



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**VICE PRESIDENT ASBURY  
DEPUTY PRESIDENT BINET  
DEPUTY PRESIDENT GRAYSON**

**C2023/5577**

**s.604 - Appeal of decisions**

**Appeal by Australian Workers' Union, The (002N)  
(C2023/5577)**

**Sydney**

**10.00 AM, THURSDAY, 16 NOVEMBER 2023**

**Continued from 24/10/2023**

PN1

VICE PRESIDENT ASBURY: Good morning. Could we just start by taking the appearances, please.

PN2

MR A MACKENZIE: May it please, Mackenzie, initial A, for the appellant the Australian Workers Union, instructed by the Australian Workers Union.

PN3

VICE PRESIDENT ASBURY: Thank you.

PN4

MR A POLLOCK: If the Commission pleases, Pollock, initial A, of counsel. I seek permission to appear with my learned friend Mr Crocker for the respondent. I can't recall whether permission has already been granted in this matter or not, but - - -

PN5

VICE PRESIDENT ASBURY: You filed submissions I think in relation to it and I don't think it's really an issue of - - -

PN6

MR POLLOCK: No.

PN7

VICE PRESIDENT ASBURY: - - - any contest where permission is going to be hotly contested, so for our part we grant permission for both parties to be legally represented.

PN8

MR POLLOCK: Thank you, Vice President, if it pleases.

PN9

VICE PRESIDENT ASBURY: Thanks. Housekeeping matters?

PN10

MR MACKENZIE: Your Honours, I don't propose - unless there are matters I can assist the Full Bench with - to say anything by way of opening. Assuming that to be right, I propose to proceed to tender documents from the appellant's list of documents which are tendered by consent.

PN11

VICE PRESIDENT ASBURY: Yes.

PN12

MR MACKENZIE: So I tender all the documents in the appellant's tender bundle.

PN13

VICE PRESIDENT ASBURY: Okay. We will mark that as exhibit A1.

## **EXHIBIT #A1 APPELLANT'S BUNDLE OF DOCUMENTS**

PN14

MR POLLOCK: Vice President and Members of the Full Bench, I should indicate that we don't oppose the tender of those documents. There of course may be submissions as to what use might be made of them and weight to be attributed to them. I don't seek to have my learned friend prove them.

PN15

VICE PRESIDENT ASBURY: All right. You're content to have them all marked as a bundle?

PN16

MR POLLOCK: I think that's probably the easiest way, Vice President. There is an index, as I understand it - - -

PN17

VICE PRESIDENT ASBURY: Yes.

PN18

MR POLLOCK: - - - at the outset and it's paginated. Unless the Full Bench has a different view, I would have thought that's the appropriate course.

PN19

VICE PRESIDENT ASBURY: Okay. Thanks.

PN20

MR MACKENZIE: Then I would seek to read the statement of Mr Giordano. I understand there is no objection to that.

PN21

MR POLLOCK: No objection.

PN22

MR MACKENZIE: No objection. I seek to read the statement of Mr Giordano.

PN23

VICE PRESIDENT ASBURY: We'll mark that as exhibit A2.

## **EXHIBIT #A2 WITNESS STATEMENT OF MR GIORDANO**

PN24

MR MACKENZIE: I understand that there are objections, but I seek to read the witness statement of Mr Cumarella(?).

PN25

MR POLLOCK: Your Honours, the objections really are matters that would ultimately go to weight. I don't propose that we deal with it at an admissibility leave, but I'll make submissions in closing as to what you can make of Mr Cumarella's statement.

PN26

VICE PRESIDENT ASBURY: Okay.

PN27

MR POLLOCK: Thank you.

PN28

VICE PRESIDENT ASBURY: We will mark it as exhibit A3.

**EXHIBIT #A3 WITNESS STATEMENT OF MR CUMARELLA**

PN29

MR MACKENZIE: That is my evidential case, your Honours.

PN30

VICE PRESIDENT ASBURY: Thanks.

PN31

MR POLLOCK: Vice President, again we canvassed the issues in writing, so I wasn't proposing to labour you with an opening. I understand my instructors have sent through a joint position around the timetabling of witnesses and of course we very much appreciate the Commission being able to facilitate the ordering of witnesses and their appearance via various (Indistinct) from the Commission elsewhere. First up is Mr Bellingham, who will be appearing remotely from Roma via Teams, as I understand it.

PN32

VICE PRESIDENT ASBURY: Not Roma, Italy.

PN33

MR POLLOCK: I imagine if he was appearing from Roma, Italy, he would be having a lot more fun than he might be in Roma, Queensland.

PN34

THE ASSOCIATE: Mr Bellingham, are you able to hear the Full Bench in the court?

PN35

MR BELLINGHAM: Yes.

PN36

VICE PRESIDENT ASBURY: Good morning, Mr Bellingham.

PN37

MR BELLINGHAM: Good morning.

PN38

VICE PRESIDENT ASBURY: Mr Pollock.

PN39

MR POLLOCK: I assume he needs to be sworn in, Vice President.

PN40

VICE PRESIDENT ASBURY: Yes. Will take an oath or an affirmation, Mr Bellingham?

PN41

MR BELLINGHAM: I'm obviously not sure.

PN42

VICE PRESIDENT ASBURY: You don't have a Bible with you?

PN43

MR BELLINGHAM: No, I do not.

PN44

VICE PRESIDENT ASBURY: Right, an affirmation is it.

PN45

MR BELLINGHAM: Thank you.

PN46

VICE PRESIDENT ASBURY: My associate will administer it.

PN47

THE ASSOCIATE: Mr Bellingham, please state your full name and address for the record.

PN48

MR BELLINGHAM: Aaron James Bellingham. The address is (address supplied).

**<AARON JAMES BELLINGHAM, AFFIRMED [10.10 AM]**

**EXAMINATION-IN-CHIEF BY MR POLLOCK [10.11 AM]**

PN49

MR POLLOCK: Mr Bellingham, just for the benefit of the transcript can you please repeat your full name and your business address?---Aaron Bellingham, and it's 61-63 Spencer Street South, Roma.

PN50

Thank you. You're currently employed by Valmec Services Pty Ltd, yes?---Correct.

PN51

During 2021 you were employed by APTS Pty Ltd, weren't you?---Correct.

PN52

What did your role with APTS involve on a day-to-day basis?---Prior to '21 it was pneumatic and hydrostatic testing.

\*\*\* AARON JAMES BELLINGHAM

XN MR POLLOCK

PN53

Thank you. You have made - - -?--- After '21 it was PSV technician, sorry.

PN54

Yes. Thank you. You've made a witness statement in this proceeding, haven't you?---Yes.

PN55

Do you have a copy of that statement in front of you?---I do.

PN56

Can I just get you to confirm that the document in front of you is a statement dated 10 November 2023 and runs to 23 paragraphs, and has six annexures labelled AXB1 through to AXB6?---Yes.

PN57

You've had an opportunity to read that statement recently?---I have.

PN58

Is that statement true and correct?---Yes.

PN59

Do you wish to adopt that statement as your evidence in the proceeding?---Yes.

PN60

I tender the statement and the annexures, Vice President.

PN61

VICE PRESIDENT ASBURY: We will mark that as exhibit R1.

**EXHIBIT #R1 WITNESS STATEMENT OF AARON BELLINGHAM  
DATED 10/11/2023 PLUS ANNEXURES**

PN62

MR POLLOCK: Nothing further in-chief.

**CROSS-EXAMINATION BY MR MACKENZIE**

**[10.12 AM]**

PN63

MR MACKENZIE: Mr Bellingham, you have made a statement in these proceedings. You understand that the witness statement you have made is important to the proceedings, don't you?---Yes.

PN64

And you understand it's important that your witness statement is accurate. That's correct, isn't it?---Yes.

PN65

You understand it's important that it's comprehensive, in that it's the whole truth. You understand that, do you?---Yes.

\*\*\* AARON JAMES BELLINGHAM

XXN MR MACKENZIE

PN66

At paragraphs 3 to 10 of your statement you give evidence about your role, your qualifications and your employment history. Do you agree with that?---Correct.

PN67

That statement is accurate, isn't it?---Yes.

PN68

It's comprehensive in the sense that it's the whole truth?---Yes.

PN69

There are no important aspects of it left out. That's true, isn't it?---Yes, sure.

PN70

Now, the work you performed - I want to take you now to the time around when bargaining for this matter - for this enterprise agreement, being the APTS Industrial Services Enterprise Agreement, was happening. The work you were performing then is the work you identify at paragraph 10 of your statement. That's correct, isn't it?---Give me a second. Yes, that's correct.

PN71

Following the approval of that enterprise agreement you continued performing that work until you were transferred or you took up employment with Valmec in 2022. That is, the work continued until you were transferred to Valmec. That's right, isn't it?---Correct, yes.

PN72

I want to take you to a different topic now, Mr Bellingham. At paragraph 13 of your witness statement you mention that you attended bargaining meetings in relation to the Industrial Services Enterprise Agreement?---Yes.

PN73

That was over two years ago; in May through July 2021. That's right, isn't it?---I believe that that's correct, yes.

PN74

Your memory of what happened in those meetings has faded somewhat in the intervening period, hasn't it?---To a point, yes, but the minutes help jog the memory.

PN75

Do I understand from your answer, Mr Bellingham, that you were provided with the meeting minutes from those - - -?---I was, yes.

PN76

For the purposes of preparing your witness statement; is that right?---Correct.

\*\*\* AARON JAMES BELLINGHAM

XXN MR MACKENZIE

PN77

Now, the evidence you give about those meetings at paragraphs 15 to 17 - pardon me, 15 to 20 of your statement, like the rest of your statement it's the whole truth of what you remember from those meetings. That's right, isn't it?---Correct.

PN78

They don't exclude anything significant that you remember from those meetings. That's right, isn't it?---Correct.

PN79

In particular, the first meeting that you describe in paragraphs 15 to 17 of your witness statement, they describe everything that you can independently remember of the first meeting you attended. That's correct, isn't it?---Correct.

PN80

You don't recall and you don't mention in your witness statement any discussion of the Workshop Enterprise Agreement in that meeting; being the agreement that applied to you before the APTS Industrial Services Enterprise Agreement. That's correct, isn't it?---Not that I can recall, no.

PN81

You describe the second meeting at paragraph 19 of your witness statement; do you see that?---Yes.

PN82

You remember some discussion about the differences between the terms of the Workshop Agreement and the APTS Industrial Agreement, in particular rates of pay, training terms and allowances; you see that?---Yes.

PN83

That is the whole truth of your recollection of that meeting?---Yes.

PN84

That's all you remember from that meeting; correct?---Correct.

PN85

So you remember a discussion about those things. That's right, isn't it?---Vaguely.

PN86

And you don't remember any detail about the contents of that discussion. That's right, isn't it?---I remember what's in that paragraph.

PN87

And nothing more; correct?---Yes.

PN88

Still in paragraph 19, you say you accepted a salary contract which addressed your concerns about rates of pay; you see that?---Yes.

\*\*\* AARON JAMES BELLINGHAM

XXN MR MACKENZIE

PN89



What you meant by that is that you had concerns about some terms of the agreement and you were offered a contractual deal that satisfied those concerns. Is that broadly correct?---Yes.

PN90

Had you not been offered that deal, you would have retained concerns about the agreement; that's correct?---Yes.

PN91

And you wouldn't have voted up the agreement unless those concerns were addressed; that's correct?---Yes.

PN92

You don't mention in your statement anyone explaining how classifications in the Industrial Services Enterprise Agreement worked. Do you agree with that?---Not that I remember.

PN93

And indeed the reason you don't describe anyone talking to you about classifications is because so far as you can recall no one spoke to you in the bargaining meetings about classifications. That's right, isn't it?---I honestly don't remember.

PN94

Pardon me, I'm correct that you do mention it in paragraph 16. You recall that there were questions asked about classifications?---(No audible reply)

PN95

But you don't remember what those questions were, do you?---Not particularly, no.

PN96

And you don't recall what, if any, answers were provided to those questions, do you?---No.

