



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT O'NEILL

AM2023/21

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

(AM2023/21)

Melbourne

10.00 AM, WEDNESDAY, 10 APRIL 2024

PN1

THE DEPUTY PRESIDENT: Well, good morning, everyone. This is obviously off to a fairly unusual start this morning. I understand my associate has already indicated that my sitting here does not, in any way indicate I'm open to cross-examination of any kind. All right. Well, we've obviously had some technical difficulties and we just can't be confident about how quickly that can be resolved and there's not another room available at short notice. So we will just proceed in a slightly unorthodox way.

PN2

All right. Now, in terms of the appearances today; changes from yesterday. Ms Bhatt remains unable to attend and, as we heard yesterday, the Australian Chamber are not able to attend today. Beyond that, I think the only change in appearance from yesterday is a different representative from the CFMEU, Mr Liley in place of yesterday's representative. Have I missed anybody? No.

PN3

MR M NGUYEN: Yes, Deputy President. We also have the FAAA Federal Secretary in the Melbourne Courtroom as well today, Ms O'Toole, initial T.

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THE DEPUTY PRESIDENT: All right. Well, welcome.

PN5

All right. Well, we're on day 4 and working through the same way we have on previous dates. So the first proposal in relation to discussion question 14 is the proposal by the SDAEA at item 3 in relation to the evidence requirements for carers leave.

PN6

Ms Biddlestone, did you want to speak to that?

PN7

MS K BIDDLESTONE: Thank you, Deputy President. Just briefly and we'll largely rely on our written submissions which goes to the reasons why we're seeking the variation, but I would just make a couple of comments in relation to the submissions by the Ai Group. We do understand that the current evidence provisions in the act don't require an employee to provide evidence on each occasion and this is up to the employer to make that request if they believe it's needed.

PN8

But we submit that the ability to require should be changed in circumstances that relate to the need to provide ongoing care for someone who has a long-term illness disability or is aged or frail and just to put into context, we have a lot of members who are caring for, not just children, but children with disability, adult children with disability, older relatives, whether they be parents or others they are related to, for example, that have dementia.

PN9

So conditions that are fairly stable, not likely to change, but do require some level of regular, ongoing care that in some circumstances might be required at short notice, those sorts of things. So not just appointments but things that might arise and we think that for those workers it is a burden on them to have to provide evidence on each occasion that they might be required to provide that care, given that it's a known reason to care.

PN10

And that it's in those circumstances that there should be the ability to provide enduring evidence to support them to provide that care without having to provide it on each occasion.

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THE DEPUTY PRESIDENT: With any limit or - - -

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MS BIDDLESTONE: We're happy to look at what those limits might be in terms of the reasonableness of that, so we have started to have some success in bargaining around this and typically, it's, you know, setting some time limits, whether it be six or 12 months and then there can be a review of that.

PN13

THE DEPUTY PRESIDENT: All right. Thank you.

PN14

Did anyone else wish to speak to this proposal? Ms Peldova-McClellan?

PN15

MS S PELDOVA-McCLELLAND: Thank you, Deputy President. Can you hear me?

PN16

THE DEPUTY PRESIDENT: Yes.

PN17

MS PELDOVA-McCLELLAND: Good. All right. Yes.

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THE DEPUTY PRESIDENT: Something's working at least.

PN19

MS PELDOVA-McCLELLAND: Excellent. We just - we also have a similar proposal in this case, which wasn't captured in the summary, but that's completely fine.

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THE DEPUTY PRESIDENT: Yes.

PN21

MS PELDOVA-McCLELLAND: We know the hard work of the Commission staff and these - it's not possible to capture everything. But, yes, our proposal is

very similar and just to make a couple of brief comments, and I think the ANMF also had a similar proposal as well, which is in the summary they might wish to speak to as well.

PN22

In terms of the ability to provide enduring evidence, we'd say there are some things to be mindful of, in particular, trends that are occurring at the moment, which is the decreasing availability of bulk-billed services, the increasing costs of an appointment with a GP to obtain a medical certificate and the difficulties in obtaining those appointments, particularly in rural, regional and remote areas and all of these things add on a layer of difficulty and barriers for people when they need to provide evidence on every occasion.

PN23

In relation to - and, of course, sorry, this also disproportionately impacts women, obviously, because they still shoulder the vast burden of unpaid care. In relation to Ai Group's comments, I concur with what Ms Biddlestone said. It's obviously - it's only on requirement of the employer that people need to provide evidence on each occasion, or whichever occasion the employer requires them to, and Ai Group note that some employers may choose to relax evidence requirements where there are enduring circumstances.

PN24

We just say it's something this important shouldn't be left to the whim or the goodwill of employers. All employees, we say, should have the benefit of these relaxed - somewhat relaxed requirements where there are enduring circumstances. The other argument Ai Group make in their submissions is that employers may need to understand how a recurring illness impacts on an employee's current or ongoing work capacity and any limitations on that.

PN25

We'd say this is a separate issue to the provision of evidence to prove to the employer that the employee is unwell in order to be able to access the leave. So if there are question about capacity, these are - there are processes to deal with that to ensure that employers have that information, as is necessary, to provide a safe workplace for that employee, for example, return to work processes.

PN26

It's certainly not the case though in many instances where there might be ongoing illness, for example, an employee with endometriosis is likely to have similar symptoms every month that prevent them from working for a period of hours or days but it doesn't have any implications for their capacity beyond the short-term symptoms. Again, for enduring care arrangements, Ai Group make this point that they may need information to understand the care demands on the employee and to provide accommodations.

PN27

Again, the employer can request that information as is necessary to understand that, if it's unclear, but it's, again, a separate issue to require in evidence to prove to the employer that they have those caring responsibilities in order to access the leave.

PN28

THE DEPUTY PRESIDENT: All right. While you're on your feet, Ms McClelland, items 5 and 6 are ACTU proposals which, in fact, do pick up the evidence element, but did you want to speak to other elements of the proposals at 5 and 6?

PN29

MS PELDOVA-McCLELLAND: Absolutely, Deputy President. Can do. So 5; I had focussed her on the quantum issue, so briefly, obviously access to personal and carers leave is incredibly important because it provides relief and support for employees balancing work and care and these entitlements have been designed to assist workers in reconciling their employment and family responsibilities. As we have set out in our submissions, personal and carers leave has a number of limitations, including that the entitlement is narrow in scope.

PN30

It has a limited applicability to immediate family and household members and the entitlements also limited to situations where there's an illness, injury or unexpected emergency. We also say they provide insufficient time for leave and that workers may lose access to leave entitlements when they're taking personal leave to care for others and may prevent them being able to access sufficient leave to provide care and look after their own health and wellbeing due to the entitlement being a single entitlement of 10 days.

PN31

This obviously, in particular, affects women who often don't have any leave left to look after themselves and take care of their own health. I might also deal with the rates of pay in this item. So we note that personal carers leave is also paid at base rates, less than what the worker would (indistinct) been working for that period of leave, which can be a disincentive to taking leave and devalues the time taken away from work to attend to care.

PN32

So this is why we've recommended awards be varied to provide for an additional amount of 10 days paid carers leave that can only be taken for caring purposes and we say that employees should retain the ability to access a combined personal carers leave entitlement for caring purposes if they've exhausted the 10 days carers leave and they need more paid leave for caring purposes.

PN33

We've also recommended that payment during the leave should not fall below reasonable expectations of take home pay over the same period to ensure that workers aren't suffering a decrease in the amount they ordinarily earn and note that many low paid worker carers are really reliant on shift penalties and overtime rates to meet their financial obligations from week to week.

PN34

Just dealing with some of the employer responses, ACCI, again raise the issue they raised yesterday about why an NES entitlement will be varied for award covered employees and that their view is that entitlements that are directed at

universal employee needs are more appropriately addressed in the NES. We did respond to this yesterday, but just to reiterate, we reject this argument.

PN35

It's entirely appropriate for these matters to be considered by the Commission and, for example, to find that personal carers leave entitlements are inadequate and no longer meet the modern awards objective and this has been done before, as I outlined yesterday, with family and domestic violence leave. We note that ACCI commented in yesterday's consultation that clarified their position somewhat, that they accept the Commission can look at this in awards, but their preference is to have the discussion in the context of the NES and a holistic discussion with government about various claims for leave and the impact.

PN36

We just simply say that may well be their preference, however, right now, the Commission is tasked with considering the issues that have been raised in this stream of the review. It, of course, can consider these proposals both individually and together in terms of their impact and it is, of course, also open to the Commission to note the desirability of legislative change in its (indistinct).

PN37

ACCI also submit that the Commission would be restricted in terms of splitting the entitlement as it currently is, by section 55 of the Fair Work Act because such a split may be detrimental to employees and we agree that splitting the entitlement as it is, without increasing it, would be detrimental because it would mean - it would leave employees with less than 10 days for both personal and carers leave, whereas now they obviously have 10 days in total to use as they need.

PN38

So we oppose a split for the sake of clarity, unless there is a increase in the amount of carers leave. Turning to some of Ai Group's comments on rates of pay, Ai Group note that it would increase employment costs and the compliance burden to increase rates of pay and they point to, sort of, difficulties maintaining separate systems for personal and carers leave for award covered employees versus non-award employees and the need to separately configure systems, et cetera.

PN39

Employers already have to do this in some other circumstances, so for example, family and domestic violence leave is paid at the full rate of pay, which obviously requires a little bit of separate configuration of the systems and, you know, this is why, I think when - partly why when the entitlement was brought in, there was a lead time to allow employees to get all of that in order, so it can be done.

PN40

We're also not sure and Ai Group haven't given any evidence, about how common that occurrence might be that an employer is employing both groups of employees, but in any event, if the Commission was persuaded that this made it too onerous on employers, it, again, could make a recommendation that it be dealt with in legislative reform. Ai Group also raised the issue of practical difficulties when trying to ascertain an employee's full rate of pay for a period during which

they otherwise would have been absent because the pattern of hours may not be discernible.

PN41

Similarly to what Ms Biddlestone said yesterday, we're not sure whether - how often this problem would actually arise. If an employee is unwell or has carer responsibilities and can't attend work, it will be for a roster or for hours that have already been agreed, so it would be fairly straightforward, in our submission, to ascertain what the applicable rate of pay would have been and if employers don't know what payment that shift would have attracted, they may well be in breach of their rostering obligations.

PN42

Again, it's also a requirement for the family and domestic leave entitlement to pay the full rate of pay. There's no evidence that I'm aware of that this has been an issue for employers to work out. Ai Group also talk about a sickie being a well-known occurrence in Australian workplaces and so opposing, sort of the proposed increase to the quantum on this basis.

PN43

We just say there's no evidence provided for that assertion and employers obviously have the ability to request evidence if they wish to do so and they suspect there are non-genuine reasons for employees taking personal leave and we'd certainly reject any claim that employees would be incentivised to take more personal leave if it's paid at their full rate of pay. And I am getting to the end, Deputy President, I promise.

PN44

The final point raised by Ai Group is on quantum that the increase to the number of days of paid leave would have adverse impacts, including additional costs and must be viewed in the context of various other proposals. We just say that any burden on business on increasing leave would obviously be a factor to take into consideration, but any such burden would need to be weighed against other considerations in the modern awards objective.

PN45

And in our submission, increasing leave also potentially has benefits and costs savings for employers, such as increased wellbeing and productivity, increased retention, decreased turnover, all of the costs associated with that and with recruitment. So this needs to be looked at holistically in terms of the costs and savings and benefits to employees, employers on that broader economy. So that was proposal 4 - have I also dealt with 5? I think I have.

PN46

THE DEPUTY PRESIDENT: The unlimited unpaid leave.

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MS PELDOVA-McCLELLAND: Is that unlimited unpaid leave.

PN48

THE DEPUTY PRESIDENT: That's the end of item 5 is an additional entitlement to unlimited unpaid personal carers leave once other paid entitlements are exhausted.

PN49

MS PELDOVA-McCLELLAND: I had intended to deal with that in relation to the discussion (indistinct) question 16, but I can deal with it now if you prefer.

PN50

THE DEPUTY PRESIDENT: Sure.

PN51

MS PELDOVA-McCLELLAND: All right. So as we put in our submissions, we do have concerns with the idea to provide an entitlement to extended unpaid carers leave. There is significant danger in entrenching unpaid leave as an entitlement given that women will disproportionately use it and that will have significant implications for their economic security and retirement savings. So we say the primary objective should be that carers are financially supported whilst they're caring.

PN52

So they should have access to paid work that supports them to care, or paid time off to care. This is why we've made the recommendations we have regarding flexible work as we spoke to in last week's consultations to ensure that employees have access to flexible work which allows them to be financial supported whilst caring. We note that all of the employer groups are opposed to an entitlement to unpaid carers leave and say that flexible work arrangements are enough and are preferred and are sufficient.

