



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**DEPUTY PRESIDENT SLEVIN
DEPUTY PRESIDENT GRAYSON**

AM2024/20

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

**Application by
(AM2024/20)**

Health Professionals and Support Services Award 2020

Sydney

10.12 AM, WEDNESDAY, 9 JULY 2025

Continued from 07/07/2025

PN1

DEPUTY PRESIDENT SLEVIN: Good morning. We have two large screens with a number of people on it. What I'm going to do is I'll take the appearances based on the information gathered by my associate, and so if you can just confirm for me, and I'll just read the person who I understand will have the speaking part. So I've got for the Australian Council of Trade Unions, the Health Services Union, and the United Workers Union, Mr Lettau. Is that correct?

PN2

DEPUTY PRESIDENT GRAYSON: You're on mute, Mr Lettau.

PN3

MR P LETTAU: Can you hear me now?

PN4

DEPUTY PRESIDENT SLEVIN: There you are. I see you.

PN5

MR LETTAU: Thank you.

PN6

DEPUTY PRESIDENT SLEVIN: Thank you. For Pathology Australia, Mr Holding. That's correct?

PN7

MR B HOLDING: Yes. Thank you. That's correct.

PN8

DEPUTY PRESIDENT SLEVIN: Thank you, Mr Holding. For the Australian Dental Association, Mr Seck.

PN9

MR M SECK: May it please, Deputy President.

PN10

DEPUTY PRESIDENT SLEVIN: Thank you, Mr Seck. Dental Assistants Professional Association, Ms Schreier-Joffe.

PN11

MS S SCHREIER-JOFFE: Yes. That's correct.

PN12

DEPUTY PRESIDENT SLEVIN: Thank you. The Phlebotomist Council of Australia, Ms Luxton, are you doing the speaking? I've got two names. Who's doing the speaking on behalf of your organisation?

PN13

MS B LUXTON: (Indistinct) today, thank you, Deputy President.

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DEPUTY PRESIDENT SLEVIN: Thank you, Ms Luxton. The Dental Services Business Council, Mr Lange. Is that correct?

PN15

MR T LANGE: Yes, Deputy President. That's so.

PN16

DEPUTY PRESIDENT SLEVIN: All right. Those are the people I have listed as seeking to appear. I have a number of other people online I can see. I'm assuming that anyone else who is online is an observer. I will give you an opportunity to speak now or forever hold your peace if you wish to appear rather than simply observe.

PN17

MR J PENAFIEL: Deputy President, Mr Penafiel, initial J, of J Penn Co Lawyers. We appear for the Phlebotomist Council of Australia, but I will be ably assisted by Ms Luxton where it is more helpful.

PN18

DEPUTY PRESIDENT SLEVIN: Thank you. All right. Thank you. Welcome, Mr Penafiel. You're most welcome, and I've noted that. The purpose of the conference today arises from the statement issued on 6 June 2025. That statement dealt with both the services classifications in the award and the professional classifications. The services classifications has advanced, as you're all aware, further than the professionals classifications in that a draft determination has been issued. We've received submissions from, I think, all of these parties, all of those I've taken appearances for in response to the provisional views expressed in the April decision, and we've received submissions in relation to the draft determination.

PN19

We can see from those submissions that the parties are apart in a number of areas. The purpose of the conferences is to give the parties the opportunity to have access to the assistance of the Commission in conciliation if there is some prospect that some consensus can be reached. The parties will be aware from following the proceedings that in relation to pharmacists a consent position was able to be reached and a determination issued. We don't see consensus in the submissions received, and so the purpose of today is to see if the parties are interested in continuing in the conference process to see if some consent position can be reached. And by way of consent position, I don't refer simply to a final determination, but it may well be that consent can be reached on confining the issues for the final determination of these matters.

PN20

I just make a couple of comments. First of all, the proceedings are pretty much 85 per cent complete. We're really just talking about the settling of the final determination now. We're not interested in, and we won't be entertaining, revisiting the findings made in the April decision. I note that some of the submissions do do that. It's simply a matter of the Commission's engaged in quite an important project at the moment under the requirements of the – or the changes

to the award provisions of the Act, and it's a project that is growing, as the parties would have noticed from the recent national wage review.

PN21

And so at this stage of these proceedings, we're at settling the determination to be made by the Commission to reflect the findings made in the decision in April. And so it's that exercise, and the parties have an opportunity – the expert panel has determined that the parties should have an opportunity to see if some consent can be reached either on the final outcome or on the issues upon which they are still apart in relation to that determination, but it's confined to that issue only. So what we're interested in hearing from the parties today is whether there is any prospect or any utility in engaging in further conferences to see if a consensus can be arrived at.

