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Fair Work Act 2009

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VICE PRESIDENT HATCHER

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s.156 - 4 yearly review of modern awards

Four yearly review of modern awards

Part--time Employment and Casual Employment

Sydney

2.14 PM, MONDAY, 7 MARCH 2016

Continued from 29/02/2016

PN455

THE VICE PRESIDENT: I'll race through the appearances as quick as we can. So starting in Sydney, Mr Burns, you appear for the MUA?

PN456

MR BURNS: Yes.

PN457

THE VICE PRESIDENT: Mr Bull, you appear for United Voice?

PN458

MR BULL: Yes.

PN459

THE VICE PRESIDENT: Ms Taylor, you appear for the AMWU?

PN460

MS TAYLOR: Yes, your Honour.

PN461

THE VICE PRESIDENT: Mr Ferguson and Ms Bhatt, you appear for the AIG.

PN462

MR FERGUSON: Yes.

PN463

THE VICE PRESIDENT: Mr Ward and Mr Arndt, you appear for ACCI and Associated Organisations.

PN464

MR WARD: Correct.

PN465

THE VICE PRESIDENT: And Ms Adler, you appear for the HIA. Mr Crawford for the AWU. Mr Maxwell for the CFMEU.

PN466

MR MAXWELL: Yes.

PN467

THE VICE PRESIDENT: Ms Carr for the TWU.

PN468

MS CARR: Yes, your Honour.

PN469

THE VICE PRESIDENT: Mr Baumgarten for the Motor Traders Association.

PN470

MR BAUMGARTEN: Yes.

PN471

THE VICE PRESIDENT: Mr Ryan, for the AHA.

PN472

MR RYAN: Yes.

PN473

THE VICE PRESIDENT: Mr Parker for the Restaurant and Catering. Mr James Valedor and Ms Thomson is it for AFEI? Ms McDonald for Clubs Australia. Mr Harmer is here - here's still here for Scurr Association. Mr Crilly for - I'll call it Ports interests. Ms Hines, was it? For the rail interests. Mr Gee - there he is for CSA. And Ms Light for the Pharmacy Guild. Right, that's Sydney.

PN474

Now, in Melbourne, Mr McCarthy for the AMMF. Is that right?

PN475

MR MCCARTHY: Yes, your Honour.

PN476

THE VICE PRESIDENT: Ms Shannon for the Group 8 Universities?

PN477

MR SHANNON: Yes, your Honour.

PN478

THE VICE PRESIDENT: Ms Wiles for the TCFUA?

PN479

MS WILES: Yes, your Honour.

PN480

THE VICE PRESIDENT: Ms Svendsen for the HSU.

PN481

MS SVENDSEN: Yes, your Honour.

PN482

THE VICE PRESIDENT: Mr Fleming for the ACT and SDA.

PN483

MR FLEMING: Yes, your Honour.

PN484

THE VICE PRESIDENT: Mr Brehas for the National Retail Association and others?

PN485

MR BREHAS: That's correct, your Honour.

PN486

THE VICE PRESIDENT: Ms Desmond for the VACC, is that right?

PN487

MS DESSMANN: Yes, your Honour.

PN488

THE VICE PRESIDENT: Ms Moussa for the AMWU Vehicle Division.

PN489

MS MOUSSA: Yes, your Honour, thank you.

PN490

THE VICE PRESIDENT: Mr Mammone for the the AMMA.

PN491

MR MAMMONE: Yes, your Honour.

PN492

THE VICE PRESIDENT: And then in Brisbane - - -

PN493

MS PUGSLEY: Excuse me, your Honour?

PN494

THE VICE PRESIDENT: Yes.

PN495

MS C PUGSLEY: I think there were two who were not on the list. My name is Pugsley, initial C, for Australian Higher Education Industrial Association.

PN496

MR M PEGG: And, your Honour, Pegg, initial M, for Jobs Australia.

PN497

MR M RIZZO: And your Honour - sorry, Rizzo, M, for the ASU.

PN498

THE VICE PRESIDENT: Right. Then, in Brisbane. Mr Herbert?

PN499

MR HERBERT: Yes.

PN500

THE VICE PRESIDENT: So you appear for who? The Meat Industry Council?

PN501

MR HERBERT: I'm sorry, your Honour?

PN502

THE VICE PRESIDENT: Mr Herbert, you appear for the Meat Industry Council, is that right?

PN503

MR HERBERT: Yes, that's so, your Honour. I'm sorry there was some noise that came over the top of what your Honour was saying.

PN504

THE VICE PRESIDENT: All right. In Adelaide - Mr Wallgren, you appear for SA Wines?

PN505

MR WALLGREN: That's correct.

PN506

THE VICE PRESIDENT: In Canberra, Ms Sostarko, you appear for the Master Builders. And Ms McKinnon you appear for the National Farmers Federation?

PN507

MS SOSTAKO: Yes, your Honour.

PN508

MS McKINNON: Yes, your Honour.

PN509

THE VICE PRESIDENT: And on the telephone you have Mr Robinson for the St Ives Group, is that right? Ms Robinson, sorry.

PN510

MS ROBINSON: Ms Robinson, sir.

PN511

THE VICE PRESIDENT: Yes, sorry. That's the problem with not being any vision. All right. Now, can I start off with the program. There has been published on the website, which I hope the parties have seen or have access to a copy of the revised program within each identified section, the witnesses who have been required for cross-examination.

PN512

I'll hear from the parties about as to whether any revision to the program is required. But can I indicate having regard to the numbers of witnesses my current inclination would be to move the section, numbered three - that is, "Other Casual and part-time engagement issues", and the section number four, "Road Transport Awards" out of the second week of the hearing and into the third or fourth week of the hearing which would allow the whole of the first two weeks to be devoted to the common claims.