PN53

But we'd say if we're relying on flexible working arrangements alone, the right to access them needs to be much stronger, available to all people with caring responsibilities and, as I went through last week, some changes made such as the threshold being raised to unjustifiable hardship and the right to revert to your previous hours so that people accessing them don't experience long-term disadvantage and get stuck in part-time employment.

PN54

However, of course, we do acknowledge there may be some situations where employees have no other option but to take a period of unpaid leave for caring responsibilities and in those situations, there are obviously clear benefits to the workforce participation and social inclusion in keeping those employees connected to their workplace with an ability to return.

PN55

So this is why we've put in our proposal that any additional entitlement to unpaid carers leave should be used as a last resort, but only after all possible options for flexible work have been explored and exhausted with the employer.

PN56

THE DEPUTY PRESIDENT: So essentially, support for that is contingent on it being part of a package of arrangements.

PN57

MS PELDOVA-McCLELLAND: Yes, I think that's fair to say, although we'd be willing to consider it separately as well, but certainly in relation to unpaid leave, we'd only support it if it was only after all other options had been considered including working from home.

PN58

THE DEPUTY PRESIDENT: All right.

PN59

MS PELDOVA-McCLELLAND: Just to address some of the employer comments, we note in our submission, we said such an entitlement should be unlimited and Ai Group have said that's preposterous. Whilst we don't think it's preposterous to envisage a system that allows employees to remain connected to their workplace whilst also supporting them to undertake care for their loved ones, with all of the broad benefits that has for society and economy, we accept it may have been a touch ambitious.

PN60

And we note that there are some other proposals before the Commission that have suggested a period of up to two years of unpaid leave which would be similar to the NES unpaid parental leave entitlement and we submit that would an appropriate length of time if the Commission was minded to put a time frame on it and obviously, a length of time that employers are already used to dealing with in the context of parental leave. I think, Deputy President, I can leave my comments there.

PN61

THE DEPUTY PRESIDENT: All right. Thank you for that.

PN62

Just before you take the floor, Mr Arndt, we may as well deal with somewhat similar proposals by the AMWU, the ANMF, the SDAEA and the UWU for increases to the amount of leave and the rate at which it's paid, in particular. Do any of those parties wish to say anything in relation to their proposals?

PN63

Ms Palmer?

PN64

MS L PALMER: Thank you, Deputy President. I'll keep it brief and rely on the written submission, but we just want to highlight that Work and Carers are much more likely to experience (indistinct) burnout and to require additional time to provide care and that evidence is well set out in the Productivity Commission's Inquiry into informal care, the impacts there on their health.

PN65

As we set out in our submission, the need for additional paid time is particularly important for frontline nurses, midwives and carers given that they must exercise greater infection prevention and control themselves, for example, by isolating when they or a family member that they're providing care to or living with, is unwell, as well as being more likely to contract illness, given the high risk nature of their workplace and requiring additional leave to cope with that.

PN66

Our proposal to increase the quantum is also connected to our proposal at item 25 to broaden access to personal and carers leave beyond episodic illness or injury. Broader entitlement or access to the entitlement would provide for preventative care for self and others such as vaccinations, attending other medical appointments and that also reflects those higher rates of burnout, illness, stress that Work and Carers are likely to experience and providing for them to accommodate that and look after themselves. (Indistinct), thank you.

PN67

THE DEPUTY PRESIDENT: Thank you.

PN68

All right. Mr Arndt?

PN69

MS BIDDLESTONE: Deputy President (indistinct).

PN70

THE DEPUTY PRESIDENT: Sorry, Ms Biddlestone, I missed you.

PN71

MS BIDDLESTONE: Sorry. That's all right.

PN72

THE DEPUTY PRESIDENT: Sorry.

PN73

MS BIDDLESTONE: I am going to be brief because I will rely largely on the written submissions which provide a lot of evidence that demonstrates the fact that workers who also provide care don't currently have enough leave often available to them to be able to provide that care or they exhaust it and when they are ill themselves, don't have any leave available to take that time off, but I did just want to make some comments in relation to the submissions of the Ai Group in terms of including penalty rates on personal leave.

PN74

So again, similar to Ms Peldova-McClelland just in relation to creating a two tier system, similarly, there is already that in play in relation to family and domestic violence leave and we submit that we don't think that that would create difficulties if that were to change. We also say that they have advanced the same arguments as they did for annual leave in relation to the difficulty in asserting what the fulltime rate of pay would have been. I'm not going to go over what I said yesterday, but I do think that that is a somewhat disingenuous argument.

PN75

The Ai Group also go on to suggest that rather than providing a disincentive for workers to be able to take leave, that paying penalties on personal leave may incentivise workers to take a sickie and suggesting that while many workers do the right thing, some do not. This can also be said for the application of award terms and conditions by employers, but awards should not be used to punish the few, but to provide an appropriate safety net to the many.

PN76

We would also point out that there are evidentiary requirements that a worker must meet if the employer does want to test the legitimacy or genuineness of an absence and that's at their disposal. Given that this is review relating to how employees manage work and the relevant consideration is how the awards meet the modern awards objectives to support management of Work and Care, we argue that the way awards are currently constructed is punitive to workers and carers in relation to the payment they receive when they are on personal leave.

PN77

It not only results in less take home pay, but for some workers, that's also in the context of them having to pay for childcare, for example, that has been unused during that period, so - and for a low paid worker who lives week to week, that has a significant impact on their ability to live. So we submit that that should be changed.

PN78

THE DEPUTY PRESIDENT: Thank you.

PN79

Right, Mr Arndt?

PN80

MR J ARNDT: Thanks, Deputy President. It's just (indistinct) points about the conceptual issue about this two tiered system. Obviously, it can be done. I think it would be - I think something needs to be said about the context of the (indistinct) wage proceedings and about how they've gone into modern awards and what actually happened with that form of leave. As I understand it, having some familiarity with those cases, yes, the unpaid entitlement was in modern awards and not the NES for a short period before shortly being made into an NES entitlement.

PN81

It was my recollection that the actual paid - the entitlement notwithstanding that the Full Bench made a decision to introduce a paid entitlement never actually made it to modern awards because the government changed and therefore the legislation changed. Obviously, it can be done but the question is whether it should and I think it's important to think about the context of FDV leave and how employers have managed that issue and the difference between regulating FDV leave and personal carers leave.

PN82

The reality is, and it is a positive reality, is that not all employees will need to take FDV leave. The overwhelming evidence in those cases is that the uptake of family and domestic violence leave would be quite low. It's my understanding and it's certainly the experience of our members that the uptake of family and domestic violence leave has been quite low. It's not - it's a universal entitlement but it's not a universal entitlement in the same way.

PN83

That means that the issues arising of having two separate books, two different standards, they don't result in the same pronounced arbitrariness. They don't result in the same practical difficulties for employers and I think it's important to understand that. There are other aspects of FDV leave which also are challenging for maintaining FDV leave records and so forth, for example, it's paid at ordinary rates instead of base rates. It goes to casuals as well as all other employees.

PN84

Those things are managed, by and large, by employers because the uptake of FDV leave is much, much, much lower than other forms of leave and so the real issues that the employer parties have been talking about in relation to the two speed NES haven't been realised. It's significant we talk about ceremonial leave yesterday. I mean, I would put ceremonial leave again, as quite a specialised form of leave that if you had, not wanting to cut across ACCI in the slightest.

PN85

But if you did have two sets of rules, one for award covered employees and one for everyone else, I think that would be slightly arbitrary. It would be slightly unfair and so forth, but it wouldn't result in the same issues that we would see if there were two different standards for personal carers leave and it needs to be a relevant standard. Obviously, it could be done.

PN86

We say it shouldn't be because (1) it would be very hard to understand; (2) it would be very hard to practically manage; and (3), in my position, regardless of whether you're covered by an award or not, you may have caring responsibilities. It doesn't seem appropriate that people with modern awards coverage would have a vastly enhanced set of NES rights that they're using every day in comparison to everyone else.

PN87

THE DEPUTY PRESIDENT: All right. Thank you.

PN88

Our next proposal is in item 16, the Flight Attendants' Association. Mr Nguyen, are you speaking to that?

PN89

MR NGUYEN: Yes. Thank you, Deputy President. I won't repeat what's in our written submission, but there's a statistic that we would just like to highlight in addition to what we've already included in our written submissions, which is from the 2018 NDIS Family and Carer Outcomes Report. That report stated that the percentage of families and carers working in casual employment is around 26 per

cent. The figure - it's from 2018, so it may be dated now, but it is higher than the percentage for all Australians aged 25 to 64 at the time, which was 15 per cent.

PN90

If we overlaid this with the Commission's own findings in the discussion paper, which indicates that half of the award reliant workforce are casuals, and then also overlay that with the FAAAs analysis of the occupation which is that of the two major labour hire firms which are Altara and Maurice Alexander Management, often referred to as MAM, of those two labour hire employers, almost all of the employees are casuals so the proposal from the FAAA is really geared towards the casuals who are regulated under the award for this new type of leave.

PN91

Sorry, not - it's not a new type of leave, but for casuals it would be a new type of leave. The upper respiratory tract infection leave is a longstanding entitlement for cabin crew and as we've noted in our submission, it's due to the impact that upper respiratory tract infections may have in terms of when crew are flying actually having subsequent injuries as a result of the upper respiratory tract infection. So giving this entitlement to casuals will help them to sustain themselves as well as the people that they care for. Thank you, Deputy President.

PN92

THE DEPUTY PRESIDENT: Thank you, Mr Nguyen.

PN93

And the final item is the SDAEA proposal in relation to extending the entitlements from paid leave to casual employees.

PN94

MS BIDDLESTONE: Thank you, Deputy President. We're going to largely rely on our written submissions, but just emphasise the point that there are a lot of workers who are casual because they think that that is the only way that they can manage both their Work and Care and the evidence from our research shows that it creates a very difficult situation for them because they don't have continuity of income and then they are penalised because they don't have access to paid leave when they do need to provide care and they lose their shifts.

PN95

The other point I just wanted to make is the literature review has also highlighted the problems in relation to this and made some recommendations about extending paid personal leave to casual employees.

PN96

THE DEPUTY PRESIDENT: All right. Thank you.

PN97

All right. Well, moving to question 15 around the definition of 'Immediate family', there's an ACTU proposal at item 20.

PN98

MS PELDOVA-McCLELLAND: Thank you, Deputy President. I might speak to two ways in which we say personal and carers leave is narrow in scope under this heading. So firstly, it's available for an employee to provide care or support to a member of their immediately family or a member of their household and secondly, it's limited to situations where the person requires care or support because of an illness or injury or an unexpected emergency.

PN99

'Immediate family' is defined in section 12 and the definition of 'Child' is in section 17 which refers also to the Family Law Act and includes adopted children and stepchildren. We say that these definitions haven't kept up with the many different kinds of family groups and the changing nature of families and it excludes many workers with caring responsibilities including some carers within the meaning of the Carer Recognition Act who are providing care to people with a disability and medical condition, mental illness or someone who's frail and aged.

PN100

We note the observations of the Work and Care final report as well, which found that current entitlements limit the ability of Work and Carers to access leave entitlements to care for friends, neighbours and members of their community and that this disproportionately affects first nations and culturally and (indistinct) diverse communities where informal care is often provided to those who are considered extended family despite not always being directly related.

PN101

And similarly, for the LGBTQIA+ community; they may not always have their families of choice recognised by employers. So we say there's a clear need to ensure the diverse nature of family structures and care giving roles are recognised and to ensure that encompasses kinship care and other significant persons beyond traditional family boundaries. The Work and Care final report obviously made some recommendations in this space including that:

PN102

Immediate family should include any other person significant to the employee, to whom the employee provides regular care.

PN103

And we concur with that and think it would be worth specifically calling out kinship care and foster children. Ai Group point out that foster children would, in most instances, be a member of the employee's household and would therefore be covered by current provisions, however, there may be some instances where that isn't the case, perhaps where they haven't joined the household yet.

PN104

In any event, we believe there's significant merit in clarifying the definition to ensure that the definition of 'Child' includes a foster child because this is where most people would be looking to see if they were eligible and I'd also note it's in issue our (indistinct) faced with us for many years, which suggests there may be an issue in the interpretation of that entitlement, people's ability to access it for foster children.

PN105

So just turning to a few other comments made by employers, again, the comment that it's a matter for the legislature rather than the Commission and this is outside the scope of the review. We reject this for the reasons I've outlined. It's open to the Commission to find that an expansion in the definition is necessary to meet the modern awards objective which, in our submission, hasn't kept pace with the diversity of families and caring responsibilities that exist in the community.

PN106

I think ABI and ACCI make the argument that section 55 may preclude the expansion of the definition because the Commission would need to determine whether broadening it would leave employees with less relevant leave for the (indistinct) the NES.

