



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT GOSTENCNIK

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/265)**

Electrical, Electronic and Communications Contracting Award 2010

(ODN AM2008/15)

[MA000025 Print PR986366]

Sydney

9.36 AM, MONDAY, 23 JANUARY 2017

PN1

THE DEPUTY PRESIDENT: Good morning. Can everybody hear me?

PN2

MS PAUL: Yes.

PN3

MR NOBLE: Yes, your Honour.

PN4

THE DEPUTY PRESIDENT: Yes, yes, all right. I'm having these proceedings recorded for the purposes of transcript, so before we begin, I know you've given your appearances to my Associate, but I might just get you for the purposes of the transcript to announce your appearances and I might get the parties in Sydney.

PN5

MR G NOBLE: Noble, initial G, for the CEPU.

PN6

THE DEPUTY PRESIDENT: Yes, thank you, Mr Noble.

PN7

MS V PAUL: Paul, initial V, for Ai Group.

PN8

THE DEPUTY PRESIDENT: Thank you, Ms Paul.

PN9

MR G JERVIS: Jervis, initial G, for NECA.

PN10

THE DEPUTY PRESIDENT: Thank you, Mr Jervis.

PN11

MR R KRAJEWSKI: Krajewski, initial R, for Fire Protection Association Australia.

PN12

THE DEPUTY PRESIDENT: Yes, thank you, Mr Krajewski. A silent "J", sort of.

PN13

MR KRAJEWSKI: Yes.

PN14

THE DEPUTY PRESIDENT: Like Slovenia.

PN15

MR KRAJEWSKI: Yes.

PN16

THE DEPUTY PRESIDENT: Thank you. In South Australia?

PN17

MR C KLEPPER: Klepper, initial C, for Business SA, thank you.

PN18

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

PN19

MS L HOGG: Hogg, initial L, for Australian Business Industrial and the New South Wales Business Chamber.

PN20

THE DEPUTY PRESIDENT: Thank you.

PN21

MR J O'DWYER: O'Dwyer, initial J, for Master Electricians Australia.

PN22

THE DEPUTY PRESIDENT: Yes, thank you, Mr O'Dwyer.

PN23

MR C YOUNG: Young, initial C, also for Master Electricians Australia.

PN24

THE DEPUTY PRESIDENT: Yes, thank you, Mr Young. All right, well, unless the parties have a different view, I was going to propose simply working down the revised summary of submissions list to try and work through the issues and see whether any modicum of agreement might be reached in relation to the outstanding matters. I'm assuming all parties have with them the latest iteration of the summary. Mine is the one published on 3 January 2017.

PN25

MR NOBLE: Yes.

PN26

THE DEPUTY PRESIDENT: Yes?

PN27

MR NOBLE: Yes, yes, your Honour.

PN28

THE DEPUTY PRESIDENT: The publication date, Mr Noble, is at the bottom.

PN29

MR NOBLE: That's right.

PN30

THE DEPUTY PRESIDENT: We might then begin with the first outstanding item which appears to be item 6.

PN31

MR KLEPPER: Business SA will withdraw that item, your Honour.

PN32

THE DEPUTY PRESIDENT: Then item 7.

PN33

MS PAUL: We would similarly withdraw that as that's been withdrawn.

PN34

THE DEPUTY PRESIDENT: Sorry, just in relation to item 7 - - -

PN35

MS PAUL: Sorry, yes. No, I hadn't come to that one. My understanding, your Honour, is that's actually been agreed and amendments have been made.

PN36

THE DEPUTY PRESIDENT: Yes, sorry. I'm sorry, it has. Yes, I see that. The next item is the item 15.

PN37

MR KRAJEWSKI: Yes, your Honour, all we seek to suggest there is that the current award doesn't make specific reference to the 38 hours. I know that we all know that the National Employment Standards do relate to the 38 hours and all we're seeking to do is just to provide some clarification so that the maximum hours will be 38. I suppose at the end of the day, nothing really stands on it, but we just say that if we're talking about clarifying an award provision then why not just make specific reference to the 38 hours.

PN38

THE DEPUTY PRESIDENT: The relevant provision in the exposure draft makes reference to the NES. What you're proposing seems to me to be seeking to explain in the award the terms of the NES; is that right?

PN39

MR KRAJEWSKI: Yes, that's right. I mean, as I say, at the end of the day probably nothing stands on it, but I just want to make specific reference to that 38 hours.

PN40

MR NOBLE: Could I just say in the report that Deputy President Lawrence made that there's a notation at clause 13 that you're actually withdrawing that. That was my understanding.

PN41

MR KRAJEWSKI: No.

PN42

MR NOBLE: I mean, as I say, it doesn't really make much difference. I mean, it's not a substantive issue, but I thought that you had earlier withdrawn that one.

PN43

MR KRAJEWSKI: I think I did something about that in relation to the part-time work. You asked the question, I think, before the Full Bench and I think I accepted that, but I can't recall. If I have erred then I apologise, but at the end of the day, I suppose, as his Honour said, you know, it probably doesn't make that much difference if we refer to the NES.

PN44

MR NOBLE: Yes.

PN45

MR KRAJEWSKI: But all I'm just saying is that we are talking about clarifying something that makes, you know, specific reference to 38 hours. I mean, if the majority view is "Don't proceed", well, then, I'm not going to be, you know, in a bit of a sweat over it.

PN46

MS PAUL: It is mentioned, though, kind of, when you look at the work cycles.

PN47

THE DEPUTY PRESIDENT: Yes, it's mentioned for day workers and then there are the 12-hour arrangements for shift workers.

PN48

MS PAUL: Yes. Then further on at 13.7, it talks about implementation of a 38-hour week, but only saying if there was going to be some replication then you'd need to replicate the NES provisions and they're not just at 38 hours.