PN97

In paragraph 19 you mention a discussion about rates of pay, training terms and allowances; you see that?---Yes.

PN98

You recall only that there was a discussion and not any questions asked; that's correct?---Yes.

PN99

Certainly you don't remember any particular answers that were given to questions; that's correct?---Not off the top of my head.

\*\*\* AARON JAMES BELLINGHAM

XXN MR MACKENZIE

PN100

And you don't recall anyone explaining to you what your rate of pay would have been under the Workshop Enterprise Agreement?---That's the whole agreement, correct?

PN101

Correct?---No, they didn't describe it because we already knew where we stood with that.

PN102

And no one compared what you were receiving under the Workshop Agreement with what you were receiving under the Industrial Services Enterprise Agreement?---There was mention of it because there was a - I can't remember the exact - what it's called, but the grandfather clause in the industrial one, so we couldn't go backwards.

PN103

And no one explained to you the circumstances in which a meal allowance would be paid under the Industrial Services Agreement; is that right?---That was - well, that was essentially stipulated that that would be in the individual contract.

PN104

That was one of the concerns you had that was satisfied by the salary agreement that you agreed to. That's right, isn't it?---Correct.

PN105

And no one explained - or no one pointed out the difference between meal allowance under the Workshop Agreement and meal allowance under the Industrial Services Agreement?---I believe people would have, but I don't remember who.

PN106

You don't remember what they said either, do you?---No.

PN107

I don't have any further questions for this witness, your Honour.

PN108

VICE PRESIDENT ASBURY: Thank you. Re-examination?

PN109

MR POLLOCK: No re-examination, your Honour.

PN110

VICE PRESIDENT ASBURY: Thank you for making yourself available, Mr Bellingham. You are excused?---Thank you.

**<THE WITNESS WITHDREW**

**[10.24 AM]**

\*\*\* AARON JAMES BELLINGHAM

XXN MR MACKENZIE

PN111

MR POLLOCK: Your Honour, on a welcome basis that's substantially quicker than the estimate that I think counsel had discussed.

PN112

VICE PRESIDENT ASBURY: I'm not getting excited yet, Mr Pollock. It's just the first - - -

PN113

MR POLLOCK: Of course, but the reason I raise it is that Mr Barry is next. I'm assuming he is available earlier than he was initialled scheduled, so we can - - -

PN114

VICE PRESIDENT ASBURY: Do you need a few moments to just - - -

PN115

MR POLLOCK: I might just have my instructing solicitor make a quick call or text message to make sure that he's available.

PN116

VICE PRESIDENT ASBURY: All right. We can just stand the matter down for a few minutes while you do that.

PN117

MR POLLOCK: Thank you.

**SHORT ADJOURNMENT**

**[10.25 AM]**

**RESUMED**

**[10.28 AM]**

PN118

MR POLLOCK: Vice President, I understand that Mr Barry is on the line.

PN119

VICE PRESIDENT ASBURY: Good.

PN120

MR POLLOCK: My learned friend has indicated that he will be roughly the same period with Mr Barry as he was with Mr Bellingham. Mr McLaughlin is scheduled thereafter. He is, at least on the present plan, to appear from the Commission building in Perth. We're making inquiries; he will likely be available earlier. It's just going to be whether he can get into the building.

PN121

Now, if he can, terrific. If he can't, then subject to my learned friend's views and the preference of the Full Bench, if you're able to log in remotely from Teams from another location then we could get him on quicker.

PN122

VICE PRESIDENT ASBURY: Yes, we could send him a link, I'm sure, from somewhere else if he has got that capacity.

PN123

MR POLLOCK: We're making inquiries, but I understand that that will likely be the case.

PN124

VICE PRESIDENT ASBURY: Yes, we can try and get someone to let him in, as well. I'll get my associate to make contact. In the meantime, let's press on.

PN125

MR POLLOCK: Let's push on with Mr Barry. I call Adam Barry.

PN126

VICE PRESIDENT ASBURY: Thank you. Good morning, Mr Barry. Can you hear us all?

PN127

MR BARRY: I can, yes. Thank you. Good morning.

PN128

VICE PRESIDENT ASBURY: Good morning. You are called to give evidence in this proceeding. Will you take an oath or an affirmation?

PN129

MR BARRY: Affirmation, sure.

PN130

VICE PRESIDENT ASBURY: Great. Thank you. I'll get my associate to administer it.

PN131

MR BARRY: Thank you.

PN132

THE ASSOCIATE: Mr Barry, can you please state your full name and address for the record.

PN133

MR BARRY: Adam John Barry. Sorry, I've just moved house, (address supplied).

**<ADAM JOHN BARRY, AFFIRMED** [10.30 AM]

**EXAMINATION-IN-CHIEF BY MR POLLOCK** [10.30 AM]

PN134

MR POLLOCK: Mr Barry, you're currently employed by Valmec Services Pty Ltd as a lead pressure safety valve technician, aren't you?---Yes.

PN135

From 2014 through to the end of March 2022 you were employed by APTS?---Yes, correct.

\*\*\* ADAM JOHN BARRY

XN MR POLLOCK

PN136

Can you describe what is the work did you do day-to-day with APTS?---So I was employed as a pressure test technician which involved pressure testing of gas plants, gas pipelines, water lines, PSV maintenance and I was testing other things relating to that, flange management, other bits and pieces, yes, all relating to pressure testing.

PN137

You have made a witness statement in this proceeding, haven't you?---I have.

PN138

Do you have a copy of that statement in front of you?---I do, yes.

PN139

Can I just ask you to confirm that the statement you have in front of you that's dated 10 November 2023 runs to 19 paragraphs and has 13 annexures labelled AB1 through to AB13?---Yes, that's correct.

PN140

You've had an opportunity to read that statement recently?---I have, yes.

PN141

Is that statement true and correct?---It is.

PN142

Do you wish to adopt that statement as your evidence in this proceeding?---Yes.

PN143

I tender the statement and the annexures, your Honour. I understand my learned friend has just informed me that he has some objections. I'm not sure what they are yet, but my learned friend can - - -

PN144

VICE PRESIDENT ASBURY: Perhaps we had better deal with them, thanks.

PN145

MR MACKENZIE: Thank you, your Honours. The first objection is to the final two paragraphs to paragraph 9 - final two sentences of paragraph 9 beginning, 'The contract either required or Valmec thought it required', through to the end of that paragraph on the basis that it's either opinion or hearsay and we don't know which. Therein lies the trouble, I say. That's an expression of an opinion about the effect of a contract. We don't have the contract.

PN146

The Commission ought not to be put in a position of assessing the effect of Mr Barry's say-so or it comes from someone else who is not being called. We have had no indication as to why that person is not being called. We cannot test that evidence. We can't marshal evidence against it. It's hearsay and opinion, and in the alternative unfair because we can't marshal evidence against it or test it.

\*\*\* ADAM JOHN BARRY

XN MR POLLOCK

PN147

VICE PRESIDENT ASBURY: Okay. Mr Pollock?

PN148

MR POLLOCK: Your Honour, it's not adduced to prove the truth of those matters. It simply provides the basis for the witness's understanding that follows in the balance of the last sentence. He understood the proposed enterprise agreement was to apply to APTS inspectors and technicians who would work on similar projects. Now, whether or not down the line - - -

PN149

VICE PRESIDENT ASBURY: Do we need to know why?

PN150

MR POLLOCK: That's the purpose of the - - -

PN151

VICE PRESIDENT ASBURY: Yes.

PN152

MR POLLOCK: - - - sentence that follows, but the point is that it's not adduced to prove the truth of those things. It's adduced to prove this witness's understanding of the purpose of the agreement, so it's a non-hearsay purpose and a non-opinion so isn't caught by either exclusionary rule.

PN153

MR MACKENZIE: The response is that Mr Barry wasn't involved, on his evidence, with any of the strategy behind the enterprise agreement so his views about why the enterprise agreement was made are just not relevant.

PN154

VICE PRESIDENT ASBURY: Given the nature of the work that Mr Barry performs, I'm assuming he has got some expertise in testing and NATA testing accreditation, and the like. Why isn't it simply evidence of his understanding of it rather than the truth of it?

PN155

MR MACKENZIE: It may be, but if it is it's not relevant to the question in the proceedings because that only goes to why APTS Pty Ltd pursue the enterprise agreement. He doesn't give evidence that he was involved in any of the decisions about why the enterprise agreement was made.

PN156

MR POLLOCK: Vice President - - -

PN157

VICE PRESIDENT ASBURY: Sorry?

\*\*\* ADAM JOHN BARRY

XN MR POLLOCK

PN158

MR POLLOCK: I'm sorry, Vice President, I didn't mean to cut across your discussions. I would simply make the observation that if my learned friend's submission is right that the employee's understanding or the reason for the agreement - the rationale for the agreement - is not relevant, then a substantial part of the first ground of appeal really falls away.

PN159

VICE PRESIDENT ASBURY: I think for my part it's going to be a question of weight really. I'm not going to start striking big chunks of text out of statements. We'll just deal with it as a question of weight.

PN160

MR MACKENZIE: May it please. I only add that the same objection would be taken to the second sentence of paragraph 18.

PN161

MR POLLOCK: I would have thought that would be dealt with on the same basis.

PN162

VICE PRESIDENT ASBURY: Thanks.

PN163

MR POLLOCK: Nothing further in-chief.

PN164

VICE PRESIDENT ASBURY: Okay. So we'll tender that statement and mark it as exhibit R2.

**EXHIBIT #R2 WITNESS STATEMENT OF ADAM BARRY DATED  
10/11/2023 PLUS ANNEXURES**

**CROSS-EXAMINATION BY MR MACKENZIE**

**[10.36 AM]**

PN165

MR MACKENZIE: Mr Barry, you have made a statement in these proceedings. You understand it's important that it's accurate, don't you?---Yes.

PN166

And you understand it's important that it's the whole truth about the topics that are covered, don't you?---Yes.

PN167

It's important you don't leave anything significant on those topics out; correct?---Yes. It was a couple of years ago so this is all, yes, to the best of my knowledge, remembrance, memory.

\*\*\* ADAM JOHN BARRY

XXN MR MACKENZIE

PN168

And the evidence that you give about your role, your qualifications, your employment history in paragraphs 3 through 8 of your statement, that's

comprehensive in the sense I mentioned just now in that it's the whole truth on those topics; correct?---Yes.

PN169

I want to change topics, Mr Barry. Before the vote or immediately before the vote on this enterprise agreement in July 2021, the Industrial Services Enterprise Agreement, your evidence is that you were doing PSV testing on the Origin Spring Gully project. That's right, isn't it?---I wasn't - I was involved in it, yes.

PN170

That is or that isn't the work that you were doing?---That is part of the work that I was doing, yes, correct, not complete. So I was also based in the workshop in Brisbane completing other works, as well.

PN171

And the work that you were doing following the approval of the enterprise agreement in August of 2021, that was the same work as the work that you just mentioned. That's right, isn't it?---Yes.

PN172

In paragraph 9 of your statement you talk about other employees of APTS?---Yes.

PN173

Do you have an idea of how many of those other employees there were?---In APTS?

PN174

Correct?---I couldn't tell you, no. With being Queensland and WA based, I'm not sure of how many employees in WA, no.

PN175

So there were technicians and inspectors in Queensland and WA; is that right?---Yes.

PN176

I want to take you to a different topic, Mr Barry, namely the meetings where the Industrial Services Enterprise Agreement was discussed. That is your evidence at paragraphs 10 to 12 and 14 to 16 of your witness statement. Do you have those paragraphs?---I do, yes.

PN177

Those paragraphs are correct; isn't it true?---Yes, to the best of my knowledge.

PN178

And they're complete in the sense that they're the whole truth. That's right, isn't it?---Yes.

PN179

As you said before, your memory had faded somewhat since that time?---Yes.

\*\*\* ADAM JOHN BARRY

XXN MR MACKENZIE



PN180

Were you provided with minutes of any of those meetings, Mr Barry?---I have got the minutes, yes, now.

PN181

And you read them in preparation of your witness statement; is that right?---As part of it, yes.