PN107

THE DEPUTY PRESIDENT: (Indistinct).

PN108

MS PELDOVA-McCLELLAND: But we just - I think this is really a very technical point and I'm not convinced about it. I think a broadening of the definition is clearly beneficial and not detrimental to employees because it recognises a broader range of care and responsibilities with employees able to exercise choice about who they use that entitlement to care for.

PN109

Again, Ai Group oppose the proposal on the basis of costs, both direct and indirect costs and again, as I outlined earlier, the savings associated with this proposal also need to be taken into account. So on the matter of allowing employees to access personal leave beyond just personal illness or injury, for example, to attend to preventative health matters, there will be significant benefits for employees there - sorry, for employers as well as employees there.

PN110

It would result in less absence due to illness or injury with associated savings and productivity gains. Ai Group also say that preventative health appointments can be booked, you know, to accommodate an employee's schedule, they're most appropriately tendered outside of work hours, but we say this signals the reality for many, many workers who, due to their hours of work, just can't get to those appointments during the hours that they are available and they may need to eat into their annual leave entitlements instead.

PN111

Ai Group say this is a situation where makeup time could be used, we've outlined our concerns in relation to makeup time and consider that the better proposal is that employees can access personal leave to attend to such appointments.

PN112

THE DEPUTY PRESIDENT: Thank you.

PN113

Mr Arndt?

PN114

MR ARNDT: I'll just make a short point, Deputy President. I don't think the jurisdictional question of section 55 is put anything other than something else that the Commission would need to consider. There is a very distinctive use of language in section 55(4) detrimental to the employee in any respect. It seems quite particular and we just raise it as an issue for consideration.

PN115

What that submission; what this discussion and what that thought does give rise to or calls upon, is making fine distinctions between award covered employees and everyone else does make things difficult to understand at very least and certainly to the (indistinct).

PN116

THE DEPUTY PRESIDENT: Thank you.

PN117

All right. Our next set of proposals in relation to this - again, to broaden the definition is by the ANMF. Ms Palmer, did you want to speak to items 24 and 25?

PN118

MS L PALMER: (No audible answer).

PN119

THE DEPUTY PRESIDENT: And then at item 32, there's the CPSU proposal.

PN120

Mr Wright or Mr Deguara, did you wish to speak to this item?

PN121

MR DEGUARA: We note that it's the PSU Group's and I don't want to speak on their behalf, but we wrote that we supported the ACTUs submission in our submissions.

PN122

THE DEPUTY PRESIDENT: Thank you.

PN123

Then item 34 is the SDAEA proposal again to expand the definition, Ms Biddlestone.

PN124

MS BIDDLESTONE: Thank you, Deputy President, and I'm not going to go on in relation to the written submissions we've made, but I will call out one of the examples that we provided in our submission because I think it's useful to get the context of how this works in practice for workers who provide care. So we have recently had a situation where one of our members who works for a large discount department store provides care to one person. That person is her elderly aunt.

PN125

Her aunt doesn't have any children or a partner, so she relies solely on our member for the provision of her care. She has dementia and had been diagnosed with bowel cancer, so had moved into a nursing facility and our member over a period of time, had been called on occasion quite urgently to attend. On the third occasion, the company refused the payment of personal leave for her to be absent from work to attend for that situation and they relied on the definition of 'Immediately family', to be able to not make that payment under personal leave.

PN126

So it is a very live issue for our members, and I suspect, for all worker carers across the economy. So it would be very good for worker carers if this was fixed under the award.

PN127

THE DEPUTY PRESIDENT: All right. Thank you.

PN128

I think the next item is item 43 in relation to the SCHADS Award by the (indistinct).

PN129

MR DEGUARA: Thank you, Senior Deputy President. We'll rely mostly on our written submissions, but just note that the SCHADS workforce is - or the disability workforce that we represent is (indistinct) per cent women and they have the burden often of making caring requirements and also their own health as well, but - and they quickly exhaust their entitlements as it is.

PN130

And this is why this will enable them to access services which are often only available during the normal 9 to 5 sort of settings and don't accommodate, generally, the shift work patterns and the rotating shiftwork patterns that are available in this sector. So I'll leave it at that. Thank you.

PN131

THE DEPUTY PRESIDENT: All right. Thank you.

PN132

Ms Biddlestone, in relation to item 44, is there anything beyond the proposal that we just discussed (indistinct) seems to crossover.

PN133

MS BIDDLESTONE: That's all right.

PN134

THE DEPUTY PRESIDENT: All right. All right. Then turning to the unpaid carers leave discussion, question 16, the first is the ACTU proposal, but that's really what you were addressing before, Ms Peldova-McClelland.

PN135

Then I think the next item is 58, which is the SDAEA proposal again, a right to unpaid leave in similar circumstances.

PN136

MS BIDDLESTONE: Yes. Happy to rely on written submissions, Deputy President.

PN137

THE DEPUTY PRESIDENT: All right.

PN138

Then unless anyone else wishes to speak in relation to question 16, the next question is a broad question about any other variations to assist employees meet their caring responsibilities and there's three proposals from the ACTU at 64, 65 and 66.

PN139

MS PELDOVA-McCLELLAND: Deputy President, we appear to be speeding through the questions, so - - -

PN140

THE DEPUTY PRESIDENT: I know.

PN141

MS PELDOVA-McCLELLAND: Perhaps we can sit in the witness box more. Now, in relation to proposal 64, that's the right to revert back to former hours for flexible work.

PN142

THE DEPUTY PRESIDENT: Yes.

PN143

MS PELDOVA-McCLELLAND: I dealt with that last week, so I don't need to deal with that again. In relation to 65, this is access to appropriate and dedicated facilities and equipment for women in work places. So this proposal comes from our affiliates reporting to us over many years and that there are still so many issues, especially in male dominated industries where women just don't have access to safe, secure and dedicated facilities or equipment, for example, bathrooms, change rooms, PPE, clothing, uniforms and so on.

PN144

And I would call out here the report of the ETU that was published in 2021 called, 'Nowhere to Go', and I'm sure the CEPU may wish to speak to this further, but this report highlighted the issue of women not having access to appropriate and dedicated bathrooms on many worksites and where there were bathrooms, how unsanitary, unsafe, inaccessible and unsuitable they were, especially for women.

PN145

So obviously, the new consideration in the modern awards objective at 134(1)(ab) talks about the need to provide workplace conditions that facilitate women's full economic participation and we say that would clearly support awards being varied to require employees to provide safe and appropriate facilities and equipment for their female employees. It's pretty basic and it's pretty shocking that in 2024 there

are some women in the country who don't have access to an appropriate bathroom when they go to work.

PN146

We acknowledge as well that some of these issues would be covered under WHS law, but the reason we're putting it forward in this stream is that we think there would be significant benefit in having an award provision that would allow employees to access dispute resolution and that would be incredibly helpful in actually resolving these issues in a timely and effective manner.

PN147

THE DEPUTY PRESIDENT: The other question in my mind about this proposal is the connection to employees with caring responsibilities. Is it that women bear the majority burden and therefore this would apply to them. Is that essentially the - - -

PN148

MS PELDOVA-McCLELLAND: Yes, I guess that's the loose connection, Deputy President, but we have, in considering this question of other variations, been more broadly minded to consider that new consideration of workplace conditions that facilitate women's economic participation and obviously, given that most carers are women, that's going to have a lot of benefits for carers.

PN149

THE DEPUTY PRESIDENT: Yes. All right.

PN150

MS PELDOVA-McCLELLAND: The proposal at 66, which is additional pay on termination for parents, this proposal is acknowledging the really vulnerable position that parents may well be in when their employment is terminated and they're vulnerable in two ways.

PN151

They've obviously got costs or they may have costs associated with the care that they continue - they need to continue to meet, such as childcare and finding a job may be more difficult for them where they have previously, for example, had the benefit of flexible working arrangements which may not be so easy to negotiate going into a new job and certainly, they have no formal right to request until 12 months has passed.

PN152

So similar to how workers over the age of 55 get additional, I think it's 55, I may be mistaken, get additional pay on termination in recognition of their particular vulnerability - - -

PN153

THE DEPUTY PRESIDENT: I think it's 45, isn't it?

PN154

MS PELDOVA-McCLELLAND: Is it 45? I apologise.

PN155

THE DEPUTY PRESIDENT: No, I'm not sure. Don't quote me, but I remember kind of looking at it back in the day and thinking when I hit that age and thinking, 'My God.'

PN156

MS PELDOVA-McCLELLAND: I know. Yes. I apologise. 45, as it should be. So in recognition of the vulnerable position there in trying to re-enter the workforce or move on in their career at that particular age, we say it would be appropriate to do the same for parents and that this would promote gender equality and social inclusion.

PN157

THE DEPUTY PRESIDENT: All right. I understand.

PN158

All right. Does anyone else wish to speak to any of the ACTU proposals. All right. The next is a proposal by the Australian Retailers Association, but it's also comprehended in their separate application to vary the award, so - and they're not attending today, so I think we can move beyond that, unless, Ms Biddlestone, you're keen to say something.

PN159

MS BIDDLESTONE: There's a lot I could say, Deputy President, but I have made some submissions in reply, so I'll leave it at that. Thank you.

PN160

THE DEPUTY PRESIDENT: All right.

PN161

There's the proposal at item 72 by the Health Services Union who aren't with us today and then the next proposal is the ACTU at item 76 in relation to breastfeeding and lactation breaks and facilities and there's similar provision or similar proposals by a number of other parties, the ANMF, the ASU, the CPSU and the SDAEA, so, Ms Peldova-McClelland?

PN162

MS PELDOVA-McCLELLAND: Thank you. I'll be brief. We note that this issue was specifically raised in the discussion paper and as we've outlined in our submission, article 10.1 of the Maternity Protection Convention provides for this right, provides a woman with the right to one or more daily breaks or a daily reduction in hours of work to breastfeed her child.

PN163

Australia is an outlier in respect of this entitlement, one of only a few countries without the entitlement to breastfeeding breaks or facilities and the absence of those entitlements may deter parents from taking these breaks and may make a return to work after parental leave, much more difficult, resulting in decreased workforce participation for women. So we say it's a bit of a no brainer that this should be part of the safety net in modern awards.

PN164

It's clearly a workplace condition that would facilitate women's full economic participation and it's clearly incredibly relevant to worker carers.

PN165

THE DEPUTY PRESIDENT: All right.

PN166

Do any of the other parties that have put forward similar proposals wish to speak to this in particular? Mr Robson?

PN167

MR ROBSON: Thank you very much, Deputy President. The ASUs perspective on this comes from working at workplaces where there is a limited amount of flexibility over the control over their time during working hours. This might be people working at the airport or workers working in disability services. It's really important that there is an entitlement in the modern award to provide for this. It's essentially one of those things where unless there's a clear guidance from the award regulation, it is one of those things that will fall by the wayside.

PN168

Once it is in the award, it is one of the things that employers and employees will then need to talk about, how they implement and that's the thing that's missing. Our members experience significant trouble accessing time to express milk during working hours. They tell us they have trouble finding appropriate facilities. It's very common for an employer to say, 'You've got to use the bathroom.' That's just completely inappropriate. It's unhygienic.

PN169

Breastmilk, particularly for children under the age of one, needs to be expressed into sterile bottles in a completely hygienic location and there are also privacy concerns. A bathroom is likely to be a public place. And then finally, and I think this is the one that we find most strange, some employers have concerns about employees storing breastmilk in fridges at the workplace. We don't see that there's much difference between anything else an employee might store in the fridge and this is one of the things that just needs to be captured in any clause. Thank you.

PN170

THE DEPUTY PRESIDENT: All right. I suspect that wouldn't be the dealbreaker of any such proposal. Mr Deguara - yes?

PN171

MR ROBSON: I'd have to say it's pointless expressing milk unless you can store it, so I think you might be wrong there, Deputy President.

PN172

THE DEPUTY PRESIDENT: No, I know. I meant the reverse.

PN173

MR ROBSON: Of course. Thank you, yes.

PN174

THE DEPUTY PRESIDENT: Yes, yes.

PN175

All right. Mr Deguara?

PN176

MR DEGUARA: If the Commission pleases. I'd like to - yes, share our support for the ACTU. We've actually had almost comprehensive coverage of all of our members for close to 20 years. We worked originally with the Australian Breastfeeding Association and in areas that are public sector utilities, universities, the State (indistinct) Awards, State Enterprise Agreements, it's almost universal. The issue of storage does come up from time to time.

PN177

It's amazing how zoonotic samples are often placed next to lactation in some of our parks and wildlife areas, but that's another thing which we've generally tended to remedy. What the Breastfeeding Association - when we initially got these sort of conditions set is that this actually assists employers because it assists workers return to work, system of retention, reduces recruitment and training requirements.