PN22

The parties will also have noted that the President has called the matter on for directions next week to programme these matters to finality, and it may well be that the outcome of this morning's exercise is that, at the directions hearing, requests can be made for further conferences to that end. So we're interested in hearing the parties view on that question first of all.

PN23

In saying that, I don't wish to constrain the parties in any comment that they'd like to make this morning about the proceedings and what's required next, but I just want to focus your mind on that question as to how we proceed, or whether we proceed by way of further conferences, or whether the parties are of the view that they'll attend the directions hearing next week on the basis that they'll be preparing for the final contest, if I can put it that way.

PN24

I'll go through the list in the order that I took the appearances and invite you to address us on those questions. So I'll start with you, Mr Lettau. What's the union's view on that?

PN25

MR LETTAU: Thank you, Deputy President. Well, look, I think, as probably everyone would appreciate on the – overall, there's probably not going to be a consensus reached, but the union has identified that there are probably some smaller issues that might be, you know, worth exploring through further conferences. I can give you a few indications of certain areas that we thought might be worthy of discussion.

PN26

Regarding pathology, Australian Pathology had proposed some changes to the definition of 'industry experience'. That might be an area that could be explored. There were submissions made by Australian Pathology in relation to certificate III, clarifying whether the qualification should be specified in more specificities. So for example, I think Australian Pathology put the Certificate III in Pathology Collection or equivalent competency. That might be an area that could be explored in conference as well.

PN27

They're the main ones that I can see based on my instructions at this stage in pathology. I don't think I've got any instructions on in debt or in terms of what could be explored there.

PN28

DEPUTY PRESIDENT GRAYSON: Mr Lettau, do you also think there might be some potential for exploring without prejudice to people's positions on a single staff collection centre, that definition or what a definition of that might look like should the - - -

PN29

MR LETTAU: Yes. Sorry, I missed that. Of course, that's another issue that we've made submissions on that the definition might be utile, so, yes. The answer would be yes to that.

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DEPUTY PRESIDENT GRAYSON: Thanks, Mr Lettau.

PN31

DEPUTY PRESIDENT SLEVIN: Thank you. Pathology Australia, Mr Holding.

PN32

MR HOLDING: Yes. Thank you, Deputy President. I share Mr Lettau's view that, overall, it seems very unlikely there's going to be consensus, but there may be issues that could be worked through, being the ones just identified, but I say that under cover of the submission that, as outlined in the written submissions, our view is that a final decision about any of the proposed changes really needs to be subject to evidence about costs modelling, which we imagined would be put on based on determinations not only in relation to pathology collectors but also in relation to health professionals, and only then can Pathology Australia give the Commission a good understanding of the effect that the changes might have on profitability and viability in the pathology sector.

PN33

So while we remain willing to talk about the issues that Mr Lettau has just identified, I need to reiterate that it's under cover of the overall submission and without prejudice to the submission that Pathology Australia opposes the changes and wants to be heard on costs.

PN34

DEPUTY PRESIDENT SLEVIN: Who do you propose do the costs modelling, Mr Holding, and what does it look like?

PN35

MR HOLDING: Yes. The discussions we've been having so far is to have Mr Brown, who gave evidence in the first proceeding, to do further modelling based on the draft determinations both for pathology collectors and health professionals, and it would look, we expect, quite similar to the previous modelling that was put on, noting the comments in the decision in April that that needed to be reflective of the actual changes proposed.

PN36

DEPUTY PRESIDENT SLEVIN: Thank you. The changes proposed are in the draft determination, has work been done or commenced by Mr Brown in relation to what the draft determination might result in?

PN37

MR HOLDING: Work has begun, but we see that there are two issues, Deputy President, holding us back, and the first is some of the issues raised in the submissions both by us and by other parties as to how the draft determination will be applied in practice; and secondly, as I mentioned, if there remain outstanding issues as to other classifications in the award, like medical scientists, for example, then Pathology Australia is not going to be able to give – or Dr Brown is not going to be able to give the Commission a good idea of the effect that those changes will have on the pathology industry, and we're mindful of the comments in the decision that the evidence we already produced was irrelevant for that reason.

PN38

DEPUTY PRESIDENT SLEVIN: Yes. No, but I just wonder, the distinction that I'd make about that, though, Mr Holding, is that it may well be that Dr Brown can do some modelling based on various outcomes; that modelling may not be the final evidence that might be presented to the expert panel, should the matter progress that far. In other words, it may well be a matter for the directions next week that a programme be put in place for final evidence to be put together, but for the purpose of whether you can reach some sort of accommodation with others, it may well be that a more broader exercise in relation to modelling considering various options might be considered by Dr Brown.

