - - - conferencing. Mr Jakov, you're happy to proceed on that basis?

PN518

MR MILJAK: Yes.

PN519

THE COMMISSIONER: Item 32.

PN520

MR BULL: That's just the main change.

PN521

THE COMMISSIONER: There's no controversy there?

PN522

MR MILJAK: No.

PN523

MS STEELE: Commissioner, this relates to the classifications and so it is a substantive change in that it's part of the substantive - - -

PN524

THE COMMISSIONER: Once the substantive matters are dealt with, then this, by - - -

PN525

MR BULL: Nomenclature, it's when we decide what things are we can name them.

PN526

MS STEELE: Yes.

PN527

THE COMMISSIONER: It will happen as a matter of course so the document can reflect that. Item 33.

PN528

MS FORSTER: This, again, is part of the substantive claim. All matters raised by NATSIHWA are set out in the document.

PN529

THE COMMISSIONER: To the extent that we've been able to, some of the matters have been narrowed in the second form of drafting part of the claims. What I intend to do from hereon is to have the document, the revised summary of submissions and exposure draft, amended to include what's taken place today in the various item numbers.

PN530

That will be circulated and I'll conduct another conference. Hopefully then that will be the end of, or will be very close to the end of, this part of it. Taking up your point, Mr Bull, earlier on about the substantive matters, I'm not sure whether that matter will come before me or another Commissioner.

PN531

MR BULL: We don't have any substantive proposals. The main substantive matter in this review, I understand, is an enhanced or more complex classification system.

PN532

THE COMMISSIONER: Some coverage issues, classifications and there's the - - -

PN533

MR BULL: And coverage issues, yes. There's the change industry, the occupational award.

PN534

THE COMMISSIONER: The other thing will be, to the extent that it's relevant, the minimum rate and the ordinary rate to the extent that that forms part of this award but they're all issues that will be dealt with in other - - -

PN535

MR BULL: Yes, but the classification (indistinct) purely to this award.

PN536

THE COMMISSIONER: Yes.

PN537

MR BULL: I would have thought there's reasons why there has been developments in the areas of award modernisation with then a professionalisation of the area, I think, than are registered with APRA and so forth which wouldn't have been the case in 2009. There are proper reasons to make changes to the classification structure.

PN538

I've indicated that I'll send something to our Northern Territory branch. We likely can get (indistinct) instructions on the face of it. We're not against what NATSIHWA is proposing.

PN539

THE COMMISSIONER: In that case, maybe there could be discussions between you to that extent, even prior to the next round of conferences.

PN540

MR BULL: Yes. The HSU also has a classification - - -

PN541

MS STEELE: Yes. Yes, Commissioner. Commissioner, after the next conferencing, given that there is likely to be some agreement on some of these

substantive changes, particularly with respect to classifications, at that point will it then be possible to determine if there might be able to be some conferencing to see if we are able to get a broader agreement on some of those substantive agreements?

PN542

THE COMMISSIONER: Yes, I'll raise that with parties who make these decisions.

PN543

MS STEELE: Thank you, Commissioner.

PN544

MS FORSTER: It might be that on the next occasion that we're all together to expect to sort of wrap up the drafting and technical issues.

PN545

THE COMMISSIONER: Absolutely.

PN546

MS FORSTER: That might occur quite quickly and given that we now know where the gaps, so to speak, are - - -

PN547

THE COMMISSIONER: Yes, we can - - -

PN548

MS FORSTER: It might be useful after that to then move into - - -

PN549

THE COMMISSIONER: To make this - move into it, yes, and that would - - -

PN550

MS FORSTER: - - - the substantive issues. We'd all be there, move along.

PN551

THE COMMISSIONER: That would be my thinking. Unfortunately, I can't simply allocate that to myself, much as - so it needs to be something that I have to raise and - - -

PN552

MR BULL: We're placed on record that we think that there's capacity for this to be dealt with.

PN553

THE COMMISSIONER: Mr Bull, it was noted, believe me, yes, and it will be noted. In terms of another date, I'm looking at Thursday, 9 March.

PN554

MS STEELE: Commissioner, I'm unavailable on 9 March.

PN555

THE COMMISSIONER: I'm sorry?

PN556

MS STEELE: I'm unavailable on 9 March, I apologise.

PN557

THE COMMISSIONER: 10 March?

PN558

MS STEELE: Commissioner, the difficulty is I'm in a five day hearing from 6 to 10 March.

PN559

THE COMMISSIONER: All right.

PN560

MS STEELE: I have reasonable availability generally but just not in that week, I apologise.

PN561

THE COMMISSIONER: That's okay. 23 March? Actually, I can't do the 23rd. What is 28 March like?

PN562

MS STEELE: Suitable.

PN563

THE COMMISSIONER: Suitable?

PN564

MS STEELE: Suitable.

PN565

MR BULL: Yes.

PN566

MS LIEBHABER: Yes, Commissioner.

PN567

THE COMMISSIONER: 10.00 am on the 28th. Thank you. We'll adjourn.

ADJOURNED UNTIL TUESDAY, 28 MARCH 2017

[11.18 AM]