PN513

I also note you Mr McDonald that we've had correspondence from Clubs Australia which indicates a difficulty in terms of the dates of 12 and 13 July for parts to say. Well, I'm happy for you to go first Mr McDonald but if any other party wishes to say anything about the program, please do so. What's the difficulty with those two dates?

PN514

MR MCDONALD: Your Honour, availability of some of the representatives on that date we note there are two lots of dates set in relation to the club industry and that it would be our preference perhaps that the clubs evidence will be dealt with in the one block of dates which was in the August dates. I have had some brief discussions with Mr Wallgren and Mr Ryan and it doesn't seem as though that would necessarily cause any particular difficulty for them subject to the meetings of course with the Commission but it may well be to do what your Honour is proposing anyway in relation to the movement of the dates that it might become a particular problem, given that those dates - - -

PN515

THE VICE PRESIDENT: I don't know about that. And so who did you say was unavailable?

PN516

MR MCDONALD: Your Honour, I will be unavailable. I have been advising the clubs in relation to this matter.

PN517

THE VICE PRESIDENT: All right. We'll see about that but I have to say because there's so many parties it's very doubtful that we can set dates on the basis of availability of legal representatives and no party has been accommodated in that respect to date. Does any other party wish to say anything about the program? Ms Adler?

PN518

MS ADLER: Thank you, your Honour. Just a correction if I could?

PN519

THE VICE PRESIDENT: This is a conference. So if the parties prefer to remain seated they may do so with the exception that if you're not at the front Bar table you'll need to come forward to ensure that what you say is recorded. Yes, Ms Adler.

PN520

MS ADLER: At item three on page three our witness was - it's in relation to the Building Trades Award that witness statement actually relates to the Building Construction - their onsite award which is listed under item 8.

PN521

THE VICE PRESIDENT: All right. Right, thank you.

PN522

MR WARD: Just two matters, if I might, your Honour? Two witnesses that were put on by one of our client's the Costa Group, Mr McPherson and Mr Roberts, are currently identified on page five under section 5, Wine Industry Pastoral and Horticultural Awards. Can I just, as a matter of fairness, say this that those witnesses' evidence respond to the ACTU common claims.

PN523

THE VICE PRESIDENT: I see.

PN524

MR WARD: As well as the Australian Workers' Union Award specific claims. I just raise whether or not it would be more appropriate in those circumstances if they go on in the first two weeks, particularly, in light of the fact that if the timetable stays the way it is we'll have to file submissions about the common claims before their evidence is even heard. And I wouldn't want some unfairness to be claimed later on.

PN525

THE VICE PRESIDENT: Okay. So that's in relation to the Horticultural Award as well as the common claims?

PN526

MR WARD: Yes, it is. So if that evidence is advanced against the ACTU claim and the AWU claim, John McPherson and Richard Roberts.

PN527

THE VICE PRESIDENT: So I think, Mr Crawford - would that inconvenience you if those witnesses were called in the first two weeks?

PN528

MR CRAWFORD: Not overly, your Honour, but it's probably a similar scenario arises for a lot of the MFF witnesses as well. Their evidence relates to the ACTU common claim and our casual overtime claim. I mean I would have thought it may be simpler to keep the Costa Group witnesses in the - I guess in the Agricultural Award grouping. I think any prejudice could probably be overcome.

PN529

MS SVENDSEN: Excuse me, your Honour, it's Leigh Svendsen in Melbourne. A similar problem arises with some of the evidence in the NDIS that they are in reply to the common matters but also listed at 6(b).

PN530

THE VICE PRESIDENT: Yes. All right.

PN531

MS SVENDSEN: On page seven.

PN532

THE VICE PRESIDENT: I appreciate that but the problem may turn out to be insoluble but we'll have to do the best we can. Ms McKinnon, did you want to say anything about this issue?

PN533

MS MCKINNON: Yes, your Honour. We are in the same situation as ACCI and what I was going to suggest as a way of resolving that is that there be an additional time for filing submissions for matters arising in the horticultural industry, witness evidence, because otherwise submissions due in reply to the common claims are due in June which is a month before our witnesses are called. We'd prefer to keep our witnesses in July. I'm not sure we're going to get through

39 or 41 witnesses in a day but we would like, if we can have, to have the opportunity to put submissions in after the witness evidence is in.

PN534

THE VICE PRESIDENT: Yes. Mr Crawford, was it your union that required all these NFF witnesses for cross-examination?

PN535

MR CRAWFORD: At this stage, yes, your Honour.

PN536

THE VICE PRESIDENT: In relation to the horticultural issues, the common claim issues or both?

PN537

MR CRAWFORD: In some cases both, but predominantly in relation to our casual overtime claim.

PN538

THE VICE PRESIDENT: And it's the same for the Costa Group witnesses?

PN539

MR CRAWFORD: Yes.

PN540

THE VICE PRESIDENT: That is primarily it's focused upon the horticultural award issues?

PN541

MR CRAWFORD: My cross-examination will be, yes. I don't know if the ACTU, for example, wanted to have any involvement for the common claims.

PN542

THE VICE PRESIDENT: All right. Well, Ms Ward, having heard that - - -

PN543

MR FLEMING: Your Honour, Fleming from the - - -

PN544

THE VICE PRESIDENT: Sorry, Mr Fleming.

PN545

MR FLEMING: Sorry, your Honour, Fleming from the ACTU. We have requested that we be permitted to cross-examine also, but I agree with Mr Crawford those witness statements primarily address the specific award matters.