PN39

That's the only suggestion that I can make, Mr Holding, as to making that distinction that I was making before between what might need to go to the expert panel and what might be useful for the parties to have in further discussions. That's the only suggestion I'd make, Mr Holding. It's something for your client to consider.

PN40

MR HOLDING: Thank you, Deputy President. I'll take that to my client and we'll consider that.

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DEPUTY PRESIDENT SLEVIN: All right. Thank you. Mr Seck.

PN42

MR SECK: Thank you, Deputy President. The Australian Dental Association sees that there would be a benefit in holding at least one further conference, if not more, to see whether or not the issues between the parties can be narrowed. As will have been apparent from the ADA's submissions, we see that there are at least two issues which need to be addressed, if not there, the first one being the appropriateness of the current classification structure as it pertains to dental assistants.

PN43

As the Commission will be aware, not only the ADA but also the Dental Service Business Council and the Dental Assistants Professional Association view that the current classification structure that applies to dental assistants is not appropriate for various reasons which are set out in the submissions, and in order to, in effect, benchmark the current dental assistants against the current classifications, it would be appropriate to ensure that those classifications reflect the appropriate work value considerations that need to be applied, but also to have perhaps more accurate classification descriptors by reference to the actual work performed by dental assistants and the experience that they have in performing those roles.

PN44

Given that the Dental Assistants Professional Association is one of the primary bodies representing dental assistants and they appear to urge that there needs to be some revision of the classification structure, in our view, there is some merit in seeing whether or not agreement can be reached as to the classification that might be involved in those classification descriptors.

PN45

If agreement can't be reached on the issue, then what we envisage happening is that there would be evidence called on those points. The ADA has conferred with the Dental Service Business Council about obtaining evidence on that issue. From the ADA's point of view, we'd probably be looking at getting evidence by way of survey from our members on some key questions relating to the grade descriptors and the nature of the work performed by dental assistants, and dealing with the second issue, to which I'll come to, which is the cost impact of any final determination made in order to ensure that phasing in doesn't jeopardise the business profitability and viability of dental practices, and looking at the impact upon the economy more generally as a result of any determination being made.

PN46

For those reasons, Deputy Presidents, we see that there would be some value in having at least one, if not more, conferences to try to see whether or not agreement can be reached on at least some of the conceptual issues involved and hopefully come up with a classification structure and some basis for properly phasing in some of these issues. Even if there can't be actual agreement on the determination, we certainly see that, as you pointed out, Deputy President Slevin, value in trying to narrow the issues that exist.

PN47

DEPUTY PRESIDENT SLEVIN: Thank you, Mr Seck. I'm with you on the cost impact side of things. An issue, I think, that I'd like to draw the parties' attention to is in the stage one report, there was quite detailed information about who – and this did impact the dental assistants – who was actually being paid on the award and what capacity there was for the absorption of some of these increases and what impact that may have on phasing in arrangements, for example, which is the way the cost issue is dealt with. So I draw your attention to that on cost.

PN48

Some alarm bells in relation to the current classification structure and what changes may be made, the provisional view and the draft determination indicate a

firm view that is being taken by the Commission in relation to classifications, as you'd appreciate. It doesn't mean that, if the parties can reach some consensus, that the expert panel may not be convinced that the parties' view is the better view, but revisiting that question in terms of calling further evidence to criticise the existing classification structure may not be available. I'll just point that out. That will be a matter for his Honour in the directions hearing next week, but I just make that distinction between what can be achieved in conferences and what might happen down the track, given that there's already been those firm indications from the expert panel on that question.

PN49

So I make those observations, Mr Seck, and then I have a question for you. So you're talking about further conferences. I think what arises from what you say is that there may be some scope for separating the pathologists away out from the dental assistants so that we deal with the matters more efficiently. Have you turned your mind to what the conferences would look like?

PN50

MR SECK: I agree with you, Deputy President, there'd be probably some benefit in separating out pathologists from dental assistants given the separate issues which apply to each of those roles. We had in mind that any conference would be in person where the parties would be sitting around a table seeking to resolve those issues, and perhaps facilitate it beforehand with some key agenda items or position papers on what each of the parties intend to present with the hope of trying to identify what's in agreement between the parties and what's in dispute. So we do certainly see some value in separating out those streams.

PN51

DEPUTY PRESIDENT GRAYSON: Mr Seck, why didn't your client appear in the first stage of these proceedings or make any submission?

PN52

MR SECK: I don't know is the short answer, Deputy President, obviously, to the extent that findings have been made in relation to the gender evaluation, and we don't seek to cavil with the fact that the process has been undertaken and findings have been made, a provisional view has been expressed, and certainly, we take onboard the points and observations made by Deputy President Slevin on the issue.