PN49

THE DEPUTY PRESIDENT: No, that's right, because the NES provides for more than just 38 hours.

PN50

MS PAUL: Yes. Your Honour, and it's only my recollection, I had thought that this issue had been dealt with in the earlier iterations of other awards. I can check on that and come back as to similar submissions being put and the Commission finding otherwise. But, again, I'm only putting that from my recollection in terms of discussions that may have occurred with other awards.

PN51

THE DEPUTY PRESIDENT: For my own part and for what it's worth, I'm not sure that it's the role of a modern award to either replicate the NES or explain it. The NES is the NES and the - - -

PN52

MR NOBLE: I'd accept that, your Honour.

PN53

THE DEPUTY PRESIDENT: Can we then note that that item is withdrawn? Yes, thank you. We have apparently lost Adelaide for the time being, but we'll continue on and I'll recap once they've re-joined us. The next item is item 18.

PN54

MR NOBLE: Sorry, what item was that, your Honour?

PN55

THE DEPUTY PRESIDENT: Item 18.

PN56

MR NOBLE: Eighteen.

PN57

THE DEPUTY PRESIDENT: That would be yours, Mr Noble.

PN58

MR NOBLE: This is just a comment in respect of the question posed in the draft.

PN59

THE DEPUTY PRESIDENT: Yes.

PN60

MR NOBLE: We're just of the position that the language itself is quite clear and we don't think it is just restricted to day workers, that's all. This wasn't on our radar at all until it was actually raised by the Commission and I think some of the employer parties actually agree with it.

PN61

THE DEPUTY PRESIDENT: With?

PN62

MR NOBLE: With our view that it's not just restricted to day workers.

PN63

MS PAUL: We may be the only one. Initially there were some. The other employer parties had. Sorry, there was a further two employer parties. I think we are the only ones left, correct me if I'm wrong, that say that that is no correct. So, we don't say it applies to shift workers.

PN64

THE DEPUTY PRESIDENT: Is it then the consent position that the parties don't agree with essentially the questions that were posed?

PN65

MS PAUL: If I may, your Honour, I think the Ai Group has no issue with the clause being left as is. I think the question is one of interpretation about whether or not it applies to shift workers and I think it would be fair to say that unless any of the employer parties disagrees, that it still maintains its position and it only applies to day workers, whilst I understand the CEPU propose it applies both shift and day.

PN66

THE DEPUTY PRESIDENT: Sorry, this is clause - - -

PN67

MS PAUL: I'm not sure where the other employee parties sit with this, but I thought my last recollection in various discussions that we've had was they had all either had put submissions or had indicated that they were of the same view as the CEPU.

PN68

MR NOBLE: I must say from a practical point of view, this has never actually arisen as a question - as being an issue. If and when it does, I imagine it's going to turn on the facts in the case and then we'll have an argument.

PN69

MS PAUL: Yes, yes. Your Honour, I guess from our point of view, it is merely about the fact we say the clause should be left as is.

PN70

THE DEPUTY PRESIDENT: Yes.

PN71

MR NOBLE: I would agree with that.

PN72

MS PAUL: Yes.

PN73

THE DEPUTY PRESIDENT: That appears to be it. Yes, all right. Perhaps the simplest way of dealing with it is leaving the fight for another day if it arises at all.

PN74

MR NOBLE: Yes.

PN75

MR KRAJEWSKI: Your Honour, that matter that (indistinct) is in relation to the matter that the CEPU raised in relation to whether it be applicable to day workers and shift workers and we expressed a view that there ought to be a reference to shift work separate, so to speak, from day workers. So, all in all, we say that the provision should apply to both groups of employees, but perhaps that might be better looked at once we get to that issue of shift work which is, I think, forthcoming.

PN76

THE DEPUTY PRESIDENT: In short, the common position of the parties, albeit that they disagree from what it means, is that there should be no change.

PN77

MS PAUL: Yes.

PN78

THE DEPUTY PRESIDENT: All right, thank you. Item 20. Is there anybody here from NECA?

PN79

MR JERVIS: I'm here from NECA.

PN80

THE DEPUTY PRESIDENT: Sorry. These are your items, Mr Jervis.

PN81

MR JERVIS: Insofar as changing the title of the clause, we don't press that, your Honour.

PN82

THE DEPUTY PRESIDENT: Is that the same as withdrawn?

PN83

MR JERVIS: I beg your pardon, your Honour?

PN84

THE DEPUTY PRESIDENT: Is that the same as "withdrawn"?

PN85

MR JERVIS: Yes.

PN86

THE DEPUTY PRESIDENT: It's just that that seems to be the phrase that's been used in other parts of the document.

PN87

MR JERVIS: I see.

PN88

THE DEPUTY PRESIDENT: Mr Jervis, item 21.

PN89

MR JERVIS: It will be withdrawn as well, your Honour.

PN90

THE DEPUTY PRESIDENT: Thank you.

PN91

MS PAUL: And 21?

PN92

MR JERVIS: And 21, yes.

PN93

THE DEPUTY PRESIDENT: Item 26, one of yours, Mr Jervis.

PN94

MR JERVIS: I don't think there's any support for that from the others, your Honour, so we'd withdraw it.

PN95

THE DEPUTY PRESIDENT: Thank you. Is South Australia back?

PN96

SPEAKER: Yes.

PN97

THE DEPUTY PRESIDENT: Ms Klepper. Sorry, Mr Klepper.

PN98

MR KLEPPER: That's all right. If there's not widespread support for the proposal, then we're happy to see it all the way as well.

PN99

THE DEPUTY PRESIDENT: Thank you, Mr Klepper. Item 28, Ms Paul.