PN546

THE VICE PRESIDENT: All right. Mr Ward, I'm inclined to keep them where they are at the time being and then we may have to do something about the submissions.

PN547

MR WARD: We'd be content with that, your Honour. And can I say the second matter is just this: and your Honour might have solved it in part for me. Professor Withers, due to overseas commitments is only available on 23 or 24 March.

PN548

THE VICE PRESIDENT: In March you mean?

PN549

MR WARD: Yes. Those dates appear to have now been made available for the first tranche of the common claims charge, but I just should note that those were his only two available though.

PN550

THE VICE PRESIDENT: All right. And would he generally be available in the July dates, do you know?

PN551

MR WARD: Your Honour, I don't have those dates at the moment. I can seek to get them as quickly as possible.

PN552

THE VICE PRESIDENT: Right. Mr McDonald?

PN553

MR McDONALD: Your Honour, Ian McDonald, for the Australian Public Transport Association. I'm not sure if my appearance got announced. We are in a similar vein as some of the others in that two of our witnesses that are referred to in the Road Transport Awards relate to a submission by APTIA on 22nd of the 2nd in relation to the common claims matter.

PN554

THE VICE PRESIDENT: A claim by who?

PN555

MR McDONALD: Sorry, it's a claim by the Australian Public Transport Industrial Association in relation to the common claims matter. Two of the witnesses that are referred to in the Road Transport awards, they relate to matters pertaining to the common claims, and - - -

PN556

THE VICE PRESIDENT: What, only or as well?

PN557

MR McDONALD: Those two witness' statements only relate to the common claims matters.

PN558

THE VICE PRESIDENT: Okay. Okay, just give me a second. So what page is that?

PN559

MR McDONALD: It will be on page 4. You see there the Australian Public Transport Industrial Association.

PN560

THE VICE PRESIDENT: Yes.

PN561

MR McDONALD: There' two statements by Geoffrey Ivan Ferris. One of those statements relate solely to the common claims matter, and the matter of Mark Driver relates solely to the common claims matter as well, your Honour.

PN562

THE VICE PRESIDENT: Right. Well, you can assume, therefore they'll be moved up to the first two weeks.

PN563

MR McDONALD: Yes, thank you.

PN564

THE VICE PRESIDENT: And does your organisation have any objection to moving back the Road Transport awards to a later tranche of the case?

PN565

MR McDONALD: No, not at all, as long as we get some notice of the date and we can advise our witnesses.

PN566

THE VICE PRESIDENT: All right. Ms Taylor?

PN567

MS TAYLOR: Your Honour, can I make some comments about our witnesses? Thank you. They're all in group 1, but I would like to draw to your attention that Simon Hines, who's Adelaide based, is only available during that two week period on Monday, 21 March.

PN568

THE VICE PRESIDENT: I just don't want to be stuck to the programming at this stage. I'll come to the order of witnesses in a second.

PN569

MS TAYLOR: Okay.

PN570

THE VICE PRESIDENT: Mr Bull, did you have something to say?

PN571

MR BULL: Yes, I just wanted to make a comment about the current placement of the part-time hospitality matters. Look, I support - - -

PN572

THE VICE PRESIDENT: What page?

PN573

MR BULL: That's on page 3. Hang on, it's on page 6, so it's 6A, and these are the ones listed on 12 and 13 July. I actually have already spoken to Mr Ryan from the Hotels Association, and I spoke to a fellow for the clubs just now, and I was also proposing that these, if possible, be moved to August. I also have a problem in the sense that I've got longstanding leave and I'm overseas. I think I come back to Australia the day before this starts. My issue is I'm not technically a representative but I'm the one for the union who would attend to appear. Obviously if it's listed at this time we'll make arrangements, but for continuity and resource purposes it would be convenient if these matters were heard with the casual claim. The other thing is I think there is - - -

PN574

THE VICE PRESIDENT: The difficulty with that is it just won't fit.

PN575

MR BULL: Yes. What I was going to suggest is, look, there is some commonality in the sense that if you hear them altogether I think there would be some sort of reduction in the sense that they do naturally fit together.

PN576

THE VICE PRESIDENT: I mean, given that the parties have required every single witness for cross-examination, and I had expected the parties would make sort of forensic choice about this, and not just nominating everybody, but that's what most parties have done. So if that's position then it can't be done in the week of August, but if - - -

PN577

MR BULL: Well, I - - -

PN578

THE VICE PRESIDENT: Just let me finish. Parties come back with a much reduced list which would allow it to be dealt with in one day, then it might be doable.

PN579

MR BULL: Okay. What I was going to suggest is that there may be some capacity. I note that 17th is a miscellaneous day, and it's only half a day. My experience with these matters, and I've only done one previously, that these lengthy – this, that the employers put up, do shrink considerably once the process of - - -

PN580

THE VICE PRESIDENT: What, just the employers? Just the employers?

PN581

MR BULL: Beg your pardon? Beg your pardon?

PN582

THE VICE PRESIDENT: Just the employers?

PN583

MR BULL: The employers shrink, or the list?

PN584

THE VICE PRESIDENT: Just the employers that shrink?

PN585

MR BULL: Well, they basically stay the same, sorry. We're not going to have all these witnesses, but, you know, I hear what you're saying. But I am suggesting that, if possible, it would be useful for a number of reasons to have the casual and part-time claim in hospitality in August.

PN586

THE VICE PRESIDENT: I hear that, but four days doesn't go into three days unfortunately, so - - -

PN587

MR BULL: Okay. Well, I'll try and – I'll talk to my friends.

