



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

1053440

COMMISSIONER JOHNS

AM2014/229

AM2014/230

s.156 - 4 yearly review of modern awards

Four yearly review of modern awards

(AM2014/229)

Higher Education Industry-Academic Staff-Award 2010

(AM2014/230)

Higher Education Industry-General Staff-Award 2010

Melbourne

10.16 AM, TUESDAY, 10 MAY 2016

PN1

THE COMMISSIONER: Let's start with the Academic Award. So just starting there on page 3, item 1.1, yes, the date will be changed to whatever date that's made. And then I think, in relation to clause 3, there's just a note that that's part of the substantive application.

PN2

4.1, the group of Group of Eight make the observation that 9(a), (b) and (c) are not really relevant, but will we just leave them there anyway? Yes, very good. That brings us to 5.1 and there's been a suggestion, a drafting suggestion made by the Group of Eight which would remove 5.1(c). And then otherwise, throughout the document, where it refers to full-time, part-time, makes the proviso that it could be fixed term. What does NTU say about that drafting suggestion?

PN3

MS GALE: We oppose that drafting suggestion. The rewording of the chance of employment clause is substantive. There are substantive applications in relation to that, based on the AHEIA and a counter application from the NTU. The – sorry
- - -

PN4

MR PILLE: (Off microphone) You might have to - - -

PN5

MS GALE: Sorry. The types of employment typology in this award dates back to the Hecky(?) Award, which was an arbitrated Full Bench decision. And the essence of that decision was that in this industry, a person under the award must be engaged in either ongoing or continuing fixed-term or casual employment. And this change actually completely removes the effect of that decision and replaces it with a fairly, I suppose, pedestrian statement that employment would be either full-time, part-time or casual.

PN6

There are restrictions on the use of fix-term employment which arise from the Hecky decision, and those would be under the AHEIA's proposal. Those restrictions would be replicated. But what would not be there is the proposition that if it's not fixed-term in one of those forms, it must be either continuing or casual.

PN7

THE COMMISSIONER: Continuing can mean ongoing.

PN8

MS GALE: Yes. It leaves open the proposition of other forms of engagement such as maximum term contract, which we say are not available under the award, under the Hecky provisions that are inherited into the Modern Award. So- - -

PN9

THE COMMISSIONER: Then just moving away then from the substantive claim.

PN10

MS GALE: Yes.

PN11

THE COMMISSIONER: What if just, when we're focussing on these sorts of drafting issues, just in relation to 5.1, if it was to remain in its current form, can we do something such that 5.1(a) had full-time ongoing, (b), part-time ongoing and (c) fixed-term (full-time or part-time) and in (d) casual. Does that work?

PN12

MS GALE: Yes.

PN13

MS PUGSLEY: (Off microphone) I think it would be messy. We prefer (indistinct) proposal as set out in our submissions in respect of (indistinct).

PN14

THE COMMISSIONER: I quite like it.

PN15

MR PILLE: Can I – the Group of Eight's position was that it didn't need to change but recognising – and I think it's just common cause that at the moment there's a definition of full-time that says full-time means all employment, other than a fixed-term. And so, amongst other things, that fails to recognise that full-time employment can be continuing or ongoing or it can be fixed term.

PN16

With respect to what Ms Gale's said, none of that is the case, based upon the amendment that we've made. All that we've sought to do is to address that inherent inconsistency by making it clear that that typical typology of full-time, part-time or casual exists, and then identifying that fix-term employment might be full-time or part-time. All of the restrictions that came out of the Hecky case in relation to fixed-term remain unchanged. All of the incidents of fixed-term employment remain unchanged and the consequential problem at clause 9 then also goes away, which is at the moment, clause 9 which deals with salaries, says:

PN17

An employer must pay a full-time or part-time employee the following rates of pay.

PN18

And based on the current definition of full-time, that would exclude fixed-term employees, even those that are full-time or part-time. And so, for consistency of language across the award and to adopt the basic typology of full-time, part-time and casual that you see across all awards, that was why we suggested that it be amended in the way that we did. But in substance, our position is the same as the position that's been put by the other parties.

PN19

THE COMMISSIONER: So what's wrong with my suggestion?