PN100

MS PAUL: Sorry, your Honour, I won't be two seconds.

PN101

THE DEPUTY PRESIDENT: That's all right.

PN102

MS PAUL: I believe ours is more an issue around terminology, your Honour. I'm just trying to grab the section. I believe, your Honour, our view is that there's been good consistent terminology used around shift allowances, shift (indistinct) shift premiums and shift loadings and it's the general submission that we have made normally. I'm not sure this was actually addressed with the employer parties in our various discussions previously or with the union. I'm trying to check the report at the moment. I have that down, your Honour, as something that all the employer parties have agreed to. I don't know that the CFMEU had actually made a comment one way or the other in relation to that.

PN103

MR NOBLE: I don't think it's an issue, sir. I don't have a position one way or the other. I'm not quite sure what you're proposing, though.

PN104

MS PAUL: Just give me two seconds.

PN105

MR NOBLE: You don't like the work shift premiums.

PN106

MS PAUL: I think it was the fact that they've been - we're just addressing there should be consistent terminology as they've all been used interchangeably in various parts of the - - -

PN107

MR NOBLE: Shift premiums would become what?

PN108

MS PAUL: It would be a shift allowance, I would have thought.

PN109

SPEAKER: The wording.

PN110

MS PAUL: Yes.

PN111

SPEAKER: It's the wording.

PN112

MR NOBLE: That's how I would read it. For example, in 13.15(e), take "shift premiums" in relation to 13.13 and call that "allowances".

PN113

MS PAUL: Yes, well, it's just that it's more a verbiage issue. I would have thought we should be keeping it the same and calling it an allowance.

PN114

THE DEPUTY PRESIDENT: I am all for using consistent language. It does appear that the clause generally uses different terminology to describe what is essentially the same thing, albeit a different percentage of the base rate.

PN115

MS PAUL: Yes.

PN116

THE DEPUTY PRESIDENT: For example, in 13.13(a), apart from the heading, "Must be paid for such a shift at 15 per cent of the" - et cetera - "ordinary hourly rate." 13.15 begins with the rate at which - at the rate of - will be paid 113 per cent, et cetera - the minimum rate. I mean, I would think that the whole provision can be simplified by using the same terminology, putting aside whether they're described as "shift premium" or "shift rates", "shift allowances," but the clause itself should use consistent language.

PN117

MS PAUL: Yes. We're not suggesting any one particular word, we're simply saying - - -

PN118

THE DEPUTY PRESIDENT: No, no, no.

PN119

MS PAUL: I believe clause 20.6 may suffer from the same problem as well. It's 20.3, sorry. 20.4, your Honour, not 20.5. 20.4(b), again in reference to "shift", it refers to "shift loadings." So, if it is, then maybe the word "loading" might be an appropriate word to use as opposed to "premium". The headings are fine. It's just more the - - -

PN120

MR KLEPPER: Apologies. Did you say 20.4 or 20.3(b)?

PN121

MS PAUL: It's 20.4(b) because there's no 20.3(b).

PN122

THE DEPUTY PRESIDENT: Of the exposure draft.

PN123

MS PAUL: Yes, in the current version of the exposure draft we're looking at. In the version of the exposure draft proposed on 3 January, it should be 20 point - and the reference in the summary document should actually refer to 20.4(b).

PN124

MR KLEPPER: Yes, thank you, I've found that one.

PN125

THE DEPUTY PRESIDENT: There seems to be general consensus that one term should be used for the purpose of describing the benefit and the issue is what should that term be. That's the first issue. The second one seems to me to be one of drafting where you appear to use various phrases in which to describe the same thing. That is the benefit to be paid for working a particular kind of shift on one or more days. Ms Paul, to describe the benefit, you were proposing?

PN126

MS PAUL: "Shift loading" might be the better use of a term.

PN127

THE DEPUTY PRESIDENT: "Shift loading", all right. Is there any violent objection to describing the benefit as a "shift loading"?

PN128

SPEAKER: No, your Honour.

PN129

SPEAKER: No, your Honour.

PN130

THE DEPUTY PRESIDENT: Yes, thank you. The second issue is to use a consistent description for the way in which the benefit would be paid and it just seems to me, for example, if you take 13.1.5(a), it doesn't seem to me to be necessary to say the rate at which continuous shift workers are to be paid for work on a rostered shift, the majority to be proportioned is 200 per cent of the ordinary rate of pay. A continuous shift worker who works on a rostered shift, the majority of which is performed is to be paid, et cetera, is to be paid 200 per cent of the - et cetera. If that kind of language is used consistently then the clause would be shortened and simplified significantly, I would have thought.

PN131

MS PAUL: Yes, it maybe, your Honour, but I think it's more about picking up on 150 of the employee's ordinary hours as being all the way through, yes.

PN132

THE DEPUTY PRESIDENT: Yes, or 200 of the ordinary hours, et cetera, yes.

PN133

MS PAUL: Yes.

PN134

THE DEPUTY PRESIDENT: I will make a notation of that. It seems to me that this is an issue that would affect a number of different awards and so that if we're going to be consistent, the first object is to be consistent within the award, but generally to be consistent.

PN135

MS PAUL: Yes, your Honour.

PN136

THE DEPUTY PRESIDENT: I will pass that through and it may be that some further work needs to be done on that issue across awards generally. Item 30.

PN137

MR NOBLE: My understanding is that it was agreed and it looks as though the wording in the notes has actually been updated in the draft.

PN138

MS PAUL: Yes.

PN139

THE DEPUTY PRESIDENT: All right.

