



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

1052554

COMMISSIONER ROE

AM2014/207

s.156 - 4 yearly review of modern awards

Four yearly review of modern awards

(AM2014/207)

Nurses Award 2010

Sydney

11.31 AM, THURSDAY, 8 OCTOBER 2015

RESUMED

[1.33 PM]

PN1

THE COMMISSIONER: All right, so we might just check everybody that we have here, so everyone knows who's involved. So we've got Mr McCarthy in Melbourne, is that's right?

PN2

MR A MCCARTHY: Yes, Commissioner.

PN3

THE COMMISSIONER: Okay and Ms Hepworth and Ms Fisher in Brisbane?

PN4

MS L HEPWORTH: Yes, Commissioner, that's correct.

PN5

THE COMMISSIONER: Great and perhaps the people here might just introduce themselves, so that people interstate know.

PN6

MS L SVENDSEN: Leigh Svendsen, HSU.

PN7

MR M ROBSON: Michael Robson, United Voice.

PN8

MR G LIGGINS: Geoff Liggins, Aged and Community Services.

PN9

MR J LI: Jess Li, API.

PN10

MR D TYLER: Dean Tyler, API New South Wales Business Chamber.

PN11

MS G VACCARO: Genevieve Vaccaro, AI Group.

PN12

THE COMMISSIONER: Great, thank you. All right, now there's a number of items to go through. Unfortunately I have limited time today, so we've got a couple of hours but I can't go much beyond that because- - -

PN13

MS PATTON: Sorry, I'm late.

PN14

THE COMMISSIONER: That's okay. So just maybe if you introduce yourself to everyone.

PN15

MS E PATTON: It's Emma Patten, from Leading Age Services Australia, NSW, ACT.

PN16

THE COMMISSIONER: So we'll see how far we can get in a couple of hours. Item 2 is – so I'll just very quickly go through the items that I understand we're going to talk about. There's item 2 which is linked to item 16 and 19. There's item 5 which is linked to item 48 and 58. There's item 12 which is linked to item 13. There's item 26, there's item 27 which is linked to 28 and 29. There's item 30. There's item 51 which is linked to 53, 65 and 68. There's item 54, there's item 62 and there's item 63, which is linked to 69 and 74 and there's item 72. So they're the ones that were referred from the conference.

PN17

I'd say, if we just deal first with item 2, which is linked to 16 and 19 and this is about minimum weekly/hourly rate which is regarded as a problematic term. All right? So who wants to comment about that?

PN18

MR LIGGINS: I thought we almost had agreement on that with respect to private hospitals, except for AIG's concern, which wasn't really enunciated yesterday.

PN19

MS PATTON: Well, I guess I'll articulate my concern in the context of this is the same in the context of 16 and 19. And it's a question of- - -

PN20

MR MCCARTHY: Sorry to interrupt, I can't quite hear.

PN21

MS PATTON: Okay.

PN22

MS HEPWORTH: No, we can't hear in Brisbane either.

PN23

MS PATTON: Can you hear now?

PN24

MS HEPWORTH: Yes, thank you.

PN25

MS PATTON: Okay, great.

PN26

MR MCCARTHY: Thank you.

PN27

MS PATTON: It's staring at me, right in between the eyes. I guess I just wanted to first post the question to the private hospitals as to where exactly or what exactly is their concern? My understanding of it, and please correct me if I'm wrong, is that you specifically want to reference the pay points within the

classification structure, so the reference to minimum hourly rate – as I understand it, minimum hourly rate would refer to a pay point, would refer to the minimum rate of someone's pay point within the classification structure.

PN28

So when you talk about someone's classification, you're talking about their classification in terms of their pay point, where they are, I guess. And so what I'm trying to understand is what exactly is [indistinct]1.38.53 concern when my view is that the phrase "minimum hourly rate" nonetheless captures that pay point. Does that make sense?

PN29

MR MCCARTHY: Sure. And I think particularly with regards to point number 2, there's actually two different issues here. The first point that we raise is in reference to some paragraphs that haven't converted the ordinary rate to minimum rate within the entire document and just makes mention of the fact that we will identify that as we go through the process. So that first paragraph is actually just a statement that there are some errors that we have identified later.

PN30

With regards to the question of what is the best approach in adopting a sentence that confirms what you're saying, which is what we also have as our intention, that the employee is paid at the correct pay rate within their classification. And our view is that some of the terminology that's used within the document ties the pay rate to the minimum hourly rate with in the employee's classification, not the appropriate pay rate which may be a couple of pay levels above within the same classification.

PN31

Obviously when there's only one pay level within a classification, there's not an issue. But where there's more than one, we don't believe it clarifies that that employee could be paid at pay point 2 or 3 or 4 within the classification rather than the minim pay rate. And it's actually only in relation to a few specific clauses where, in the existing award, it's quite clear that it refers to the employees' minimum rate or their minimum rate, whereas in the exposure draft, that linking to the employee hasn't come through in the translation.

PN32

We don't believe – we just feel it may open up an area of confusion that we don't think currently exists.

PN33

MR MCCARTHY: Could I add something? It's Andrew in Melbourne from the ANMF. Yes, just a couple more points, just following on from – was that Linda, I think? Just yes, as Linda said, in the existing award, it uses the term "Ordinary rate" rather than minimum. So I think one of the reasons for it was also just to remove any potential ambiguity.

PN34

I mean, that's part of the process is to make it clearer for users of the document, so we thought that would just help to reduce any ambiguity, noting also that the

schedules, the pay tables in the schedules are calculated in that fashion, though they do refer to the pay point. But look, I think the discussions that were had at previous teleconferences between the parties was that it was just felt that that would clarify matters and would reduce the chance of any confusion.

PN35

THE COMMISSIONER: Yes, so does the Australian Institute Group have an objection to the proposed changes in 16 and 19? It appears to me that they don't change the words "minimum rate of pay" but though retaining those words it's simply putting – in 19, putting the word "their" in front of it and in 16 it's adding the "applicable to their classification and pay point".

PN36

MS VACCARO: I guess I would prefer the wording that's in 16. The reference to "their minimum rate", while it's clear to us, would be their minimum rate in accordance with the award, I wouldn't want there to be any confusion with say a paid rate.

PN37

THE COMMISSIONER: A paid rate, yes.

PN38

MS VACCARO: So reference back to- - -

PN39

THE COMMISSIONER: Be applicable to their classification and pay point.

PN40

MS VACCARO: Yes.

PN41

THE COMMISSIONER: Do you have any objection – does the Private Hospitals have any objection to using the same expression in item 19 as they're proposed to use in item 16?

PN42

MS HEPWORTH: No, that sounded fine. Can you just repeat it for me, please?