PN182

Just clarifying, as part of your preparing your witness statement you read the minutes of the meetings?---I'm trying to remember, sorry. I believe that most of the statement was done before receiving the minutes.

PN183

Do you say some was done after you received and read the minutes?---I don't think so, no. I believe it was all done before I read the minutes.

PN184

Now, in paragraph 16 of your witness statement, Mr Barry, you say that there was a discussion and you can't remember in which meeting that discussion occurred. Do you see that?---Yes.

PN185

In paragraph 12 you described the first bargaining meeting?---Yes.

PN186

And leaving aside the fact that there is that discussion you describe in paragraph 16 - and you don't know which meeting that was in. That issue aside, paragraph 12 is everything you remember from the first bargaining meeting. That's right, isn't it?---Yes.

PN187

At paragraph 14 you give evidence about a call that you had with David Wong?---Yes.

PN188

You say that AB12, which is the minutes of that meeting on page 184 of the court book, is consistent with your recollection of that phone call?---Yes, yes.

PN189

The import to that discussion, its effect, was that you asked Mr Wong if you're covered by the enterprise agreement and he said in his view you are. That's right, isn't it?---Yes, yes.

PN190

That's what you recall the substance of that conversation being. That's correct, isn't it?---Yes, yes, just seeking further clarification on whether, yes, I would fall under it and his knowledge that I would, yes.

\*\*\* ADAM JOHN BARRY

XXN MR MACKENZIE

PN191

The things in the minutes of that call aside, you don't remember anything else from that discussion?---No. I know we had some - no, no, I don't remember that, no.

PN192

The other meeting that you deal with in paragraph 15, on 28 June, similarly that's all you can recall from that meeting. That's correct, isn't it?---At the time of the statement, yes, yes.

PN193

I understand from your comment that what you mean by, 'At the time of the statement', is that your memory has changed on reviewing the minutes; isn't that right?---Yes, yes, it helps jog the memory.

PN194

In paragraph 16, that's the discussion you say you can't remember which meeting it happened in?---Mm-hm.

PN195

You say that there was a discussion about that and that's all you remember. You don't remember the specifics of that discussion. That's right, isn't it?---No.

PN196

And indeed except for the part about the salary contract at the end of paragraph 16, you don't remember the details about anything else discussed in that meeting. That's right, isn't it?---No - yes, that's correct.

PN197

What you mean by the last sentence of paragraph 16 is that you had some concerns about rates and allowances, particularly travel and away-from-home allowances?---Yes.

PN198

And you were offered a salary contract which provided you entitlements with regards to those issues; correct?---Yes.

PN199

Those concerns were satisfied by the salary contract that you were offered. That's correct, isn't it?---Correct.

PN200

The concerns wouldn't have been satisfied had you not been offered the salary contract. That's right, isn't it?---No, that's correct.

PN201

You wouldn't have been prepared to vote up the agreement had you not been offered the salary contract. That's right, isn't it?---I would say - without my contract I'm not understanding, sorry.

\*\*\* ADAM JOHN BARRY

XXN MR MACKENZIE

PN202

MR POLLOCK: Your Honour, it's a hypothetical question. I'm not sure whether it assists one way or the other in any event. This concerns the nature of the explanation, the accuracy of it.

PN203

VICE PRESIDENT ASBURY: I don't know that it is hypothetical on the basis that the witness has clearly stated, 'I ended up accepting a salary contract which met my concerns.'

PN204

MR POLLOCK: I appreciate that, your Honour. At the end of the day if the question proceeds, then of course I will make submissions as to what's to be made of it.

PN205

VICE PRESIDENT ASBURY: Yes, but I think you just need to clarify the question. The witness didn't understand it.

PN206

MR MACKENZIE: The question, Mr Barry, is the salary contract that you were offered, you wouldn't have voted up the agreement without it; isn't that correct?---Sure, correct.

PN207

Now, you don't mention in your description of the bargaining meeting, Mr Barry, any mention of classifications. That's because you don't remember any discussions about classifications; isn't that correct?---No, not correct.

PN208

You don't recall anyone telling you what your salary would have been under the previous agreement that covered you, the Workshop Agreement, do you?---As a salaried employee rather than hourly?

PN209

Pardon me. Were you an hourly employee or a salaried employee at the time of voting on this agreement?---Well, I guess I was a salaried employee.

PN210

And do you recall anyone pointing out to you what your salary was under the Workshop Enterprise Agreement during these bargaining meetings?---No, I don't recall.

PN211

You don't recall then anyone pointing out the difference between what your salary would be under the Workshop Enterprise Agreement, the previous enterprise agreement, versus what your salary would be under the proposed Industrial Services Enterprise Agreement?---I don't (audio malfunction)

\*\*\* ADAM JOHN BARRY

XXN MR MACKENZIE

PN212

Pardon me, Mr Barry, you just dropped out in the courtroom?---No, I don't recall that.

PN213

You don't mention meal allowances in any of the paragraphs of your statement that go to the bargaining meetings, Mr Barry, and that's because you don't remember anyone mentioning meal allowances in the bargaining meetings; isn't that correct?---Not meal allowances specifically. I remember allowances coming up, but not which ones.

PN214

And you don't remember the content of those explanations, do you?---I don't.

PN215

I don't have any further questions of this witness, your Honour.

PN216

VICE PRESIDENT ASBURY: Thank you. Re-examination?

PN217

MR POLLOCK: No re-examination, your Honour.

PN218

VICE PRESIDENT ASBURY: Thank you for giving your evidence, Mr Barry. You are excused?---Thank you very much.

**<THE WITNESS WITHDREW**

**[10.51 AM]**

PN219

MR POLLOCK: Vice President, I'm instructed that Mr McLaughlin, who is next, is able to join via Teams. He has the link and he will be ready to join in 10 minutes.

PN220

VICE PRESIDENT ASBURY: Okay.

PN221

MR POLLOCK: Perhaps if we can stand the matter down for 10 minutes.

PN222

VICE PRESIDENT ASBURY: Yes, we will do that.

PN223

MR POLLOCK: Thank you.

**SHORT ADJOURNMENT**

**[10.51 AM]**

**RESUMED**

**[11.11 AM]**

\*\*\* ADAM JOHN BARRY

XXN MR MACKENZIE

PN224

VICE PRESIDENT ASBURY: Thank you.

PN225

MR POLLOCK: Thank you, Vice President. I call Deon McLaughlin.

PN226

THE ASSOCIATE: Mr McLaughlin, can you please state your full name and address for the record?

PN227

MR McLAUGHLIN: Deon Paul McLaughlin, (address supplied).

**<DEON PAUL MCLAUGHLIN, AFFIRMED [11.12 AM]**

**EXAMINATION-IN-CHIEF BY MR POLLOCK [11.12 AM]**

PN228

VICE PRESIDENT ASBURY: Thanks. Mr Pollock.

PN229

MR POLLOCK: Thank you, your Honour. Mr McLaughlin, you're currently employed by Alfred Services Pty Ltd in the HSE manager role?---Correct.

PN230

As I understand it, you had carriage of the bargaining for the APTS Pty Ltd Industrial Services Agreement 2021?---Yes.

PN231

You've made a witness statement in this proceeding, haven't you?---I have.

PN232

Do you have a copy of that statement in front of you?---No, I don't.

PN233

I understand, Mr McLaughlin, you've been sent a PDF file comprising a court book with all of the material in that?---I guess so. I have, yes.

PN234

Can I ask you to turn to tab – in my bundle it is section B, tab 4? It's at page 755 of the court book?---Sorry, Mr Pollock, I don't know that I've been sent the court book. I have a copy of the statement that I can bring up.

PN235

That's fine. Can I just get you to confirm then that the statement that you have in front of you is dated 10 November 2023? It runs to 29 paragraphs and has four annexures labelled DM1 through to DM4?---I'm looking at it now. It is dated 10 November and it has four annexures, yes.

PN236

Have you had an opportunity to review that statement recently?---I have.

\*\*\* DEON PAUL MCLAUGHLIN

XN MR POLLOCK

PN237

Is that statement true and correct?---It is.

PN238

Do you wish to adopt that statement as your evidence in this proceeding?---Yes, I do.

PN239

I tender the statement, your Honour.

PN240

VICE PRESIDENT ASBURY: We'll mark that as exhibit R3.

PN241

MR MACKENZIE: There are objections to the statement, your Honours. Something else that's just been brought to my attention is that Mr McLaughlin doesn't have the court book in front of him, which is necessary for the cross-examination, and I understand, though I've not seen the email, that my friend's instructors were informed that he did need to have the appeal book. I propose perhaps we stand the matter down while we resolve that issue.

PN242

MR POLLOCK: Your Honour, I don't apprehend it will take very long at all for an email to be sent with the PDF file.

PN243

VICE PRESIDENT ASBURY: Yes.

PN244

MR POLLOCK: Apparently it's already been done, so perhaps if we can resolve the objections and Mr McLaughlin will have that by the time we've done it.

PN245

VICE PRESIDENT ASBURY: Yes. Mr McLaughlin, can you look for that email and get the PDF file of the entire court book while we resolve these matters? Thank you.

PN246

MR MACKENZIE: Thank you, Vice President. I'm aware of the attitude of the approach taken with the previous objections. I do make these objections and press them, however, but I understand that extensive argument may not be necessary for the Commission if it takes the same attitude.

PN247

The objection is to all of paragraph 11, the first sentence of paragraph 13, all of paragraph 14, and all of paragraph 15 except for the first sentence, and the objection is on the basis that those paragraphs are hearsay from either Mr Rahman and Mr Dropulich, and it's not identified which parts come from which. That's the matter that arises out of the last sentence of paragraph 14, your Honours.

\*\*\* DEON PAUL MCLAUGHLIN

XN MR POLLOCK

PN248

VICE PRESIDENT ASBURY: With paragraph 13, is it the first sentence or the -  
- -

PN249

MR MACKENZIE: Yes, it's the first sentence.

PN250

VICE PRESIDENT ASBURY: The first sentence only. Yes, I understand.

PN251

MR MACKENZIE: The objection is we don't know which of Mr Rahman or Mr Dropulich these came from. We don't know on the basis of what statements or other indications from Mr Rahman or Mr Dropulich. For that reason we're restricted in our cross-examination; we're restricted in our validity (indistinct) evidence against it.

PN252

We say as well, whilst Mr Rahman – it's in evidence at the end of Mr Lord's statement – appears not to want to give evidence - - -

PN253

VICE PRESIDENT ASBURY: Doesn't want to give evidence. There's no other reason why?

PN254

MR MACKENZIE: That's the submission, your Honour, and I would add that there's nothing at all to that effect regarding Mr Dropulich.

PN255

I'd say as well, if it's not hearsay, it appears to be opinion, because they are conclusions drawn about what Mr Rahman thought, or Mr Dropulich thought, and we also don't have the basis for those conclusions. Presume on something he said, but again we don't know; restricted in our ability to respond to that. We say hearsay opinion and unfair for those reasons.

PN256

That's the first objection. There are others I think that are small (indistinct).

PN257

VICE PRESIDENT ASBURY: Well, the paragraph 15 objection, regardless of whether it was somebody's direction, it's a matter of fact that there were two agreements made, one covered this and one covered that, isn't it, in paragraph 15?

PN258

MR MACKENZIE: Yes.

\*\*\* DEON PAUL MCLAUGHLIN

XN MR POLLOCK

PN259

VICE PRESIDENT ASBURY: Two enterprise agreements were implemented, one covering only employees located at Henderson. That's a matter of fact, isn't it?

PN260

MR MACKENZIE: I accept that, Vice President, and so the problem is at Mr Rahman's direction.

PN261

VICE PRESIDENT ASBURY: Yes.

PN262

MR MACKENZIE: I accept that.

PN263

VICE PRESIDENT ASBURY: And isn't there evidence in the strategy documents about consideration of setting up a new company?

PN264

MR MACKENZIE: Yes.

PN265

VICE PRESIDENT ASBURY: There's discussion in email exchanges, as I recall, in your tender bundle about that.