PN178

And apart from the health benefits to mothers and children, which they also go on about, it actually has a really good economic effect for productivity in the workplace at a microlevel as well as there are often safety benefits as well. So we support the ACTU. I'll let the PSU groups, if they're not here in attendance, go on their written submissions. Thank you.

PN179

THE DEPUTY PRESIDENT: All right. Thank you for that.

PN180

Does anyone else wish - Ms Biddlestone?

PN181

MS BIDDLESTONE: Sorry, Deputy President. Yes. I just wanted to just make the observation that similarly to Mr Robson's submission, our members in retail and fast food, (indistinct) hair and beauty, have similar experiences in relation to returning to work and being able to access breaks and facilities and have room to breastfeed.

PN182

Although for major employers, it is often in company policy, it is not well-known to workers and it is definitely not implemented in any kind of practical way, so it is up to the worker to try and seek out how they can actually breastfeed and facilities, breaks and depending on the role that you're performing, particularly in a retail environment, you do have to ask for permission to leave the floor and do that. So we think that it is necessary in awards to have provisions around that so that they can be properly implemented. Thank you.

PN183

THE DEPUTY PRESIDENT: Does anyone else wish to speak to any of those proposals? All right. The next two are proposed - at items 85 and 86, the proposal by the AMWU and the ANMF to reduce maximum ordinary hours and there's a similar proposal by the SDAEA at item 90 in relation to the hours and the introduction of a four-day week, I think. Yes. Does anyone wish to speak to those proposals?

PN184

MS PELDOVA-McCLELLAND: Deputy President, I do wish to speak to that proposal, but I think - I'm sorry if I missed the opportunity, we may have skipped over a few items in the parental leave section starting at 81.

PN185

THE DEPUTY PRESIDENT: Yes. I did, all right.

PN186

MS PELDOVA-McCLELLAND: So should I start there, Deputy President?

PN187

THE DEPUTY PRESIDENT: Yes, please.

PN188

MS PELDOVA-McCLELLAND: All right. So the proposal - and I can speak to 81 and 82 together, 81 is our proposal to vary awards that require an employer to demonstrate the redundancy is bona fide and that reasonable accommodations cannot be made where that redundancy is for an employee during or returning from a period of parental leave and the reason we put this forward is to try and make some inroad and to address the huge rates discrimination against employees on parental leave, so many of whom are terminated or made redundant.

PN189

And there's significant research supporting this, which I don't think we included in our written submissions just given the time constraints, but I'm happy to send this to Chambers if that would be helpful after today, but I just refer to two pieces of research. One is the 2014 Australian Human Rights Commission Review, it was Supporting Working Parents, Pregnancy and Return to Work National Review.

PN190

And it found that discrimination in the workplace against mothers is pervasive with one in two experiencing discrimination at some point during pregnancy, parental leave or return to work. One in five mothers indicated they were made redundant, restructured or dismissed, or that their contract wasn't renewed and there are many examples given in the report. I'll just read out of those where the respondent to their survey saying:

PN191

I've been made redundant twice. Both times it was at different organisations when I was on leave to have a child. I was told there was a restructure both times, however, it was only ever my role that was being restructured.

PN192

So this proposal would give employees on parental leave a bit more protection from this occurring and is clearly a workplace condition that would facilitate women's full economic participation. There's also some more recent research that's been undertaken by the University of South Australia. It's been published very recently this year and there - I haven't had a chance to look at the full findings yet, but the interim findings indicated that 18 per cent of employees on parental leave had their role permanently replaced. Happy to move on now to proposal - - -

PN193

THE DEPUTY PRESIDENT: Just before you do.

PN194

MS PELDOVA-McCLELLAND: Sure.

PN195

THE DEPUTY PRESIDENT: The first piece of research, was it the Human Rights Commission?

PN196

MS PELDOVA-McCLELLAND: That's correct.

PN197

THE DEPUTY PRESIDENT: And 2020 - - -

PN198

MS PELDOVA-McCLELLAND: 2014 was the Human Rights Commission.

PN199

THE DEPUTY PRESIDENT: 2014.

PN200

MS PELDOVA-McCLELLAND: And then (indistinct) was the South Australia University.

PN201

THE DEPUTY PRESIDENT: South Australia.

PN202

MS PELDOVA-McCLELLAND: And they - as part of a impetus for that research was acknowledging that research hadn't been done in a long time. The Commission wasn't able to follow up their survey, so my understanding is the University of South Australia took a lot of the questions and methodology and built on that so that there could be some comparisons made.

PN203

THE DEPUTY PRESIDENT: Thank you.

PN204

MS PELDOVA-McCLELLAND: The proposal 82 which is to recognise unpaid parental leave as active service, this would ensure that during unpaid parental leave, employees are accruing all their entitlements, so personal leave, long

service leave, annual salary increments, redundancy pay and so on, as well as the payment of public holidays during those periods.

PN205

And this is really designed to ensure that parents on and returning from parental leave which is obviously still mostly women, are not disadvantaged or, at least, not as significantly disadvantaged as they are at the moment, over time taken out from the workforce, for example, they'll have some leave entitlements to come back to. Their career progression hasn't been completely stunted whilst they're on leave and their retirement savings don't take such a huge blow.

PN206

Now, we'd say given the significant literature on the motherhood penalty and how women's careers suffer so much after having children in comparison to what happens to men's careers, this would be significant in providing workplace conditions that facilitate women for economic participation.

PN207

THE DEPUTY PRESIDENT: Thank you. I've also skipped over item 84 which was an SDAEA proposal. Do you want to - - -

PN208

MS PELDOVA-McCLELLAND: No. Thank you.

PN209

THE DEPUTY PRESIDENT: No. All right.

PN210

All right. Well, then the items in relation to shorter ordinary hours by the AMWU, the ANMF and the SDAEA; did anyone wish to speak to any of those items?

PN211

MS BIDDLESTONE: Sorry, Deputy President, this is more of a point of clarification and also responding to item 87 which is the ARA proposal which I'd neglected to address in our reply submissions and that is just that I wanted to point out that the variation that they had sought in relation to 38 hours across four days and the draft wording they have proposed in their variation application, it only provides for increasing the number of hours you can work in a day. It is in no way linked to a four-day week.

PN212

So we would have - yes, serious concerns about agreeing to what is currently put because it's not as it has been suggested. Thank you, Deputy President.

PN213

THE DEPUTY PRESIDENT: All right. Well, no doubt that will be ventilated strongly at the - - -

PN214

MS BIDDLESTONE: Yes, it will.

PN215

THE DEPUTY PRESIDENT: All right.

PN216

MS PELDOVA-McCLELLAND: Deputy President, may I also speak to this item; again the ACTU did have a recommendation in relation to this. So we've outlined in our submissions that our affiliates are pursuing various claims and priorities in relation to the issue of worker (indistinct) of time and ways to effectively reduce working hours and so some of these include shorter working weeks without loss of pay, decreasing hours worked through rostering adjustments and fairer rostering.

PN217

And, of course, increased annual leave as well and our affiliates have made specific submissions to this review about what they say is appropriate in their industries. So given this, we think there's significant merit in looking at these issues further.

PN218

And consistent with recommendations 22 and 27 of the Work and Care Final Report, we recommend the Commission include in its report that there be a further review of standard working hours, the extent and consequences of longer hours of work, stronger penalties for longer hours and ways to effectively reduce working hours and this was included in recommendation 18 of our initial submission. We note that Ai Group is opposed to this and say that the 38-hour ordinary hour working week is a longstanding, deeply entrenched feature of the safety net.

PN219

Any amendment would require extensive and detailed consideration and it would impact employees profoundly and this is part of the reason and exactly why we've recommended that there be a further review to look at this carefully and in detail to give it careful and thorough consideration including the impacts on employees and employers and there's obviously a lot of evidence regarding the multiple beneficial impacts for both employees and employers that have emerged from global and domestic trials.

PN220

Some of that evidence was provided to the Work and Care Senate Committee and included that shorter working hours reduced the scope for work life conflict by providing more scope to manage family and other personal responsibilities outside work hours, that they can support greater gender equality in employment participation, improve health and wellbeing, normalise care as a part of work, improve productivity, produce environmental and cost saving gains and may trigger a positive redistribution of paid and unpaid work between parents or between genders.

PN221

We note ACCIs comments in their reply submissions that this stream should be aimed at providing practical solutions that directly facilitate the balancing of work and care and they state quite strongly in their view, that grater equality will be achieved when there's a more equal distribution of caring responsibilities between

men and women, and we agree that is one of the key things that needs to shift and therefore we're surprised that they wouldn't support such a recommendation and review given the impact this can have on that very issue.

PN222

ACCI also state it's not clear to whom or on what basis the Commission would be providing a recommendation for such a review, so to clarify here, as outlined in our reply, it would be appropriate and consistent with the terms of the review for the Commission to include recommendations for legislative change that are, for example, directed at the government in its report.

PN223

Such a recommendation would be consistent with the Work and Care Inquiry which recommended that the government write to the Commission suggesting or requesting that the Commission undertake a review of standard working hours and the operation of the 38-hour working week, so the recommendation could be in those terms. Alternatively, the Commission could, of course, potentially initiate proceedings on its own motion to look at this issue.

PN224

ACCI state that a proposed reduction in working hours shouldn't be a goal or objective of the Commission and we don't claim that it should be a goal or objective of the Commission. It's simply that we say there's a strong argument to be made that a reduction in working hours and stronger penalties for longer hours could be necessary to achieve the modern awards objective.

PN225

In particular, having regard to section 134(1)(ab) regarding gender equality, (c) regarding social inclusion, (d) regarding additional remuneration for working overtime and unsociable hours, and (h) which is the impact on employment growth and the national economy.

PN226

THE DEPUTY PRESIDENT: Thank you.

PN227

Mr Arndt?

PN228

MR ARNDT: I just might make a short point about the jurisdiction of the Commission which is a heavy way to start any submission. I think I need to put on record the - well, I'll just speak for my own clients. ABI and Business New South Wales concern about the submission put that it be within the jurisdiction of the Commission to make recommendation to government about legislative change.

PN229

The content of the Senate Report or even the content of the Ministerial Request about what the Commission is to do would not define the Commission's jurisdiction, the Fair Work Act would. We see the Commission as having a very, very important role in regulating industrial relations in this country. We see that

the Commission has a jurisdiction to create a fair and relevant safety net in relation to modern awards and we see this consultation can easily be understood in that context.

PN230

Whether or not actual variations arise from these consultations or not, all of this presumably is in preparation for the exercise, and the proper exercise, of the Commission's jurisdiction in relation to its powers under the Fair Work Act. We don't see that the Fair Work Commission should or can be advising government as to what should go into legislation and I think that's as strongly and as clearly as I could put it.

PN231

THE DEPUTY PRESIDENT: I can't certainly think of any instances where the Commission has in any form made any such recommendations. It would be quite a big step; I would have thought.

PN232

MR ARNDT: Nor can I. Obviously, there is interaction between the two systems and to some cases and particularly, let's call it the test case scenario. We mentioned one previously; family and domestic violence. It's not uncommon that the Commission may make a decision within jurisdiction to change modern awards in a certain way which might be reflected in the NES. That's different from providing a report to government (indistinct).

PN233

THE DEPUTY PRESIDENT: Or indeed within - in the context of a decision in the exercise of its powers expose or shine a light on where there may be issues, which is far from a recommendation.

PN234

MR ARNDT: Correct. And courts and tribunals do that all the time, which is to say, 'This is the state of the law, this is what I can do and so I will do it.'

PN235

THE DEPUTY PRESIDENT: Yes.

PN236

MR ARNDT: Even despite - I wouldn't call this a unique process. There is an informality to this process, there is a breadth to this process.

PN237

THE DEPUTY PRESIDENT: As is evident here.

PN238

MR ARNDT: Correct. No leading the witness. But that doesn't mean that the Commission would accede it's bound by making recommendations to government, so that's all I'll put that in that respect. Thank you.

PN239

THE DEPUTY PRESIDENT: Yes. Understood.

PN240

All right. Now, the next set of proposals, unless I've missed anything, and the last set of proposals are those of the Flight Attendants' Association, so I'll hear from them. It might be - given that we've raced through the agenda today, there's a couple of things that I wanted to just mention before we finish, and I might do that now before hearing from Mr Nguyen, because as entertaining and articulate your submissions are, it may be that there are some people present in other industries that don't wish to continue for the rest of the session this morning.

PN241

So I did firstly, just want to thank all of the parties. There's been an enormous body of work that you've all done that has presented a kind of - an enormous range of quality proposals and submissions and arguments that have all been supplemented very well by the attendants during the consultation. So - and that's been under incredibly tight time frames, so I'm very grateful to you and I think it's actually been a very useful exercise.