PN20

MR PILLE: I don't think functionally there's anything wrong with it, Commissioner. Well, with respect, it is a little cumbersome in the sense that the clause starts with:

PN21

You'll be employed in one of the following categories.

PN22

And then you've got overlapping categories. You would have full-time- - -

PN23

THE COMMISSIONER: Ongoing.

PN24

MR PILLE: Ongoing. Part-time ongoing and then you've essentially got another form of full-time which is fixed-term and another form of part-time which is fixed-term and then you've got casual.

PN25

THE COMMISSIONER: Yes, so you can still be engaged in one of the following categories.

PN26

MS GALE: It would be possible to simplify it by making it ongoing (full-time or part-time). Fixed-term (full-time or part-time) and casual which make it clear that there's full-time or part-time is available for either ongoing or fixed-term. But a change there would also have to be reflected in 5.4 because the definition of full-time employment is where the essence of the current confusion arises, which is that it defines full-time employment as other than fixed-term. I think we're all- - -

PN27

THE COMMISSIONER: So what about that suggestion, that 5.1(a) will be ongoing (full-time or part-time). (b) would say fixed-term (full-time or part-time) or (c) casual? Then the necessary consequential amendments for the rest of it.

PN28

MR PILLE: Well one, I still think, with respect, it's more cumbersome than the drafting been proposed, which I haven't heard any actual accurate problem with at the moment. Secondly, it would put it out of kilter with the basic types of employment in this and all of the other awards.

PN29

THE COMMISSIONER: You're unique.

PN30

MS PUGSLEY: Yes, we are unique.

PN31

MR PILLE: Can I flip it slightly- - -

PN32

THE COMMISSIONER: It's meant to be a relevant Modern Award.

PN33

MR PILLE: If you're talking about full-time (fixed-term or continuing), part-time (fixed-term or continuing) or casual, that would sit more consistently with the rest of what's in the award which attaches – well, it starts by defining full-time employment, then defines part-time employment, then goes on to define fixed-term employment.

PN34

The wages provisions are based around whether you're full-time or part-time. The pro-rata entitlements are based upon whether you're full-time or part-time.

PN35

MS KENNA: But Stuart, how would you get around what you just raised in 5.4?

PN36

MS GALE: No, 5.4 would still need to be fixed, but still, just looking at 5.4.

PN37

MR PILLE: So in our draft, if you look at our draft, we've amended full-time to basically- - -

PN38

MS KENNA: All employment, other than part-time or casual.

PN39

MR PILLE: That's right, it's whether it be continuing or fixed-term, if it's full-time.

PN40

MS KENNA: Yes.

PN41

THE COMMISSIONER: Ms Gale, what do you say about that, the Group of Eight draft, which at paragraph 9 of their submission.

PN42

MS GALE: Well, as Mr Pille's just amended it to put in brackets after (a) and (b), each of (a) and (b), continuing or ongoing, we're not fussed about which of those words it is. So full-time (continuing or fixed-term), part-time (continuing or fixed-term) or casual, I think.

PN43

THE COMMISSIONER: And then the other amendments that have been suggested there.

PN44

MS GALE: I just need to check. Well, if that change was made at 5.1, I don't think the brackets would be needed at 5.8(a), the reference to the engagement of a full-time or part-time employee would necessarily import fixed-term employment.

PN45

MR PILLE: I agree with that. As a strict position, it's really for the avoidance of (indistinct).

PN46

MS GALE: Just going back to the award, does that miss anything else? I think that works, yes.

PN47

THE COMMISSIONER: All right, then we'll adopt paragraph 9 from the Group of Eight submission with the addition at 5.1, that after (a) full-time, we'll say (continuing or fixed-time).

PN48

MS GALE: Fixed-term?

PN49

THE COMMISSIONER: Yes, and after (b), (continuing or fixed-term) and then the other suggestion then as to 5.4, 5.6 and 5.8. Very good. That then brings us to 5.6(a), and it seems to me that there's a – correct me if I'm wrong – there's a consensus to the issue essentially that there should be a schedule referring expressly to the name of the employees and then also referring to, "And their successors". Continue, yes?

PN50

MS GALE: Yes, noting that the Bond University Academic Staff Association application would then presumably apply to that schedule.

PN51

THE COMMISSIONER: Yes. AHIA?

PN52

MS PUGSLEY: Yes, we're happy (indistinct).