PN53

DEPUTY PRESIDENT GRAYSON: Thanks, Mr Seck.

PN54

DEPUTY PRESIDENT SLEVIN: Thank you. I think we'll go to the Dental Assistants Professional Association. Ms Schreier-Joffe.

PN55

MS SCHREIER-JOFFE: Yes. Thank you, Commissioner. I think that, in response to Mr Seck's comments about the viability of further conferences, I have to say I am not entirely sure that there would be utility in doing so, because the parties appear to be quite far apart in terms of what they want from those

conferences in terms of outcomes. Yes, there is no doubt that the Dental Assistants Professional Association has made submissions regarding a separate classification structure, but that was rejected in the draft determination by the Full Bench and we have accepted that position.

PN56

What I am concerned about is that there will be further conferences which will delay the process – and I want to make some further submissions on delaying any implementation of outcomes – with parties who have very different and opposite views as to the outcomes of what should occur in relation to those classifications, and I'm basing those submissions on recent submissions primarily by the Dental Services Business Council. I do welcome the Commission's position that we're not reopening evidence on this matter, because I am concerned and I note requests by the Dental Assistants – sorry – the Dental Association for directions about evidence, and we would be very much objecting to any new evidence that revisits matters that have already been litigated, so to speak, in the first phase.

PN57

And I do want to point out that the Dental Services Business Council, which seems to have been driving these additional submissions, is a business council that represents the biggest players from dental providers that - big corporate dentistry practices. Many of those are owned by private equity. On the other side of the coin is the organisation that I represent, which is a volunteer organisation dealing with the lowest level of participant in the dental industry, being the dental assistants, and my client cannot afford, and nor can the dental assistants afford, ongoing disputation. We see huge amounts of further evidence requiring responses, et cetera, and it becomes a little bit about Goliath and David, a competition which our client just isn't, we'd say, at this stage, given the matter's been going for almost 12 months, would be entirely inappropriate and unfair.

PN58

In terms of the issues raised and the differences between the parties, I think that Mr Seck has identified the main differences, being the classifications. We have made submissions on this in our primary submissions on 27 June, and we just require minor amendment to the wording of the classifications already proposed by the Commission to make it clear as to how those classifications operate so that they either recognise the actual academic qualifications gained by dental assistants, or, in the alternative, years of experience that would give them the same type of qualification. And that, we just say, is a matter of tweaking the wording, and we've set that out in our submissions.

PN59

In relation to the issues raised by the Dental Services Business Council, they've raised a number of different issues and I'm happy to go through them in this forum. I think, at best, given the lateness of some of their submissions – I think they provided supplementary submissions only this week – that we provide a further written reply to those submissions. It might be of more assistance.

PN60

But I think, on the whole, the real issue here is that their argument is that there are different streams of dentistry requiring different skills from dental assistants and

that should be recognised. I think that the evidence that was provided by the various dental assistants that gave evidence in these proceedings set out quite clearly what skills were required over a broad range of dental activities and what those skills encompassed. We would take issue – and there is no evidence to support this proposition by anybody in these proceedings – that there is a large difference between various different streams of dentistry work. In fact, to be honest, when you get more specialised, so do your dental assistants. That doesn't minimise the dental assistant work at lower levels, and that's already been addressed and findings made by this bench in relation to those issues. We say that that should not be reopened.

PN61

In terms of the cost consequence and the absorption issue that you rightly pointed out, we make the following points. The current submissions in relation to costs are being made, as I say, by a group that effectively represents the very largest of players in this field, and their arguments primarily are suggesting that the increases as proposed at the moment will impact the access to dental services by, you know, the general man in the street, or it will increase costs for the individuals who will now seek dental care.

PN62

To that, we say two things: one, there has been a recognition by this Commission in this matter that there is an undervaluation of dental assistants and their work, and that needs to be addressed; two, that there needs to be some recognition that there will be possibly an increase in costs, but when we're talking about the largest players of an industry saying that that is going to affect the man in the street without indicating why their participants can't absorb some of those costs, or why they can't – and I noticed there were certain graphs provided in their submissions regarding a number of large health funds and agreements with those health funds and the suggestion that those will then be impacted – why those can't be negotiated to affect an increase to the lowest paid people in the industry but rather a suggestion that these increases should not be as significant as they may be, or that they should be delayed over a very significant period of time.

PN63

And I am concerned about delay, and the suggestion that there will be additional evidence and further conferences will again just delay any implementation of any increases for a group of workers who effectively have not had an increase, a proper increase, in a significant period of time, and there is compelling evidence before the Full Bench in relation to how so many of these dental assistants are leaving the industry because of the very factor that they are not being paid a sufficient wage, a living wage, and that has a far more direct and immediate impact on dental care to the general population.