PN242

In relation to tomorrow, I have listed it for a further day, but my sense - but if anyone has a different view, I'm certainly open to that, that that would only deal with the potential consent matters between the NTEU and the AHEIA. I don't know that there's any other matters, even where there's some prospect of consent that further discussion will assist tomorrow.

PN243

So for example, even with the proposal where there's some substantial potential support for annual leave and half pay, that was ventilated fairly comprehensively yesterday and I don't immediately see any great benefit from continuing those discussions tomorrow. So in relation to tomorrow, that will just be in relation to the ETU and AHEIA and it certainly won't take the whole day. It would certainly be concluded by 11 am. So nobody else needs to attend unless they wish to.

PN244

The other matter was I have invited, if anyone wants to say what their top three items are, whether that's themes or issues or specific proposals, but if anyone would like to express that, this might be a good time to do so and I've got my own internal book going as to - or bingo card as to what I think might come up.

PN245

Ms Peldova-McClelland, you'd like to take that up?

PN246

MS PELDOVA-McCLELLAND: Thank you, Deputy President. I would like to take you up on that opportunity. We have given some thought to the three - I think as you phrased it last week, issues and themes emerging from this stream and we've gone with the sort of theme. So the first theme we've identified that we think has emerged really strongly is the need for workers to have access to regular and predictable patterns and hours of work.

PN247

This includes dealing with a plethora of issues that have been identified with the structures of part-time employment, particularly in feminised industries where, as we've heard, they're characterised by a lot of guaranteed hours and highly changeable hours as well. It also includes ensuring workers have access to secure, stable and meaningful rosters that provide both job security and the ability for them to accommodate their caring responsibilities, what we've referred to, in our submissions, as roster justice.

PN248

And we'd like to highlight some of the submissions made by the NTEU in these consultations, which is that there can be no flexibility without security. In order for workers to have that meaningful flexibility that genuinely meets their needs, they first must have a job that is secure and where they're not afraid of the implications of exercising their rights or refusing additional hours, and we'd like to refer here to the distinction that's made in the research between good flexibility and bad flexibility.

PN249

So good flex is described as where workers have a degree of control and choice over the types of flexibility they access coupled with the capacity to exercise their voice or have a say to signal their needs and preferences. This form of flexibility allows workers to construct and progress within their careers, underpinned by secure employment and a decent wage. Bad flex, on the other hand, is described as precarious and poorly rewarded work, where the flexibility overwhelmingly benefits employers and workers have low levels of control over these arrangements.

PN250

And in the literature, this flexibility is seen as coming at the expense of job security and gender equality over a worker's life course. The second theme that we think has emerged really strongly in this stream relates to provisions regarding hours of work, so provisions such as standard hours, overtime, TOIL, minimum engagements, on-call and travel time, and how all of these provisions differ between awards covering male dominated industries and those covering female dominated industries.

PN251

The theme we've identified is that workers in female dominated industries are worse off in many ways. They have less secure employment. They have more unpredictable and precarious working arrangements. They're often not fairly compensated for working at unsociable times or outside their ordinary hours and they're less able, as a result, to manage their caring responsibilities. We say that all of these issues are contributing to gender-based undervaluation, because they directly impact on income or women workers.

PN252

For example, they're more likely to have a shorter minimum engagement period, they're more likely to have a broad span of hours, which means overtime is not payable on nearly as many hours as they are for men in male-dominated industries, and the compensation for on-call work is often far less, often being an allowance rather than payment at ordinary rates.

PN253

Finally, the third thing we've identified is whether current leave entitlements in awards are sufficient to enable workers to balance work and care, including the specific caring and cultural obligations of diverse groups of workers, such as First Nations workers, culturally and racially diverse workers and LGBTIQ+ workers.

PN254

In our submission, workers don't currently have adequate time or leave entitlements to manage their care and responsibilities and their life outside of work, and we've identified a number of issues in this respect, including the quantum of leave and the narrow scope of personal and carer's leave, and the absence of specific leave provisions, such as ceremonial leave, from most awards, currently.

PN255

THE DEPUTY PRESIDENT: All right. Thank you.

PN256

MS PELDOVA-McCLELLAND: Thank you.

PN257

THE DEPUTY PRESIDENT: Who else would like to - Mr Arndt, you go now.

PN258

MR ARNDT: I've tried to approach the homework with as open mind as possible and not just to engage in a self-serving exercise. Obviously we have our issues, other parties have their issues. Just because it's our issue doesn't mean it makes the top three, and one of the difficulties in synthesising all the issues is that we have covered such a broad scope of ground over the past four days. We thought the discussion paper was very broad, and I think the parties have exceeded even that, so that's something.

PN259

We've had contributions from associations which are really, really specific and targeted, and then we've had everything else, including changes to the NES and letters to Santa, and which I think most people would agree are probably not going to be part of the system any time soon. I do have a top three. It's in the top three for different reasons. The first is working from home. Both sides of the Bar table had proposals about working from home. It's an area that seems to have a lot of potential for development, to use a particularly Sydney phrase.

PN260

If you take the relevant safety net, or take the idea of a relevant safety net, we say that working from home has to form a part of that relevant safety net. There is disagreement as to a right to work from home, but we say very clearly if the modern awards are to be relevant and fair, it should contemplate working from home and the difference between working from home and working from a site or from the office.

PN261

The second issue for me is IFAs. There is some uniformity and agreement between the parties. Everyone appears to agree that the current system is not as good as it could be or should be. One thing I should have said in opening is, really focusing on what working and care means to Australians, it seems that the deficiencies in IFAs particularly impact on people who have caring responsibilities and also work, probably because it seems like IFAs were created, at least in part, to assist people who had care and responsibilities. That's definitely the standard, classic example of an IFA and one used in the EM and so forth.

PN262

We obviously don't think that the solution to deficiencies and IFAs is to make them harder to use or proscriptive. If the Commission was minded to do that, indeed, if the legislature is minded to do that, we say that they're useful, which is further - they'll become a dead letter. That might be the point of those kind of proposals. We say that IFAs could be fixed and someone should have a go at fixing them.

PN263

The last issue is part-time work - very broad, I understand, but we would have to - and we don't have any claims on about part-time work. We'd have to concede that part-time work, regulation of part-time work, is central to work and care, absolutely central. The difficulty, as we've seen through various contributions from various parties, is that regulating part-time work is so dependent on the industry, it's so dependent on a particular modern award.

PN264

The best evidence we've seen of that is the considerable contribution of the FAAA in these proceedings. I've learnt a lot about the work of people who work on our planes and in our airlines. They've been very, very detailed about the types of considerations that apply to their workers in that industry, and without making any submissions about those claims, it really does demonstrate if you're going to regulate part-time work, you're going to address part-time work, it needs to be done on an award by award basis, not a one-size fits all approach.

PN265

Anyone who had the lived experience of the four-yearly review, casual, part-time case, will recall the extraordinary depth, scope, scale of that case, on the basis that all industries are different and the one size fits all - relevantly, in that case, the minimum engagement of four hours universally applied over everyone - was rejected, on the basis that one size does not fit all. Certain industries have different - for example, industries have different clients, different regulation, didn't laws applying to them, different forms of work.

PN266

They're just different, and so if the Commission is minded to address a part-time employment condition, we say that the proposition, the exercise, is obviously far broader than this stream. It's a difficult road, it's long road, but it's a road that needs to be undertaken award by award, in an industry-specific way, and that's the only way that a fair and reasonable, fair and relevant minimum safety net can be achieved.

PN267

THE DEPUTY PRESIDENT: It's an interesting challenge for the Commission as much as anyone else, I guess. I mean, for me, some of the issues that the discussion paper and the analysis - when you do everything on an award by award basis, you can inadvertently end up with quite disparate outcomes where there's not an obvious connection or rationale because of the nature of the industry, for example, but that might be a challenge that we need to grapple with.

PN268

MR ARNDT: Particularly when modern awards were created in a very frenetic and very challenging environment of award (indistinct). That's not a criticism. There are obviously things to fix in the system. Everyone would agree that the difficulty is that part-time employment, particularly because it relates to so many labours, hours of work, availabilities of work, and all those things central to the concept of work and care, for some industries which we've heard about - some industries are more flexible for part-time workers. Some industries there is an ability for part-time workers to work more hours without additional overtime pay. There are reasons for that. Some industries are extremely rigid and that doesn't seem to present a problem.

PN269

The casual and part-time case in the four-yearly review had analysis of industries where part-time work was, as it was described by the Commission, a dead letter. Hospitality is an example, because the part-time conditions in that industry were just not fit for purpose for that industry, so everyone got pushed to casual employment. That hasn't been an issue that's been particularly ventilated in these proceedings. The relation - well, maybe on the first couple of days, slightly - the connection between the regulation of part-time work and the effect on casualisation that that has, but that, you know - - -

PN270

THE DEPUTY PRESIDENT: Well, that was part of the SDA's submissions, pointing to that was the rationale for more flexible provisions in awards, on the basis that it would lead to more permanent part-time employment and a reduction in casual, but the suggestion is that that's not been the case. But I think the other issue in relation to part-time work that's been raised is with the upcoming changes to the definition of casual employment. The wash-through and the practical impact of that is a bit of a kind of open question at this stage, and - - -

PN271

MR ARNDT: Yes, that's correct. We didn't make a submission on that specifically, but I think that's right. The relationship between part-time and casual employment, if you tighten casual employment, it seems you've got to loosen part-time. If you tighten part-time, you've got to expect more casualisation. It is too early to tell. That doesn't mean the Fair Work Commission can't consider these issues and go along with its business, but there has been an extraordinary change in the way casual employment is regulated, all kinds of changes in relation to the Fair Work Act. It is an open question as to what all those things will actually mean.

PN272

THE DEPUTY PRESIDENT: Thank you. Any other bids? Ms Biddlestone?

PN273

MS BIDDLESTONE: Thank you, Deputy President. I'm going to initially agree with Mr Arndt and then disagree. In terms of our three, I think that the most important one for us is part-time employment, and I think with the evidence that we've provided and the submissions we've made, it's pretty clear to us that for the industries that our members are working in, part-time employment is broken. It no longer reflects what the intention of part-time employment was, which was that it is supposed to be the same as full-time employment but on less hours.

PN274

In our awards that is not what it looks like anymore, and unfortunately we have a situation where the excuse for that made by employers is that it needs to be that way because of the nature of the industry, and we submit that that is just not the case, that there is absolutely scope for better rostering practices which would allow workers to be rostered on regular contracted hours that would create more stability, which is particularly important for worker carers, but it is more cost effective at the moment, under the current construct of awards, for employers to have very low numbers of full-time workers, which we've demonstrated in the submissions we've made, a very large base of part-time workers who work on low contracted hours but are given the opportunity to work additional hours at no additional pay apart from the ordinary hours of work.

PN275

This is having significant impacts on our members when they are trying to (1) earn enough of an income to actually support their families. This is in the context of a very low paid workforce. (2) in the context of being in households where they do have to manage work and care for others, we hear from our members, and we've heard it through the research that we've done, is the management of that is virtually on a week-by-week basis, where they have to constantly work with their family in terms of who's going to be looking after who that week. It's a very difficult and stressful way for people to live, and we submit that it is not necessary if employers were to roster people properly.

PN276

So in terms of our second point, I suppose, it's part-time employment, one, in terms of that being broken, and that is interlinked with rostering under the awards and the need for that to be fixed, in line with better part-time provisions that reflect what part-time employment actually should be, and then the third for us is - - -

PN277

THE DEPUTY PRESIDENT: So just to be clear - - -

PN278

MS BIDDLESTONE: Yes.

PN279

THE DEPUTY PRESIDENT: The second is rostering - - -

PN280

MS BIDDLESTONE: Yes.

PN281

THE DEPUTY PRESIDENT: - - - only in relation to part-time, or more broadly?

PN282

MS BIDDLESTONE: No.

PN283

THE DEPUTY PRESIDENT: The more broadly - - -

PN284

MS BIDDLESTONE: More broadly, yes.

PN285

THE DEPUTY PRESIDENT: Okay.

PN286

MS BIDDLESTONE: Then the third is just reflecting on the gender nature of awards, and this exercise and this review has been very helpful, I think, for unions, as well as employers, to actually reflect on the award system as it is, because it's given us an opportunity to go back and look a little bit more closely to the award system that we currently have, and what it's identified, I think, for many of us, is that with the history of awards, how they were made, how they've been varied over time, there is an obvious gendered element to how they are currently constructed.

PN287

That is resulting in really poor outcomes for women workers, who are much more award-reliant than male workers, and I think that part of this review, and I'm sure it will come up also in the job security review and gender equality, is that there needs to be a proper review not only of the rates of pay under male and female dominated awards but how the award terms and conditions are constructed for those workers as well, because there are definitely unequal and, we would argue, unfair outcomes, currently, for female workers in the award system. Thank you.