PN53

THE COMMISSIONER: Yes. Group of Eight?

PN54

MR PILLE: There's no problem with successor in that context in the sense that, I understand it's a transfer of business provisions which operate under the Act.

PN55

THE COMMISSIONER: Yes.

PN56

MR PILLE: It currently applies to employees who were bound at the time of its making. I don't think we have any substantive objection. I'm not sure I understand what that means in that context.

PN57

THE COMMISSIONER: I think it's a University of Melbourne reconstituted itself as the University of Carlton, they would still be called.

PN58

MS GALE: Or the reconstitution of part of itself as the Graduate Business School as a separate employing entity.

PN59

MR PILLE: Yes, (indistinct), because it means something different to the scope and the transfer of business provisions.

PN60

THE COMMISSIONER: No, that's what's intended to me.

PN61

MR PILLE: Thank you. If that was identified perhaps, then no objection to that. The only other thing, and I don't represent Bond University and there is a substantive application and I'm not sure that they're aware of what's going on.

PN62

MS GALE: Bond University is aware of this.

PN63

MR PILLE: They are? Okay.

PN64

THE COMMISSIONER: I'm sure they're well represented. All right, then we'll make that note.

PN65

MR PILLE: Thank you.

PN66

THE COMMISSIONER: The next- - -

PN67

MR PILLE: Can I just check? Is there any doubt amongst the parties on the conditions for who's on that list? Do you need the parties to supply- - -

PN68

THE COMMISSIONER: Someone should provide the list, that would be useful.

PN69

MS PUGSLEY: I think we provided, in our submissions on the substantive based purposes of our argument about redundancy provisions.

PN70

THE COMMISSIONER: Right. Ms Pugsley, can I impose upon you to send me a note?

PN71

MS PUGSLEY: Sure.

PN72

THE COMMISSIONER: Thank you. The fine points out of the casual employment, I think there's just a note there that the NTU has a substantive claim in relation to the conversion clause.

PN73

MS GALE: Yes.

PN74

THE COMMISSIONER: In relation to 5.8, the consensus position is that the probation provision should be retained.

PN75

MS GALE: Yes.

PN76

THE COMMISSIONER: Do you want to confirm that?

PN77

MS GALE: Yes.

PN78

MR PILLE: Yes, Commissioner.

PN79

THE COMMISSIONER: Ms Pugsley?

PN80

MS PUGSLEY: Absolutely, yes.

PN81

THE COMMISSIONER: Thank you. 7.6, there's just a note there that's part of the NTU's substantive claim as in hours of work in part 3. Part 4, wages. Now, for the drafting question there in the box, parties are asked to confirm whether the rates of pay in clause 9.1 also apply to fixed-term employees and casual employees performing work other than those covered by clause 9.4. I think the consensus to the issue is yes. Is that right?

PN82

MS PUGSLEY: Yes.

PN83

MS GALE: Well, the active position from us is that it does apply in fixed-term employees and there are no casual employees. That all casual work is caught by clause 9.4.

PN84

THE COMMISSIONER: Right. Everyone agrees with that?

PN85

MR PILLE: Yes, and the changes we just made to clause 5 means that you don't need to amend 9.1 to pick up the fixed-term employees.

PN86

THE COMMISSIONER: Yes. And that brings us to 9.4, casual employees. NTU had a submission here.

PN87

MS GALE: I think it's fair to say that this is a matter that's subject to our substantive application, but simply put, several of these rates refer to where an academic holds a doctorate to be appropriately consistent with the basis of the rates, which are set out at 9.4(b). If you look at 9.4(b)(2), it's the rate applicable where the employee possesses a relevant doctoral qualification or carries out full subject coordination duties. And it's the all four subject coordination duties that's missing from the salary, expressions in the actual table of rates.

PN88

THE COMMISSIONER: Well, it's dealt with at the bottom of – it's at the bottom of table 9.4(a).

PN89

MS GALE: Yes.

PN90

THE COMMISSIONER: And they're sort of different language in there. If you sort of look at where it's got the heading "Marking rate".

PN91

MS GALE: Yes.

PN92

THE COMMISSIONER: It says:

PN93

(Where academic holds a doctorate).

PN94

And then at the bottom of that table 9.4(a):

PN95

If academic holds doctoral qualification or performs full subject coordination duties.