PN588

THE VICE PRESIDENT: Mr Crawford?

PN589

MR CRAWFORD: Your Honour, just a correction. At item 5, which is the Agriculture Awards again.

PN590

THE VICE PRESIDENT: Yes.

PN591

MR CRAWFORD: The AWU witnesses are all identified as being relevant to the Horticultural Award, but they actually – there are some for the Wine Award and the Pastoral Award.

PN592

THE VICE PRESIDENT: All right.

PN593

MR CRAWFORD: In our correspondence dated 4 March 2016 from paragraph 6 onwards we identify the correct awards.

PN594

THE VICE PRESIDENT: Yes. All right.

PN595

MR RYAN: And, your Honour, I note your Honour's comments about the issues raised by Mr Ward, but just so your Honour is aware we have a similar issue in part 6A of the table. You will note there are lists of witnesses which was compiled by the Australian Hotels Association. Those witness statements that are under the date of 26 February this year, those witnesses - there are six of them, are in reply to the ACTU common claims insofar as they apply or relate to the

Hospitality Industry General Award. So I just make your Honour aware of that, but I note your Honour's general submissions.

PN596

THE VICE PRESIDENT: If that's right, then you should assume that they'll have to be moved up to the first two weeks of the hearing, and then they'll need to be available in that period.

PN597

MR RYAN: Okay.

PN598

THE VICE PRESIDENT: Mr Maxwell?

PN599

MR MAXWELL: Thank you, your Honour. Just briefly, in regard to your suggestion about the moving the matters in item 3 to the third or fourth week, we would have a preference to the fourth week, given that the other building award matters are on 17 August in item 8. If they could be grouped together that would be the preference there. I should say, I don't think the matters will take particularly long, because I think most parts are putting comparative witness statements, and in regards to the HIA witness, we wouldn't be very long with her.

PN600

THE VICE PRESIDENT: All right. Thank you. All right. Any other comments about the program?

PN601

MR FLEMING: Your Honour, Fleming from the ACTU.

PN602

THE VICE PRESIDENT: Yes.

PN603

MR FLEMING: Just one correction, I apologise. This was our error.

PN604

THE VICE PRESIDENT: Yes.

PN605

MR FLEMING: The ACTU does not call Gary Talbot, on page 8. It was a transcription error in the table that we provided the Commission.

PN606

THE VICE PRESIDENT: He's not going to be called. All right.

PN607

MR FERGUSON: Sorry, your Honour.

PN608

THE VICE PRESIDENT: That should move things along. Yes?

PN609

MR FERGUSON: One correction in relation to four of the road transport awards, just for clarity. The first two witnesses, Brad Oslin and Grant Hosking, I think they actually relate to the Road Transport Long Distance Operations Award.

PN610

THE VICE PRESIDENT: Relate to what?

PN611

MR FERGUSON: The Road Transport and Distance Operations Award.

PN612

THE VICE PRESIDENT: I see. Yes, all right. Anybody else?

PN613

MR PEGG: Yes, your Honour. Mr Pegg, for Jobs Australia in Melbourne. Just a correction on page 7. Witness, Jennifer Fitzgerald is in relation to, not to the Labour Market Assistance Award, but the Social Community Home Care and Disabilities Services Award.

PN614

THE VICE PRESIDENT: All right. Thank you. All right. I'll take that silence as assent. No.

PN615

MS SOSTARKO: Apologies, your Honour. I was just waiting for an opportune moment to speak up. It's Rebecca Sostarko from Master Builders Australia. I just wanted to put on the record that we certainly don't have any objections to item 3 potentially being heard in the fourth rather than the third week as put forward by Mr Maxwell.

PN616

Secondly, with regard to item 1, the general opening submissions, in relation to both our matters regarding firstly the Joinery Award on item 3, we would ask that our opening submissions on that issue be heard on the day of that hearing, given that we are anticipating that given the lack of evidence and witnesses being adduced in that regard, that those opening sentences could perhaps be confined to that issue on that day, given the distinctness of those in relation to the Construction Awards and we would ask that that be the case for those that are dealt with in regards to the On Site Award as well, later in the schedule.

PN617

THE VICE PRESIDENT: I'm glad you've raised that. Obviously, the program isn't sufficiently clear but I had intended that those submissions relate to the common claims; so no party should think that apart from the common claims that there will be any open submissions heard on the Thursday and even then parties can just simply refer to the written submissions. They shouldn't feel that they have to make an open submission if they don't want to.

PN618

MS SOSTARKO: Thank you, your Honour.

PN619

MR BULL: One matter I was going to raise - sorry - - -

PN620

THE VICE PRESIDENT: Is there somebody else interstate who wanted to speak?

PN621

MS ROBINSON: Sir, this is Beth Robinson from - I'm on the telephone for St Ives Group.

PN622

THE VICE PRESIDENT: Yes.

PN623

MS ROBINSON: I'm just noting that our witnesses are all identified in the part-time hours of work in the 6(b) portion of the document as sent out and I'm aware that at least one of the witnesses had a witness statement in response to the casual conversion issues. So just to clarify that that evidence will obviously come out when she gives evidence later in the program.

PN624

THE VICE PRESIDENT: Which witness is that?

PN625

MS ROBINSON: Ms Andretich, Lois Andretich.

PN626

THE VICE PRESIDENT: So her evidence does not relate to that particular - - -

PN627

MS ROBINSON: No, it does, but she also - part of her evidence related in the second witness statement she put in one as part of the application and one in response to the casual conversions claim.

PN628

THE VICE PRESIDENT: Just give me a second. Yes, all right.