PN43

THE COMMISSIONER: Well, in 16 you've said, "Insert applicable to their classification and pay point", after minimum hourly rate. Right?

PN44

MS HEPWORTH: Mm-hm.

PN45

THE COMMISSIONER: The suggestion is, use the same approach for item 19, so it would be the minimum rate of pay applicable to their classification and pay point.

PN46

MS HEPWORTH: Yes, that's fine, thank you.

PN47

THE COMMISSIONER: Right. Is there anyone else who's got an opposition to that approach?

PN48

MR MCCARTHY: Commissioner, Mr McCarthy in Melbourne.

PN49

THE COMMISSIONER: Yes.

PN50

MR MCCARTHY: I don't have an opposition to that approach for item 19. I just note that, apart from 16 and 19, this rides to about four or about five items as well, which is exactly the same issue.

PN51

THE COMMISSIONER: Is it? So that's – well, let's just identify those issues in just a moment, all right? So which ones are they? Are they 51, 53, 65 and 68?

PN52

MS VACCARO: Yes.

PN53

MR MCCARTHY: Yes. And 69, I think.

PN54

THE COMMISSIONER: 69? You sure that's the same one?

PN55

MR MCCARTHY: Yes, 68 and 69 are the same item.

PN56

THE COMMISSIONER: Are they?

PN57

MR MCCARTHY: Yes.

PN58

THE COMMISSIONER: Okay. That was my mistake, I had that wrongly. All right, so can we just recap? So items 2, 16, 19, 51, 53, 65, 68 and 69 should be resolved by adding the words, "applicable to their classification and pay point".

PN59

MR MCCARTHY: I'd agree with that in principle. I just wonder whether it works in practice with some of them though, because- - -

PN60

THE COMMISSIONER: Yes, I get that. Adding those words in conjunction with the minimum hourly rate words, whether- - -

PN61

MS HEPWORTH: And just working the terminology to make sense.

PN62

THE COMMISSIONER: Whether they go before or after and whether you need a preposition between the two of them, we'll need to look at the context in each case. But the general approach is the agreed approach, is that's right?

PN63

MS HEPWORTH: Yes.

PN64

THE COMMISSIONER: I agree, we'll have to check the exact context and get it – in some cases it will go before the words, in some cases it'll go after, but that's, I think, something that can easily be attended to. Yes?

PN65

All right, so the next thing I want to look at is item 5 which I believe is linked to item 48 and 58. So item 5 is about the facility provisions, I think.

PN66

MS HEPWORTH: If I can make a comment, Commissioner?

PN67

THE COMMISSIONER: Yes.

PN68

MS HEPWORTH: It's actually put down against the Private Hospital, as part of our reply submission. This actually was raised by ACE and we were simply referring to a general agreement that appeared in the ANMF's reply submission there, attachment A, saying that we also agreed. But this related – and Andrew, correct me if I'm wrong – in your reply submission that ACE entered a comment at paragraphs 9 and 11 regarding the use of the term "penalty".

PN69

THE COMMISSIONER: Right.

PN70

MS HEPWORTH: And it was felt that the removal of that subclause rectified their concerns and PHIA(?) as part of the group on the teleconference didn't see any objection to raising that or deleting that subclause. But perhaps if I can hand over to Geoff?

PN71

MS SVENDSEN: Could I just make a comment, Commissioner?

PN72

THE COMMISSIONER: Yes.

PN73

MS SVENDSEN: I think that the very first matter, very first part – I was looking at the facility provision above it.

PN74

THE COMMISSIONER: No, no.

PN75

MS SVENDSEN: Sorry.

PN76

THE COMMISSIONER: That's fine. No, it's 5, not 4. I'm sorry.

PN77

MS SVENDSEN: No, no, it's my fault. It was me- - -

PN78

THE COMMISSIONER: No, it's not completely, it was partly my fault because I did refer wrongly to the facility provision. Okay, go on.

PN79

MR LIGGINS: Commissioner, we simply identified the fact that throughout the document there was a use of a range of different words, "penalty", "loading", "allowance" and even something else, interchangeably used in some areas and not in others and we thought it would be sensible to try and have some consistency in use throughout the document and we did a summary, if you like, which we've provided to the parties, of all of the instances where those individual words occur throughout the document.

PN80

THE COMMISSIONER: Yes.

PN81

MR LIGGINS: But the best of my knowledge was that too many people were concerned that any change might have an effect on some associated legislation, like Workers' Comp, or something else which has a reference to one of those words. I truly thought we sort of had agreed not to change anything.

PN82

THE COMMISSIONER: Gave it away.

PN83

MR LIGGINS: Gave it away, because I didn't think we could get a single, or two organisations agreeing to the same thing.

PN84

THE COMMISSIONER: Yes.

PN85

MR LIGGINS: So we leave it in a situation. I understand – Andrew, correct me if I'm wrong – where we'll stay with the confusing thing that's already there because it was too confusing to change.

PN86

MS SVENDSEN: It got worse.

PN87

THE COMMISSIONER: I think that sounds like wise words.

PN88

MS HEPWORTH: Commissioner, just in follow up to that point, there was a specific one I thought most of us on the teleconference had agreed to in relation to 14.2, where I believe it referred to 112.5 per cent and we were going to change it back to 12½ per cent and 15 per cent. And I thought we had agreed to that.

PN89

MR MCCARTHY: That's correct. If you look at the ANMF's submissions of 21 August, the table attached to that, which refers to item 5 and 48 in the left-hand column, in relation to 14.2(a) and (b), the existing wording of the shift penalty clause was 12.5. The exposure draft changed it to 112.5 and we just wanted to change it back to 12.5. So we were just going back.

PN90

The only other thing that changed was from ordinary rate to minimum hourly rate, so we just wanted to change that back to the existing clause. And the other change was to remove 14.2(f), which wasn't in the existing clause and just to remove that, because it partly goes to Geoff Liggins' point, that if you add it – [indistinct] 1.51.00 refer to shift allowances. And given that the rest of 14.2 refers to shift penalties and loadings, we thought a third term was probably unnecessary.

PN91

THE COMMISSIONER: All right. So can we deal with the first one first? So it's in clause 14.2(f), the percentages should be - - -

PN92

MR MCCARTHY: No, that would be 14.2(a) and (b).

PN93

THE COMMISSIONER: 14.2(a) and (b), sorry. Yes, okay, 14.2(a) and (b). And the percentages should be 12.5 and 15 respectively. And secondly, in 14.2(f), what are you saying, Mr McCarthy, there?

PN94

MR MCCARTHY: That we delete 14.2(f).

PN95

THE COMMISSIONER: Delete.