PN96

MS GALE: Subject coordination duties, yes.

PN97

THE COMMISSIONER: Should all of those be consistent?

PN98

MS GALE: Yes. In our submission, yes they should. And- - -

PN99

THE COMMISSIONER: I assume, preferring the language at the bottom of the table?

PN100

MS GALE: Yes.

PN101

MS PUGSLEY: Yes.

PN102

MS GALE: Because it more accurately reflects the basis of the rate of pay which is for either of those circumstances.

PN103

THE COMMISSIONER: Is that agreed?

PN104

MR PILLE: I'm breaking it into two, but no objection with reference consistently to relevant doctoral qualification or doctoral qualification doctorate. The substantive issue that we seem to be apart on is whether the reference to full subject coordination duties is effectively an allowance that applies in respect of the academic duty of performing the subject coordination duties, in which case it attracts a higher rate, or whether it is to be equated that the equivalent of holding a doctorate, i.e. the fact that I am the subject coordinator in Physics 101 and I go and do a tute over here in Chemistry 202, on the NTU's formulation, I get the higher rate for the tute, not just for the subject coordination duties.

PN105

That, on its face, seems to be at odds with the pre-reform award. I think it's fair to say that the Modern Award, in the interests of streamlining and shortening, has lost some of that detail. And so the other required activity rate, Commissioner, had a lot more guidance about this issue and if there's no objection, I might just put it in - the pre-reform award in front of you so you understand what we're talking about, which is 82.7 at the bottom of the page there.

PN106

THE COMMISSIONER: "For each hour of such activity delivered as required and demonstrates." Is that the point you're making?

PN107

MR PILLE: Yes. So it's - - -

PN108

THE COMMISSIONER: They only get it when they're performing the coordination duties.

PN109

MR PILLE: Yes. You'll see that one of the dot points is essentially:

PN110

The performance of subject coordination and duties, (indistinct) subject material, so it's the preparation (indistinct) associated with subject coordination.

PN111

And so, at best there's an ambiguity as to whether what's been prescribed in the pre-reform award, was intended to be reflected in the Modern Award is just relevant to that other required academic activity, and that's basically reflected in the Modern Award by the reference to "doctorate" throughout and the only reference to the subject coordination duties, in terms of pay, sits under the (indistinct) activity.

PN112

We are continuing to seek some instructions from our clients about how that's being followed to determine whether, in the substantive proceeding, this issue will be resulted in NTU has seen it or indeed, there's a need to address it in some other way.

PN113

THE COMMISSIONER: Well, how about for present purposes we just make sure that where it currently refers to, "Where academic holds doctorate", it will say, "If academic holds doctoral qualification". And maybe we'll leave the other aspect of it for you to get further instructions and report back.

PN114

MS PUGSLEY: We're in the same situation of seeking instructions and I'm aware that ADL has put in submissions on this in relation to the (indistinct). It's the same point that the last one outstanding point is (indistinct) award. So ADL does have submissions in respect to that while, I don't know, is it Ms Chan, in Sydney?

PN115

MS CHAN: Yes, so Commissioner, our interest in the current award really relates to our opposition to the changes, to the extent that they're the same in the post-secondary award. That being the case really, we believe that like in the post-secondary award, there are actually work/value considerations that need to be addressed in relation to the NTU's claim regarding the casual academics and whether they are required to perform the full subject coordination activities.

PN116

Our submissions of 15 October do address this to some extent, but we would also be looking obviously to make further submissions in due course, in relation to the matter as well.

PN117

THE COMMISSIONER: Ms Gale?

PN118

MS GALE: Yes. We say that it is, in fact, a work/value issue, that not all casuals are required to perform full subject coordination duties, self-evidently, but some are. And where they are, then they're entitled to be paid no less than the rate of pay drawn from step 6 of level A. If you look to clause 9.1, which is the full-time and part-time rates of pay, there's an asterisk that's point 6 of level A and that asterisk is explained in a note immediately below that section of the table.

PN119

Any level A academic required to carry out full subject coordination duties as part of his or her normal duties or who, upon appointment, holds or during appointment gains a relevant doctorate qualification will be paid a salary no lower than the salary point.