PN64

And so on that basis, we'd say we're open to conferences, but I have to say they would have to be very much circumscribed, directed. I would not be open to, or would not be in favour of, ongoing conferences to try and narrow a range of issues as identified by Mr Seck in circumstances where that will just delay the process, and I have concerns that they will not reach a resolution given what has already been placed in submissions about where they want to go with the classification

structure and the like. I know that's not overly helpful in terms of reaching a consensus position, but I think that needs to be said in circumstances where we are somewhat far apart on the principles of these issues.

PN65

DEPUTY PRESIDENT SLEVIN: Thank you. Ms Schreier-Joffe, I think you've probably put better the comments I made earlier on the classification structure as to the fact that much evidence has already been led and considered by the expert panel on the classification structure, and there may well be room for agreement between the parties that may depart from provisional views and the draft determination, and so any discussion on those lines would be confined. What you say about costs is compelling and will be a matter for the expert panel should the matter need to be finally determined by further arbitral proceedings.

PN66

Your focus on delay, I meant to convey earlier, and I hope I did, that these conferences will run alongside any timetable set by the President at the directions hearing next week. I indicated that the President takes the view that the matter should proceed with some expedition, but not too quickly, and I can indicate that the requests on the Deputy President and myself are that we block out time in October should there be a need for further hearings in this matter. I don't think I'm letting any cat out of the bag there. If I am, then no doubt I'll hear about it, but the parties, I think, should know that any conferences that are held will run alongside a timetable that's set for finalising the matter, and that timetable is expected to be set at the directions hearing next week.

PN67

Does that address those matters that you've raised, Ms Schreier-Joffe? And I'm going to end that by saying I'm hearing that you would be willing to engage in the process that Mr Seck described so long as it's circumscribed to those sorts of matters.

PN68

MS SCHREIER-JOFFE: Yes. If there is any scope to narrow the issues and find agreement, I'm not going to object to that. It would be helpful, but I just – I'll leave it at that.

PN69

DEPUTY PRESIDENT SLEVIN: Thank you. Thank you. I'm conscious that I'm jumping between the two areas having indicated that perhaps it's worth separating them two, but I'll go to the Phlebotomist Council of Australia because that's what I promised to do. Mr Penafiel, do you have anything to add in relation to the matters that affect your client?

PN70

MR PENAFIEL: Deputy President, I'll do my best to limit my submissions to the topic of programming rather than substantial areas of difference in line with your preliminary comments at the start of this conference, but broadly speaking, the PCA does want to echo the sentiments expressed by Ms Schreier-Joffe in terms of the urgency of implementing the 6 June 2025 decision, which is, of course, incomplete, and also echoing the concern about the prejudice to the parties from

the cost of further evidence that might just unnecessarily revisit the findings of fact from the April 2025 decision. At the same time, we do want to reiterate that the PCA is here to assist the expert panel as much as possible to do its job effectively, and can sort of file and provide further material as required.

PN71

We do note for the record that in its submission on, sorry, 27 June 2025, the PCA has already addressed the request at paragraph 10 of the 6 June statement 2025, which was to provide the expert panel with, essentially, details of the composition of the pathology collector workforce and numbers who work in single-person collection centres. So it may be that, if the Commission is of the view that further evidence is required in fairness from all parties, it may be just a matter of formality, but it may be that the PCA is also able to provide further evidence in support of the senior subset to the level 7 classification it flagged in its most recent submission, if the expert panel considers that will be of assistance.

PN72

So the PCA does broadly take the position that some of the evidence flagged in particular by Australian Pathology is, with due respect and for want of a better term, flogging a bit of a dead horse, but at the same time, it is ready, willing, and able to provide additional assistance as necessary and for that programming to be extended to all parties in fairness to all, Deputy President.

PN73

DEPUTY PRESIDENT GRAYSON: Mr Penafiel, what's your position on engaging in a conference along the lines of what Mr Lettau proposed at the beginning? That is, seeing whether any consensus could be reached on concepts of what is a single staff collection centre, what is the appropriate description of the qualification, what should be the definition of 'industry experience'? Is that something you think there would be utility in engaging in to see if there's consensus on some of those confined issues?

PN74

MR PENAFIEL: Certainly, Deputy Grayson, and, yes, I did omit mentioning that the PCA is in broad agreement with the ACTU on perhaps another conference where the expert panel or a member of the expert panel may spend more time hearing directly from players like the PCA directly on those more substantial issues, and that will help to limit this current conference to matters of programming.