PN96

MR MCCARTHY: It's from the exposure draft.

PN97

THE COMMISSIONER: Yes. All right, so is there any opposition to those two changes? Okay, so we'll report that and that resolves 5 and 48. 58 is not proceeded with, is it, or is there still something there?

PN98

MR MCCARTHY: There was no recommended changes in relation to 58.

PN99

THE COMMISSIONER: Okay.

PN100

MR MCCARTHY: So the exposure draft would stay as it is.

PN101

THE COMMISSIONER: Thank you. All right, then the next matter we're going to look at is item 12 and 13. So these two matters relate to the facility provisions. Just seeking confirmation that those two matters are agreed.

PN102

MS VACCARO: Commissioner, the issue that we raise is that – and it's something that goes to clause 10.7 itself in the exposure draft, that says wages must be paid fortnightly unless otherwise mutually agreed. So there is a lack of clarity as to whether it's purely an individual agreement or purely a majority agreement. We would suggest that it could say both. What the other parties had proposed was in the facility table at the beginning of the award, for there to simply be a dash in that third column, not specify either way.

PN103

Our view is that the column should actually say something. It should say "individual" or "majority". But if the other parties do not agree with that view, we're not going to press it much harder than that.

PN104

THE COMMISSIONER: All right, so is the position of the other parties that there should be a dash in the column, last column in clause 5 against – or should it say "majority" or "individual"?

PN105

MR MCCARTHY: Or both.

PN106

MS VACCARO: Or both, that's right.

PN107

THE COMMISSIONER: Or both, yes.

PN108

MS HEPWORTH: Private Hospitals would be quite comfortable with the individual or majority agreement, as proposed there. I can't recall from our discussions who actually opposed that.

PN109

MS SVENDSEN: I think, in our discussions, an alternative of putting up an individual or the majority of employees was not discussed. I think it was just that it wasn't either so we left it – we continued to leave it blank. I don't remember that we talked about the alternative, but I might be wrong.

PN110

THE COMMISSIONER: Well, what do you think about the alternative? Is there any reason it couldn't be either?

PN111

MS SVENDSEN: No, there isn't. There isn't any reason it couldn't be either except the employer won't agree to do it separately for an individual but that's fine.

PN112

MS VACCARO: It's just for a matter of completeness in the table.

PN113

THE COMMISSIONER: Yes, I think it's a matter of completeness and I think that what the Australian Industry Group is saying is correct, it makes it clearer if it says "individual" or "majority", even if in practice, it will hardly, you know, it's pretty impractical to do it individually, but I don't see any reason why not.

PN114

MS VACCARO: I agree.

PN115

THE COMMISSIONER: So, Mr McCarthy, do you have any problem with that?

PN116

MR MCCARTHY: No. So if it says "individual" or a "majority"?

PN117

THE COMMISSIONER: Yes.

PN118

MR MCCARTHY: I have no problem with that. Yes, no problem.

PN119

THE COMMISSIONER: Okay. So that would then mean that there doesn't need to be any change to the other clause so it would just simply be in clause 5.

PN120

MR MCCARTHY: So 5.2, and we'd have words added to 5.2, the last column?

PN121

THE COMMISSIONER: Yes.

PN122

MS HEPWORTH: It would.

PN123

THE COMMISSIONER: It would be individual – we use exactly the same words as there, so we're not implying something different. So we'd use the words "An individual" or "the majority of employees".

PN124

Okay, then the next item is item 26 and clause 8.2(e) requires 7 days' notice for roster change and I think there's a proposal that there be words, "unless otherwise agreed by the employee". Is that a correct summary of what's being put forward?

PN125

MR LIGGINS: Yes, Commissioner. Simply for there to be a change within 7 days – it can be done by agreement by the moment only at the initiative of the employee and the agreement of the employer. We don't see why it can't be initiated by the employer and still have the agreement of the employee. We're not looking at expanding anything, we're just saying look, it shouldn't be just at one side's initiative, it should be either way.

PN126

Classic situation someone says, "Look, I can't come to work tomorrow, my son or daughter's getting some prize at school". So they can change because they're initiating it. You want to talk to someone else to fill that shift, you can't make that change within 7 days unless you go through an artifice, which is along the lines of, "Look, there's a shift available tomorrow. If you're interested and tell us that you're interested, we'd be prepared for you to work those additional hours so we can change your roster."

PN127

Hardly necessary when why shouldn't the employer or the employee initiate the discussion, there still needs to be agreement. So that's all we're attempting to do here is to say it should be able to occur from either side.

PN128

THE COMMISSIONER: The ANF opposes this as does the HSU as I understand it, so Mr McCarthy do you want to say something about this?

PN129

MR MCCARTHY: Yes, we still oppose this. We don't think it's necessary to meet the modern award's objective. We can just see problems with this occurring in practice. The proposal relates to 8.2 but it bears on other clauses as well. For example, the provision in relation to part time work in clause 6.3 of the exposure draft in relation to part time employees.

PN130

Under (b) and (c) in 6.3, (b) says "That before commencing part time employment, an employer and employee will agree in writing to the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours." (c) says "The terms of the agreement in 6.3(b) may be varied by agreement and recorded in writing."

PN131

This proposal seems inconsistent with the exposure draft clause 6.3 and I note that that provision in 6.3 was put in by the Full Bench which the Nurses Award was made for very specific reasons and I can quote from that decision at the relevant paragraphs. What they said was that "We have some reservations about the nature of the consent in circumstances where a supervisor directly requests a change in hours on a day where the part timer had otherwise planned to cease work at a particular time. The existing provisions require that any amendment to the roster be in writing and we have retained this provision."

PN132

They go on to say "There may also be part timers who would be concerned to be sure that their employment is not jeopardised by declining a direct request from a supervisor to work additional non-rostered hours at ordinary rates." They say later on that any change would require written consent.

PN133

This proposal would remove any requirement for written consent and would be inconsistent with clause 6.3 and it's inconsistent with that decision as to the nature of the consent. That may not be the only reason, but that's probably our main reason for opposing this provision.

PN134

MR LIGGINS: Commissioner, we don't see how it has any effect on the obligation for written consent, nor does the clause that's already there where the employee can initiate it. If what Andrew is talking about were the case, then he should have a problem with the clause that's there as well, with the employee initiating it, because there still needs to be written consent in accordance with 6.3.

PN135

I don't know how this really compromises that particular obligation at all. It's just simply the initiating point, it doesn't affect the status or the stature of the requirement to put the agreement in writing.

PN136

THE COMMISSIONER: Right, I hear what you say. Does that alter your view Mr McCarthy?

PN137

MR MCCARTHY: No, for one thing the proposal by the Aged Care employees doesn't refer to agreement in writing.