PN120

And we say that is, in fact, a work/value point within the level A range. And that that is reflected in the fact that there's one of the three casual rates is drawn from step 6 of level A. It is a work/value point and it relates to the work value of a person who is employed to carry out full subject coordination duties. And that should be reflected throughout the casual rates of pay and we say that the history of the rates shows that it historically as reflected throughout the casual rates of pay and not simply in relation to other required academic activity.

PN121

Other required academic activity is the hourly rate of pay that's available for work that's done in addition to work encompassed in the – or separate from work encompassed in the named rates of pay, such as lecturing and tutoring. But someone who is tutoring and doing the unit coordination duties for full subject coordination duties, should be paid both for their tutoring and for the other aspects of subject coordination duties at the rate which reflects that work/value level. So perhaps it is something that needs to wait for the substantive hearings on that.

PN122

THE COMMISSIONER: Well anyhow, I mean we'll make the transcript today available to all parties and I think I've heard from both Ms Pugsley and Mr Pille, that they will get some instructions from their clients in relation to these matters.

PN123

MR PILLE: Yes, and I've got no difficulty with this course and thank you to Ms Gale for pointing out the asterisk point. That language of relevant doctoral qualification would appear to be the relevant language to adopt for the consistency point, Commissioner.

PN124

MS PUGSLEY: Yes that- - -

PN125

MS GALE: Certainly.

PN126

MS PUGSLEY: - - -I think between the pre-reform and the wording, I think that the Commission is suggesting is more – is closer to what's in the pre-reform award.

PN127

MR PILLE: I think, with respect, what the Commissioner was suggesting was that where there's reference to "doctorate" or there's three formulations in there at the moment. One doctorate, one's relevant.

PN128

MS GALE: Yes.

PN129

MR PILLE: Relevant, not - - -

PN130

THE COMMISSIONER: Yes, so it will say, "If academic holds doctoral qualifications". The bit that we haven't resolved is where it says, "or performs full subject coordination duties", and I think - - -

PN131

MR PILLE: I'm just struggling with relevance, Commissioner - - -

PN132

MS GALE: Yes.

PN133

MR PILLE: - - - because it appears that that does appear in the table and at 9.4(b)(ii).

PN134

MS GALE: Yes.

PN135

THE COMMISSIONER: And I don't think that's in contention, the relevant documents. Okay, if that could say, "Relevant doctoral qualification", that will be the standard phrase. And then if the Group of Eight and the HEIA could let us know their view about the remainder there, which says, "Or performs full subject coordination duties".

PN136

I mean, if it can be resolved in this technical drafting stage, then that would be well and good. If not, then it's part of the substantive claim.

PN137

MS GALE: Can I just make one other point in relation to the technical drafting which is under the marking rate? There's two sorts of marking. There's standard marking and there's marking as a supervising examiner. And then it has those rates replicated for where an academic holds relevant doctoral qualification. The second of those rates does not need to be replicated for where an academic holds a relevant doctoral qualification.

PN138

You'll see from the rates of pay that that second category makes no difference to the rate of pay of 39.64, and that's because the 39.64 rate of pay is actually a level B rate of pay, not a level A rate of pay. Where someone's marking as a supervising examiner, they're paid at level B, step 2, which is the rate at (i) under the formula.

PN139

THE COMMISSIONER: Yes.

PN140

MS GALE: So it makes no difference whether a person holds a doctorate or carries out full subject coordination duties. They're already being paid at a higher work value level than either of those things provides as a minimum.

PN141

THE COMMISSIONER: So does that mean standard marking (where academic holds doctorate), that row comes out?

PN142

MS GALE: No. The one below that:

PN143

Marking as a supervising examiner where academic holds doctorate.

PN144

Because that rate is already provided two rows above.

PN145

MR PILLE: No, I think as long as that's clearly understood and it's now on the transcript, we've got no objection to – and you might have put standard marking where academic holds a doctorate below standard marking and then have marking as a supervising examiner, which would then also reflect the dollars that attaches.

PN146

THE COMMISSIONER: Yes, makes sense. All right, moving on, then we come to 10.5(a), Group of Eight indicated that they preferred the old language, which was:

PN147

Assessment of performance and the acquisition of the use of skills.

PN148

And I understand that the MTU supports the reversion to the old language. And AHIA?