PN140

MS PAUL: I think, Your Honour, we seem to be the one that has the word "disagrees" associated with our submission, I think from then we had moved our position in terms of the report - ultimate report that went to the Full Bench. So, we would say it's an agreed position.

PN141

THE DEPUTY PRESIDENT: Item 32.

PN142

MR NOBLE: Does your draft have 16.4(iv) crossed out?

PN143

THE DEPUTY PRESIDENT: It does.

PN144

MS PAUL: Yes.

PN145

MR NOBLE: But just the actual numeral, not the text?

PN146

THE DEPUTY PRESIDENT: Yes, just the numeral, yes.

PN147

MR NOBLE: Yes.

PN148

MS PAUL: 16.4, roman numeral?

PN149

MR NOBLE: 16.4(iv).

PN150

THE DEPUTY PRESIDENT: 16.4(a)(iv).

PN151

MS PAUL: Yes, we've got that one crossed out as well. Your Honour, our submissions of 25 July, we have proposed some words that may rectify what was - I'm sorry, I'll take that back. Our submissions state, your Honour, that we actually do see the two clauses interacting, but there might be a better utility in redrafting the clause and we oppose an alternative to paragraph 190. I'm not sure that the parties have looked at this.

PN152

MR NOBLE: Is that the underlined part?

PN153

MS PAUL: Yes, so we add that to the end of 17.2.

PN154

MR NOBLE: Three.

PN155

MS PAUL: Just before the words, "Any other special allowances," we say add the words, "These weekly payments" - blah, blah, blah - and then, "Any other special allowances."

PN156

MR NOBLE: Yes, I don't have a problem with that.

PN157

MS PAUL: That's all from me.

PN158

THE DEPUTY PRESIDENT: Mr Noble indicated that the CEPU doesn't have a problem with the proposed additional words contained in Ai Group's submissions of - Ms Paul, the date?

PN159

MS PAUL: It's of our submissions of 7 July.

PN160

THE DEPUTY PRESIDENT: 7 July 2016.

PN161

MR NOBLE: Yes, their submissions in reply.

PN162

MS PAUL: Sorry, yes, it's our submissions in reply, 22 July.

PN163

THE DEPUTY PRESIDENT: 22 July. Perhaps for the benefit of those who don't have a copy of those submissions in front of them, do you want to just read out the proposed amendments?

PN164

MS PAUL: Yes, your Honour. At the end of subclause (iii) - sorry, not at the end of subclause (iii), just before the words, "Any other special allowances," and after 17.2 in line number 6 of subclause (iii).

PN165

THE DEPUTY PRESIDENT: Roman (iii).

PN166

MS PAUL: Roman (iii).

PN167

THE DEPUTY PRESIDENT: Yes.

PN168

MS PAUL: We have identified the - we have suggested the following words: "These weekly payments in total will form the all-purpose rate to be paid to an apprentice. The weekly all-purpose rate of pay is payable for all purposes of the award and will be included as appropriate when calculating payments for overtime all forms of paid leave, annual leave loading, public holidays and pro rata payments on termination," full stop. Then the words: "Any other special allowances of the remaining of subclause (iii) would continue."

PN169

THE DEPUTY PRESIDENT: Yes.

PN170

MS PAUL: Which would then mean (iv) is redundant.

PN171

THE DEPUTY PRESIDENT: Delete (iv)?

PN172

MS PAUL: Yes.

PN173

THE DEPUTY PRESIDENT: Yes. Do any of the other parties have a view about Ai Group's suggested amendment?

PN174

MR KRAJEWSKI: No, your Honour.

PN175

THE DEPUTY PRESIDENT: Can I take then from the silence that that amendment is acceptable?

PN176

MR JERVIS: Yes, your Honour.

PN177

MS HOGG: Yes.

PN178

THE DEPUTY PRESIDENT: Thank you. We will mark that item now agreed by including the variation proposed in the AiG's submissions in reply of 22 July 2016 by adding an additional sentence immediately before the words, "Any other special allowances," in clause 16.4(a)(iii) and by deleting (iv). Thank you. Item 33, Mr Jervis.

PN179

MR JERVIS: Your Honour, we don't press that.

PN180

THE DEPUTY PRESIDENT: Thank you. Mr Young, Mr Jervis and NECA don't press that issue. Do you wish to press it?

PN181

MR YOUNG: Your Honour, I don't believe it's applicable anymore in relation to Queensland apprentices. I think that provision no longer has any effect anyway, from my understanding.

PN182

MR O'DWYER: I think, Commissioner Spencer, your Honour, or Asbury, I can't remember which Commissioner, recently made a determination through an enterprise bargaining agreement BOOT test case with All Trades Queensland that clarified this point.

PN183

MS HOGG: Yes.

PN184

MR O'DWYER: I can't remember which Commissioner it was.

PN185

MS HOGG: It was Asbury, I think it was.

PN186

MR O'DWYER: Was it Asbury?

PN187

MS HOGG: Yes.

PN188

MR O'DWYER: Yes, Asbury. Yes, so we're fine with that being withdrawn.

PN189

THE DEPUTY PRESIDENT: All right, thank you for that. The next item appears to be 37. Mr Jervis.

PN190

MR JERVIS: Your Honour, we do maintain that position. We say that the current wording is clearer than the wording in the exposure draft.

PN191

MS PAUL: Is it all of the 17.4 or just that particular section?

PN192

MR JERVIS: No, I think it was all of 17.4, from memory.

PN193

THE DEPUTY PRESIDENT: Mr Jervis, what - - -

PN194

MR JERVIS: It's at 17.4(iii) of the current award.

PN195

THE DEPUTY PRESIDENT: Yes.

PN196

MR JERVIS: Where it says in the last two lines, "Must be paid for meals which the employee has provided but which are surplus," as opposed to the exposure draft which says, "For surplus meals which the employee has provided."