PN138

MR LIGGINS: Nor does the rostering clause already, where the employee gets to initiate it, Andrew.

PN139

MR MCCARTHY: We're not just talking about the employee initiating it, but talking about partly also the employer initiating it.

PN140

THE COMMISSIONER: Isn't the situation here that the proposed variation in the view of the employer organisations has significant merit. It is a change to the current award, isn't it? This isn't a situation where the exposure draft isn't sort of reflecting the current award and it is the sort of thing which if there was a level of agreement about, I'm sure the Full Bench would be happy to make change, but given that there isn't agreement, I think we have to say that this is a substantive item that will need to be referred to a Full Bench.

PN141

Let's move now to items 27, 28 and 29. This is a proposal to be able to extend five hours to six by agreement prior to a meal break. The ANF appeared to be

prepared to contemplate such a proposal as part of a package which specified that the meal breaks to be taken between the fourth and the six hour and where there'd also be inclusion of a provision that where the shifts are less than six hours, by individual agreement, there could be no break or by majority agreement. The break could be at a different time and specifying that there be compensation for when on-call during a meal break.

PN142

That's my understanding of the issue. First check whether my understanding of the issue is correct. Mr McCarthy?

PN143

MR MCCARTHY: Yes, Commissioner, I think your summary of the situation is correct there. There is a bar, basically I think it was the AIG proposed the thing about the waiting a meal break if it's in the six hours.

PN144

THE COMMISSIONER: Yes, it's the AIG, that's correct.

PN145

MR MCCARTHY: Yes, there's a commonality in the clauses to that extent, however, you are quite correct. The hours are part of a package and we also want the other parts of that package and we don't want to just agree to that without the other parts.

PN146

THE COMMISSIONER: There's the AFEI proposal which is to allow for paid crib rates instead of unpaid meal breaks for shift workers.

PN147

Can we deal with that specific proposal of the AFEI, because in a sense, it could be part of a package, but it could also be separate? What's the view of the ANF and HSU about that proposal?

PN148

MS SVENDSEN: Principally I think we'd need to see it.

PN149

MS LIGHT: Did you not receive, I forwarded that around quite some time ago, but you might not have received it.

PN150

MS SVENDSEN: No, sorry.

PN151

MS LIGHT: I can email it through. No, my fault.

PN152

MS SVENDSEN: Andrew might want to comment.

PN153

MR MCCARTHY: Yes, look I found the AFEI proposal, 6 May is the email that I've got here. I note there was no submissions made by AFEI so I'm only going on the letter, so I'm probably not fully across the rationale for it. To cut a long story short, I think our position is we would oppose it. Again, I think given it deals with the meal breaks clause, it has to be dealt with altogether, including the ANMF proposal. I'm not quite sure what the AFEI position is in relation to the ANMF proposal, so in isolation we couldn't agree to that proposal.

PN154

MR LIGGINS: Jessica, what was the rationale for it? I'm sorry I can't recall the May letter either?

PN155

MS LIGHT: It's purely to provide a provision to allow shift workers to have a crib break that's paid and to reduce it to treat as work time effectively. We're not trying to introduce anything or get around any existing provisions, it's just to afford shift workers and employers a little bit more flexibility in terms of rostering. I don't think that the ANMF submission or variation is in any way related to our claim as ours is specifically for crib breaks and specifically related to shift workers.

PN156

To the extent that the ANMF are treating that as a package, in our view, and this is the view that we've taken for all package deals that have been proposed in the context of the review, each variation will need to stand alone and will need to be justified on merits, grounds on that basis. To the extent that it's a package deal, we would oppose it, but as I said in our view, those are two separate variations.

PN157

MS SVENDSEN: Can I just ask why shift workers only?

PN158

MS LIGHT: Shift workers traditionally get crib breaks.

PN159

THE COMMISSIONER: That's the way it is in lots of awards.

PN160

MR MCCARTHY: Partly, I think it necessarily has to be treated as a package, this clause I'm talking about, this meal breaks clause because what your proposal is doing affects, for example, whether overtime is paid if you work through a break. I'm not quite clear how those put through a proposal would relate to the existing provision about getting overtime if you don't get your meal break.

PN161

MS LIGHT: Our proposal specifically excludes the application of the other meal breaks provisions, so it allows an employer to implement those crib breaks notwithstanding that day workers might be on the other arrangements. I think they've specifically provided for in our variation.

PN162

MR MCCARTHY: I think there's still an issue there as to how that would relate to the existing overtime clause in meal breaks provision because presumably, I mean, correct me if I'm wrong, but are you going to argue that if a nurse works through that crib break, then they're not entitled to overtime until they get the actual break?

PN163

MS LIGHT: The provision that we've put forward doesn't provide for that, but it treats the crib break as time worked, so the employee is remunerated for that time in any event, it's not an unpaid break.

PN164

MR MCCARTHY: But there's a chance that they won't get a break through the whole shift.

PN165

MS SVENDSEN: Yes.

PN166

THE COMMISSIONER: Since we are talking about the crib break proposal, have the other employer organisations had an opportunity to consider that proposal and do they have a view about it?

PN167

MS HEPWORTH: We could see merit in the argument that a meal break should be taken within the first six hours whether it needs to be within the - - -

PN168

THE COMMISSIONER: No, no, sorry. I wasn't asking about that.

PN169

MS HEPWORTH: The crib break, sorry.

PN170

THE COMMISSIONER: The crib break, we'll come back to that. I was aware that you supported the general aim of the other proposal, we'll come back to that in a moment. I just thought if you could just respond to the crib break for shift worker proposal.

PN171

MS HEPWORTH: The proposal put forward by AFEI, that one?

PN172

THE COMMISSIONER: Yes.

PN173

MS HEPWORTH: I think when Jessica sent the draft determination around we said we wouldn't oppose it, but we wanted to see how it played out. It is introducing something we believe is substantive and outside of what already exists within the award.

PN174

THE COMMISSIONER: Can I ask the question another way? Are there any of the employer organisations apart from AFEI that want to pursue this change as part of this particular award review process?

PN175

MS HEPWORTH: No.

PN176

MS VACCARO: No, we wouldn't.

PN177

THE COMMISSIONER: Then, AFEI probably, given that they've not had a clear response prior to now, I think has a clear response. Can I ask AFEI if perhaps if they could advise within seven days whether or not they wish to proceed with it.

PN178

MS LIGHT: Certainly.

PN179

THE COMMISSIONER: I think the consensus is that if they do with to proceed, it's a substantive matter which would need to be dealt with by the Bench. That's how I think we'll leave item 28.