PN288

THE DEPUTY PRESIDENT: Thank you. All right. Was there anyone else that wanted to indicate their priorities? No? Sorry, I can't see a hand up. Mr Nguyen?

PN289

MR NGUYEN: Thank you, Deputy President. We can address the top three issues now as well, if you would like.

PN290

THE DEPUTY PRESIDENT: Yes.

PN291

MR NGUYEN: I'll firstly just address what Mr Arndt was saying about the process. I think generally the process that has been conducted by the Commission in this and previous reviews, going back to the award modernisation process, is

appropriate, in terms of starting from a point of what are the standard or general conditions that might be applicable across the modern awards system, and then it's generally been the case that it's up to parties to establish that because of the unique features or nature of their occupational industry, that the Commission needs to then put further resources into an industry or occupational specific inquiry into that specific issue, which is what the FAAA is doing in these proceedings, which is establishing for the Commission that there are occupational specific characteristics that require a more focused approach in relation to cabin crew.

PN292

That doesn't mean that every industry needs to. In terms of resourcing, that would just be unwieldy for the Commission, and we need to support the Commission an efficient conduct of the review process and in establishing those modern awards system-wide conditions that might be applicable across the system.

PN293

In terms of the FAAA's priorities, our main priority is for the Cabin Crew Award as a whole to be looked and varied so that it can be a fair and relevant safety net. The multitude of issues and range of issues which we've raised before the Commission should demonstrate that it's not currently a fair and relevant safety net, so within that overarching priority the first issue which is a priority for us is that there are properly fixed and valued rates of pay in the award and that those rates of pay are free from gender-based undervaluation.

PN294

Secondly, our priority is having a fair set of operational rules for assigning duties, assigning reserve, assigning on-call duties, providing rosters and providing monetary support for those duties, whether they're at home or overnight, in a different location, and then, thirdly, having a fair set of rules for casual employment, including for their home reserve duties and including for certain leave arrangements such as the upper respiratory tract infection leave. If it pleases the Commission, I can then move on to item 92.

PN295

THE DEPUTY PRESIDENT: Just pause there for a moment. So, yes, I think unless - is there any other issues that anyone wished to raise in relation to the consultation? Ms Wells? Otherwise, we'll just turn to Mr Nguyen. Ms Wells?

PN296

MS WELLS: Thank you, your Honour. Just in respect of the three areas of priority that you've invited the community to identify - with much appreciation - I would certainly like to take the opportunity to identify, as our comrades in the ACTU and other affiliates have identified, the NTEU considers job security to be a critical element of meeting the modern award objectives and the legislative objectives.

PN297

As other speakers have identified, without the ability to actually, genuinely have voice and agency and engage in discussions with employers, collectively or individually, around work and carer needs, the only genuine basis on which that

occurs is having a framework of equitable negotiation, and one part of that, for the purposes of this review - separate to other forms of power relations that may influence enterprise bargaining, et cetera, but one form of that agency is a critical element for employees of job security.

PN298

So we are participating in the job security review. We have much work to do there, and further discussions to have with employer association representatives on ensuring that NTEU members and higher education workers gain the benefit of recent changes to legislative minima.

PN299

We also note in our submissions that there is more work to do, we consider, more opportunities to take, in respect of strengthening the definition of casual employment. We welcome recent legislative framework changes for minimum entitlements, however we note that in the literature review published on 8 March, and with other affiliates, there are further opportunities, either specific to an industry or overall, to strengthen and tighten the definition of casual employment to the benefit of all workers and all participants in our communities.

PN300

So job security is the first of our top three. The second that we have identified in our submissions but also that other parties have made a range of proposals on, is the regulation of work and time for the purposes of working carers. The literature review collates a number of pieces of evidence and research to support the view that in relation to the regulation of working time there is certainly much to do to change, both in legislation and in modern awards, and progress from the residual Harvester male organisation of work, more than 100 years later our awards and our legislative frameworks are still based upon the organisation of working time that has emerged and has influenced casework and legislative change since the Harvester male decision was made.

PN301

So in respect of changing that configuration and concepts of working time, a male looking after three children, a female as a part of a family, in full-time care of three children, the institutions, the regulation of work that arises from that decision, more than 100 years later, obviously still influences the regulation of working time in modern awards and our minimum entitlements of legislation.

PN302

This is why we agree with the evidence-based approach of the literature review and recommendations that go to ensuring that entitlements, right to flexible work, part-time work, moving between part-time and full-time work, being able to work remotely through application, should be a universal right for workers so that employers are obligated to allocate work on the basis of a framework which does not expect or does not privilege or presume a male full-time worker.

PN303

The universal application of rights to flexible work, individually or collectively, in the control of employees and the control of employee proposals would be some way of addressing the historical legacy of the Harvester male in our legislative

and modern award framework. So we really hope that the parties and the Commission may take the opportunity of making a recommendation in the report to introduce an individual and collective right for employees to make application for flexible work and to have those applications genuinely considered.

PN304

The final priority, which we have made some submissions on but many other union affiliates and the ACTU have as well, is rather than - I would characterise them as hopes or wishes or Santa lists, our proposals to remedy in substance enable substantive equality for employees who have caring responsibilities via forms of leave and other mechanisms that are specific to those employees nevertheless enable our community to function, whether it is identifying leave that relates to individuals being able to care for themselves and recognise their own specific caring needs which benefits the community and the regulation of work, or which gives payment to the various forms of unpaid work that workers with carer's - with responsibilities, in the majority women, have and undertake currently.

PN305

So again, we would recommend the proposals for individual leave benefits that we've made in NTEU submissions, but also support and, as relevant to the higher education awards, where support the recognition of other unions and the ACTU submissions in respect of caring work or leave provisions that enable caring work to be undertaken.

PN306

This caring work will be undertaken regardless, and employers may benefit from this being unrecognised or unpaid. This is an opportunity for us to ensure that caring work and caring obligations are supported via paid leave in order that workers with carer's responsibilities are able to participate in the workforce adequately, to the benefit of employers and all of us as a community.

PN307

The final point I made about those submissions, your Honour, and we've touched upon this in prior submissions, is simply that we do consider that the literature review and evidence-based approach, as well as unions being the voice of workers, unions being the voice of employees with carer's responsibilities, and having those voices heard through this process, is the way in which to discern how workers with carer's responsibilities need their workplaces or modern awards and legislative minima to change.

PN308

We've sometimes heard across this process numerous assertions from some employer bodies as to how workers with caring responsibilities would best be served by modern award changes or legislative changes. As we've noted prior, both in respect of unions being the voice of employees in this process but also that an employee individual or collective application right to flexible work would enable individual or collective voices of workers to be heard and to be genuinely assessed in applications versus the assertions made by some parties as to what would be in the best interests of employees with caring responsibilities. Thank you so much for the opportunity.

PN309

THE DEPUTY PRESIDENT: All right. Thank you. Mr Nguyen, back to the summary proposals, and we're at item 92.

PN310

MR NGUYEN: 92.

PN311

THE DEPUTY PRESIDENT: And through to 96.

PN312

MR NGUYEN: Thank you, Deputy President. I'll address 92 and 93 together, because they're in the same vein. I won't repeat what's in the submission, but it is important to outline from the outset that there can't really be a promotion of work and care or job security or any other objective, really, if the rate of pay is inadequate to sustain a person.

PN313

It's not possible to even begin considering whether the award provides for a fair and relevant safety net to carers if the minimum rates are manifestly inadequate - and I don't say manifestly inadequate as a hyperbole, because as will be shown in our submissions today, they are manifestly inadequate. Firstly, they're inadequate in terms of the minimum weekly rate, which appears to be affected by historical assumptions based on gender, and also they haven't been properly fixed in accordance with the structural efficiency principle. Secondly, the divisor used to arrive at the hourly rate of pay is 38, which is not the number of ordinary hours for a full-time worker in the occupation.

PN314

Deputy President, you were interested yesterday in how much of an impact the Cabin Crew Award has given the number of enterprise agreement. I explained yesterday, at a very high level, how the Cabin Crew Award continues to have significant influence over the terms and conditions of the occupation because of the industrial strategy that's been pursued by the Qantas Group, but today I will demonstrate very specifically the direct and significant impact that the Cabin Crew Award has upon the industry rates of pay.

PN315

The FAAA has prepared a bundle of materials which I'd like to take you to. If it please the Commission, we're happy to tender that, if necessary, and I understand there's a hard copy in the room if you would like a hard copy as well.

PN316

THE DEPUTY PRESIDENT: I'm just opening it up now.

PN317

MR NGUYEN: Yes.

PN318

THE DEPUTY PRESIDENT: I can see that. It's not necessary to tender it.

PN319

MR NGUYEN: Yes. If it please the Commission. If I can take you, Deputy President, to page 2 of the bundle. We've prepared a sample comparison of weekly rates of pay in some major agreements which apply to cabin crew. You can see there the first agreement is the Qantas Domestic Pty Ltd agreement, which provides for \$49 per week more than the award. Qantas Domestic Pty Ltd was established around 2008, 2009, and has been the primary vehicle through which the Qantas Group has employed cabin crew to work on Qantas airplanes.

PN320

The second agreement is the Qantas Airways Limited agreement, so that is the agreement that applies to the airline operator, and you can see there that the rate of pay is actually \$25.32 per week less than the award. Now, of course, what that means is that the award minimum rate actually applies in that particular instance, but we do note and concede that Qantas Airways Limited hasn't employed new cabin crew since 2008, 2009. After that time, new cabin crew who are employed by the Qantas Group to work on Qantas airplanes has been employed under the agreement which is above that, the Qantas Domestic Pty Ltd agreement. The third agreement there is the - - -

PN321

THE DEPUTY PRESIDENT: Just before you move on, Mr Nguyen, so is the explanation for the lower rate than the award in the short haul new entrance rate - is that because that agreement is quite dated, so it would have passed the BOOT at the time the agreement was made but now wouldn't?

PN322

MR NGUYEN: No. If I can clarify, Deputy President, that agreement is not dated. It has been approved recently by the Commission, however there is a classification scale in that agreement that goes from first year up to over, I think, eight or 10 years, and all of the cabin crew who are employed under that agreement would have commenced their employment from 2008, which is why those rates have not really been applicable in practice, because everyone's on the more than eight, more the 10-year rates - - -

PN323

THE DEPUTY PRESIDENT: I see.

PN324

MR NGUYEN: - - - which are well above the award, but the fact that the rates in there are less than - if Qantas Airways Limited decided to employ a first-year cabin crew member now, they would have the Cabin Crew Award rate apply to them, because it's higher than the rate that actually exists in that agreement.

PN325

The third agreement is the Jetstar Group Pty Ltd agreement, which is only \$29 per week, and then the last agreement is the Maurice Alexander Management Pty Ltd agreement, which is often referred to in the industry as MAM. If you hear people talking about the MAM agreement, that is the one that's referred to, and that one provides for \$33.48 per week less than the award if you calculate a weekly rate. That one is actually applicable. So those rates are actually applicable, and

the reason why we think this has occurred is because there isn't actually a weekly rate specified in the MAM agreement, and I'll take you through that now.

PN326

Sorry, before I take you to that, I'll run through the weekly rates first. In terms of the weekly rates, we appreciate that gender pay equity issues are being dealt with by the annual wage review at first instance, but we note that the Cabin Crew Award has not been identified in the Commission's annual wage review research projects, where there have been identified 12 awards where the Commission has produced research in relation to the historical undervaluation of rates in those awards. The Cabin Crew Award is not part of those 12, which is why I think it's important for us to outline some of these issues here today.

PN327

Deputy President, as you would be aware, as a member of that Full Bench, the Aged Care Work Value Full Bench decision noted that the structural efficiency principle was established in 1989 by the then Australian Industrial Relations Commission, and they referred to that as the C10 Metals Framework Alignment Approach. The process of varying awards to align to the C10 Metals Framework was known as the Minimum Rate Adjustment, and in 1998, during the awards simplification process, the AIRC moved to properly fix all awards to align to the C10. While the C10 didn't mandate that everyone should be having their rates changed to be equal to the C10 rate, in practice that was what occurred, and that was acknowledged in the aged care decision, as you'd be aware.

PN328

If I can take you, Deputy President, to page 13 of our bundle. We've conducted an analysis and outlined the equivalent trade rate in the seven major awards in the modern awards system, and you can see there that all of the rates are equal to the Manufacturing and Associated Industries rate for the C10, which is \$995, except for the Clerks Private Sector Award and, of course, except for the SCHADS, the Social, Community, Home Care and Disability Services Industry Award, which has an equal remuneration order sitting on top of that (indistinct) rate.