PN266

MR MACKENZIE: Yes, Vice President.

PN267

VICE PRESIDENT ASBURY: Involving Mr Rahman.

PN268

MR MACKENZIE: Yes.

PN269

VICE PRESIDENT ASBURY: Okay. Do you want to identify the other ones?

PN270

MR MACKENZIE: Yes.

PN271

VICE PRESIDENT ASBURY: Like, even though we might take a view about them, at least for the record they should be identified.

PN272

MR MACKENZIE: Yes, Vice President. The only other is paragraph 17 in the first sentence, 'following the close of the (brackets), who are both very experienced tradespeople', so that's opinion and irrelevant. That's a question for the Commission on the basis of the evidence that are given by these people as to their own experience. Those are the only objections, your Honours.

\*\*\* DEON PAUL MCLAUGHLIN

XN MR POLLOCK



PN273

VICE PRESIDENT ASBURY: We might just confirm momentarily. Just give me a minute. Thanks.

PN274

MR POLLOCK: For the benefit of the Commission, I've received the court bible.

PN275

VICE PRESIDENT ASBURY: Great. Thank you. Having considered the - sorry, we haven't heard from you, Mr Pollock, have we?

PN276

MR POLLOCK: No, you haven't.

PN277

VICE PRESIDENT ASBURY: I'm so sorry.

PN278

MR POLLOCK: Your Honour, I think you probably anticipate the sorts of submissions I'm going to make. This is obviously the first time I've heard of all of this. These paragraphs of course provide – they are stated with reference to representations and things that Mr Rahman did and said, and we know that from the back end of paragraph 14. The witness can of course be cross-examined on those things, and that evidence can be tested.

PN279

As your Honour also identified, there is the body of the (indistinct) in the tender bundle that goes to -contemporaneous materials that goes to strategy, and goes to, you know, what was said and done at the time, that the Commission's not in a position of only having to rely upon, and my learned friend being bound only to test this evidence with reference to what this witness says about those things, it provides the context for which this agreement was made, and informs again what then follows in the statement, which is Mr McLaughlin's role in having carriage of the bargaining and the things that were said and explained to employees in that context, relevantly including why the agreement was being made and what sort of work it was going to cover.

PN280

Now, there might well be questions of weight in all of that, your Honour, and as your Honour has identified - and Mr Rahman is not here and through Mr Lord has given his reasons, regardless of what one might make of that - but short of compelling someone who's not our employee to attend by compulsive order, that's the position that we're in.

PN281

Again, those might be questions of weight, but in my submission, it's not something that would go to admissibility, certainly not in this Commission.

\*\*\* DEON PAUL MCLAUGHLIN

XN MR POLLOCK

PN282

VICE PRESIDENT ASBURY: Given context is an important matter in this proceeding, as I understand it, the context in which the agreement was made, and the AWU has a tender bundle which has got documents in it that deal with some of these matters, and I think absent Mr Rahman giving evidence, and, you know, there's no reason why he couldn't have been compelled to give evidence, that we're inclined not to allow paragraph 11, and also to strike the first sentence of paragraph 13.

PN283

Similarly paragraph 14 given that it's directly about Mr Rahman's intention and there's evidence about that in emails, and I don't know that hearsay evidence should be allowed to colour the evidence of the emails, which will speak for themselves.

PN284

And paragraph 15, anything about whether it was Mr Rahman's direction or not we won't have regard to, but the simple facts are that there are two agreements, one covers their operation and another one covers the other part of it.

PN285

With respect to paragraph 17, we're not going to strike that. Mr Barry and Mr Bellingham's CVs speak for themselves, and their experience is set out, and I think that Mr McLaughlin is quite able to say something about that.

PN286

So on that basis we'll strike paragraph 11, the first sentence of paragraph 13, the entirety of paragraph 14, and consider paragraph 15 on the basis that it describes the facts as being there are two separate agreements.

PN287

With those amendments, the statement is admitted and marked as exhibit R3.

**EXHIBIT #R3 WITNESS STATEMENT OF DEON McLAUGHLIN  
DATED 10/11/2023 PLUS ANNEXURES**

PN288

MR POLLOCK: Thank you. Nothing further in-chief, your Honour.

**CROSS-EXAMINATION BY MR MACKENZIE**

**[11.27 AM]**

PN289

MR MACKENZIE: Mr McLaughlin, you give evidence that Valmec is a corporate group, correct?---Yes. So a group of companies. There are four in total at the time.

PN290

Within the group, employees of one company provide labour to other companies that are not their employer, that's right, isn't it?---They may support – that's – no, that's not wholly correct.

\*\*\*

DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN291

You say that there's not an arrangement within the Valmec group of companies whereby one employee of one company provides labour, provides their services, to another company within the corporate group; you say that's not true?---I'm sorry, I'm uncertain about the question. Are you saying that they would leave one employer and go to another, or provide support to another part of the business?

PN292

Provide support to another part of the system of the business, in the sense of work?---Yes. It's possible, yes.

PN293

And employees within the Valmec group with relative frequency moved between sites, that's true, isn't it?---When I think of the group, yes, that's correct.

PN294

At least on occasion employees who were employed by one entity within the corporate group move and become employed by other entities in the corporate group; that's true, isn't it?---I have no recollection of specific cases, but the transfer between companies is possible.

PN295

You're not aware then of Mr Bellingham being transferred from APTS Pty Ltd to a Valmec entity?---I am aware of that, but I wasn't involved in that process.

PN296

The enterprise agreement that we're talking about, the APTS Pty Ltd Industrial Services Enterprise Agreement that was bargained for and made in July and August 2021, Mr Rahman was in charge of the strategy for that agreement, isn't that right?---Yes.

PN297

And you were involved, but less so than Mr Rahman, that's correct, isn't it?---I was involved. Mr Rahman had responsibility for what was known as the APTS and Valmec Services Group as an industrial services EGM.

PN298

Can I take you to – you've got the court book there, Mr McLaughlin?---Yes. If you can help guide me, please?

PN299

Of course. Can I ask you to turn to page 57 of the court book using the numbers in the bottom right-hand corner? That's tab 4 of the applicant's tender bundle?---Sorry, at page number what?

PN300

57?---I'm moving there now.

PN301

Blue numbering in the bottom right-hand corner?---Yes. I've found it.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN302

Sorry, I'll start with page 56?---56, yes. Okay.

PN303

You see at the top of page 56, that's an email from Mr Rahman to recipients including you; do you see that?---I do.

PN304

Dated 7 April 2021; the subject line, 'Forward asset service', and it goes on. Do you see that?---I see that.

PN305

Do you accept that you received that email?---Yes.

PN306

Over on page 57 you see the document headed - - -?---I do, yes.

PN307

You see the document with 'Background involved' at the top?---I do.

PN308

Do you recognise this document?---I do. The appearance looks a little different to what I recall, but yes, I do.

PN309

And you see the second sentence of the first paragraph under 'Background':

PN310

*The paper also prompted discussion about a new entity to consider the opportunity to create a competitive agreement that could in turn provide employees to support to existing Valmec group entities.*

PN311

Do you see that?---Yes, I do.

PN312

You recall around this time discussions in which you were involved in which a decision was made not to proceed with a new legal entity, that's correct, isn't it?---Yes, the trading entity, that's correct.

PN313

And rather the strategy outlined in this document, decision was made to pursue it by way of a new enterprise agreement for APTS Pty Ltd, that's right, isn't it?---I would have to read this document to confirm that, but that was the decision, yes.

PN314

You see under point 2, 'Create a new employing entity':

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN315

*Should a new employing entity for asset service be established? A single enterprise agreement can be drafted to encompass all scopes of work and employment classifications from across the three business units.*

PN316

Do you see that?---I can see that.

PN317

And at the end of that paragraph:

PN318

*A new entity award could be established under both the Hydrocarbons Industry Upstream Award and the Manufacturing And Associated Industries Award.*

PN319

Do you see that?---I can see that, yes.

PN320

And do you see under 'Recommendation':

PN321

*The recommendation is to proceed with a new legal entity for the purposes of supplying labour to any of Valmec Ltd subsidiaries.*

PN322

Do you see that?---Yes, I do.

PN323

And the following sentence:

PN324

*This provides a platform to secure long-term maintenance contracts that are governed by a central enterprise agreement which is market-competitive.*

PN325

Do you see that?---I do.

PN326

Do you agree the strategy was to create a new enterprise agreement to provide employees to support existing Valmec group entities; do you accept that?---I accept that's what it says, yes.

PN327

Do you accept that that was the intention of Valmec at the time?---It's – look, that was my belief, but you need to probably understand some context, if I can provide that.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN328

Yes?---Okay. So the foundation of the business was a construction company, Valmec Ltd, who acquired in or around 2015 the Valmec Services Company from a company called Exterran, which brought us into the maintenance sector, and in or about 2018 APTS was acquired. The three companies, the three companies that were providing services to our companies, had some crossover and some opportunity to sell other products to our existing customers, so our customers were asking us are you able to provide certain things. So when you ask about being able to provide across company, it was – the strategy was more around providing additional services to our customers.

PN329

Do you accept though, as set out in the document, that an intention was to provide labour under a competitive enterprise agreement to other entities in the Valmec group; you accept that, don't you?---I accept that's what's written, but that's not my true recollection. My recollection was about providing labour or employees that could service our customers with additional scopes. That's my understanding, but I accept what's written; I can see that.

PN330

So is your evidence that the strategy is not as set out in the strategy document?---My involvement doesn't talk about moving people between companies. My understanding of the strategy was to provide additional offerings to our existing customers and future customers. Sorry, I'm uncertain about the question, what's being asked about specifically labour. I think it was – I think it was more about providing services to different parts of the business. So let's say Valmec Services have a contract and APTS provide scope to that customer, we would provide that labour there. If that's what's being asked, then I concur with that. If it's about shifting people between companies, that was not my understanding of this.

PN331

Your evidence before was that – I think you said; correct me if I'm wrong – Mr Rahman was really leading the strategy on this, isn't that right?---Yes, he was the executive general manager to increase opportunities to grow our business.

PN332

Mr Rahman being in charge of the strategy could well have been aware of aspects of the strategy that you weren't aware of and weren't involved in, that's correct, isn't it?---Yes, that's possible.

PN333

Indeed it's possible that the creation of an enterprise agreement to supply labour within the Valmec group, as we've just been discussing, was an aspect of the strategy that existed, but you just weren't aware of it?---I accept the words, but I – the context of my knowledge of the time is that it was about providing additional services. The word 'labour' I think is probably about, you know, people to provide those services to other parts of the group, which substantially was we're a contracting company, we provide work to customers.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN334

And the desire was to do that at a lower cost in preference to at a higher cost, isn't that right?---Look, I think that's reasonable within the conditions of the award and some being better off overall.

PN335

My question's not about the reasonableness. My question is about whether that was the intention, and I don't cavil with reasonableness?---Can you ask the question again, please?

PN336

It was the intention to have that support or labour supplied on a less expensive basis in preference to more expensive basis, wasn't it?

PN337

MR POLLOCK: I'm sorry, your Honour. Compared to what? Less expensive as opposed to more expensive – what's the reference point here?

PN338

VICE PRESIDENT ASBURY: I think it's a good point.

PN339

MR MACKENZIE: The preference was for an enterprise agreement that provided more inexpensive terms for the company versus an enterprise agreement, for instance like the workshop agreement, that provided for higher, more expensive conditions, wasn't it?---I can only refer to the words where a market-competitive agreement was considered.

PN340

Can I take you court book page 73, which is tab 6A, and that's the blue numbers in the right-hand corner?---Yes. I'm just scrolling. Number 73?

PN341

That's right?---Yes, I have it.

PN342

And you see that that's an email from Mr Cooper to Mark Hudston, you see that?---I can see that, yes.

PN343

You're not copied into this email so I don't ask you if you recognise it, but you see that it says in the first paragraph:

PN344

*During my discussion yesterday with Deon and Mushfiq, they shared the attached document.*

PN345

Do you see that?---I can see that.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN346

Deon means you, doesn't it? Well, so far as you're aware?---So far as I'm aware, yes.