PN180

In respect of item 26 and 29, it seems to me that the response of the PHIEA was not in opposition, but wanted there to be some amendment. The other employer organisations were generally opposed to the change, is that correct?

PN181

MS VACCARO: From our perspective yes. To any extent that the ANMF considers that we could get a package up, will not work with AI Group. Our application stands alone and we are of the view that any good that would come out of our variation for both employers and employees would significantly be reduced if the ANMF's proposal was also put up.

PN182

We're happy to run our case on our proposed variation and I'll leave it up to the ANMF to decide what they'll do with their own.

PN183

THE COMMISSIONER: I think it would be fair to say that items 26 and 29 have been proceeded with and that we can't reach agreement about those matters. They're substantive changes that will require reference to the Bench. Is there anyone who disagrees with that?

PN184

Let's move to item 30. This is the item which we could spend several hours on. As I understand it the breaks provision should be in a stand-alone clause rather than a subclause in breaks. I think some of the responses have asked for a bit more information about why the nurses are pursuing this, so perhaps Mr McCarthy you might explain.

PN185

MR MCCARTHY: Sure, Commissioner. As I've explained at previous teleconferences, it wasn't a major point but I just thought it would make the award easier to read. Clause 9 of the exposure draft deals with breaks; 9.1 is unpaid meal breaks; 9.2 is paid tea breaks; 9.3 is rest breaks between rostered work.

PN186

Given clause 9 is breaks, my view was that there are two types of breaks. You have a break during work, that's your meal breaks, and then you have a break after a shift. I thought it just made more sense for 9.3, the rest breaks between rostered work to be in clause 8, the ordinary hours of work and rostering clause, it just seemed to be a more logical spot. In support of that, I note that, I think it's in the overtime clause, which is clause 15, 15.3 in particular. It's got rest period after overtime.

PN187

Rest period after overtime is analogous to a rest period after a normal shift. 15.3 it's in the middle of the overtime clause where it's not in the breaks clause, so it seemed to make sense, it follows on from overtime. My view was just that 9.3 might be better put as 8.3 and renumber 8.3 to 8.4. That was the extent of the intention for that.

PN188

MS SVENDSEN: Can I just add, it was actually in the current award, it's actually linked with ordinary hours and span of hours that follows immediately after it. It's a separate clause because it goes 21, 22, 23, but it's still sitting at that time rather than the other. I agree with Andrew it's not exactly a major issue and I think we could probably spend three days on it.

PN189

THE COMMISSIONER: I don't intend to do that.

PN190

MS SVENDSEN: Good, I'm glad.

PN191

THE COMMISSIONER: I understand the rationale that's been proposed and as I understand it the PHIEA does agree with that. This is purely a drafting issue. We've got a number of parties who think it should be moved to become 8.4. We've got some parties who don't like the idea or are unclear about the idea. I think the only party that opposed the idea was the AI Group. Are you still opposed to the idea?

PN192

MS VACCARO: We're not fundamentally opposed and I wouldn't press the opposition very hard. It's in the clause that talks about breaks, but if the other parties feel that it would be easier if it was in the ordinary hours clause, as I said, I won't press that opposition.

PN193

THE COMMISSIONER: Would it be fair to say that there is - well can I ask is there anybody's who's going to oppose the proposal to move 9.3 to become 8.4?

PN194

Alright, so that's agreed.

PN195

The next matter we're going to deal with is item 54. This is about - you've got that as agreed? 53 we've dealt with haven't we. I had 54 down, so is there anyone who says that it's not agreed?

PN196

MS VACCARO: That might have been yesterday when I raised that I wanted to have another look at it.

PN197

THE COMMISSIONER: I think you're right, that's what it was.

PN198

MS VACCARO: So long as what the other parties is seeking is no change from the existing award, or from the current award, I'm comfortable with that. I think a proposal by the parties is to reinstate the existing clause and get rid of the exposure draft clause.

PN199

MR LIGGINS: That's what I thought we agreed to.

PN200

MS VACCARO: I'm happy with that approach.

PN201

MS SVENDSEN: Yes, it was.

PN202

THE COMMISSIONER: It's to amend 15.3(b) and (c) by using the current award clauses. Do we know what those current award clauses are?

PN203

MR MCCARTHY: Yes, it's clause 28.3 of the existing award. The only change that would have been proposed was that the ordinary rates is changed to minimum hourly rate.

PN204

THE COMMISSIONER: Yes.

PN205

MR MCCARTHY: The clause that was put in, I believe it was anyway, no, maybe it wasn't.

PN206

THE COMMISSIONER: That's clear, that's the existing clause.

PN207

Alright, we now move to item 62 about leave loading for non-shift workers, is that correct?

PN208

MS SVENDSEN: I think it's just leave loading.

PN209

THE COMMISSIONER: Just leave loading generally. Who could perhaps explain where things are up to on this issue? Mr McCarthy, do you want to do that or Ms Svendsen?

PN210

MS SVENDSEN: It doesn't really matter. We just lack agreement about it. The question was asked whether leave loading was applicable because the Nurses Award has a five week base and a six week additional for shift workers. The question was asked, I think by the drafting team, whether the leave loading applied to four weeks, five weeks or six weeks. The position is that the unions say it's all six weeks and the employers say it's four. Is that true? Four or five.

PN211

MS FISHER: Depending upon the shift worker.

PN212

MS SVENDSEN: Yes, I understand it, you don't get the six weeks if you're not a shift worker.

PN213

MS LIGHT: How do those parties who say it's more than four reconcile clause 31.4 of the existing award. It says "An employee other than a shift worker will be paid an annual leave loading and 17.5 percent of their ordinary pay on a maximum of 152 hours or four weeks' annual leave per annum."

PN214

THE COMMISSIONER: Ms Svendsen do you want to answer that?

PN215

MS SVENDSEN: No. That's a non-shift worker anyway, so that it wasn't actually in relation to that. It was in relation to what people would be paid in lieu not who were shift workers, so I don't think there's anything about that other than that.

PN216

THE COMMISSIONER: With shift workers, at 31.4(b) says "Shift workers, in addition to their ordinary pay will be paid the higher of annual leave loading of 17.5 percent of ordinary pay or the weekend and shift penalties the employee would have received had they not been on leave during the relevant period."

PN217

MS SVENDSEN: For them, their relevant period is six weeks.

PN218

THE COMMISSIONER: Six weeks, yes, presumably that's right. Is it correct that the PHIEA believe that the existing award means if you're not a shift worker you get the annual leave loading on four weeks. If you are a shift worker then you get the annual leave loading or your penalties, whichever is higher on the full period of your leave. Is that correct?

PN219

MS FISHER: On the extra week would be the fifth week.

PN220

THE COMMISSIONER: I see.