PN149

MS CHAN: Commissioner, sorry, just before Ms Pugsley begins, we're having a bit of an issue actually hearing her in Sydney.

PN150

MS PUGSLEY: Am I too far away from the microphone? Thanks. Just that we hadn't formed a view on that at this stage.

PN151

MS CHAN: Yes.

PN152

THE COMMISSIONER: We will assume it is the change we made unless we hear some violent opposition from you.

PN153

MS CHAN: Sure.

PN154

THE COMMISSIONER: That then brings us to 12.1 which is excess annual leave, that is part of the - that is a substantive issue, we don't need to go there. 12.3 which is the leave loading, as I understand it the parties are agreed with the updated language which is the reference to -

PN155

The Australian Bureau of Statistics average weekly total earnings all males (Australia) for the August quarter preceding the date of accrual.

PN156

All agreed? Thank you.

PN157

MR PILLE: Commissioner, can I (indistinct) that they're - and I don't know, I'm assuming that is a standard that has been (indistinct) more than the level 3 award. It seemed a bit odd to be the legislation that - it struck me as a very odd clause that is talking about a non-award base rate of pay. I have got no objection, I just wanted to point it out. If it is anomalous to all the other awards I need some explanation. If it is in there because someone has decided that it should be in every award I'm not going to say any more about it.

PN158

THE COMMISSIONER: Then we move on to clause 14, personal carers needing compassionate leave. There is a note there about it having been amended for the NES and you are all content with that, I understand.

PN159

Now public holiday 16, the MTU has made some submissions about consistency between this and the NES and there is no suggestion that in 16.2 it should read "an employer and an employee may agree to substitute". What does the employer say about that? It seemed to me that, as inconvenient as it is and I am comfortable as it is, the submission being made by the NTU is probably right.

PN160

MR PILLE: We can see the basis for the submissions. The main thing we called out in our response is - well, implicitly, if it was to be amended our clients would prefer to see it amended like approximately 40 other awards and refer to an employer and the majority of employees, but we recognise that there is no argument about whether those clauses are consistent with the NES and I don't want to make too much of this and your name is on it as well, Commissioner, that the public holidays common issue, the scope of that is not entirely clear to me, I have to say, and there is a blanket direction issued on 27 April 2016 about any variations to public holiday provisions needed to be filed and will be dealt with under this process. Now whether that remains the case or not, I don't know.

PN161

The main point we raise at the moment is we recognise the submission that is put. I don't have anything substantive to say about it other than to note that it seems to relate to a significant number of awards and subject to what the Commission might do with those other awards we would say if it was to be amended that a majority of employees is (1) closer to the existing clause and (2) perhaps it reflects what occurs in practice which is uncontroversial. The universities have closedowns Christmas/New Year, they provide additional holidays to employees in substitution for typically Labor Day and Melbourne Cup Day.

PN162

THE COMMISSIONER: I seem to recall there were always exams on Melbourne Cup Day, it was terrible.

PN163

MR PILLE: Very inconvenient. And obviously to subject all students to that is the rationale. Obviously it falls during the testing period and that is entrenched and embedded in all of the (indistinct) across the sector, so I understand the way the Commission puts its comment.

PN164

THE COMMISSIONER: Maybe it is something we just have to park, get some greater clarity about how it is going to be dealt with more broadly.

PN165

MS GALE: If I can say the NTU only raised this issue because - frankly, we hadn't looked at this before. The question and the exposure draft about the relationship with the NES drew our attention to it, so it is just inconvenient but having become aware of it we thought it appropriate to raise it rather than pretend the issue wasn't there.

PN166

The proposition about a majority consent would at least enable the existing provisions in most enterprise agreements which replicate the stand down arrangements to persist and as a collective organisation we like majority rather than individual decisionmaking about terms of employment. However, the words in the NES are a little more individual in their expression. So, we are certainly not pressing it as an NTU claim; we raised it in response to the question in the exposure draft, so we are happy for it to be parked but I think that the words in the general staff award is noted which make the provision on public holidays subject to - sorry - the NES subject to the provision in the award. I raise the question more sharply about you can make the NES subject to - - -

PN167

THE COMMISSIONER: Yes. At this stage I just think we should park it and I'll do some more thinking about how we move it forward.

PN168

The next item I have is on page 30, which is Schedule B, the Group of Eight issue with which I understand the NTU agree, but it is not entirely clear to me what the issue is.