PN75

DEPUTY PRESIDENT GRAYSON: So not sure it will be hearing from them, but facilitating discussions between them to see if consensus could be reached, but understood. One quick question in relation to your proposal. You referred to the level 7, you know, senior, proposal that you've made in relation to level 7. Just so I understand your position correctly at paragraph 10 of your submissions, when you refer to the standard rate, are you referring to your proposed level 7 standard rate, or are you referring to the standard rate, you know, that we would normally understand an award to include, which will be, you know, level 1, from memory, in this award?

PN76

MR PENAFIEL: It's referring to the standard rate for level 7, and then the second strata sort of at paragraph 10(b) is a 25 per cent loading on prevailing rate for level 7. So sort of 7(a) and 7(b) are sort of set out in the submission. Does that clarify the point, Deputy President?

PN77

DEPUTY PRESIDENT GRAYSON: Yes. so the proposal is 25 per cent above the level 7 rate, not 25 per cent above the standard rate as we would normally refer to it or contemplate it in a modern award?

PN78

MR PENAFIEL: That is correct, Deputy President.

PN79

DEPUTY PRESIDENT GRAYSON: All right. Understood. Thank you.

PN80

MR PENAFIEL: Sorry, one point, Deputy President, before we move on. Mr Seck for the Dental Association mentioned conferences in person. The PCA would prefer, or submit, that conferences still be facilitated online via Teams given the geographically disparate locations of the parties.

PN81

DEPUTY PRESIDENT GRAYSON: Thanks, Mr Penafiel. And just - - -

PN82

DEPUTY PRESIDENT SLEVIN: I might reiterate, Mr Penafiel, that any evidence or equine submissions can be made in any proceedings that arise from the directions hearing next week. Again, I want to emphasise that we're focusing on whether the parties can reach some agreement as to either final outcomes or confining issues. Ms Luxton.

PN83

MS LUXTON: Thank you, Deputy President. I just wanted to add to that. Within our submission, we have raised an issue that we are seeing happening in real time at the moment where the parties are quite at a very different – greatly different points, and that is in current bargaining, enterprise bargaining, which was raised during the hearings. And we are seeing – and it has been raised in our submission – a real threat of where previous employees who had a right to bargain for above-award wages are being threatened to be moved back to the modern award wage, because the modern award has been looking to be increased due to the gender undervaluation and that their wage – the modern award has been, you know, clear that they have been undervalued due to the case of gender undervaluation. We have raised that up as that could be potentially an adverse action moving forward, and we do ask the Commission for further, you know, advice and seek their opinion on how that may look moving forward.

PN84

DEPUTY PRESIDENT SLEVIN: I'm not sure that we can help you in these proceedings with that, Ms Luxton, and it's not our position to give you advice, but

it sounds like something that would be amenable to a section 240 application of a dispute in bargaining, and the Commission may be able to assist there. I'm not sure that's something for the expert panel, though. Thank you. I think that leaves us with the Dental Service Business Council, another party that was late to the proceedings but still welcome on the basis that I've explained before, that you have arrived late and we're not going to revisit things that have been dealt with previously. So Mr Lange.

PN85

MR LANGE: Deputy President.

PN86

DEPUTY PRESIDENT SLEVIN: There you are. Thank you.

PN87

MR LANGE: We're at a point in the proceedings where the purposes of these conferences identified are to address two issues, operative date or phasing in, however one addresses that, and the draft determination. I hear the submissions of the Dental Assistants Professional Association and of the Australian Dental Association. Our position is, as to directions, and noting your indication that those might be held in parallel, our view would be that there ought to be at least one conference. It would be a private conciliation conference with the default attendance to that being in person and facilitated by a member of the Commission. We would not, in light of having reviewed the submissions, be suggesting that that is a conference that would cure all ills. We accept that it's likely to be limited to narrowing of issues, but there is a real value in a conference which narrows issues that would otherwise need to be dealt with in arbitration.

PN88

The aspect as to phasing in or operative date, we've given an indication in the written submissions that, noting the April decision's comments, that there's no evidence dealing with cost-based financial operations, et cetera, other than in a specialist hospital environment, and that it's necessary that there be some evidence about that, which might be achieved, one would hope, by some sort of consent position, but hearing what the dental assistants say, perhaps that's not going to go very far.

PN89

Nevertheless, the issues around phasing in and operative dates are not exclusively going to be dealt with by the financial position of a particular group of dental clinics. They are matters that will involve factoring in – and I have regard there to paragraph (h) of the modern award objective – what are the impacts of other operative features, voucher, fixed fee, et cetera, measures which we've sought to quantify in supplementary submissions. I should say those supplementary submissions are there to provide additional information on things we'd already said in written submissions.