PN347

Can I ask you to turn over the page to page 74? Do you see that document?---I do.

PN348

And you see it begins with the word, 'Strategy', and in the last sentence of that paragraph – pardon me, do you recognise this document?---I don't have a perfect recollection of it, but I – I may have seen it. I can honestly not say.

PN349

Do you see the last sentence in the first paragraph:

PN350

*Having minimum wages in line with the award provides flexibility in paying higher.*

PN351

Do you see that?---I do.

PN352

And do you see on paragraph 75 there's a comment which says:

PN353

*Commented (MRI): Obtain minimum rates from award. Choose higher amount.*

PN354

?---Sorry, where am I looking? To 75?

PN355

Yes. Do you see a comment over in the right-hand column?---Yes, I can see that.

PN356

Do you accept that so far as you're aware of the strategy, the strategy was to make an enterprise agreement with hourly rates as close as possible to the award?---My recollection was to - - -

PN357

MR POLLOCK: I'm sorry, before the witness answers the question, to which award? There are two awards that are - - -

PN358

VICE PRESIDENT ASBURY: Yes. Are you able to clarify that?

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN359



MR MACKENZIE: Withdraw the question. Do you accept the strategy was to make an enterprise agreement with hourly rates as close as possible to the Hydrocarbons Award?---I recall that there was an improvement on those rates, as I'm sure we will all understand that you need to be market-competitive to attract employees. So it wasn't my recollection that it would just be a direct reflection of the award at the time, but to increase the rates by a percentage; the percentage I can't recall.

PN360

The question was, was the strategy to make an enterprise agreement with hourly rates as close as possible to the Hydrocarbons Award?---I don't think I can answer that honestly. I don't know.

PN361

MR POLLOCK: The witness has just given an answer to the question.

PN362

MR MACKENZIE: I don't think the witness did give an answer to the question the first time.

PN363

VICE PRESIDENT ASBURY: Well, perhaps he can ask it again and we'll see, because as I understand it the witness just said he doesn't know, he can't answer it.

PN364

MR MACKENZIE: I withdraw the question, your Honour. You've been involved in enterprise agreement negotiations before, haven't you, Mr McLaughlin?---One previous to this.

PN365

You give evidence, don't you, that at the time you were bargaining for two other enterprise agreements?---In a 12-month period? So prior to this we did negotiate the Valmec Australia agreement. As I recall, at that time I had a very experienced HR person working for me. This was the second – Mr Wong had just started working for me; he and I didn't have high levels of experience, and why we engaged with Mapien to support us.

PN366

At the time you were bargaining for this enterprise agreement, did you think you were more likely to achieve an agreement with less expensive rates than under the Workshop Agreement by bargaining with fewer employees?---No. That was not the intention. Its additional scopes were the intention of this agreement.

PN367

Your evidence then is that you're just as likely to get an agreement on these rates, bargaining with three employees, as you were versus bargaining with 100 employees - - -

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN368

MR POLLOCK: Your Honour, I object to the question. How is that possibly relevant to the issues that are canvassed in this case? There weren't 100 employees. It's not part of my learned friend's case to cavil with scope.

PN369

VICE PRESIDENT ASBURY: With sorry?

PN370

MR POLLOCK: With scope. It's not part of the case, and the idea of suggesting to this witness that – you know, that you might be better off getting a - you know, getting a what my learned friend's client describes as a baseline agreement with a smaller number of people is neither here nor there.

PN371

VICE PRESIDENT ASBURY: Do you want to respond to that?

PN372

MR MACKENZIE: I understand the objection to be relevance. The allegation in the case is that this group of companies bargained with three employees in order to achieve a cheaper enterprise agreement. It's clearly relevant.

PN373

VICE PRESIDENT ASBURY: I don't think it's a question of scope. I think it's a question of the number of the employees involved, and the proposition I think is apparent from the union's case that there was a small cohort selected for a reason, and I think that they're entitled to explore that in the cross-examination.

PN374

MR POLLOCK: If the Commission pleases.

PN375

MR MACKENZIE: Is it your evidence that you thought in July 2021, so May/July 2021, that by bargaining with three employees you were just as likely to make an enterprise agreement with terms less expensive than those of the Workshop Agreement as it would have been bargaining with 100 employees?---Look, honestly I'm not sure how to answer that question. The scope was about additional scopes of work to which these employees would fit. They're two separate propositions.

PN376

You bargained with only three employees in order to obtain a more competitive enterprise agreement, Mr McLaughlin, didn't you?---I disagree with that. That was not the strategy.

PN377

You chose to bargain with three employees, didn't you?---I didn't choose. The persons weren't selected by me.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN378

They were selected as the employees who would vote on the agreement, weren't they?---They were selected as the employees that would fit into the new scope of the agreement.

PN379

They were selected as the voting employees, weren't they?---Yes.

PN380

And the reason they were selected was to avoid bargaining with more employees, wasn't it?---They were – the agreement was for upcoming and prospective works, and those people were selected because they would fit into that scope.

PN381

Can I take you to tab 7 at page 76 of the court book?---Yes.

PN382

VICE PRESIDENT ASBURY: Sorry, what page was that?

PN383

MR MACKENZIE: 76, Vice President?---Yes, I'm here.

PN384

Yes, I'm just waiting for the Bench, Mr McLaughlin.

PN385

VICE PRESIDENT ASBURY: Thanks.

PN386

MR MACKENZIE: You see at the top of that document, Mr McLaughlin, that's an email that Mr Rahman sent to you on 29 April 2021?---I can see that.

PN387

The subject line, 'Forward agreement update', do you see that?---(Indistinct reply)

PN388

And its content is 'FYI', do you see that?---I can see that.

PN389

Do you recognise this document?---I don't have a strong recollection of it. I'd need to look at it, but I accept that it was sent to me as an FYI.

PN390

Do you see in the chain an email from Mr Cooper at 4.44 pm on 28 April with subject, 'Agreement update', do you see that email further down on page 76?---Yes, I see that.

PN391

And you see the words after the dot points:

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN392

*I recall that you indicated a preference to have the agreement balloted by the end of May. It will be tight, but we can do so if we met the following timelines.*

PN393

Do you see that?---I see that.

PN394

You recall, do you, that it was the Valmec group's desire to have this enterprise agreement made such that it was voted on before the end of May?---I don't recall that, but I accept – I accept what's written.

PN395

Do you accept that there was some urgency to the making of the agreement?---Yes, somewhat I think, because there was some – you know, we were tendering some additional works and looking at other opportunities, and to have an agreement prepared before that would be, as I recall, probably something we were looking at. I don't – I don't recall the comments about May, but I accept that they're written.

PN396

Is your evidence then that there was an element of urgency because you wanted this agreement in place to apply to employees doing new work, is that your evidence?---New employees that would join the business is my recollection of the time.

PN397

And those new employees would be doing new work covered by this enterprise agreement, that's right, isn't it?---New work covered by this agreement, yes.

PN398

Do you see in the email from Mr Rahman to Mr Cooper at 28 April at 8.17 pm, second sentence:

PN399

*We will need to get our people together to start letting know about this negotiation, but if that makes things slip a week I'm sure we can live with that.*

PN400

Do you see that?---I see that.

PN401

Do you accept that these employees were chosen to vote on the enterprise agreement?---Yes, they were, because they fit into the new scope.

PN402

Can I take you over to tab 8, Mr Rahman(sic), page 87 of the court book?---I have arrived.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN403

And you see that that's an email from Mr Cooper to Mr Rahman, Mark Hudston and you, do you see that?---Yes.

PN404

Do you recognise that chain of emails?---I don't have a strong recollection, but I accept I was cc'd on that email.

PN405

Do you see further down in that chain of emails the email from Mr Rahman - the recipients are disclosed - on 5 May at 6 am, do you see that?---Yes, I do.

PN406

And do you see over on page 88, the first big paragraph at the top of page 88, Mr Rahman says:

PN407

*One final question. We're close to issuing contracts to the 2 x PSV employees in Queensland for two-week on, two-week off swing in APTS. We also have our condition monitoring person starting this week in Perth. These will be the three people who vote on the agreement. Do we need to have anything specific for the two PSV technician contracts, knowing that they will transition to this?*

PN408

Do you see that?---I can see that.

PN409

And do you accept that you chose to bargain with these employees to avoid bargaining for the larger cohort?---No, I maintain that these employees were selected because they would fall within the scope of the new agreement; in the new work that was being tendered and pursued at the time.

PN410

Can I take you now to tab 9, page 90 of the court book?---I am there.

PN411

You see that that's an email from Mr Cooper to Mr Rahman copying you and Mark Hudston and Mr van Daele?---Sorry, the email from Mr Rahman?

PN412

No, the email at the top from Mr Cooper?---Okay. Yes, I accept I've been cc'd on that.

PN413

Do you recognise it?---No. I mean, but I accept that I received it.

PN414

Can I take you over the page, continuing in that chain of emails, Mr McLaughlin, to the email from Mr Cooper on 19 May at 8.26 am to you, Mr Rahman and Mr van Daele? Do you have that document?---Wednesday the 19th at 2.08 pm, is that the one?

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN415

That's the one.

PN416

VICE PRESIDENT ASBURY: 2.08 pm - I thought you said 8.26.

PN417

MR MACKENZIE: 8.26, pardon me.

PN418

VICE PRESIDENT ASBURY: 8.26 am. It's on page 92?---I beg your pardon. Okay, sent at 8.26 am?

PN419

MR MACKENZIE: That's the one?---Okay. Yes, I see that now.

PN420

And you recall receiving this email, do you?---No, I don't recall it, but I accept that it was sent to me at this time.

PN421

Can I take you to the last substantive paragraph that reads, also in terms of scope:

PN422

*I've reviewed the scope of the Workshop Agreement and although the workshop is referenced in the title, clause 1.2 of that agreement is sufficiently broad to cover operations both in the workshop and in the field.*

PN423

It goes on:

PN424

*Because the employer is the same, this means that technically the Workshop Agreement would continue to apply to employees already covered by it until its nominal expiration date.*

PN425

Do you see that?---I can see that.

PN426

The only urgency in making this agreement was to make it with pure employees, wasn't it, Mr McLaughlin?---Sorry, can you repeat that question?

PN427

The only urgency in making this agreement was to make it with pure employees, wasn't it, Mr McLaughlin?---I – I don't recall that being the strategy, no. It was about the new scope.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN428

Your evidence before was that there was an element of urgency because employees needed to be covered by this agreement to do the new work, wasn't it?---Yes, the employees that were part of the bargaining agreement and any new employees that would provide new scopes of work.

PN429

They couldn't have been covered by this agreement until February 2022, do you accept that?

PN430

MR POLLOCK: Your Honour, that calls for a legal conclusion and I'm not sure this witness's answer to that's going to assist one way or the other.

PN431

THE WITNESS: No. I don't - - -

PN432

VICE PRESIDENT ASBURY: Mr McLaughlin, just wait one moment.

PN433

MR MACKENZIE: You knew, including because of this email, that the agreement couldn't have had the effect of conferring entitlements on any employees till February 2022, isn't that correct?---That's not my recollection of our conversations held with Mapien when we were seeking their advice.

PN434

The question was about the intentions of Valmec so far as you knew them?---I'm sorry, I don't understand what you're asking me.

PN435

Valmec knew that this agreement couldn't apply to anyone's employment until February 2022, isn't that right?---That's not my understanding. I'm afraid – I'm sorry, I can't answer that question, because that is not – that was never explained to me.

PN436

It was explained to you in this email, wasn't it, Mr McLaughlin?---Look, I accept the words that are written. I was not as – yes, look, I accept the words that are written, because they're there. In terms of understanding that, I am – yes, look, I'm not – I don't recall that at all.

PN437

Can I take you back to page 90 of the court book, still in the chain of emails, Mr McLaughlin? There's an email from Mr Rahman, 19 May at 4.01 pm. Do you see that?---Yes, I do.

PN438

And copied to you, do you see that?---Yes, I do.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN439

And do you see the content on that email reads:

PN440

*Hello Ben. Thanks for organising this. We will get the three employees that are covered under the new scope.*

PN441

Do you see that?---I can see that.