PN169

MR PILLE: The issue, Commissioner, is that the Schedule B contains a shorthand summary of certain rates that apply where someone is entitled to a clinical loading but if you go back to the actual entitlement - and it appears in clause 9.2(c)(i) - to be entitled to essentially the highest of those loadings you need to be employed in a (indistinct) in a full clinical department in a medical school and responsible for patient care, it is that requirement to be responsible for patient care that has been dropped from Schedule B.

PN170

MS GALE: And that is found in the heading to the column under "Medically qualified", the first column "Full clinical department in a medical school" should also say "with patient" - - -

PN171

MR PILLE: And responsible for patient care.

PN172

THE COMMISSIONER: Is it just there, too?

PN173

MR PILLE: I believe so.

PN174

THE COMMISSIONER: In each of the tables?

PN175

MR PILLE: Yes.

PN176

THE COMMISSIONER: Where it says "Full clinical department in a medical school" it should say "Full clinical department in a medical school and responsible for patient care". We can make those amendments.

PN177

MR PILLE: The other suggested I have.

PN178

MS GALE: That is just for the first column.

PN179

MR PILLE: Just for the first column?

PN180

MS GALE: Yes.

PN181

THE COMMISSIONER: Yes, just there.

PN182

MR PILLE: The other suggestion, just in the interest of clarity, there are embedded within the substantive clause certain expressions including to pay

different allowances or higher allowances and so forth. All I was going to suggest that it might be an appropriate case for an asterix and a reference to "Refer to clause 9.2 - 9.2 generally in relation to the (indistinct) provisions the same.

PN183

THE COMMISSIONER: We will do our best to fix that up.

PN184

MS GALE: And we don't object to that, because that is entirely consistent with the fixing up we are trying to do with the casual rates.

PN185

THE COMMISSIONER: That concludes all the issues that I had identified in the Academic Staff Award. Are there any that I have missed?

PN186

MS GALE: Can I just mention in relation to the definitions, the definition of the industry now appears in two places.

PN187

THE COMMISSIONER: And if it is appearing in coverage it really doesn't need to appear in the definitions, I agree, and I think that that submission has been made consistently with the others as well. You don't want the two definitions particularly because they are not the same. We note that as well.

PN188

Shall we move on to the general staff. 1.1, yes, the year will reflect the year that an award is made. The coverage clause again - the definition there of higher education industry means that it shouldn't appear in Schedule I of the definition. Then there is an additional NTU issue there but that is part of the substantive case.

PN189

MS GALE: Yes.

PN190

THE COMMISSIONER: In relation to clause 6 "Types of employment", we will resolve that as we have with the Academic Award, as we will 6.6(b) with the schedule of employers and reference to their successors. 6.7, there is consensus that we will retain the probation clause. 6.8(a), there are some drafting issues there. It should read:

PN191

"Casual employment" means employment where a person is engaged by the hour and paid on an hourly basis a payment that includes a loading related to award base benefits for which a casual employee is not eligible.

PN192

6.9 "Casual conversion" is a substantive issue. T "Instance of fixed term contract", we have now resolved those issues, as I understand it. 8.1 "Classifications", I think there was a Group of Eight issue here.

PN193

MR PILLE: I think it is a common issue, it is a recognition that we have a schedule that has definitions in it and no reference in the body at the moment of that schedule. The Commission in its exposure draft put in some relatively brief words. The NTU as part of its substantive has sought to reinsert a paragraph that appeared in two major pre-reform member staff awards and there were other enterprise awards, the so-called (indistinct) awards and (indistinct) awards contain similar paragraphs. If you look at our submission at paragraph 18 of those submissions, the first paragraph there 8.1, that contains in total what was included in the previous pre-reform awards. My understanding of the difference between us and the NCEU is that we have indicated that the whole clause, including that last sentence, should go in.

PN194

MS GALE: And we oppose the last sentence going in.

PN195

MR PILLE: And the NTU say "No, the last sentence should not go in".

PN196

THE COMMISSIONER: But it is in pre-reform.

PN197

MS GALE: Yes.

PN198

MR PILLE: Yes.

PN199

THE COMMISSIONER: Why are we posting it?