PN221

MS FISHER: Because all employees get five weeks, but leave loading is on four, so why would a shift worker who gets the extra sixth week have it on a further week, logically? At most, it should be on five for the shift worker and leave loading on four for those who aren't shift workers because the award expressly says for five weeks of leave but you only get leave loading on four of those five weeks.

PN222

THE COMMISSIONER: How do you get that from 31.4(b)?

PN223

MS FISHER: It's in here. If you look at 31.4(a), it talks about leave loading being applicable to a maximum of 152 hours.

PN224

THE COMMISSIONER: Yes, for other than a shift worker.

PN225

MS FISHER: For other than for a shift worker, and for a shift worker, in addition to their ordinary pay would be paid the higher of an additional leave loading of 17.5 percent. Because they only obtain one additional week of leave for being a shift worker, then logic says that the leave loading should only apply to that one additional week.

PN226

THE COMMISSIONER: The unions proposal - exposure draft clause is 17.5, isn't it?

PN227

MR LIGGINS: Yes.

PN228

THE COMMISSIONER: I don't see any ambiguity in the clause at all. I don't see why you need to answer the question, because I don't think it's at all ambiguous myself, but obviously given the responses of the parties to the question, the parties don't agree with that. Are the unions saying that non-shift workers receive any more than leave loading on four weeks?

PN229

MR LIGGINS: No.

PN230

MS SVENDSEN: No.

PN231

THE COMMISSIONER: That part is not ambiguous. The second part of the clause, I don't think we need to change it because it seems to me quite clear what it's saying. I think that unless someone wants to pursue a change, we should probably just leave the exposure draft. If people think there is a need to clarify it, then I would have thought it's probably a substantive change and the people who want to change it will have to make out that case.

PN232

MR MCCARTHY: I agree with that Commissioner. This wasn't raised by any particular party, so I'd be quite happy to leave it as is, and have one less substantive issue to deal with. That's my view.

PN233

THE COMMISSIONER: Anyone have a different view?

PN234

MS SVENDSEN: No, I don't. It wasn't raised by us.

PN235

THE COMMISSIONER: I understand that. I think it was the Fair Work Commission's fault.

PN236

MR LIGGINS: An opportunity for opinions to be expressed.

PN237

THE COMMISSIONER: Alright we're going to move on from that. Thank you.

PN238

Now item 63, I think that item 74 is linked to this one, but I could be wrong, because I'm not an expert. No I think I'm wrong. I think item 74 is just about using the right terms about minimum and ordinary, isn't it?

PN239

MS VACCARO: Yes, it is.

PN240

THE COMMISSIONER: I think we'll come to item 74 separately, that was my mistake. Item 63, no, it's the same thing, isn't it?

PN241

MS VACCARO: It's the same matter, same issue.

PN242

THE COMMISSIONER: Sorry, so item 63 and 74, is there anybody who is opposed to changing ordinary to minimum in those two cases? I'm sure some people wouldn't like it, but given the Full Bench decision.

PN243

MR MCCARTHY: Sorry Commissioner, which clause are we talking about now?

PN244

THE COMMISSIONER: 17.5 firstly.

PN245

MR MCCARTHY: One thing, I'm not sure if ordinary pay directly translates as minimum pay, just in terms of that minimum hourly rate issue we talked about earlier.

PN246

THE COMMISSIONER: Yes, you think the term ordinary pay here is a bit different, do you?

PN247

MR LIGGINS: It's not so much just the rate, it's the amount of money they'd get for that period. I don't it's necessarily the same thing.

PN248

THE COMMISSIONER: I don't think it's the same thing, is it? It's not. No, I think you're correct. This is a case where it probably isn't directly interchangeable.

PN249

MS SVENDSEN: I don't think it's what was contemplated by the Full Bench decision.

PN250

THE COMMISSIONER: No, I think this is about the pay for ordinary.

PN251

MS SVENDSEN: Just in this particular case.

PN252

MR LIGGINS: Other awards would have the same sort of wording.

PN253

MS SVENDSEN: I don't think it's ever been raised. I'm just looking at it in 17.4 it says would have received for ordinary time worked. So paid the amount of wages they would have received for ordinary time worked which is then kind of reflected in their ordinary pay as opposed to the minimum hourly rate.

PN254

THE COMMISSIONER: Have you had a look at this Ms Vaccaro?

PN255

MS VACCARO: This particular issue? We're at number 74, aren't we?

PN256

MS SVENDSEN: No, number 63.

PN257

MS VACCARO: No, number 63, okay.

PN258

MS SVENDSEN: And again, 17.5 specifically.

PN259

MR LIGGINS: It's whether ordinary is interchangeable with minimum.

PN260

MS VACCARO: It all turns on - in my view I don't see a material difference between using ordinary rate, minimum rate in this clause or any clause of the award. My understanding is that ordinary rate is not used in the award.

PN261

MS SVENDSEN: It's not rate. It's pay.

PN262

MS VACCARO: Or ordinary pay. That's my view. It wouldn't really have - the ordinary pay - if the context in which we are talking about it, if we're talking about ordinary pay as in the pay they ordinarily get not the minimum within the award, well it's minimum rates award.

PN263

THE COMMISSIONER: What does the NES say?

PN264

MR LIGGINS: I think the NES says base rate of pay.

PN265

MS VACCARO: It does.

PN266

MR LIGGINS: That has a certain definition excluding a number of - - -

PN267

THE COMMISSIONER: That's right, whereas awards include other elements such as the industry allowances and so on, yes of course.

PN268

MS VACCARO: I'm just checking to see whether this award does have all purpose allowance. My understanding was - - -

PN269

MS SVENDSEN: No, it doesn't, no.

PN270

MR LIGGINS: I don't think so.

PN271

THE COMMISSIONER: Can we ask, isn't this an issue of ensuring consistency with the Full Bench decision about this matter?

PN272

MS SVENDSEN: It was thought of as that, but I'm not sure that this is, because the - anyone jump in and correct me. The Full Bench decision was about the minimum or ordinary rate of pay or hourly rate that that was the principle. Whereas, this is actually talking about ordinary pay and particularly if you look at 17.4, "Before going on annual leave an employee will be paid the amount of wages they would have received for ordinary time which had they not been on leave during that period". Then it talks about their annual leave loading being based on their ordinary pay.

PN273

I think those two are linked, rather than the - - -

PN274

MS VACCARO: It all depends on - with 17.4 I think replicates what's in the Act, but 17.5 just specifically goes to on what basis the annual leave loading - goes to the basis of I was going to say how the annual leave loading was calculated. The annual leave loading I would say would be calculated not on their ordinary pay, but would be calculated on the minimum rate unless the parties, when making the award had the specific intention otherwise. I'm not sure what the current award actually says.