PN329

For completeness, we've also included at page 10 of our bundle the definition for the C10. So we can see there that the definition includes a recognised trade certificate or certificate III in engineering or mechanical trade or certificate III in engineering fabrication trade. Following that through, we've also included in our bundle at page 14 the training package which is available from the government training.gov.au website for the certificate III in engineering, mechanical trades.

PN330

If we follow that through to page 17 of our bundle, we've also included there the training package for the certificate III in aviation cabin crew, and then following that, on page 19, there's a certificate IV in aviation supervision. If we compare the units between the certificate III and certificate IV, the differences appear to be predominantly in the supervisory or management units, but other than those, the remaining units in the training package are similar. There used to be a certificate II in aviation cabin crew, which has been discontinued, so the minimum requirement now is the certificate III training package for cabin crew.

PN331

So putting all these materials together, it's clear that the cabin crew rates should be aligned to the C10 at a minimum, but for clarity, we don't submit that that's the only process that should occur. At a minimum, the Commission should immediately increase it to the C10 rate; that's obvious, but that's not the final process that should occur, because we do also submit that there has been historical undervaluation of the occupation as well which should result in a further increase to the rate above the C10 rate.

PN332

As such, we do recommend to the Commission that a further process should be undertaken to account for and rectify the gender-based undervaluation, and in that vein, we note the analysis that was undertaken in the Aged Care Work Value decision, of which, Deputy President, you were a part of.

PN333

I will now turn to the classification structure. So the classification structure in the award is a flat structure which only has two classifications, as you would be aware, Deputy President. The flat structure has one level for cabin crew and then an additional level for cabin crew managers. Crew are required to satisfy on an annual basis that they meet requirements set down in the Civil Aviation Safety Authority's regulations around emergency procedures, and we've attached those requirements to our submissions.

PN334

The association has identified that the one level award classification structure supports employers who are covered by enterprise agreements routinely restricting casual employees to the first level of the enterprise agreement classification structure, regardless of their skill level, and in this context as well, supervision and management, we think, are key factors in determining the classification skill level, and the supervision and management that cabin crew are required to conduct over passengers is not adequately comprehended by the single classification structure, which only comprehends the supervision and management of cabin crew managers over other cabin crew, it doesn't recognise the supervisory and management skills of cabin crew over sometimes hundreds of passengers.

PN335

So while on board, under the chain of command of the pilot, a cabin crew member can be required to exercise their training, knowledge and expertise in a range of first responder responsibilities. The first responder responsibilities are outlined in our submissions, and the federal secretary, Teri O'Toole, will also be outlining them as well in her conclusion today, but if I can just briefly speak to them, cabin crew can be required to respond to and manage a medical emergency on board, including the use of defibrillator. They're also required to control and extinguish a fire on board.

PN336

They're required to restrain and detain disorderly or physically aggressive passengers. They're required to protect and defend the cockpit from unauthorised entry, including through what lay people would describe as the use of martial arts.

PN337

They're required to direct and control the efficient and safe evacuation of passengers from the aircraft in an emergency, which is a very complex operation and includes assessing the type of landing, whether it's on water or land. It also includes the assessing the surrounding environment for fire or other hazards and then deciding which doors are safe to exit from, and, lastly, they're also required to be aware and alert at all times to any suspicious activity that might result in incidents on board or needs to be reported to local law enforcement authorities either before take-off or upon landing.

PN338

An example that I'd just like to draw attention to is when boarding passengers, while we might only see the cabin crew member checking our ticket and directing us to their seat, they're also mentally considering the characteristics of passengers as well to see who might be able-bodied to assist in various emergency situations. Many of these skills are invisible to passengers, and members of the public will only see flight attendants providing food and checking their tickets on entry.

PN339

So for the purposes of these proceedings, we have proposed a four-level cabin crew classification structure which recognises the increased capability and the application of skills through repeated annual training and skills that are required in supervising and managing hundreds of passengers.

PN340

If I can turn briefly to a comparison of rates, currently a cabin crew member earns 94 cents more than a level 1 fast food employee and 51 cents less than a level 2 fast food employee working ordinary hours, Monday to Friday. Cabin crew regularly work Saturday and Sunday without penalty rates, so on a Saturday, a fast food employee level 1 earns \$5.24 more than cabin crew for each and every hour worked. I should say that our submission doesn't dismiss the skill levels or try to denigrate or put down the skill levels of fast food workers. It simply demonstrates the absence of a classification structure within the Cabin Crew Award, meaning that they're not appropriately valued for the work that they do.

PN341

The importance of skill development through regular and repeated training is crucial in situations where the skills are not used regularly, and that's certainly the case for emergency procedure training for cabin crew, because they are unlikely events, all of these emergency incidents that might occur.

PN342

This was demonstrated, if I can give another example, in a 2022 Australian Transport Safety Bureau report, which was about a July 2021 incident. The incident involved the landing gear on a QantasLink aircraft that was not retracted below the maximum altitude, and that resulted in the aircraft vibrating. After the checklist was done and the autopilot was engaged, both pilots noted that the aircraft was noisier than normal, with noticeable vibration that was uniform and distracting. The ATSB reported that the pilots only realised the issue when a cabin crew member told them that the landing gear was still deployed.

PN343

In this context the ATSB found that, for pilots, skill decay or skill degradation refers to the loss of trained and acquired skills and knowledge following periods of non-use. It also demonstrates that a cabin crew member, after initial cabin crew training, is unlikely to have known that the aircraft procedure had not been deployed by the pilots.

PN344

Similarly, a cabin crew member, even with one year of initial training, would be less capable of managing an emergency situation than a crew member who has undergone repeated emergency procedure training and conducted thousands of silent reviews during take-off. When I say silent reviews, we've referred to in our written submissions the process where every take-off a cabin crew member has to sit and consider what they might do in various emergency situations, which is why passengers are not able to talk to the cabin crew sitting across from them during take-off, because all of them are required to conduct the silent review. So through these repeated training and silent review, they do become second nature if the unlikely event of an emergency does occur.

PN345

If I can give another example of an emergency situation from 2009 which is not contained in our submission. It was famously referred to as the Miracle on Hudson River and has subsequently been turned into a motion picture starring Tom Hanks. It's an example where a plane had to land in the Hudson River adjacent to Manhattan Island in New York City, which, Deputy President, you might be aware of.

PN346

In that particular incident, the three cabin crew members on board the flight had between them 95 years of cabin crew experience. Shortly after take-off from La Guardia Airport at 3.27 pm the plane hit a flock of geese and the engines, both of them, shut down, and the plane went quiet. The pilots calculated within minutes that they could not, in their assessment at that time, turn back to La Guardia Airport and could not also land at the nearby New Jersey Teterboro Airport.

PN347

At 3.29, which is about two minutes later, the captain said over the intercom, 'Brace for impact.' The flight attendants had about 90 seconds to think about the impact before it was about to happen. Cabin crew recounted that their training kicked in and all three cabin crew members began preparing the passengers for impact. It was recounted by passengers to the media that the cabin crew immediately sprang into action and shouted commands to passengers to keep their feet flat on the floor, put their heads down and cover their heads. At 3.31 pm, just under four minutes after the geese hit the plane, the Airbus A320 landed in the Hudson River.

PN348

The New York Times reported that a passenger tried to open the rear doors, which would have allowed a gush of water into the cabin, but that was stopped by the cabin crew member at the rear. She shouted to passengers to move to the

over-wing exits, as water was rising rapidly in the rear of the aircraft from structural damage to the plane. So there was water leaking into the aircraft, but not from the door being opened, it was due to the structural damage.

PN349

The rear cabin crew member that I just referred to also suffered a laceration to her leg from the metal bar that had pushed up through the floor, but she still managed to evacuate all the passengers before exiting herself at the front of the aircraft - credit also to the pilots who actually did the final sweep of the aircraft before exiting themselves, and, of course, critically, all 155 people on board were successfully evacuated within 24 minutes. That time would have been significantly shortened had the rear doors been opened and there would have been a risk that not all of them would have been able to evacuate the aircraft.

PN350

We've also provided, Deputy President, in our written submissions, the recent example of JAL crew who evacuated the plane at Haneda. That plane was hit on the runway and was engulfed in flames while cabin crew were evacuating the passengers. These examples really demonstrate the high level of skill required of cabin crew in keeping passengers safe and evacuating them from emergency incidents.

PN351

I'll turn now to the second issue, which is item 93, which is the 38 divisor, and return to the MAM agreement which I was referring to earlier. We have an extract of the MAM agreement which is at page 4 of the bundle.

PN352

THE DEPUTY PRESIDENT: Yes.

PN353

MR NGUYEN: Clause 44.1 indicates that flight attendants shall be paid a minimum hourly rate as set out in clause 45 and, in addition, a 25 per cent loading. So then if we go to clause 45, you can see there the table which stipulates the rates, but if you look at 45.2, it's actually been pegged to the Aircraft Cabin Crew Award. So the minimum hourly rate specified in the table in 45.1 is the Aircraft Cabin Crew Award rate with an addition of 50 cents per hour. 'The rate will be adjusted in line with any changes to the Aircraft Cabin Crew Award rate.' If you look at that on its own, you would expect that the weekly rate should definitely be higher than the award weekly rate, so why is that the case that it's not?

PN354

We turn then to clause 47.1. There's a clause about the ordinary hours of work. 47.1 indicates that there's 1872 hours each week. Over 13 roster periods of 28 days it would be 144 hours, over 12 roster periods, 156, and if it's a fortnightly roster period it's 72. So from those figures, in each calculation the weekly number of ordinary hours is 36. That should be the number of weekly ordinary hours, so then when you calculate 36 hours multiplied by the minimum hourly rate, that's why you get the reduced weekly rate of pay. If I turn back to the table on page 2

of our bundle, we've got in the footnote there just how we've calculated that from the MAM agreement.

PN355

THE DEPUTY PRESIDENT: I see.

PN356

MR NGUYEN: The reason why this is the case is because in the award the hourly rate is actually arrived at by dividing the award weekly rate by 38 hours instead of 36 hours, so if the award rate was divided by 36 hours, then that would result in the MAM weekly rate being higher than the award rate.

PN357

The Commission's processes in terms of setting weekly rates of pay goes back to the Harvester decision. There was a brief interregnum when the Australian Fair Pay Commission Standard operated where rates were hourly, but outside of that brief interregnum the Commission has always maintained that it sets a weekly rate in the first instance and then from that weekly rate the hourly rate is arrived at, which is why we say it should be divided by the ordinary hours that are assigned by the award for cabin crew, which is 36.

PN358

If I can take the Commission now to page 3 of our bundle. We've done an analysis there of the other awards - all of the awards in the modern awards system which have less than 38 hours - ordinary hours, that is, and we can see there which is the divisor used to arrive at the hourly rate, and for each of those awards except for the Cabin Crew Award and the Marine Towing Award, which I'll explain, other than those two awards, all of the hourly rates are arrived at by dividing the weekly rate by the ordinary hours for the occupation in the award, which is either 35 or 37.5. The Marine Towing Award doesn't have an hourly rate, it just has a minimum daily rate, so that's an exception because of the way that that award is structured.

PN359

As a result of the Cabin Crew Award being divided by 38, you can see that the hourly rate is much lower than the other awards there as well. On this basis alone the Cabin Crew Award, along with the NES, is not providing a fair and relevant safety net and is providing this loophole through which the MAM agreement can pay on a weekly basis less than what they should be getting under the award for working the same week's worth of work. It's not a criticism of the Commission, in terms of how the BOOT was conducted or anything like that. That's just the way that MAM have been able to structure their agreement in terms of referencing only the hourly rate. I'll turn now to item 94, which is a different - - -

PN360

THE DEPUTY PRESIDENT: Just before you do, so the outcome of this review process, as you all know, will be a final report of the Full Bench. There may or may not be any particular proceedings that follow, but regardless of the outcome of this particular process, it's, of course, open to any kind of party to make an application to vary the award. So I just wanted to be clear that that opportunity may well be available, and I guess I'm just a little curious as to whether that's

something the association has thought about or these issues have really kind of come to light through this process, or what the thinking is of the association.

PN361

MR NGUYEN: Yes, the association has definitely thought about that, and certainly if the Commission invited the association to make an application it would do that, but I guess through these proceedings, in the first instance, we've taken it as a priority to support the Commission in satisfying - or complying with its duty to ensure that the modern awards, along with the NES, provide a fair and relevant safety net. But certainly I'm instructed that if the Commission invited the FAAA to make an application, it would certainly do that.

PN362

THE DEPUTY PRESIDENT: I guess I'm making the point - and it's not just to the association, but there's a very large number of proposals that have been put forward across the raft of issues across all of the streams. An invitation is not necessary. In most instances there's an opportunity under the legislation generally, so I guess I just wanted to flag in respect of whatever the outcome of this is, it wouldn't be right to conclude that there's been some kind of assessment or decision as to the merits or otherwise of any particular proposals, and the opposite, if you like, of an invitation to anyone to seek to vary an award.