PN197

THE DEPUTY PRESIDENT: Sorry, 17.3, did you say, or four?

PN198

MR JERVIS: 17.4(iii).

PN199

THE DEPUTY PRESIDENT: (a)(iii) of the exposure draft.

PN200

MR JERVIS: Yes.

PN201

THE DEPUTY PRESIDENT: "Unless the employer advises"?

PN202

MR JERVIS: No, it's the sentence that says: "If an employee, pursuant to notice, is provided a meal or meals and is not required to work overtime or is required to work" - - -

PN203

THE DEPUTY PRESIDENT: It's (iii) by - - -

PN204

MR JERVIS: Is it?

PN205

THE DEPUTY PRESIDENT: It's (iv) in my draft.

PN206

MR JERVIS: Yes.

PN207

MS PAUL: The exposure draft is (iv).

PN208

MR JERVIS: Yes, the exposure draft is (iv), I'm sorry, yes. The original award is (iii).

PN209

THE DEPUTY PRESIDENT: I see. I see.

PN210

MR JERVIS: Yes.

PN211

MR NOBLE: The CEPU doesn't object to what NECA are pursuing. I don't think a great deal turns on it.

PN212

MR JERVIS: I would agree there's nothing earth-shattering about it.

PN213

MR NOBLE: No.

PN214

MS PAUL: Your Honour, we have no issue with the amendments as proposed. We simply, in our submissions, I think we disagreed only because we didn't see where the confusion lay. But keeping the original terms, that's an issue for us.

PN215

THE DEPUTY PRESIDENT: The proposal that appears to be agreed is that the existing clause 17.3(a)(iii) of the modern award would become 17.4(a)(iv) in the exposure draft.

PN216

MR JERVIS: That's correct, your Honour.

PN217

THE DEPUTY PRESIDENT: Does anybody else wish to say anything about that proposal?

PN218

MS HOGG: No.

PN219

MR KLEPPER: No, thank you, your Honour.

PN220

SPEAKER: No, your Honour.

PN221

THE DEPUTY PRESIDENT: Thank you. We'll mark that proposal as agreed. Thirty-eight, Mr Young.

PN222

MR YOUNG: Thank you, your Honour. We're seeking to include some additional wording in 17.5(d)(ii) to clarify that the payment provided to employees who are travelling in excess of the 50 kilometres is paid at ordinary time rates, for some additional wording to be included in there just for that clarification. I believe, from my understanding, all parties, except the union, are in agreement to that. In the report, it states that the union doesn't think this is required.

PN223

MR NOBLE: We don't object to the proposed wording. We don't think it's required, but we're not going to object to it.

PN224

THE DEPUTY PRESIDENT: Thank you, Mr Noble. Just so that we're clear, Mr Young, what words and where do you propose being inserted?

PN225

MR YOUNG: I don't think we have. Sorry, just one moment, your Honour.

PN226

THE DEPUTY PRESIDENT: That's all right. With a minimum payment of a quarter of an hour rate at the ordinary rate plus payment for incident expenses actually incurred. So, at the ordinary rate.

PN227

MR YOUNG: Thank you, your Honour. To insert just after a minimum payment of a quarter of an hour, to insert the words, "At the ordinary rate," and then to continue on, "Plus payment for incident expenses actually incurred other than private motor vehicle expenses," et cetera.

PN228

THE DEPUTY PRESIDENT: Mr Noble, is that - - -

PN229

MR NOBLE: Yes, that seems the logical place to put it.

PN230

THE DEPUTY PRESIDENT: Yes, thank you, Mr Young. Item 39, Mr Young.

PN231

MR YOUNG: Thank you, your Honour. Again, we are seeking some additional wording in there just to clarify that where the employer offers to provide transport, employees are entitled to the \$3.37 instead of the \$18.80 for starting and finishing on the job site. We believe that the current wording could be interpreted that employees are, in fact, entitled to both where employer provided transport is offered. Again, I think all parties are in agreement to that, except the union.

PN232

MR NOBLE: I don't think we disagreed. I think we just said we didn't support. I mean, we don't read it like that.

PN233

MR YOUNG: Yes, sorry, you didn't think it was necessary.

PN234

MR NOBLE: I mean, if you really think it's necessary to go in then, look, I'm not objecting to it. Maybe it's early in the year.

PN235

THE DEPUTY PRESIDENT: Again, just for clarity, I don't have your submission in front of me, Mr Young, but in (d)(iii), what words should appear and where?

PN236

MR YOUNG: After the words "\$3.37 per day", insert the following: "Instead of the 18.80 per day in clause 17.5(i)."

PN237

THE DEPUTY PRESIDENT: In order to avoid changing it each time the rate changes, how about: "Instead of the amount in clause 17"?

PN238

MR NOBLE: Specified in 17.5(d).

PN239

THE DEPUTY PRESIDENT: Yes, 17.5(d)(i).

PN240

MR YOUNG: Yes, that's fine, your Honour. I agree.

PN241

THE DEPUTY PRESIDENT: Yes, all right. Thank you. Does any other party wish to be heard on that? I will mark it as agreed. Thank you. The next item appears to be item 42.

PN242

MR KRAJEWSKI: Your Honour, that's a proposition from ourselves which I suppose in a more formal way went to Lawrence DP before the Full Bench at the end of last year. We hadn't heard from the union in relation to that proposition, but what we were simply trying to do there was to have a clearer distinction between those who work shift work and those who work day-work and the proposition was to not change any entitlements and to make it as simple as possible and that is that in the current ordinary hours clause is to identify those subclauses which apply to day workers or shift workers or both and we felt that by doing that sort of exercise or that type of exercise that would then clarify where that clause would apply.