PN275

MS HEPWORTH: The current award says the same words but says of their ordinary pay. It says "Paid on an annual leave loading of 17.5 percent of their ordinary pay on a maximum of 152 hours." Then it talks in (a) and (b), it says that annual leave loading of 17.5 percent of ordinary pay or the weekend penalties. I think that that's what you are talking about.

PN276

THE COMMISSIONER: I think what you're saying is that ordinary pay means the wages they would have received for ordinary time worked had they not been on leave. That's really what ordinary pay is shorthand for.

PN277

MS HEPWORTH: I think so.

PN278

THE COMMISSIONER: What we need to do is ask the question, is there any difference between the wages they would have received for ordinary time worked had they not been on leave. Is there any difference between that for a non-shift work and minimum rate pay?

PN279

MS HEPWORTH: I don't think there is but I'm not sure that this is actually the same clause, which is a different question. Actually, there could be, because a part timer, their annual leave is based on an average of their hours and their

minimum rate might go back to their protracted hours and not their average hours that they've worked.

PN280

MR LIGGINS: Because it's the roster that's not being worked that determines what amount of ordinary pay they receive when they're off. I know what you're saying, you can accumulate more hours than your normal roster by virtue of picking up extra shifts, but when you actually go on leave, you get paid for the shifts that were on the roster but are not worked.

PN281

MS HEPWORTH: No, because you might then always have a - - -

PN282

MR LIGGINS: The only way you could circumvent that is if people are entitled to cash out some leave during that time.

PN283

MS HEPWORTH: No, that's not right, because you just pay an average. What happens is that you accumulate hours and it's paid - if you've taken two weeks' leave, then it's two weeks of those hours and you assume that it's four week.

PN284

MR LIGGINS: Well 17.4 doesn't say that. 17.4 absolutely says the opposite of that.

PN285

MS HEPWORTH: Sorry, 17.4, sorry I'm looking at the wrong thing.

PN286

MR LIGGINS: I understand your argument, it's a problem with the system, but it's not really this issue.

PN287

MS HEPWORTH: I understand what you're saying.

PN288

MR LIGGINS: This issue is simply that the minimum rate doesn't really mean the amount that they would have received in that time. Referencing 17.4 somehow should make sense there. That's what it's all about isn't it, what they would have got.

PN289

THE COMMISSIONER: It seems to me that this is probably - I'm not sure, but it's possible that in other awards they have this same expression.

PN290

MR LIGGINS: I would have thought so, Commissioner.

PN291

MS HEPWORTH: I think it's actually in the HPSS award too.

PN292

MR LIGGINS: Doesn't help.

PN293

MS HEPWORTH: No, it doesn't help, but just as an aside.

PN294

MR LIGGINS: I don't think anybody's arguing about what we need to do, but we're just not sure what that is.

PN295

MS VACCARO: With this type of clause though, it's like you said, I can't recall specifically the wording of other awards, but the structure of it does appear across many awards. The interpretation that we might put on ordinary pay might have flow on and that's what I'm most concerned about. If it was never intended for ordinary pay to represent paid rates - - -

PN296

THE COMMISSIONER: I don't think it is.

PN297

MS HEPWORTH: This never refers to paid rates in the award.

PN298

MS VACCARO: Well that's right, but that's my concern in the expression of ordinary pay in the absence of ordinary rate or ordinary having any definition or any other bearing in this award. It might represent a difference from all other awards that either refer to an ordinary rate or refer to minimum rate. This has a little bit of a different twist on it. In my opinion, we need to have a good understanding of how the current award works so we get a better understanding of what this award is meant to mean in the context of that Full Bench decision. So, I think there's a little bit more work to be done.

PN299

THE COMMISSIONER: I think that that's right. I think in respect of item 63, the parties need to consider and I think the Fair Work Commission should also have a look at this. We need to consider what exactly ordinary pay means in this particular context then we can see whether it is something which can be changed in some way or another. I think yes, it needs a bit more work, that particular one.

PN300

Can we just, while we're at it then, have a look at item 74 because I think that it's not the same issue, even though it's related. In the schedule B, there's the heading of a number of the tables, is ordinary and penalty rates. Then it's got the percentage of minimum hourly rate underneath. I think it's fairly clear in that context that the word ordinary is about the payment for ordinary hours. So in that sense, I don't think that's a wrong use of the term there and I don't think the word minimum actually helps there. I think ordinary there is really a reference to ordinary hours, not a reference to pay rates.

PN301

I actually think that I understand what PHIEA are doing which is trying to make sure that we're consistent with the Full Bench decision in terms of using minimum rates, not ordinary hourly rates. I think when you look at it, it's probably correct in the context of the schedule. Do you want to comment on that our friends in Brisbane?

PN302

MS HEPWORTH: Commissioner, we accept your interpretation there, we're fine. As you said, it was a pick-up of what we thought might be an omission, happy to go along with your thoughts on that one.

PN303

THE COMMISSIONER: Thank you. Now we'll move to item 72. Mr McCarthy, do you want to tell us about this item?

PN304

MR MCCARTHY: Yes, Commissioner. I was hoping this wouldn't be a controversial one, but I'll go through it. We propose to vary the definition of nursing assistant which is in clause B1 of Schedule B, classification definitions which is - just go into the exposure draft, page 27.

PN305

THE COMMISSIONER: I think it's schedule 1. Isn't it schedule 1?

PN306

MR MCCARTHY: Schedule A1.

PN307

THE COMMISSIONER: Schedule A, yes.

PN308

MR MCCARTHY: Yes, that's right, sorry it is A1. So it's the definition of nursing assistant. "Nursing assistant means an employee other than one registered with the Nursing and Midwifery Board of Australia or its successor or one who is in training for the purposes of such registration." I'll just stop there. One who is registered with the Nursing Board is either a registered nurse or an enrolled nurse and nursing assistant is not registered. It means an employee who is under the direct control or supervision of a registered or enrolled nurse and whose employment is solely to assist an RN or EN in the provision of nursing care to persons.

PN309

The only change we wanted to do there was to remove "or enrolled". The rationale for the variation is that under the rules of the Nursing Board, enrolled nurses can't supervise nursing assistants. Supervision of nursing care is outside the scope of practice of an enrolled nurse. A nursing assistant can only be supervised by a registered nurse.

PN310

The definition needs to be changed to reflect the current state of the law. That basically should not have been in there from the beginning, from 2010. I don't

know why it was, but I don't have the relevant regulations of the Nursing Board with me nor have I circulated them, but I'm happy to do so. There's no actual substantive difference to what it means in practice. It's just needs to reflect the current state of the law. I note that although a nursing assistant would still be under the direct control and supervision of a RN, they can still assist an RN or EN, so that "or EN" would stay in there. Just the actual supervision and control and supervision is RN.