PN629

MR WARD: Sorry, your Honour. Can I just ask a question? If it's already been answered and I haven't known, because I haven't been here, I apologise - does the Bench have a view as to whether or not all of the evidence has been taken as common evidence across all matters or whether or not elements of the evidence are accepted as evidence for certain matters only.

PN630

THE VICE PRESIDENT: I think the Full Bench will have to make a view about that, but I think if a party wishes to rely upon evidence that's listed in one aspect of a case for some other extraneous aspect of a case that is for a purpose other than for which it was filed, they will need to identify that to the Commission and then the Commission will consider what course to take.

PN631

MR WARD: If the Commission pleases.

PN632

MR BULL: I was just going to indicate, this is perhaps just a way to save some time in the part-time - this is 6(a). The hotel witnesses at the bottom which were filed after 26 February; three of those witnesses are common with the witnesses filed for the part-time claim. So those later ones are ACTU witnesses.

PN633

THE VICE PRESIDENT: I think that's what Mr Ryan has already told us.

PN634

MR BULL: No, but they're the same witnesses which have given statements in each bit. So it would, I would have thought, be more efficient to perhaps call these people once, rather than get them to attend here twice. I'm quite prepared, if those three are going to be called in the ACT claim to attend and, you know, their statement in relation to the other matter can be tendered and whatever questions I need to ask them can be done then. That's just one way to save some space.

PN635

THE VICE PRESIDENT: All right, thank you. Now, order of witnesses. Mr Ferguson, you've organised all this now?

PN636

MR FERGUSON: Yes, a daunting list we have. I don't think we are very far in terms of working through an order as such. The one thing that strikes me is that at the moment I'm not sure how many are in Melbourne and how many are in Sydney from the parties, but that might be an appropriate starting place, if we can get some handle on that to work out whether or not we block aside a number of days in Melbourne. I had some discussions with the AMWU and we'd notionally identified a couple of days that might work with sitting in Melbourne, but I have no handle of everyone's - - -

PN637

THE VICE PRESIDENT: I must say, I'm not really inclined to go to Melbourne unless the parties think a full week would be of some use. That is, it's moving five members and five lots of files around is a major logistical exercise, so if there's a full week which the parties reach consensus should be in Melbourne or somewhere else, we can do that, but I'm not really inclined to do part weeks in every sitting.

PN638

MR FERGUSON: Yes. Well, we are not at this stage.

PN639

THE VICE PRESIDENT: All right. Can we proceed upon the general basis that leaving aside experts which I'll come back to, but the witnesses will be called by the parties in the order that they appear; that is, not talking about the precise order of witnesses, but the ACTU will call its witnesses first and so on as identified in the list, or is there some reason why that can't be done?

PN640

MR FLEMING: Your Honour, Fleming from the ACTU. I have a couple of difficulties with that in terms of the witnesses availability. Are we at the stage where we could discuss individual witnesses' availability?

PN641

THE VICE PRESIDENT: I am not inclined to and I realise that there may be some adjustments that need to be made for individual witnesses, but as a broad parameter, is there any reason why we shouldn't adopt that as the default position?

PN642

MR FLEMING: I have no issue with that as a default position, your Honour.

PN643

THE VICE PRESIDENT: Does any other party have any issue with that, with respect to the common claims?

PN644

MR HERBERT: Yes, your Honour. Andrew Herbert from the Meat Industry Council. The matter was traversed earlier in a hearing. I think Mr Johnson raised it in earlier conference. A number of senior management personnel involved in the AMIC will be giving evidence and we did - and I will be travelling from interstate. I think Mr Johnson did ask would it be possible to have the AMIC witnesses on a single day. We don't ask for times or anything of that kind, and we've identified 22 March as being a day on which all of the witnesses will be available and will minimise cost on behalf of my client. I was respectfully going to request whether the AMIC could have a fixed feast on that day.

PN645

THE VICE PRESIDENT: That's four witnesses, is it?

PN646

MR HERBERT: Four witnesses have been asked for, yes. Whether that is still the case then, but the ACTU has asked for those four witnesses to be made available. They can all be available on that date as can I.

PN647

THE VICE PRESIDENT: I understand that the group of eight universities and the AHEIA have requested similar accommodation, is that right?

PN648

MS SHANNON: That's correct, your Honour. There are eight witnesses in total. One for the ACTU, three for AHEIA and four for the group of eight universities, all of them - - -

PN649

THE VICE PRESIDENT: So who is the ACTU witness?

PN650

MS SHANNON: I beg your pardon - Linda Gale for the ACTU.

PN651

THE VICE PRESIDENT: I see, yes.

PN652

MS SHANNON: Given that there are eight witnesses in total, we would anticipate it would need a day to deal with all of those eight witnesses.

PN653

THE VICE PRESIDENT: Yes. Hopefully the maths for that will all work out somehow. Yes, all right. Well, firstly - - -

PN654

MS SHANNON: We've been having some discussions - the two employer representatives have had some discussions about respective availability of our witnesses.

PN655

THE VICE PRESIDENT: To what end? That is, have you identified a possible date?

PN656

MS SHANNON: I think the 17th, 18th and 21st, I think.

PN657

MR FLEMING: I can confirm that Linda Gale is available on those dates.

PN658

THE VICE PRESIDENT: All right. Can I ask, if the parties agree upon a date, then we will try to accommodate that. So does any other party oppose the meat industry witnesses all being called on the 22nd, and the university witnesses being called on a single date to be advised? All right, if the parties could give us urgent advice as to what date they prefer in respect of the university witnesses, we will build that into the program.