PN243

There had been some discussion amongst the employers in relation to that with some differing views, but at that point in time and at this point in time, we haven't heard what the union's view is in relation to that. But we felt that it was really no more than a drafting exercise because we took the most simplistic way of identifying or distinguishing between those two groups of employees. We made an earlier comment this morning in relation to a particular clause and that, as I said then, is really covered by what we are saying now and that by distinguishing between the day workers and the shift workers it makes it a more simpler sort of application.

PN244

THE DEPUTY PRESIDENT: Thank you, Mr Krajewski. Mr Noble.

PN245

MR NOBLE: Yes, your Honour. We have considered this and whilst we don't think it's necessary, we don't really have any objection to it. I think the other employer groups have a stronger position than what we do because we actually agree that what is proposed, the way it works, that there isn't a disagreement there. Whether it's necessary or not or, you know, I mean, if it helps your members, fine, no objection from us.

PN246

MS PAUL: Your Honour, we have some concerns with that from our position in that as highlighted with our position taken around the rest breaks as the present example. The other one I believe is in relation to another of the clauses being - I'm just taking two as examples - I think it's some aspect regarding rostering and I can't recall off the top of my head which one it was. But, your Honour, to actually split the clauses up will require replication of the clauses, particularly rest breaks, et cetera, and that comes into a real question about whether or not we get into an issue of interpretation in what those clauses actually mean. We don't believe that it's appropriate to have those matters dealt with as part of this which is the technical drafting issues and, in fact, if the FPA which to pursue it. We say that we'd need to look at it within the context of the substantive claims.

PN247

Our objection is based on the fact of the process within which this is brought which is around the technical amendments arising from the exposure draft and we say that it's not a simple matter of just adding clauses or headings. We will need to then look at what the interpretation is and, I guess, the best example is when we look at the rest break clauses as we did today.

PN248

THE DEPUTY PRESIDENT: Would there be any merit in perhaps the CEPU sitting down with those employers who agree that there can be - perhaps a neutral term - a simplification of the provisions and agree on a draft and then perhaps have a further discussion with Ai Group before shoving it across to contest it?

PN249

MS PAUL: We would be certainly open to that, your Honour.

PN250

THE DEPUTY PRESIDENT: Mr Noble, that will require some work on your part too.

PN251

MR NOBLE: Yes, I don't object to that course of action. Could I ask, though, your Honour, what sort of timeframe?

PN252

THE DEPUTY PRESIDENT: I was going to ask you that now. What kind of timeframe?

PN253

MR NOBLE: I think it could be done within - - -

PN254

MR KRAJEWSKI: I'm comfortable with whatever Mr Noble thinks within the next week - so two weeks.

PN255

MR NOBLE: Or next week is fine.

PN256

MR KRAJEWSKI: I'm okay with that subject to others.

PN257

MR NOBLE: Tuesday or Wednesday.

PN258

THE DEPUTY PRESIDENT: Perhaps if the employers or the employer representatives who support the proposal meet with Mr Noble within the next two weeks and try and land on an agreed redraft and if you are able to then do that then there should be a further discussion with AiG to see whether it could be persuaded to change its view.

PN259

MS PAUL: Yes, your Honour.

PN260

THE DEPUTY PRESIDENT: If it can, then the matter might be agreed. If it can't, then we'll go off to the - - -

PN261

MS HOGG: Your Honour, Ms Hogg in Brisbane. I just wanted to note as well that we're also in agreement with AiG. At this stage, we have some concerns about the proposed redrafting and potentially, you know, there will be consequential amendments that are being made. There might be unintended effects as a result of those amendments, so we are also in the camp with AiG of having serious concerns about what's proposed.

PN262

THE DEPUTY PRESIDENT: Perhaps, I'll rephrase what I had said. Those employers that support the proposed amendment to meet with the CEPU over the

next two weeks to try and formulate an agreed position. If an agreed position between those parties can be arrived at then those parties should thereafter meet with those employer groups that oppose the proposed amendment to see whether or not an agreed position can be arrived at. If so, then the matter can proceed on that basis. If not, then it will be referred to the other process if the employer parties that oppose the change still press it. All right?

PN263

MR KRAJEWSKI: Thank you, your Honour.

PN264

THE DEPUTY PRESIDENT: Thank you. Item 47. Ms Paul.

PN265

MS PAUL: Your Honour, we have put forward a number of suggestions regarding the schedule B, 1.1. I understand that there's been no objection regarding our proposed amendments in relation to the schedules which go through to 454 except in one area and I'm not sure that it's an issue around our suggestion that the schedule doesn't match with of words of the award are. I believe the CEPU has indicated that the award clause itself may be wrong in relation to the public holidays. But I believe that there's a general agreement to our technical amendments proposed in relation to the entire schedule B1.1. So, the one outstanding issue was (indistinct).

PN266

MR NOBLE: Yes, and I haven't been in a position since it was drawn to our attention to actually take instructions on this. It was just the holidays, the way they fall and everything, I just haven't had access to the people I really need to talk to. It does look as though it is a more substantive alteration to the award than we - it wasn't on our radar, your Honour, but because of this, it's brought it to our attention and it probably does need some, yes, fix.

PN267

MS PAUL: If I may, your Honour, just to clarify the area that is in - and I use the term "dispute" loosely because I don't think we are that far apart - the amendments we are seeking is really that the schedule should reflect the clause and the public holidays clause which - the public holidays provision doesn't provide for double time and a half payments in relation to it. Sorry, your Honour, I should have (indistinct). Your Honour, clause 23, which is the public holiday provision - - -

PN268

THE DEPUTY PRESIDENT: Yes.