PN442

Those employees were chosen because you wanted to bargain with only three people, that's right, isn't it?---I didn't select the people. There were three people nominated to bargain.

PN443

Can I take you now to page 102 of the court book?---I'm here.

PN444

And you see that that's an email from Mr Rahman to you and Mr Cooper on 27 May?---Yes.

PN445

Going on further in the chain, do you recognise this chain of emails?---I don't have a strong recollection, but I accept they are there.

PN446

Do you see in your email to Mr Cooper, 27 May at 10.45 in the morning, also to Mr Rahman and Mark Hudston further down, do you see that email?---I do.

PN447

Do you see under the first bolded dot point:

PN448

*Please check the draft wording within the attached creates no conflict with existing APTS Agreement per earlier comment –*

PN449

and it's underlined -

PN450

*We do have one person to be covered under this 'new' agreement based at Henderson. I also want to double-check about excluding inspection and NDT, but no mention hydrotesting covered in existing agree. I want to make sure there are no conflicts that could derail the vote or at the Commission.*

PN451

Do you see that?---Yes, I do.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN452



You chose to bargain with three employees to avoid bargaining with the collective, and this email is you being concerned that that might cause an issue at the Fair Work Commission, isn't that right?---I'm seeing this for the first time in almost – more than two years. Just give me a moment to consider what I was thinking. Okay. What I was confirming with our – as I recall, looking at this for the first time in a long time, I think I'm asking for advice from Ben to make sure that the agreement was clearly separated from the existing one, and that's what I was looking for.

PN453

This email is you seeking for the scope of the enterprise agreement to be amended to make sure it only covered the three employees who would vote, isn't it?---No. That's not the way I recall it. It was – my recollection is that we were establishing a new agreement for new scopes of work and that – and I think that the Henderson piece was that the condition monitoring, we had one person based in Henderson that would be doing that work, or bus from Henderson, performing condition monitoring, and what I'm looking for was no – no conflict, and like I say, reading this for the first time in a couple of years, I assume that was what – I recall that's what my intention would have been, to make sure that there was no conflict, no crossover, and I was seeking advice about that.

PN454

I want to take you to a different topic, Mr McLaughlin, namely, the meetings about bargaining?---Mm-hm.

PN455

Now, these meetings, as you say, were a long time ago, do you accept that?---Yes, they were.

PN456

And you've attended a lot of other bargaining meetings in and around the same time?---Yes.

PN457

So the minutes of the meetings, which you say are broadly consistent with your recollection, are probably a better record of what happened than your recollection now, isn't that right?---Look, to the best of my knowledge, they seem reasonably consistent with what was discussed, yes.

PN458

You understand that it's important that your statement in these proceedings is the whole truth, in the sense that it completely deals with the topics it covers?---My statement?

PN459

Your statement in these proceedings?---Yes.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN460

What you say about the meetings in paragraph 25 through 27 – pardon me, in paragraph 20 of your statement, that's the whole truth, in the sense that that's what

you remember, apart from the minutes, and nothing else?---So this is paragraph 20?

PN461

Paragraph 20 and then 25 through to 27 – pardon me, I withdraw the question, Mr McLaughlin. I've led you astray. You talk about the bargaining meetings in your witness statement, and what you say in your witness statement represents all you remember about those meetings, does it?---I'm just referring to the statement. Give me one minute. Sorry, through to 26, was it, or - - -?

PN462

And the last one, paragraph 29? So 25 through 27 and 29?---To the best of my recollection, that's correct.

PN463

You understood at the time of these meetings that there were penalties for breach of an enterprise agreement?---I'm not certain of the question.

PN464

Was it your understanding when you had these meetings that there are penalties for breaching an enterprise agreement?

PN465

MR POLLOCK: Your Honour, what's the relevance of that question?

PN466

VICE PRESIDENT ASBURY: What is the relevance?

PN467

MR MACKENZIE: This, your Honours. It's part of our case, and we opened on it in writing, about the statement contract - that salary is mostly by contract is misleading, in the sense identified in One Key. The sense in which it's misleading includes that contractual salary is different from enterprise agreement. That's one question, but whether Mr McLaughlin knew that to be the wrong thing is evidence in support of that contention. That's the relevance.

PN468

VICE PRESIDENT ASBURY: Well, how does the penalty for breach of an agreement matter if you don't establish the basis of when that penalty might apply that the witness - if it relates to that first proposition, how does the fact that he knows there's a penalty have any relevance?

PN469

MR MACKENZIE: I withdraw the question, Vice President.

PN470

VICE PRESIDENT ASBURY: Well, you know, I'm not trying to make you - - -

PN471

MR MACKENZIE: No, no - - -

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN472

VICE PRESIDENT ASBURY: I just don't understand that the preliminary proposition was put to the witness, that's all.

PN473

MR MACKENZIE: I understand. I take the point that the statement was either misleading or it wasn't, and it doesn't really matter. Can I take you, Mr McLaughlin, to court book page 760? Do you see that? Well you put this in evidence. It's the meeting minutes?---Yes, look, I'm getting there. 760? Found it, 760.

PN474

This is your document you put in evidence. It's the meeting minutes from 14 June 2021?---Yes.

PN475

Over the page on 761, down the bottom, you say, or the minutes represent you saying:

PN476

*Schedule B wages I wanted to tough base on this and wish people explain this is just the base, but this is not the rate employees will be paid. This is the requirement of the award.*

PN477

Do you see that?---I do see that. The typing is a bit confusing, I acknowledge. Yes, okay, yes, I see it.

PN478

And 'tough base' means touch base; that's what you meant just now, isn't that right?---Possibly. I mean, it's an awfully long time ago. I don't know precisely what I said.

PN479

So far as you can recall, the statement that you made was to the broad effect: this is the wages that you voting employees will get; you need not be concerned about the enterprise agreement wages?---No. I don't agree with that. From what's written I'm happy to discuss what I believe was implied was that the rates in the award – things are market-competitive. What's written is not always what's paid. It's often more.

PN480

And indeed you offered Mr Barry, or Valmec offered Mr Barry a contractual arrangement to satisfy concerns that he had about the terms of the enterprise agreement, isn't that right?---I have no recollection of that.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN481

Valmec offered a contractual arrangement to Mr Bellingham too to satisfy his concerns about the conditions in the enterprise agreement, isn't that true?---I don't

recall that, but I believe they were issued contracts. I don't have the details though. I can't answer to that question.

PN482

And following on from the passage I took you just now, do you see the minutes indicate Mr Rahman saying:

PN483

*We have just mirrored the award and the consultant added some info in, but you already have your salary so this is the base what we have to pay anyone, but you would see that if this was this rate, we wouldn't have anyone employed, so just be aware this is the baseline. I don't know what each of you are paid, but to keep it on a clean slate we have mirrored the award and paid the right market salaries here.*

PN484

?---Yes, that – reading that, that's sort of consistent with I think what I was referring to in the previous line, that – that I think everyone in this meeting will understand that market rates determine what you can employ people for, and the agreement I think, using Mr Rahman's words, was sort of the baseline, but he's implied, and that's my recollection, that we need to often pay more.

PN485

So you continue to resist the proposition that the gist of this statement was don't worry about the award rates, that's not what you'll be paid?---Can you repeat the question? I'm a little unsure what you're asking me.

PN486

Do you accept that the gist of what was said there is: don't worry about the award rates, you'll be getting something higher?

PN487

MR POLLOCK: Your Honour, the words speak for themselves. The words are on the page and we don't really need evidence from this witness as to the gist of it. The words are there.

PN488

VICE PRESIDENT ASBURY: Well, I think that the union's entitled to explore in cross-examination what employees were told in relation to the effect of this agreement and the stake they had in it by virtue of what they were being paid. So my inclination is to allow the question. Yes, thank you.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN489

MR MACKENZIE: If I could perhaps clarify it. Having read the statement that I just took you to, Mr McLaughlin, do you accept that statements to the effect of don't worry about the rates in the award, you'll be getting a different higher rate were made to the employees in this meeting?---I believe what I'm looking at is that we said that – that something to that effect would have been said, but not just about them. If I look to Mr Rahman's words, we wouldn't have anyone employed. So I think the thing was that this is a baseline agreement; we will need

to pay more in the market. So, yes, I believe that to be the case. The conversation would have been something along those lines.

PN490

VICE PRESIDENT ASBURY: Just so I'm clear, Mr McLaughlin, because I think the question you were just asked was the award. So can we just be clear about exactly what the question you're asking is, if it was the award or the agreement.

PN491

MR MACKENZIE: My apologies for the error, Vice President. Having read the words that I just took you to, Mr McLaughlin, do you accept that the statement to the effect of don't worry about the rates in the proposed agreement, you'll be getting a different higher rate were made to the employees?---I believe the conversation would be saying that, something to the effect that these are - the agreement's rates would be the minimum, but the market, you know, sort of determines that we may pay more.

PN492

The question was do you accept a statement to the effect of don't worry about the agreement rates, you'll be getting a different higher rate was made to the employees?---I accept that, but it wasn't at the exclusion of them only. Like the gist would've been going forward that we need to pay market rates to attract people.

PN493

You don't have any recollection of explaining to the employees the classifications in the Workshop Agreement during these meetings, do you?---I am aware that it was discussed at this meeting. I can't recall. As I've said earlier, I attended multiple meetings with different parts of the business over a 12-month period, but I think at the second meeting some questions were asked about that and they were resolved. But in this first meeting – well I can't recall specifically what was discussed, other than referring to the minutes.

PN494

In any of the meetings held with these three voting employees, you don't recall explaining the Workshop Agreement classifications?---Yes, I believe in the second meeting, because they – if I look at the minutes, they're referring to some conditions that were inside the Workshop Agreement about - from memory, it could be things like travel or food allowance, that type of thing. So there was discussion. How precisely it was discussed and presented, I can't recall.

PN495

Your recollection on that front goes no further than what's in the meeting minutes about that discussion, isn't that right?---Yes, that's fair.

PN496

And do you accept the meeting minutes don't indicate that the Workshop Agreement classifications were explained to employees?---I accept that in the minutes, unless I've missed something.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN497

And you don't recollect that being explained in any of the bargaining meetings with these employees, do you?---I'm – my memory's sketchy, so I – I've committed to telling the truth. I believe it would've been explained at the opening of the meeting what the purpose was and what the different agreements are, but I don't have a vivid recollection of what was discussed. I'm looking at the opening meeting where Mushfiq discussed the current APTS Agreement, then what the purpose was of the second. I can see that, and I can generally recall that there was discussion about the existing agreement and what the new one – what its purpose was around the new scopes. Precisely, I don't – I don't have a strong recollection, but I can see there that Mr Rahman explained it. That's in line with my general recollection.

PN498

You have no recollection of the classifications in the new Industrial Services Enterprise Agreement being explained to employees at any of the meetings, do you?---I meant to refer to the clauses, but we went – I think we went through all the – all the relevant clauses. My memory is that we put the agreements on a screen for, if I recall, I think Mr Woodard was in the room with myself, Mr Wong and maybe Andre van Daele at the first meeting. I'm not sure if he's on there, but I think that's the case, and Mr Rahman, Bellingham and Barry dialled in as they were based in Queensland. I recall the agreement being displayed and we ran through the terms and conditions, focussing on sort of the main things that the team would want to know about. And I think those clauses are listed there. That's the general – that's my general recollection of that.

PN499

Being familiar with the agreement, you know the classifications in the APTS Industrial Services Enterprise Agreement are the same classifications as in the Manufacturing and Hydrocarbons Awards?---Look, I'd have to go and do some research. Do I know? No, I'd need to refresh my memory, but, you know, when we engaged with Mapien we wanted them to help us with that. That was the advice that they gave us.

PN500

Certainly if you don't remember how the classifications worked, you don't remember anyone explaining those classifications either?---I'm sure we would have discussed them. You're asking me to remember something from, you know, two years ago. As I'm sitting here today, I don't recall. If I had time to go and review, I may be able to answer that question. But in terms of the classifications, I can't see them. I don't recall.