PN311

I realise the other parties don't have the Nurses Board rules in front of them, and you might want to consider it further, but that's all that that relates to.

PN312

THE COMMISSIONER: That's the proposal, that's the thing you're seeking to change in 72. In our summary, we suggest that it was to vary several definitions, but that's really what it comes down to is that right?

PN313

MR MCCARTHY: That's right. It is only that one. There was another proposal but it was withdrawn by the ANMF which was another item. I think that's summary is incorrect where it says several classification definitions, it was only one, just that item.

PN314

THE COMMISSIONER: Alright. According to our notes, the HSU and the PHIEA agree with these proposals but ACE is opposing the matter and it considers it to be a substantive claim.

PN315

MR LIGGINS: Well, we'll come back very soon and check the legislation. I don't have any reason to contradict Andrew, I just haven't formally looked it up. If it's as he says, then I don't have any opposition.

PN316

THE COMMISSIONER: The way I see it is this, is that if Mr McCarthy is correct about what the legal situation is, then it probably isn't a substantial change. It's probably a correction, if you can put it that way. If there's some argument about what Mr McCarthy says, well then obviously it would be a substantive change and it would be a matter that would have to be considered by a Full Bench. That's the way I see it. Perhaps we can ask the other employer parties to consider this matter in the next seven days and advise their attitude.

PN317

MS LIGHT: Andrew, it might assist if you could pass everyone along the regulations that you've just referred to. I'm not sure if we all have access.

PN318

THE COMMISSIONER: I think that's a really good idea. I think it would be helpful if Mr McCarthy or Ms Svendsen was to send the link that shows what you're saying and then within seven days of that link being sent, if the employer parties could advise their position.

PN319

MR LIGGINS: Commissioner, just to clarify if it's correct then the first reference to "or enrolled nurse" would be removed and the second reference would still stay?

PN320

THE COMMISSIONER: Correct.

PN321

MR LIGGINS: Except you'd probably have to change EN to enrolled nurse.

PN322

THE COMMISSIONER: Enrolled nurse, yes. Exactly.

PN323

MS SVENDSEN: It's probably actually better if both (indistinct) there actually isn't any indication that RN means registered nurse - make that point. I know we know it, but you know.

PN324

THE COMMISSIONER: I think that's probably a good suggestion. You might want to put that suggestion in writing.

PN325

MS SVENDSEN: Darn, I'll shut up next time. Alright, I'll do that.

PN326

MR MCCARTHY: So Commissioner, can I just clarify, I'll circulate the relevant link. The employer parties will advise yourself or - - -

PN327

THE COMMISSIONER: Advise the other parties and the Commission whether or not - what their position is, alright?

PN328

MR MCCARTHY: Yes.

PN329

THE COMMISSIONER: I think we've dealt with all of the items now and I think there's a couple of matters that have come out of that, that are definitely substantive matters that are not resolved and I think there's a number of the matters that we've ended up sorting out today. I think that's been useful. I think once we've got the clarification about item 72 that will either put it into the category of having to go to the Full Bench or being an agreed item.

PN330

The only item which we sort of left up in the air is item 63. I think the way that we handle that is if the parties can give any further views they might have on this item within 14 days. I think this is one where we had better be particularly assisted by the views of the Australian Industry Group and AFEI and the unions because I think it's the linkage to how this is dealt with more generally in the system that's going to be particularly important here.

PN331

Unless there's anything else, I think that concludes what we need to do today.

PN332

MR MCCARTHY: Commissioner, I was just wondering after these two issues are resolved, what are the likely next steps from the Bench? Is the Bench going to refer the substantive matters to a separate Full Bench or do you have any idea as to the likely next steps?

PN333

THE COMMISSIONER: We're keen as far as possible to deal with the group 2 awards by the end of the year, that's what we're trying to do. We may not be able to succeed in that, but that's our aim. There are some matters that are related to the penalty rates Full Bench or the casuals part time Full Bench and obviously they are not going to be necessarily resolved that quickly, so there are some things that go into that camp.

PN334

The things that are award specific will be referred to a separate Full Bench whether it's one Full Bench to deal with one award, or whether it will be one Full Bench to deal with a group of awards, we haven't sorted that out yet. That's certainly the intention.

PN335

I'll be circulating some notes from today's conference so that we're able to uptake our material from yesterday based on what happened today, so I'll certainly be doing that, combining that with the responses on these last couple of matters that are still up in the air. From that, we'll be able to tell which matters need to go to a Full Bench.

PN336

MR LIGGINS: Is there any likelihood there'd be a revised exposure draft as a result of the agreements in different issues, or will it be left to the very last when everything's done?

PN337

THE COMMISSIONER: I suspect that - I'm really not sure about that.

PN338

MS SVENDSEN: They did do revised exposure drafts in one. That was a bit of different circumstances. Commissioner, in closing we get to that point and we have at least the summary of submissions now updated to reflect all of the agreements and discussion from yesterday and conference today, are we then going to have a directions hearing in relation to substantive matters?

PN339

THE COMMISSIONER: Certainly there'll be directions.

PN340

MS SVENDSEN: Maybe not a directions hearing.

PN341

THE COMMISSIONER: There might not be a directions hearing because it might not be that complicated. Look, we'll have to work that out, so I don't have a clear answer to that.

PN342

Just before I go, there are a number of the parties here who are also involved with the Health Professional award. I'm thinking of convening that conference in the week around 25 October, I can't remember what the Monday is, but in that week. Just because I can't do it before then, we'll do it in that week. I understand that the largest number of parties involved are in Sydney for that award, so I presume we'll have the conference here in Sydney. Given the way it works, I think it would be best if the parties are actually present. It makes it much - I mean it's been fine today with Mr McCarthy and the other parties on video, but it probably works better if everyone's together, so not insisting on that. If we need to have video links we will, but just want to encourage people to attend.

PN343

That's what we're trying to do. I can't tell you what day it will be in the week, but I'm not proposing to do a ring around and try and find a day that everyone can do, because that's just not going to work, too many people involved. I'm just giving you notice that it will be sometime in that week, we'll let you know very soon.

PN344

MS LIGHT: Commissioner, can I just say that all of the Transport Awards have been listed for 28th and 30th.

PN345

THE COMMISSIONER: Of course, we'll make sure it's not those two days.

PN346

MS LIGHT: Thank you.

PN347

THE COMMISSIONER: Yes, thank you everyone.

ADJOURNED INDEFINITELY

[3.06 PM]