PN269

MR NOBLE: Is this the current award or - - -

PN270

MS PAUL: Sorry, in terms of the exposure draft, it doesn't provide for any specific payments in the public holidays clause, but it can be found in the overtime clause of the exposure draft. Let me get that.

PN271

MR NOBLE: Yes, in the front.

PN272

MS PAUL: Clause 19. Clause 19, your Honour, I think provides for public holidays to be paid at the 250 per cent, yes, of the ordinary hourly rate.

PN273

MR NOBLE: The overtime.

PN274

MS PAUL: Yes.

PN275

MR NOBLE: Yes.

PN276

MS PAUL: The payment for the public holidays sits within the overtime provision which means the overtime rate is at 250 per cent, but not ordinary time that's worked on a public holiday. I believe the schedule which we say is a problem - the ordinary and penalty rates in terms of B2.3 identifies that - - -

PN277

THE DEPUTY PRESIDENT: Bear with me. B2?

PN278

MS PAUL: 2.3.

PN279

THE DEPUTY PRESIDENT: Yes.

PN280

MS PAUL: Identifies the public holiday rate as with B2.1. B2.1 and B2.3 identify public holiday rates of 250 per cent being paid on ordinary time worked whilst the body of the award actually doesn't provide for that.

PN281

THE DEPUTY PRESIDENT: Yes.

PN282

MS PAUL: Our understanding is that that is the same position that is in the current 2010, so it's replicated the provision, it's just the schedule doesn't match the body of the actual award term.

PN283

THE DEPUTY PRESIDENT: The rates, the 250 per cent, is a percentage of the ordinary rate of pay.

PN284

MS PAUL: Yes.

PN285

THE DEPUTY PRESIDENT: Is that the issue?

PN286

MS PAUL: No, your Honour.

PN287

THE DEPUTY PRESIDENT: No.

PN288

MS PAUL: The issue is that we say that the award actually stipulates that the employees do not get 250 per cent when they work their ordinary time on a public holiday.

PN289

MR NOBLE: The award is actually silent on that.

PN290

MS PAUL: Yes, so it doesn't specify that, whilst the schedule specifies that and the 2010 award, I understand that the same silence exists in the current 2010 award as well.

PN291

MR NOBLE: Yes.

PN292

MS PAUL: Our position at the moment is purely on the basis that the schedule doesn't reflect what's in the award and should be amended, but that has given rise to the concern.

PN293

MR NOBLE: The award should be amended or the - - -

PN294

THE DEPUTY PRESIDENT: As I read the award, one can't work ordinary time or work on a public holiday is classified as overtime.

PN295

MR NOBLE: Yes, that's how I would read it.

PN296

THE DEPUTY PRESIDENT: Yes. It mightn't amount to anything at all in substance because the rate of pay in the schedule and the award is the same or at least the percentage is the same, but - - -

PN297

MS PAUL: It might be an issue, your Honour, of just simply removing the terminology in the schedule. Because the schedule has split it up, it might just be removing the one that says public holidays.

PN298

THE DEPUTY PRESIDENT: Yes, that's right. That might be a simple solution.

PN299

MS PAUL: That would solve that problem.

PN300

THE DEPUTY PRESIDENT: Or, alternatively, to add an additional clause which has overtime. In fact, I think the solution is deleting the columns so far as they relate to ordinary rates of pay because they're already for overtime rates.

PN301

MS PAUL: Yes.

PN302

THE DEPUTY PRESIDENT: Yes, I think that's right.

PN303

MR NOBLE: I think that would work.

PN304

MS PAUL: Yes.

PN305

THE DEPUTY PRESIDENT: Because, as I say, my reading of the award is that any work on a public holiday is overtime.

PN306

MS PAUL: Overtime. Which I understand then amendments that the AiG's other proposals weren't objected to by the CEPU at the time.

PN307

MR NOBLE: No, and they agreed do they need fixing up.

PN308

THE DEPUTY PRESIDENT: So far as the public holiday rate is concerned, the solution is to delete the public holidays column from the B2.1 in schedule B and elsewhere it appears to be fine because it either deals with the overtime rate or the continuous shift work rate and there's also a reference to - - -

PN309

MS PAUL: B2.3, your Honour, may be another one, and B3.1. B2.1 and B2.3. 2.2 says overtime. Sorry, your Honour. B2.1, B2.3 and B3.1 and B3.2.

PN310

MR NOBLE: What about the apprentices - - -

PN311

MS PAUL: Sorry, B4.1, 4.3. Sorry, your Honour, just bear with me. And 4.5.

PN312

MR NOBLE: 4.7.

PN313

MS PAUL: 4.7. 4.9.

PN314

MR NOBLE: And 11.

PN315

MS PAUL: 4.11. I think that's it.

PN316

THE DEPUTY PRESIDENT: There is specific reference to public holiday loadings in respect of shift workers separately from overtime in the awards.

PN317

MS PAUL: Yes.

PN318

THE DEPUTY PRESIDENT: For example, in 13.5 - - -

PN319

MS PAUL: Sorry, your Honour, I will grab the - - -

PN320

THE DEPUTY PRESIDENT: 13.5, some of those rates are referable to - - -

PN321

MS PAUL: It might have been. Yes, sorry, your Honour, I was reading it.

PN322

THE DEPUTY PRESIDENT: Yes, so there are other provisions which deal with shift workers which treat public holidays different.

PN323

MS PAUL: Yes, for shift workers.

PN324

THE DEPUTY PRESIDENT: So that those rates in the schedules which are applicable to shift workers.

PN325

MS PAUL: Your Honour, we'd be happy if we had a little time just to go through and cross-reference all of that.

PN326

THE DEPUTY PRESIDENT: That's fine. That's fine.