PN90

What we'd say to the Commission in due course that indicates is that, particularly in relation to section 134(1)(h), there are a number of other broad factors that will need to be considered. What we will be saying in relation to those matters and

operative date, picking up something that the dental assistants said a moment ago, is that, on a best case, the issue of funding of those types of fixed fee and capped fee arrangements is a matter that is not within the purview of anyone around this table. It is a matter where budgeting processes that belong to some private health insurers and to the Commonwealth – for example, there is only one annual opportunity for private health networks to determine what – I'm sorry – to obtain ministerial permission so as to increase their capacity to raise insurance premiums. That flows on, of course, to what those networks are then able to package up as a preferred provider network, et cetera. So there is a real flow on state and federal government budgetary processes in terms of funding those voucher schemes so as to manage the overflow from public dentistry – are all features that follow an annual budgeting process.

PN91

They are not matters that are raised in some attempt to unnecessarily delay the implementation findings. They are simply a factual matter that has to be taken into account as to phasing in operations. We would like the opportunity in a conference to see if we can come to at least some meeting of minds as to what those external processes are going to impose. I'm hearing what's said by the dental assistants. I'm not necessarily hopeful that there will be agreement, but at least there may be a level of consensus as to what are those objective factors which may obviate the need for evidence as to those matters and allow, for example, some agreed facts. We think that would be helpful.

PN92

There is another aspect to the conferences which we are anticipating would be on utility. I hear what the Commission says. You're 85 per cent complete. You're not entertaining revisiting findings to reflect, but rather to look at the terms of draft determination that will reflect the findings in the April decision. We understand that, but nevertheless, what we say my client wants to raise here is, conceptually within what is the scope of findings, it's simply at a level of detail that the determination was not called on to address, because that level of detail within the envelope, what we think are the findings in April, was not descended to.

PN93

We don't say that a practical proposal such as has been identified in those supplementary submissions would necessarily be inconsistent. I see the dental assistants say that it would be, but even the dental assistants, who accept that there is some tweaking required, say that that tweaking is required, and rightly so, because – and I'm reading from paragraph 11 of the written submissions:

PN94

The inclusion of service-based alternatives recognises the industry reality that many dental assistants develop advanced competencies through in-practice training and experience.

PN95

I realise the dental assistants will say that what's been identified in the supplementary submissions is many steps beyond that. I understand it. I'm not trying to put words in their mouths, but simply to recognise that there are some

aspects of the April decision that lend themselves to additional detail that reflects the very industrial reality that has been raised by the dental assistants.

PN96

In the absence of agreement, where it could be achieved, there would be a significant lessening of effort and possibly some of the time that will be taken. And we hear what the dental assistants say as a volunteer organisation, et cetera. In the absence of agreement, or to the extent that there can't be agreement or at least the production of some agreed facts, the matter will need to be arbitrated. And I hear what you say; sometime in October would need to be set aside. What we anticipate is that, subject to the identification of some agreed facts, potentially, October may be a little tight, particularly because what we would anticipate is seeking to obtain some expert evidence. We think the Commission would be best assisted and the expert panel best assisted by something that looks at the industry-level and potentially sector-level scenarios so far as financial operations and the potential impact on the wider economy is concerned. We would aim to put that expert evidence on. October may be a little tight for that.

PN97

That's a matter no doubt will be quizzed on by the President on the 15th, but for today's purposes, as I started out with, our suggestion would be that with a default attendance in person of those people around the table with a particular interest in the position of the changes for dental assistants, but that ought to be held, and I would anticipate that that could be done, within the next 2-3 weeks, as Mr Seck has suggested, with the exchange of potentially some key issues and key position papers, not seeking to repeat what's put in written submissions but rather to confine and guide the agenda.

PN98

DEPUTY PRESIDENT SLEVIN: Thank you, Mr Lange. A couple of observations. What you say about costs and the scheme in place associated with the private health insurers and the opportunities for caps to be lifted, are all matters that you'll find when you get to reviewing the material that was before the expert panel had been canvassed already by other parties. You'll find that there's quite a lot of evidence on those topics already before the expert panel that may assist you in preparing for the directions hearing. I can't help you at all with your concerns about October, but that exercise may.

PN99

In terms of the matters of the classification structure, I hear what you say about tweaking. If it is simply tweaking, then perhaps the conferences that have been anticipated may well bear some fruit, but I simply stress that that process will be a process that will run alongside the preparation of any final positions being taken, and so the parties should prepare themselves in that manner.

PN100

Mr Lettau, I'll give you a chance to respond to all of that. I see you're instructed by Ms Peldova-McLelland, De Plater, and Orman, who I can see but I'm not hearing from today, I understand. Does anything arise from what's been said from the union's point of view that gives you any concern?