PN363

MR NGUYEN: Yes. I appreciate that, Deputy President. Thank you for that clarification. I guess we're in a process that the Commission's undertaking, and if the Commission has a preference in terms of its resourcing and when it would like to deal with the issues, that might be something that's taken into account by the association as well, whereas I appreciate that the association can cause resources to be diverted by its own application.

PN364

If it please the Commission, I'll turn now to item 94. The title of it in the summary is 'Supporting secure work conditions in the context of airline operation', but the actual entitlement that's being sought is in relation to a meals and incidentals allowance for domestic cabin crew. The example given in the FAAA's written submissions compares the domestic flying with the regional flying, and that clearly establishes the inadequacy of the entitlement for cabin crew.

PN365

Between regional and domestic flying there's no apparent reason why the entitlement to a meals and incidents allowance should be different. There's no apparent difference in characteristic between regional or domestic flying that should result in that differential there. The physical health of cabin crew is vital to managing work and care responsibilities, which is also good for the airlines, we say, because the higher proportion of cabin crew who consistently are able to report fit and ready for duty, the better the performance for the airline and the less it has to rely on reserve crew and other arrangements to fill and to fly planes.

PN366

If I can turn now to item 95, which is the international flying allowance minimum rates. It's just a short submission, Deputy President, which is that the current entitlement is too vague to be a fair and relevant safety net. It needs more clarity to be a safety net condition, and that's why we've proposed a specific safety net figure which ensures that whatever is decided upon by the airline, it's, at minimum, going to be a certain rate.

PN367

Lastly, I'll turn to item 96, which is the casual employment provision. The way that Altara, the labour hire company that I referred to earlier - the way that they are treating casual employees is that they have a policy which really flies in the face of what industrial institutions and practitioners would consider to be casual employment. You'd be used to hearing submissions from parties, Deputy President, which is often given in song, about how casual employees love remaining casuals and don't want automatic conversion to permanent employment because they love the flexibility of being casual.

PN368

The example in our submission, which is shocking to hear but critical to highlight again, is that Altara has a policy which says that a casual cabin crew member can nominate which days they're unavailable but the employer can still assign them to five of those unavailable days to duties. It's a policy which says also that if an employee regularly does not attend for duty on a day that they have nominated as being unavailable and for which they've been assigned a duty, then they will be performance managed.

PN369

Essentially, the employers can't have it both ways. If they want to make submissions about how casual employees love the flexibility, they should give them that flexibility, so the proposal that the FAAA is making to the Commission is that there should be a right enshrined in the award which says that if a cabin crew member says they're unavailable, they cannot be assigned a duty on that day, and that also clearly helps them with their caring arrangements and caring responsibilities, because it means that they can be sure that on those days that they've nominated as being unavailable, they will be available to attend to their care and responsibilities.

PN370

So to conclude, Deputy President - before I conclude, we take on board the comments that you've made, Deputy President, in terms of the FAAA making its own application, but we do say that the Commission should, on its own initiative, commence consideration of the deficiencies, if not for all of the matters, at minimum for the weekly rate of pay, which should immediately be aligned to the C10 rate, and we do say that a specific inquiry in relation to the Aircraft Cabin Crew Award should be conducted in order to ensure that it is a fair and relevant safety net for cabin crew, but having said that, the association is committed to fully participating in any process that's led or initiated by the Commission and also to considering, following the report being delivered, what action it might take on its own initiative.

PN371

We've included in our bundle as well the full list of our proposed variations that have been made to the review both in this stream and also the job security stream. That's on page 24 of the bundle. If the Deputy President needs to refer to the full list of our proposed variations, they're included there. I'll hand over now to our federal secretary, Ms Teri O'Toole, who will make our closing remarks to the Commission.

PN372

THE DEPUTY PRESIDENT: Thank you, Mr Nguyen. Ms O'Toole?

PN373

MS O'TOOLE: Thank you, Deputy President, for giving us the opportunity to speak on behalf of cabin crew in Australia. Myself, a former international cabin crew member for 35 years - it's hard to say that. It's more than half my life - I've seen first-hand how this Cabin Crew Award has impacted the lives of cabin crew.

PN374

The aviation industry, as you know, has gone through many, many changes over the years, from being a government-owned entity, to collapses of airlines, privatisation, open skies, competition from other countries where labour laws don't exist, so we have a varied scope of employers and it's really hard to sit here and not hear from some of the personal experiences that cabin crew have gone through.

PN375

We find that negotiations are notoriously difficult with aviation, especially when it comes to PIA. This is a public - you know, it's an infrastructure issue, and it doesn't just affect an employer, it affects the entire country when PIA is even mentioned, but I will come back and talk just - - -

PN376

THE DEPUTY PRESIDENT: Sorry, PIA?

PN377

MS O'TOOLE: Protected industrial action, sorry, when we're negotiating. Sorry.

PN378

THE DEPUTY PRESIDENT: I'm with you.

PN379

MS O'TOOLE: It's late in the afternoon.

PN380

THE DEPUTY PRESIDENT: That is one acronym I should be familiar with, yes.

PN381

MS O'TOOLE: If we talk about it - and Michael's submissions were excellent in relation to the fact that they aviation's first responders. They run towards the fire. They are the fire fighters on board an aircraft and assume all responsibilities of that role. Aircraft are floating fuel tanks, flying fuel tanks. It is absolutely essential that fire is taken at the ultimate ability to be able to deal and manage

that. So they are the fire fighters in the air. They perform CPR, use defibrillators. They are saving people's lives just as a paramedic would. They protect the safety of others and they have the ability to use force and to arrest just like our police force do. They protect the integrity of the aircraft. After September 11, cabin crew were trained to defend the flight deck with deadly force.

PN382

In an emergency, as we've seen - and I think everyone has touched a flight - I don't want to say everyone has - everyone has been in the presence of a flight attendant in their life; I don't think there's too many people that don't fly, and we've all seen those terrible scenes from the Haneda incident. What you will remember is cabin crew are trained to get a full aircraft of passengers off in 90 seconds. They are the last to leave the aircraft. They will stay on a burning aircraft, making sure that people are safe. That is their role. On a good day at the office, we never see that. They serve food and they direct passengers and they give care, but that is their training and that is their skill base.

PN383

I speak to cabin crew daily about their conditions and issues with the workplace, including fatigue, rostering, disruptive passengers, the challenges of managing their caring responsibilities. Last-minute arrangements place considerable mental and financial strain on cabin crew and their families. The current structure of the award has significant psychosocial implications for cabin crew, particularly for those with caring responsibilities.

PN384

The conditions of the Cabin Crew Award make balancing work and care very difficult. We have proposed changes which will go to supporting cabin crew in caring and being able to manage their work and care responsibilities. Cabin crew are required to report for duty within 90 minutes when called off what we call a standby, which is a duty to replace another crew member. It could be for a myriad of reasons. It could be because of weather, it could be because of illness, it could be because of a cancellation or a mechanical issue.

PN385

The median rents in Mascot and nearby suburbs range from 780 a week to \$900 per week for an apartment, with family homes being significantly more expensive. These rates have risen between 13.6 and 20 per cent in the last 12 months. Given the ongoing cost of living, it's reasonable to expect these costs to continue to escalate. Consequently, even suburbs farther from the airport are becoming increasingly unaffordable for our members. The situation highlights that the 90-minute standby requirement is no longer practical or even sustainable.

PN386

The hourly rate for the Cabin Crew Award is completely inadequate and needs to reflect the hours of work that cabin crew do, and every dollar does make a difference. I've spoken to many crew who have been able to make ends meet. I know of crew who only bid for particular duties because the food allowance, or the allowance for food, on these overnights or away from home, is significantly higher. We now know that they pack tuna and instant noodles because they

cannot afford to eat and they save those food allowances to pay for their electricity or their home bills.

PN387

In fact, I've had a conversation very recently with a young lady who called me. There had been a disruption and her Dallas flight, which goes for 18 hours, was extended, and so they thought it would go over the 20-hour maximum and so they took her off the duty. She called me, crying, and saying, 'I must do that duty. I have a bag of salad in my fridge, and if I do not go to work, I will not eat.' These are the real situations that our cabin crew are facing.

PN388

We know that, again, for some crew they earn less money on home reserve. So if we have trips, for instance, for our international crew to Perth, there are no allowances, so what happens is it costs them more in petrol to go to work because they're on a salary. So whether they work on that flight or another flight, it costs them more to actually go to work on those days, because they have to pay for their petrol, and yet it's encompassed in their - without the allowances, they can't survive, and those allowances aren't meant for this, those allowances are meant for them to buy food.

PN389

A lot of them work over the 40 hours in one week. We have regular crew that come in one day and leave the next day, and they do this to minimise - to get as much out of their allowances and to try and increase their money, but also, they say, to save on electricity and gas, because they're not in their apartments. So they actually want to go to work and get away so that they can minimise some of these costly bills that they actually can't afford to pay.

PN390

We say to have to make a decision on rest over survival just doesn't seem fair. International crew can work up to 18 hours planned and then up to 20 unplanned. We know that the airlines are planning on sunrise flying, which will be from Sydney to New York direct. We're looking at somewhere around 26 hours on an aircraft. We know that the literature on fatigue is very clear. If you haven't slept for 17 hours you're operating at a 0.05 BAC level. We know that. Fatigue is going to be a major factor, and yet there is very little in the modern award that even contemplates that.

PN391

We know that crew come home from overnight flights and the minute they land they're expected to be carers, because they can't afford to pay for anyone else to look after their children when they actually are in the country, so we know that that is a major cost, and when there are delays, we know that these roster instabilities cause so much hardship.

PN392

You're due to pick your child up at 4 o'clock, because that's your duty, and you don't get home till 8, you then have to pay for carers or someone else to come and look after your children, not to mention the issues around where people are in a split family and they have orders from courts on parental responsibilities or

parenting orders, where because of the ability for the airlines just to say, 'No, you're late', 'No, you're going away', 'No, we're overnighing you here', how can they even sustain - so what that ends up in is more court proceedings, more money and more costs.

PN393

So that is another thing to take into consideration when we look at what the modern award - if I call even for a small amount of time about the layover allowances. The modern award has a DTA for our regional or our domestic crew. That's a daily travelling allowance. That works out at around \$5.92 for domestic.

PN394

The modern award has it based on flight time, so if I were to look at - let's just say an Apia flight, which is around 12 hours of flight time, six up, six back. For that 12 hours at that calculation they get around - I think they get around \$71. Now, that's the same if they're there for 12 hours as if they're there for 72. So that same amount of money is to cover food. It costs them more to be there than it does - it would work out, if you divided it over the three days, breakfast, lunch and dinner over three days, they'd have \$7 to spend.

PN395

THE DEPUTY PRESIDENT: Is that because the allowance is payable for the days flying not the gap in between. Is that - - -

PN396

MS O'TOOLE: That's correct.

PN397

THE DEPUTY PRESIDENT: Right.

PN398

MS O'TOOLE: It's only the flight time. It shouldn't be. We fight in agreements to try and get them from sign off to sign on so that that covers that time. People are ringing and saying, 'I can't do these overnight trips.' In domestic they don't want overnights, because they can't afford them. In international they have to try and get the longest and furthest overnights with the most allowance to survive. The system is - you know, it's pitted against the cabin crew, depending on who they are.

PN399

We have our language speakers who are stuck in a language route - for instance, going to Jakarta. That allowance is a low allowance. They never get an opportunity to try and do some of the longer flying to get the higher allowances because they're stuck in that, and again, these allowances are meant to be fully expended on food and beverages and they're not, because they can't afford to spend those allowances on food and beverage.

PN400

Deputy President, as has been explored with the FAAA's submissions over the last fortnight, the aviation industry operates in a very unique way. We understand

that. Operational and employment needs are quite different from many other industries, with many Aircraft Cabin Crew Award clauses interacting with one another in ways that don't contemplate any other rewards.

PN401

With this in mind, the FAAA's view is that the most effective path forward would be for the Commission to, on its own initiative, commence proceedings to address the deficiencies in the Cabin Crew Award, and I would respectfully urge the Commission to take this course of action. To this end, the FAAA stands willing and able to do whatever we can to support the Commission in making the award a more fair and relevant safety net for cabin crew across Australia.

PN402

THE DEPUTY PRESIDENT: Thank you, Ms O'Toole and Mr Nguyen. You paint a very kind of strong and impactful picture of the issues that you've raised, so I'm grateful for that. Thank you all again for your contribution and work in this consultation stream, and the Commission is now adjourned. Thank you.

ADJOURNED INDEFINITELY

[12.27 PM]