PN327

MS PAUL: We can then send that to the parties.

PN328

THE DEPUTY PRESIDENT: Perhaps, Ms Paul, if you prepare a proposed note on the amendments, circulate it to the parties and if I give you, say, a week to do that.

PN329

MS PAUL: That's fine.

PN330

THE DEPUTY PRESIDENT: The parties can indicate their positions on that within another week and hopefully the position will be agreed. I don't think there's any violent disagreement. It's just getting the references correct.

PN331

MS PAUL: To be clear, your Honour, we're just doing proposed amendments in relation to the public holidays.

PN332

THE DEPUTY PRESIDENT: Public holidays, yes, yes. As to the other matters, Mr Noble, did I hear you correctly to indicate that the CEPU recognises there's a need for that once the parties get instructions on those issues?

PN333

MR NOBLE: I think your proposal, your Honour, I think that will deal with it, so then I won't have to get instructions which would be good.

PN334

THE DEPUTY PRESIDENT: Just in relation to the overtime.

PN335

MR NOBLE: Yes, yes.

PN336

THE DEPUTY PRESIDENT: All right. On that basis, Ms Paul will prepare a schedule with the proposed amendments to deal with the consistent referencing of public holiday rates of pay in schedule B having regard to the way in which that issue is dealt with in the award proper within seven days and the other parties can respond within a further seven days and hopefully arising out of that there will be an agreed position. Thank you.

PN337

MS PAUL: Your Honour, there is one thing that I omitted to mention earlier when we were going through the list. It's in relation to item number 7.

PN338

THE DEPUTY PRESIDENT: Yes.

PN339

MS PAUL: The facilitative provisions and it's my error, your Honour, not drawing attention. We had put forward some submissions in relation to the - and I think, again, it's just merely a drafting issue. In the revised exposure draft at subclause 7 - - -

PN340

THE DEPUTY PRESIDENT: There's a reference to the individual - - -

PN341

MS PAUL: Yes, there's a section in there at 14.3. It just says, "An individual," whilst, in fact, that should actually be a majority. So, 16.6(b)(i) says: "A majority of employees, given (f)." I believe that should actually be reading: "An individual or the majority of employees."

PN342

MR NOBLE: Sixteen point what?

PN343

MS PAUL: 16.6(b)(v), and when you actually look at the clause, it actually says: "An individual or the majority of employees." That looks more to be typo.

PN344

THE DEPUTY PRESIDENT: That appears to be right, Mr Noble.

PN345

MR NOBLE: Yes, it does.

PN346

THE DEPUTY PRESIDENT: Yes, all right. The proposed amendment would be to clause 7.2. So far as that deals with 16.6, that would be (i), to add the words: "An individual or" - - -

PN347

MS PAUL: "The majority of employees." I think it would be good - it would be better, your Honour, to reflect the same words that are in the column below where it says: "An individual or the majority of employees."

PN348

THE DEPUTY PRESIDENT: That's what I was proposing, so delete the words - insert, "An individual or" - sorry, uncapitalize "the" and before that and insert, "An individual or" - and delete the errant "f" at the end. All right?

PN349

MS PAUL: Yes, your Honour.

PN350

THE DEPUTY PRESIDENT: Thank you. Item 48. This is the same issue, isn't it?

PN351

MS PAUL: Yes, your Honour. I think all of them are the same.

PN352

THE DEPUTY PRESIDENT: All of them are the same.

PN353

MS PAUL: Would it assist your Honour if we actually did a schedule for all of the amendments we are seeking in schedule 1?

PN354

THE DEPUTY PRESIDENT: Yes.

PN355

MS PAUL: Then we can split it up. It might be easier than for the parties to see what our proposals are.

PN356

THE DEPUTY PRESIDENT: Okay. That would deal with 48 through to - that's all of them, 54; is that right?

PN357

MS PAUL: Yes.

PN358

THE DEPUTY PRESIDENT: All right. That appears to be it, so if the two processes that we have discussed today can occur over the next few weeks. It appears that those are the only two matters that are outstanding so far as this level of the exercise is concerned. Can we perhaps just tentatively list a telephone conference, say, in a month's time to see where we're at and hopefully by that stage we can draw this exercise to a close. Would 4.30, Melbourne time, on 28 February be convenient?

PN359

MS PAUL: Yes, your Honour.

PN360

MR NOBLE: Yes, that's fine.

PN361

MS PAUL: Totally fine, your Honour.

PN362

MS HOGG: Yes, that's fine.

PN363

MR YOUNG: Yes, thank you, your Honour.

PN364

THE DEPUTY PRESIDENT: All right, thank you. We will list the matter for a telephone conference to hopefully finalise the outstanding matters on 28 February 2017 at 4.30 pm, Melbourne time. My associate will send out a notice.

PN365

MS PAUL: Apologies, your Honour, 27th or 28th?

PN366

THE DEPUTY PRESIDENT: 28th. Apologies, 28th. All right. Is there any other matter?

PN367

MR KRAJEWSKI: No, just on - and maybe it's a matter to talk to the CEPU about, but in terms of that first - the shift work matter - whether, in fact, would we be able to use the facilities of the Commission to conduct that particular get

together? Only on the basis that we have got Brisbane with the Master Electricians, yourselves and ourselves.

PN368

THE DEPUTY PRESIDENT: I'm happy to facilitate that. If you liaise with my associate, she can organise a room and video conferencing facility for the parties.

PN369

MR KRAJEWSKI: Thank you. Thank you, your Honour.

PN370

THE DEPUTY PRESIDENT: Thank you all for your attendance and your contributions this morning. We'll adjourn on that basis.

ADJOURNED INDEFINITELY

[10.59 AM]