PN501

And you don't recall giving the employees separate copies of the classifications?---Of this - - -

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN502

Pardon me, Mr McLaughlin. You don't recall giving the employees documents setting out the classifications from the Manufacturing and the Hydrocarbons Award, do you?---Giving them copies of the awards? Was that the question?

PN503

Yes?---I don't recall doing that. Whether Mr Wong did that, I can't speak to him, but from me to them, no, I don't recall doing that.

PN504

You don't recall anyone identifying the rates employees would get, the voting employees would get under the Workshop Enterprise Agreement, do you, in the meetings?---I am pretty sure the rates were in the agreements that we displayed on the screen, and we would have discussed those.

PN505

I clarify, I'm asking about the rates in the Workshop Enterprise Agreement, which was the agreement that applied to at least Mr Barry and Mr Bellingham at the time of the vote?---I believe that those were discussed with them in terms of what their new contracts would entail. That wasn't me. I didn't have that conversation and so I can't talk to the content or the values of it, but that's how I recall it.

PN506

I clarify, I'm not asking whether a discussion occurred. I'm asking whether the rates the voting employees got under the Workshop Agreement were identified for them in any of the meetings?---Side-by-side, is that what you're asking? Like it is this, here's that?

PN507

No, I'm not asking that now; just whether the rates they were entitled to under the Workshop Agreement were identified for them in the meetings?---I can't recall. I can't – I can't say that they were or that they were not. I simply can't recall them, sorry.

PN508

And now I ask the question I think you thought I was asking before, which is that you don't recall the previous Workshop Enterprise Agreement rates being identified for the employees and then compared with the rates under the Industrial Services Enterprise Agreement, do you?---I don't recall that. I recall discussions around some of the terms that the – certainly Barry and Bellingham were covered with the Workshop Agreement, and I think they're in the second meeting minutes, but in terms of were they displayed on a page, I simply can't recall. So I can't provide an honest answer to that, sorry.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN509

And you don't recall in any of the meetings the circumstances in which meal allowances are paid under the previous Workshop Enterprise Agreement being identified and explained to the employees, do you?---I believe from my reading of these minutes recently that at the second meeting those topics were for

discussion. So I can recall speaking to - speaking to a couple of those conditions with the team, because they asked questions about it.

PN510

I'm not asking whether you spoke to those matters, I'm asking if you identified when a meal allowance is payable under the workshop agreement in the bargaining meetings, or if you saw anyone else identify that matter?---I can only recall the conversations.

PN511

And you don't recall, do you, anyone identifying the rate at which meal allowances were paid under the Workshop Enterprise Agreement in those meetings?---I recall conversations and the persons were well aware of what those conditions were, and hence the question. That's my recollection. So the discussion was based on their awareness - - -

PN512

And you don't - pardon me?---And seeking for clarification that it would be the same or better.

PN513

Do you recall meal allowances under the Workshop Enterprise Agreement being compared with meal allowances under the Industrial Services Enterprise Agreement?---I recall a conversation about it.

PN514

My question is about whether it was identified and explained?---It was explained, because a question was asked about it. That's what I recall.

PN515

Just one moment. I don't have any further questions for this witness.

PN516

VICE PRESIDENT ASBURY: Thank you. Mr McLaughlin, can I just ask you before the re-examination, can you just have a look at the court book starting on page 96?---Ninety-six?

PN517

Or really 95?---One moment. I'm on 95, your Honour.

PN518

It seems to me that's a draft of email communications around the notice of employee representational rights and the negotiation process for review in relation to the APTS Agreement?---Yes. Yes, I see that.

PN519

And then the next page sets out a series of emails, which appear to go all the way through to the voting process and then that it had been lodged for approval with the Commission. So it looks like it goes through the course of the negotiation for an agreement?---Yes, I see that.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE



PN520

Have you seen these drafts before?---I believe I was copied - I was copied on this. So, yes, I would have seen them. I don't recall them intimately, but I'm happy to take questions about it.

PN521

Would you have a look at email number 2 about the bargaining representative for the agreement, and perhaps explain how there's a draft agreement nominating, which appears to nominate - your draft email, it appears to nominate you as the employee bargaining representative for this agreement?---Yes. I actually spotted a couple of typos. I notice on email 4 Robert Chasland's name is after mine. I believe - my recollection of this - I believe Mr Wong had taken some - we had negotiated the Valmec Australia Agreement some months before this, and I think he's probably taken some templates and seeking advice. Sorry, let me check the - I think he sent it to Mr Cooper to get some advice on the content. So these are - these are simply drafts. They are not what went out as I recall, because there's too many mistakes in it. I think he was looking for advice as the general content - I've never been a bargaining representative on any agreement ever anywhere in my life, so I think - I can't speak for Mr Wong where he got this.

PN522

Well, you have, haven't you? Weren't you the employer bargaining representative for this agreement, the APTS Agreement?---Sorry, I beg your pardon. Yes. Sorry, it's been - it's been a long time and I don't work in HR, so I'm a little bit confused. Maybe if you could ask the question again, please.

PN523

It's all right, I am just ascertaining that it is in fact the case you were the bargaining representative for the employer in relation to the APTS Agreement?---Yes. Yes, I was the company representative.

PN524

Just bear with me for a moment. Sorry, I'm just trying to turn up the Form F16 and F17 in this enormous - - -

PN525

MR POLLOCK: Your Honour, it's behind tab 8 in the appeal book. It's the F16 - - -

PN526

VICE PRESIDENT ASBURY: Can you give me the page number, please, Mr Pollock.

PN527

MR POLLOCK: I think unfortunately the appeal book which is separate from the court book is not paginated, it's tabbed.

PN528

VICE PRESIDENT ASBURY: All right. Am I correct or not in that - - -

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN529

MR POLLOCK: I can indicate looking at it under 'Employer bargaining representatives', question 3, yes, name of the employer bargaining representative, Deon McLaughlin, employer representative, by the bargaining representative of APTS Pty Ltd.

PN530

VICE PRESIDENT ASBURY: So, Mr McLaughlin, from my examination you signed a declaration that was filed in the Fair Work Commission that said you were the bargaining representative for an agreement, the APTS Agreement, you were the employer bargaining representative?---Then that - yes, that's correct. I'm sorry, as I said I don't - I'm not a HR specialist. That's why we engage with Mapien. I got the terminology wrong. Yes, I was the company representative.

PN531

Which would have meant in the negotiations?---Correct.

PN532

Okay, thank you. Anything arising from my questions?

PN533

MR MACKENZIE: Very briefly, Vice President.

PN534

VICE PRESIDENT ASBURY: Sure.

PN535

MR MACKENZIE: Mr McLaughlin, was it contemplated within Valmec that you would be the bargaining representative for the employees voting on the agreement?---I had some 18-odd months earlier moved from a HSE role to be a functional GM, supervising and managing the HR department, HSE and quality departments of the business. I was the I guess at the time the most senior person with responsibility, and I don't think I was ever appointed. That was just my role at the time.

PN536

MR POLLOCK: I'm sorry, I think the witness might have misheard. I don't think he understood that to be a reference to employee - - -

PN537

VICE PRESIDENT ASBURY: You might need to ask that question. You might need to re-ask the question.

PN538

MR MACKENZIE: I understand.

PN539

VICE PRESIDENT ASBURY: Yes, thanks.

\*\*\* DEON PAUL MCLAUGHLIN

XXN MR MACKENZIE

PN540

MR MACKENZIE: Mr McLaughlin, the Vice President took you to a chain of emails, or draft emails just now, that appear to contemplate that you would be the employee bargaining representative for the employees - - -?---No. No, I was not an employees bargaining representative.

PN541

I know. Mr McLaughlin, my question is was it contemplated within the Valmec group that you might be?---Never.

PN542

You have no explanation for why Mr Wong appears to have drafted an email proceeding on that basis and obtained advice on it from Mapien?

PN543

MR POLLOCK: Well, before the witness answers the question he already gave an answer to that question. He said this was full of mistakes.

PN544

VICE PRESIDENT ASBURY: Well, maybe if you explore the mistakes, if the description of Mr McLaughlin is correct at the top of page 97. Mr McLaughlin, is that your qualifications and experience at that time, working on the water renewal project in the west?---Never. I was - I oversaw and supported those types of programs. I think - I think that - I haven't seen these emails for years, but Mr Chasland was an employee bargaining representative for - so it's email number 4 - you see my name and then Mr Chasland. Robert Chasland was the employee bargaining representative on the Valmec Australia Enterprise Agreement. I think, looking at this without investigating it further, I think David's probably searched for Robert Chasland and changed it with Deon McLaughlin. For what purpose I don't know. But I was never - never considered, never was, never have been an employee bargaining representative.

PN545

MR MACKENZIE: I don't have any further questions for this witness.

PN546

VICE PRESIDENT ASBURY: Re-examination?

PN547

MR POLLOCK: Thank you, your Honour, just a couple of very brief questions.

**RE-EXAMINATION BY MR POLLOCK**

**[12.54 PM]**

\*\*\* DEON PAUL MCLAUGHLIN

RXN MR POLLOCK

PN548

Mr McLaughlin, you were asked several questions about the purpose of the Industrial Services Agreement and it was suggested to you on several occasions that it was made with three employees in order to, paraphrasing, secure cheaper rates of pay. You disagreed with that proposition and you said a couple of things. One was that customers were asking for additional services. Do you recall giving that answer?---I know that customers were saying, 'Hey, can you do this.' I can't - - -

PN549

Sorry, Mr McLaughlin, just a moment. You recall giving that answer?---I do, yes.

PN550

Can I just ask, what were the sorts of services - well, who were the customers and what were the sorts of services that they were asking for?---Okay. So the conversations were not held between me and customers, but what I recall from conversations with operational team members, and I form part of the leadership team with those people, was that our customers - well, there was additional scopes of work being tendered, so well head servicing, which includes a lot of new scopes of work that we haven't performed before. But there was also conversations about other types of maintenance. You know, it could be anything from maintaining the water treatment facilities to, you know, building access scaffolds, to, I don't know, mowing the lawns. It could have been anything. Because we had a (indistinct) with customers and they were looking - I guess customers were thinking, you know, can we do more with one company rather than have multiple companies doing many things. And, you know, that was part of the strategy (indistinct) for Mr Rahman was to look at additional opportunities with existing clients, and any future clients as well.

PN551

Thank you. Nothing further.

PN552

VICE PRESIDENT ASBURY: Thank you. Thanks for giving your evidence, Mr McLaughlin, you're excused?---Thank you.

**<THE WITNESS WITHDREW**

**[12.57 PM]**

PN553

VICE PRESIDENT ASBURY: We might take the full hour. Deputy President Binet has got a matter listed in the luncheon adjournment, so we might take the full hour given that - I'm touching wood - we are ahead of schedule.

PN554

MR POLLOCK: I think we're tracking very well.

PN555

VICE PRESIDENT ASBURY: Yes. But don't put the mock on it.

PN556

MR POLLOCK: I think that's in my learned friend's hands more than mine.

PN557

VICE PRESIDENT ASBURY: All right, we will adjourn and we will resume at 2 o'clock. Thank you.

**LUNCHEON ADJOURNMENT**

**[12.57 PM]**

**RESUMED**

**[2.07 PM]**

\*\*\*

DEON PAUL MCLAUGHLIN

RXN MR POLLOCK

PN558

VICE PRESIDENT ASBURY: Thank you.

PN559

MR POLLOCK: Thank you, your Honour. I had some discussions with my learned friend over the lunch break and perhaps mercifully we are narrowing the (indistinct) and the issues. You will recall that Mr van Daele was up next to give his evidence. We no longer need to call him. We would rely on his statement. The reason for that really is this, your Honours. You will see from his statement that he canvasses much the same terrain as Mr McLaughlin did concerning the rationale for the agreement and observations on the bargaining meetings.

PN560

Having heard your Honour's observations around the force of that sort of evidence in light of the contemporaneous emails and strategy documents that we have from Mr Rahman, and noting of course Mr Rahman is not here, we are to some extent -  
--

PN561

VICE PRESIDENT ASBURY: And in light you're probably going to get more objections.