PN659

MR CRILLY: Your Honour, the stevedoring employers would respectfully seek a similar accommodation to those just discussed. The reason is twofold; one, we only have two witnesses and so our participation in these proceedings would generally be limited to the days on which our witnesses are required for cross-examination. The second is that as flagged in our correspondence of last week, we would be respectfully seeking that they be permitted to give evidence by video link from Brisbane.

PN660

THE VICE PRESIDENT: Did you have a date in mind?

PN661

MR CRILLY: Your Honour, I have one date on which each of my witnesses is available. That's the 17th. Given the limited number and the request for a video link, it might be convenient to do that either first thing or straight after lunch. I have not had a chance to discuss that date with my friends Mr Fleming and Mr Burns who are in attendance today.

PN662

There's perhaps one other issue I should deal with, your Honour, while I'm on my feet and before Mr Burns in particular addresses that one. Which was that we're surprised to an extent that both the ACTU and the MUA are seeking to cross-examine our witnesses. Our understanding was that in these proceedings the MUA is essentially supporting the ACTU case and doesn't have a separate interest, as it were. So we're not sure what the purpose of that, and it would seem to be duplication that's not conducive to getting through these witnesses as quickly as possible.

PN663

THE VICE PRESIDENT: That's a well-made point. Can I indicate that - I mean it may be a case of simply failure to coordinate but can I indicate that what won't be tolerated is overlapping cross-examination by parties whose interests align, let me put it that way. Did you want to say anything about that, Mr Burns?

PN664

MR BURNS: Firstly, your Honour, the way it's been done is just to assist the ACTU to identify the parties who we would require to be called, and that's the way it's been administered. That having been - and what the ACTU wanted us to do was to identify the parties to the union base to identify which witnesses we would like to be cross-examined. But I haven't discussed with Mr Fleming whether or not he would do it or I would do it.

PN665

THE VICE PRESIDENT: But the essence of it is there'll only be one union cross-examiner of those witnesses.

PN666

MR BURNS: I would expect so.

PN667

THE VICE PRESIDENT: Yes.

PN668

MR BURNS: But in relation to the date, I've got no problem with the date and I've got no problem with the cross-examining of these witnesses via video link if necessary. We don't require them at the proceedings so that's fine.

PN669

THE VICE PRESIDENT: Thank you.

PN670

MR CRILLY: May it please the Commission.

PN671

MS TAYLOR: Your Honour, on that point can I state that the AMWU will wish to cross-examine some of the witnesses that the ACTU is also calling, but our cross-examination will be restricted to those areas of the statement which go to the manufacturing industry or the manufacturing industry awards or the AMWU's submission.

PN672

THE VICE PRESIDENT: I'll leave the parties to work that out but again, if I hear any over-lapping cross-examination it won't be allowed.

PN673

MS TAYLOR: Yes.

PN674

THE VICE PRESIDENT: Mr McDonald?

PN675

MR McDONALD: Your Honour, thank you. In relation to the Transport Industry matters, given that the date will now be vacated to 24 March, would it be possible to have those witnesses, Dr Driver and Mr Ferris, given the 24th date, that was the day counsel was going to be briefed to appear and it would be convenient if their cross-examination took place on the 24th so we didn't sort of lose some benefit of that day of the 24th, your Honour. Mr Driver would need a video link from Melbourne in relation to his evidence, that's all.

PN676

THE VICE PRESIDENT: Yes, all right. Thank you. Does any party oppose that in principle?

PN677

MR McDONALD: Thank you.

PN678

MR FERGUSON: Your Honour, I'm just going to suggest - I'm just thinking about a possible way forward to suggest. It seems from discussions before the proceedings started that a number of parties will have concerns about unavailability of specific witnesses, and given the volume that we've got we probably can't work through all of them today as I had anticipated we might be able to. It seems to me there might be two ways forward. One would be perhaps for the Commission if it was minded to release some sort of indicative list for when they'd be structured in terms of notionally, in terms of what order and so forth and what dates. Then the peak counsels perhaps to try and work cooperatively to try and manoeuvre that as far as possible to accommodate everyone's availabilities. I haven't spoken to my friends from the ACTU and - - -

PN679

THE VICE PRESIDENT: My intention would be to publish a revised program taking into account what's been put today. Except where we need to accommodate specific parties which have just raised the issue you can expect that the list will basically be in the order that it is currently.

PN680

MR FERGUSON: Yes.

PN681

THE VICE PRESIDENT: Then if the parties wish to change that by reference of issues of availability they can do that by agreement and if that's agreeable we'll accommodate that in a revised list in due course.

PN682

MR FERGUSON: Yes, well that was the only other course of action I was going to suggest, was that if parties be afforded an opportunity to try and indicate unavailabilities. I just didn't want to put any work on the Commission, but it's obviously difficult to try and get agreement potentially with many parties, which is why I was - - -

PN683

THE VICE PRESIDENT: Now while you're on your feet, Mr Ferguson.

PN684

MR FERGUSON: Yes.

PN685

THE VICE PRESIDENT: With experts, we have the issue that's been raised with respect to the evidence in reply which the ACTU wishes to call. We'll be in a better position to assess what can be done about that when the documents are filed.

PN686

MR FERGUSON: Yes.

PN687

THE VICE PRESIDENT: If necessary, I think we've indicated a further directions about it on Thursday afternoon if there's some further issue. But it occurs to me that at least to minimise - sorry, at least to give the employer parties a maximum opportunity to respond if that evidence is admitted that the experts might be pushed back into the second week, so that you have some time to deal with it.

PN688

MR FERGUSON: The same occurred to me, your Honour. We'll know what sort of position we're in when we see the material but that seems the sensible course of action, that we push it back.