PN101

MR LETTAU: Look, we would echo, I guess, fairly loudly all the concerns about the scope issues and the re-litigation of matters that have already been dealt with in the hearing last year. So we have concerns there. There's not much more to add in terms of what we think might benefit from further conferencing.

PN102

In terms of the dental side of things, obviously, we've received this proposed – the additional submissions, you know, yesterday or the day before. We haven't had time to consider that deeply, but on its face, we don't really see that much opportunity for, you know, for reaching any sort of beneficial consensus. It is a proposal that really goes against one of the principles that, at least on our understanding, was set out in the decision, which is that the rectification of the gender evaluation wouldn't entail rewriting structures. So I guess that would be our initial response. Other than that, I don't think I have anything further to add in terms of our views.

PN103

DEPUTY PRESIDENT SLEVIN: Thank you. If you'll bear with us for a moment. I might just have a discussion with Deputy President Grayson and we'll see where we go next. Thank you.

SHORT ADJOURNMENT

[11.07 AM]

RESUMED

[11.09 AM]

PN104

DEPUTY PRESIDENT SLEVIN: Thank you for that. It seems that there's broadly consensus that there be at least a further conference in relation to both topics. We're inclined to think that perhaps separating the two groups is the most efficient way to do that. It's a matter of us giving that more thought and getting back to the parties about that.

PN105

What I would like, though, is if I can go through my list again and get an indication from you as to your preference for in-person or online conferences. My inclination is, or our inclination is, to agree with the observation of Mr Lange that an in-person conference that facilitates some online participation where that's necessary would be the best way to deal with those conferences, but having made that observation, I'll just get the views of the parties about that. And so if you can address me on simply a conference for the pathologists, a conference for the dental assistants, and where, I'd appreciate if you could do that. I'll start with you, Mr Lettau. I'll do the same order. Mr Lettau.

PN106

MR LETTAU: Well, as you can appreciate, on the where question, Melbourne would be our preference. As for whether it's in-person or online, we would accept in-person as default would be okay, although an option for an online appearance, we think, could be beneficial potentially as well.

PN107

DEPUTY PRESIDENT SLEVIN: Thank you. Mr Holding.

PN108

MR HOLDING: Yes. In-person in Melbourne or online would be the preference.

PN109

DEPUTY PRESIDENT SLEVIN: Thank you. Mr Seck.

PN110

MR SECK: Separate conferences for pathologists and dental assistants consistent with my earlier submissions, in-person as default. We're in Sydney, so our preference is in Sydney, but we understand that it could be in Melbourne.

PN111

DEPUTY PRESIDENT SLEVIN: Suspect we might be outvoted on that, Mr Seck, but I'm with you on Sydney. Ms Schreier-Joffe.

PN112

MS SCHREIER-JOFFE: I echo that in-person would be our preference, but if so, it would need to be in Sydney – my client cannot afford to send me to any other state – and if there are other parties that need to attend, then the ability to do so by video.

PN113

DEPUTY PRESIDENT SLEVIN: Looks like we've got dentists in Sydney and pathologists in Melbourne thus far. Mr Penafiel.

PN114

MR PENAFIEL: PCA's preference would be Brisbane if it was to be in-person. So in those circumstances, the preference, or default preference is online.

PN115

DEPUTY PRESIDENT SLEVIN: Thank you. And Mr Lange.

PN116

MR LANGE: Deputy President, separate conferences, in-person being the default. We would say Sydney, both in order to accommodate the dental assistants and also because there are some key members of the business council who are based in Sydney. It would behove us all, I think, to have as many of our direct clients in attendance as possible.

PN117

DEPUTY PRESIDENT SLEVIN: I suspect that's all we can do today. We'll be back in touch with you about future conferences. The next step in the proceedings is the directions hearing, as I've already indicated. Unless anyone wants to raise anything further – Ms Luxton, your hand is up.

PN118

MS LUXTON: Sorry, Deputy President. PCA can attend in Sydney if that does assist. Mr Penafiel's in Sydney, and - - -

PN119

DEPUTY PRESIDENT SLEVIN: Thank you.

PN120

MS LUXTON: Thank you.

PN121

DEPUTY PRESIDENT SLEVIN: Anything further from any of the parties? I see no one jumping to turn their mic back on. That's got to be a good thing. Thank you for your attendance this morning. As I said, we'll take into account the matters that have been discussed. It looks like we're heading to a further conference. We'll split the dental assistants and the pathologists, and have separate conferences from those is the most likely outcome, and we'll let you know when and where in the near future. Thank you again for your attendance. I'll adjourn the Commission, and you're free to leave the call now.

ADJOURNED INDEFINITELY

[11.14 AM]