PN562

MR POLLOCK: We are going to get the same objections - - -

PN563

VICE PRESIDENT ASBURY: About people's - - -

PN564

MR POLLOCK: - - - and really to be frank looking at Mr van Daele's evidence the needle is not going to move materially one way or the other on all of that, and rather that waste your Honours collective times this afternoon with repeating much of the same cross-examination and getting to the same place we think that's really not the best use of the Commission's time.

PN565

VICE PRESIDENT ASBURY: So his statement isn't going to be read?

PN566

MR POLLOCK: No. I can't sensibly read the statement without him being called and be available for cross-examination. So to that end that puts Mr Lord up next. My learned friend has indicated that he no longer requires Mr Lord for cross-examination. So I would simply propose that statement be read and received. That leaves us with Mr Woodard. Mr Woodard is available from 3 pm as I understand it. We're talking in Perth time. His evidence as I apprehend in a similar bucket to the first two employees probably will be of reasonably short compass, which should put us in a position where we will comfortably finish the evidence today and perhaps come back for some submissions tomorrow morning and we should be - I don't want to verbal my learned friend here, but I would have thought we should be in a position to be finished up by lunchtime, thereabouts.

PN567

VICE PRESIDENT ASBURY: So you want to have the night to prepare closing submissions and then make them tomorrow?

PN568

MR POLLOCK: I think that's appropriate, Vice President, thank you.

PN569

VICE PRESIDENT ASBURY: Okay.

PN570

MR POLLOCK: So if that's (indistinct) we'd simply seek that Mr Lord's statement be read and marked.

PN571

VICE PRESIDENT ASBURY: That will be I think exhibit R4.

**EXHIBIT #R4 WITNESS STATEMENT OF JON LORD**

PN572

MR POLLOCK: And then the matter be stood down until 3 o'clock.

PN573

VICE PRESIDENT ASBURY: Okay. Thank you.

**SHORT ADJOURNMENT**

**[2.10 PM]**

**RESUMED**

**[3.05 PM]**

PN574

VICE PRESIDENT ASBURY: Thank you.

PN575

MR POLLOCK: Thank you, your Honour. Mr Woodard is our last witness. My learned friend Mr Crocker will take his evidence.

PN576

VICE PRESIDENT ASBURY: Thank you.

PN577

MR POLLOCK: The respondent calls Peter Woodard.

PN578

VICE PRESIDENT ASBURY: Thank you. Mr Woodard, thank you for making yourself available. Can you hear us all? Mr Woodard, can you hear us?

PN579

MR WOODARD: Yes, I can.

PN580

VICE PRESIDENT ASBURY: Great, thank you. Will you take an oath or an affirmation?

PN581

MR WOODARD: Sorry, what was that?

PN582

VICE PRESIDENT ASBURY: Will you take an oath or an affirmation to give your evidence in these proceedings?

PN583

MR WOODARD: I'm not too sure what (indistinct) is. The oath is just - - -

PN584

VICE PRESIDENT ASBURY: You haven't got a Bible with you?

PN585

MR WOODARD: No, I don't.

PN586

VICE PRESIDENT ASBURY: Then you will have to make an affirmation. I will get my associate to read it. It's just a declaration that the evidence you are going to give in the proceedings is going to be truthful. So just bear with us for a moment. Thanks.

PN587

THE ASSOCIATE: Mr Woodard, could you please state your full name and address for the record.

PN588

MR WOODARD: Peter Ryan Woodard, (address supplied).

**<PETER ROY WOODARD, AFFIRMED** [3.06 PM]

**EXAMINATION-IN-CHIEF BY MR CROCKER** [3.06 PM]

PN589

VICE PRESIDENT ASBURY: Thank you. Mr Crocker, your witness.

PN590

MR CROCKER: Thank you, your Honour. Mr Woodard, would you be able to state your full name again for the transcript?---Peter Roy Woodard.

PN591

And what's your business address, Mr Woodard?---Business address - sorry, I have to get it up. Sorry, bear with me.

PN592

That's all right. Mr Woodard, if that's not convenient if you could give your residential address?---(Address supplied) My work address for the company I currently work for is 20 Walters Drive, Osborne Park, WA 6017.

\*\*\* PETER ROY WOODARD

XN MR CROCKER

PN593

In 2021, Mr Woodard, were you employed by APTS?---Yes, I was.

PN594

And what work did you do for APTS?---Condition monitoring.

PN595

Have you prepared a witness statement in this matter, Mr Woodard?---Yes, I have.

PN596

And is that a statement of 33 paragraphs with four annexures labelled PW1 through PW4?---That's correct.

PN597

And have you read that statement before coming here today?---Yes, I have.

PN598

And do you have a copy of it with you?---I do.

PN599

Is the contents of that statement true and correct?---Yes, it is.

PN600

Do you wish to adopt that statement as your evidence in this matter?---Yes, I do.

PN601

I tender that, Your Honour.

PN602

VICE PRESIDENT ASBURY: We will mark that as exhibit R5.

**EXHIBIT #R5 WITNESS STATEMENT OF PETER WOODARD**

PN603

MR CROCKER: No further questions.

PN604

VICE PRESIDENT ASBURY: Thank you. Cross-examination, Mr Giordano?

PN605

MR GIORDANO: Thank you, Vice President.

**CROSS-EXAMINATION BY MR GIORDANO**

**[3.09 PM]**

PN606

MR Woodard, you understand that your evidence in your witness statement is important, don't you?---Yes, I do, yes.

PN607

And you understand the need for it to be the whole truth on the things that are covered in it. That's right, isn't it?---Correct, yes.

\*\*\* PETER ROY WOODARD

XXN MR GIORDANO



PN608

And you give evidence at paragraphs 3 to 12 of your witness statement about your role, qualifications and your employment history?---Yes.

PN609

And what you say about that is accurate, isn't it?---Yes, to the best of my ability.

PN610

And it's the whole truth, isn't it?---Yes.

PN611

Mr Woodard, do you recall voting on the APTS Industrial Services Enterprise Agreement in about July 2021?---Yes, I do.

PN612

Around the time that you voted on that agreement what was the work that you were performing?---Condition monitoring services.

PN613

And where were you doing that?---At APTS.

PN614

Where in Australia were you doing that?---In Perth and Darwin in Northern Territory.

PN615

I want to ask you about a different topic, Mr Woodard. You say in your witness statement that you attended about five bargaining meetings?---That's correct, yes.

PN616

They were over two years ago in May through to July 2021; yes?---Yes.

PN617

And your memory of them has faded somewhat; do you agree with that?---To an extent, yes.

PN618

Were you given any minutes of those meetings when you prepared your statement?---What, sorry? What, for the statement or minutes for when we were actually going for the EA agreement?

PN619

The minutes of the bargaining meetings?---Before I did the statement, no.

PN620

Not before you did the statement. But you've subsequently been given those meeting minutes; is that right?---(Indistinct reply)

\*\*\* PETER ROY WOODARD

XXN MR GIORDANO

PN621

And you give evidence about those meetings in your witness statement, and that evidence is accurate, isn't it?---To the best of my ability, yes.

PN622

And it's the whole truth in the sense that that's everything you can remember about those meetings; isn't that right?---That's correct, yes.

PN623

You describe in paragraph 27 of your witness statement a discussion about the terms of the APTS Industrial EA compared to the Hydrocarbons Award and the Manufacturing Associated Industries Award. You see that?---Yes.

PN624

And your evidence is that you can't remember which of those meetings that was discussed at. That's right, isn't it?---That's correct, yes.

PN625

And you can remember that there was a discussion on that topic, but you don't remember the details of the discussion. That's right, isn't it?---Correct, yes.

PN626

And you describe the first meeting, just taking you back to paragraph 16 of your evidence?---Yes.

PN627

And leaving aside paragraph 27, because your evidence is you don't remember when that discussion happened, that issue aside, paragraph 16 is all you remember from that meeting. That's right, isn't it?---That's correct, yes.

PN628

And you describe another meeting in paragraph 21 and you mention things that came up in that meeting at paragraphs 18 to 20. But again paragraph 27 aside that's all you remember from that meeting. That's right, isn't it?---The first meeting, yes.

PN629

Sorry, paragraph 21 is about a follow up meeting, isn't it?---That's correct, yes.

PN630

So a second or subsequent meeting, not the first meeting, right?---Correct, yes.

PN631

And the third meeting you describe at paragraph 28, and again paragraph 27 aside that's all you remember from that meeting. That's right, isn't it?---Correct.

PN632

And in paragraph 27 you remember a discussion comparing the enterprise agreement with the awards, but you don't remember the specifics of that discussion. That's right, isn't it?---That's correct, yes.

\*\*\* PETER ROY WOODARD

XXN MR GIORDANO

PN633

And what's in paragraph 27 is all you remember of discussions had on that topic. That's right, isn't it?---Correct, yes.

PN634

Now, there's nothing in your statement where you mention an enterprise agreement known as the Workshop Enterprise Agreement that applied to employees of APTS Pty Ltd around that time. Do you recall such an agreement ever being mentioned throughout the bargaining meetings?---Not that I can recall.

PN635

And you don't mention anywhere in your statement classifications in the enterprise agreement that you were asked to vote on being mentioned. You don't recall classifications being explained to you, do you?---I do recall some classifications being explained, but it's not in my - in my statement.

PN636

You certainly don't recall being given a copy of the awards, do you?---From memory I believe we were supplied documentations and copies during the EA agreement discussions.

PN637

Copies of the agreement though, not other documents?---No, but we were given - we were given links to the supplementary, where they were getting the information from.

PN638

And you don't recall anything being said about meal allowances throughout the enterprise agreement meetings, do you?---Not that I can remember.

PN639

Do you recall a statement being made to you or to any of the other voting employees to the effect of, 'This is the agreement rate, but don't worry about that, you will get a different higher rate'?---No, that was not said. I don't recall that being said at all.

PN640

I have no further questions for this witness, your Honours.

PN641

VICE PRESIDENT ASBURY: Mr Woodard, can you just confirm, you had a contract of employment both before and after the APTS agreement applied to you, a written contract of employment?---That's correct, yes.

PN642

And the written contract of employment as I read it specifies that you were provided with a vehicle. Is that the case?---That's correct, yes.

\*\*\* PETER ROY WOODARD

XXN MR GIORDANO

PN643

So you were provided with a vehicle both before the APTS agreement came into effect and after?---That's correct, yes.

PN644

Was anything said to you about you keep getting that vehicle?---It was just part of the arrangement I had when I joined APTS.

PN645

So in the agreement negotiations was anything said to you, for the APTS agreement was anything said to you about retaining your terms and conditions that you had before the agreement negotiations commenced?---There was no indication of alteration to my original agreement for APTS.

PN646

Were you told your original agreement wouldn't be altered?---I was told that my agreement stood, so it was separate to the EBA agreement.

PN647

Okay. Thank you. Anything arising from my questions?

PN648

MR GIORDANO: No, Vice President.

PN649

VICE PRESIDENT ASBURY: Mr Pollock, re-examination?

PN650

MR CROCKER: No, your Honour.

PN651

VICE PRESIDENT ASBURY: I'm sorry, Mr Crocker. Sorry about that. All right, thank you for giving your evidence, Mr Woodard, you're excused?---Thank you very much.

PN652

Thank you.

<THE WITNESS WITHDREW

[3.20 PM]

PN653

VICE PRESIDENT ASBURY: So that concludes the evidence?

PN654

MR POLLOCK: That's the evidentiary case for the respondent, your Honour.

PN655

VICE PRESIDENT ASBURY: Okay. So we will adjourn for this afternoon and we will resume at 10 o'clock tomorrow?

\*\*\* PETER ROY WOODARD

XXN MR GIORDANO

PN656

MR POLLOCK: That's convenient for us, yes.

PN657

VICE PRESIDENT ASBURY: Thank you.

**ADJOURNED UNTIL FRIDAY, 17 NOVEMBER 2023**

**[3.20 PM]**

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