PN689

THE VICE PRESIDENT: Does any other party take a different view about that? Mr Fleming, will that be able to be accommodated if the reply evidence is admitted?

PN690

MR FLEMING: Yes, your Honour, that will. Could I say something regarding the first point about coordinating the witnesses (indistinct) the peak counsels however?

PN691

THE VICE PRESIDENT: Yes.

PN692

MR FLEMING: I'm just concerned that we'll have limited capacity to do that this close to the hearing unless we get to a very advanced stage today, and it sounds as though your Honour is heading in that direction. But if we could please try and come to near finalising that list and if it's just a matter of fine adjustments I'm happy to do that, but otherwise it's going to eat into our capacity to prepare.

PN693

THE VICE PRESIDENT: I understand that. It's up the parties. The Commission will try to publish a revised program this afternoon and then it's up to the parties what they want to do about it. If witnesses can't be called on particular days that are the program well we'll just do the best we can and move them to another day, so it's not going to be so fixed that parties won't be able to adjust the timing of witnesses depending upon availability.

PN694

MR FLEMING: Thank you, your Honour. Could we have the opportunity today to discuss individual witnesses' availability and incorporate that into that first draft of the program?

PN695

THE VICE PRESIDENT: Yes, if you've got - does everybody want to make comments about availability? I mean I'm just wondering whether this is best done in writing or through this process.

PN696

MS TAYLOR: The AMWU would like to make some comments about availability, your Honour.

PN697

THE VICE PRESIDENT: How many other parties?

PN698

MR FERGUSON: Yes, your Honour.

PN699

THE VICE PRESIDENT: It might be simpler if the parties, to the extent they have an issue about unavailability of witnesses as soon as possible, that is soon after we adjourn send my chambers a written list of the name of the witnesses and when they're available to be called and we'll try to fit that into the program.

PN700

MR FLEMING: Thank you, your Honour. I have one special request if I may regarding one witness. It may be best to raise it now. I understand that there are two witnesses that are on parental leave; one is an employer witness and the union parties have been in discussion with the RCSA and come to an agreed course as to how that could be dealt with, which we'd like to confirm with the Bench. That is for the employer party to answer by way of interrogatories a number of questions that we've put to them and all parties agreed to that course. It's since come to my attention that an ACTU witness is in the same situation on parental leave and I would seek permission for - it's a union official. I would seek permission for the

branch secretary of that ASU New South Wales and ACT branches, being Natalie Lang, I seek permission for Judith Wright to adopt her statement. I understand she is familiar with the same issues, they're of a general nature and the two work closely together and I understand a similar course was taken in the equal pay case when a union official became unavailable due to personal leave. I can write to the Commission advising availability along with the other witnesses.

PN701

THE VICE PRESIDENT: Where is she in the list?

PN702

MR FLEMING: In the first lot, eighth or ninth down, I believe. Ninth witness to be called in the entire proceedings.

PN703

THE VICE PRESIDENT: The July proceedings.

PN704

MR FLEMING: That's 14 March, Natalie Lang.

PN705

THE VICE PRESIDENT: Who was the RCSA witness?

PN706

MR FLEMING: It was Carly Fordred.

PN707

THE VICE PRESIDENT: So effectively they can come out of the list, if that's agreed and there will be a different process adopted.

PN708

MR FLEMING: I would request that Carly Fordred be removed from the list, but that Natalie Lang be replaced with Judith Wright.

PN709

THE VICE PRESIDENT: I see. All right. Mr Gee.

PN710

MR GEE: We just concur with Mr Fleming's comments about Ms Fordred.

PN711

MS ADLER: Your Honour, just briefly, we would (indistinct).

PN712

THE VICE PRESIDENT: All right. Can any party that's not calling a witness in Sydney, can they identify who that witness is and where the video link was required. Mr Ferguson?

PN713

MR FERGUSON: It will be required in relation to Kay Neill. Sorry, does your Honour just want us to write and advise your chambers or do you want us to go - -

-

PN714

THE VICE PRESIDENT: It would probably be easier if you just advise us.

PN715

MR FERGUSON: We can do that. The other thing I just thought it might be of some utility if the parties all advise chambers whether the witnesses they are calling are in Sydney or Melbourne so we can identify whether or not we have got (indistinct) because if it falls that a significant number are - - -

PN716

THE VICE PRESIDENT: I think it's too late to move the first week from Sydney, so we'd be talking about the period after that. Is there any objection if we sit to 5 pm every day? No, good.

PN717

Mr Gee, can I just raise the issue of the confidentiality order that you've applied for with respect to the annexure to the statement of Mr Shepherd. Mr Shepherd's statement has not gone up on the Commission's web site and there's been an application made by the RCSA that an annexure to that statement be confidential. That's right, isn't it?

PN718

MR GEE: Yes, your Honour.

PN719

THE VICE PRESIDENT: Can I just indicate that because it's not on the web site the RCSA will need to serve it, subject to the terms of the confidential order which will be made and that will be bind the party that claims it. You have already served it on who?

PN720

MR GEE: It will be served on the ACTU and Mr Maxwell of the CFMEU.

PN721

THE VICE PRESIDENT: All right. Well, can I just indicate that if any other parties considers that they may have an interest in that annexure, they should contact the RCSA and ask to be served with it on the basis that there will be a confidentiality order attached to it.

PN722

MR MAXWELL: Your Honour, I should mention there was some material filed by the RCSA on behalf of Mr Dale Last, subject to the order to produce. I should inform the Commission that in one of the attachments, I believe it's attachment 3, whilst the name of the person involved has been redacted, there is an email address in that documentation that may identification of the person that received them. So I just bring that to the attention of the Commission and to the RCSA that they may wish to redact the information.

PN723

THE VICE PRESIDENT: All right. Mr Gee, you've heard that, so you can respond appropriate to that.

PN724

All right. Is there any other issue we can deal with now?

PN725

MR GEE: Your Honour, this might be a dangerous question, but for some of the witnesses in regional areas, would the Bench consider accepting cross-examination over the phone or is video link the minimum?

PN726

THE VICE PRESIDENT: As a last resort, if there's some real issue about them coming to Sydney - I mean, we've tried to accommodate witnesses so far as timing, as far as we can.

PN727

MR GEE: Yes.

PN728

THE VICE PRESIDENT: So the first step should be that you should try to get a date upon which they can come to a capital city.

PN729

MR GEE: Yes.

PN730

THE VICE PRESIDENT: But if it's totally insoluble, then I will consider evidence by telephone.

PN731

MR GEE: Okay, thank you.

PN732

THE VICE PRESIDENT: Mr Harmer, I thought we'd dealt with your problem.

PN733

MR HARMER: I trust so, your Honour, and apologies for taking up time on this, but as your Honour is aware, we have agreement with the AWU on all substantive issues, some of which straddle matters before this Full Bench and others which are before the Group 2 Full Bench. Your Honour would be aware that there's a fairly significant coverage issue in relation to the awards, so the current agreement relates to all existing employers covered by the award, however, subject to the outcome of that coverage issue, other employers may take on a substantive interest in the content of the award. We note that we've been stepped out of this program. We just wonder how we take forward our package, whether we take that back to the Group 2 Bench or otherwise, your Honour.

PN734

THE VICE PRESIDENT: No doubt you will be informed when we know what the answer is.

PN735

MR HARMER: Thank you, your Honour.

PN736

MS TAYLOR: Your Honour, there's one more issue and that relates to the union's notice to produce for Mr Blanche. There was an issue raise, I believe we were going to discuss that some time during today.

PN737

THE VICE PRESIDENT: All right. Well, just hold on a second. I've seen that, Ms Taylor. I've asked for the AiG's response to that, because prima facie I don't consider it's in proper form and order to produce documents, but more in the nature of an interlocutory. If Mr Ferguson's member wants to respond to it and doesn't have an issue with it, well, then that can be done consensually, but on the face of it, unless you persuade me otherwise, I don't consider that's an order to produce in proper form which I would be prepared to make.

PN738

MS TAYLOR: Your Honour, we withdrew our first order and put a second order. Is your Honour talking to the first order or the second order?

PN739

THE VICE PRESIDENT: The second one is not as bad as the first one, but it's still not in proper form and order to produce. It's more in the nature of an interlocutory. So if you can work something out consensually with Mr Ferguson and his member, that's fine, but if you want an order to produce issued you will have to, with respect, draft one which actually sets out documents to be produced rather than, as this one is, simply a series of questions.

PN740

MS TAYLOR: Your Honour we did ask for document to be produced. That is at the beginning of the order and it relates then documents in relation to all those points that flow underneath. We would note that during these proceedings documents in those forms have been subject to a notice to produce. We think it would be more appropriate for the order to issue and then if AiG have a concern with the revised order, then we can deal with that in the proper way.

PN741

THE VICE PRESIDENT: For example, number 11 is just a straight out question. I don't raise that exhaustively, but only as an example. That is not a proper request for documents.

PN742

MS TAYLOR: "Copies of all documents, records, notes, handwritten or otherwise, all correspondence which are Bayside's offer of fixed-term employment to the 550 casuals referred to in paragraph 34."

PN743

THE VICE PRESIDENT: I might be looking at the wrong one. It's number 11, Bayside Groups. Is that how it start?

PN744

MS TAYLOR: Yes, but it must be read in the context of the beginning of the order.

PN745

THE VICE PRESIDENT: Ms Taylor, I am telling you I am not going to issue an order in that form. If something consensually can be worked out with Mr Ferguson's member, you can, but otherwise you will have to reapply, because as far I'm concerned, that's simply a request for answer to a question, not a request for documents. Anything else?

PN746

MR FLEMING: Your Honour, can I just confirm that the Commission would want to parties to put our witness availability details in writing to the Commission and that they can be accommodated in that first draft?

PN747

THE VICE PRESIDENT: That's the intention. So the sooner you can do it, the sooner we can try to put it into the revised program.

PN748

MR FLEMING: Thank you, your Honour.

PN749

THE VICE PRESIDENT: So if you can do that this afternoon, then we will try to incorporate it into a program to be published as soon as we can and then we will deal with that. But as I indicated, the program will only ever be a work-in-progress, so it's recognised that there will be further modifications as we go. Is that understood?

PN750

All right, any other takers? All right, well, I thank the parties for their assistance. Sorry, did I hear somebody say something?

PN751

MR FLEMING: Sorry, your Honour. Fleming again, ACTU. Are we in a position at this stage, your Honour, to confirm whether experts - the ACTU experts will be required to be called after the March proceeding dates?

PN752

THE VICE PRESIDENT: Well, that - well, no. That is, my intention is no matter what happens is that they be called in the first two weeks, but if they have to be pushed back to the last few days of the first two weeks to accommodate any difficulty with the new evidence, so be it. If the new evidence is so extensive that it can't be accommodated at all, then we will have to consider whether it's admitted or not.

PN753

MR FLEMING: Thank you, your Honour.

PN754

THE VICE PRESIDENT: All right. I thank the parties for their assistance. We will now adjourn.

ADJOURNED INDEFINITELY

[3.06 PM]