PN200

MS GALE: Because we say it is a separate issue; it is not about the - - -

PN201

THE COMMISSIONER: It is not creating a new right.

PN202

MS KENNA: Is it actually allowable?

PN203

MR PILLE: We would say it is incidental to classifications, rates of pay and in this award where there are types of employment that require you to specify duties and the like that it is incidental.

PN204

MS GALE: We say that the first paragraph is clearly about the relationship between the classifications and the rates of pay and the manner in which employees will be classified. The second paragraph, which has an entirely separate history comes from different issues, is not part of - should not simply be put in because it is geographically located together with the first paragraph. The second paragraph there is about the employer's power to direct in relation to duties, that is not - it is talking about duties within an employee's classification, so

it is not about, you know, for example it's not the provision that if they direct you to cross out the duties outside your classification, it doesn't change your classification or it does change your classification. It's about the employer's power to direct people to work. It's not about classifications and it doesn't belong there. If the employers want it inserted then - - -

PN205

THE COMMISSIONER: How hard are you going to press it?

PN206

MR PILLE: Well, with respect, the presumption should be the other way. First of all - - -

PN207

THE COMMISSIONER: I think I made that point, but it wasn't persuasive enough so I'm coming to you.

PN208

MR PILLE: And on its face it's clearly incidental to the classification and, yes, it's an authorising provision. It's also a limited provision in relation to classification. We're surprised that it's opposed. And I have to say, without being too disingenuous about it, if that clause had been put up in the modern award it would have been uncontroversial and it would have been included. It was omitted by all parties in toto.

PN209

THE COMMISSIONER: What I propose to do is put both paragraphs in accordance with paragraph 18 and there'll be a drafting note that the final sentence is opposed by the NTEU.

PN210

MR PILLE: And that brings us to ordinary hours of work. That's a substantive claim by the NTEU. Coming then to 9.2(b), I think it's (iv), it's an NTEU issue, page 10 of their submissions. The NTEU submits that neither the current nor the proposed new wording is adequate. Sorry, I think it's relation to 9.2(b)(iii).

PN211

MS CHAN: Sorry, I'm just trying to find where it is in our submissions.

PN212

THE COMMISSIONER: They're not numbered, but it's the tenth page in.

PN213

MS CHAN: Yes. Thank you, Commissioner.

PN214

MS GALE: So the 50 per cent or 150 per cent – if it's instead of any other shift penalty that may apply then that could have the effect of actually reducing a 200 per cent penalty to 150 per cent. And we don't think that's intended, and we recognise that problem is there in current when they – 50 per cent wording as

well. It's surely not the intent that the employer can avoid a Sunday or a public holiday penalty rate simply by changing a roster notice.

PN215

THE COMMISSIONER: No, that can't be right. So we just need to figure out what needed – make sure that that isn't the content. What's your suggestion?

PN216

MS GALE: Well, our suggestion is to say:

PN217

entitled to a shift penalty of 150 per cent on an hourly rate.

PN218

And then not say:

PN219

instead of any other shift penalty that may apply.

PN220

THE COMMISSIONER: Entitled to a shift penalty of 150 per cent of the minimum - - -

PN221

MS GALE: Of the minimum hourly rate which makes it clear it's not 150 per cent of whatever shift penalty would otherwise apply. So it's only 150 per cent of the minimum hourly rate.

PN222

THE COMMISSIONER: And then you would - - -

PN223

MS GALE: And then we would also amend - - -

PN224

THE COMMISSIONER: - - -delate the rest of that?

PN225

MS GALE: Yes. And we would also amend 16.5 which it's rates not cumulative to cross-refer, so it would say the penalty rates within this clause and in the penalty rates clause and in clause 9.2(iii) are not cumulative where an employee is entitled to more than one penalty rate, the employee will be entitled to the highest single penalty rate.

PN226

THE COMMISSIONER: So what does the cross-reference – I'm looking at 16.5.

PN227

MS GALE: So we would just add – so as well as the penalty rates clause and the - this clause and the penalty rates clause we would add in the rostering clause because of the rate we've just discussed.

PN228

MR PILLE: Well, I'm not going to follow it on the first one.

PN229

MS GALE: Okay. The rate we've just discussed, the 150 per cent rate when this change in roster, a short notice change in roster doesn't arise under either of the penalty rates clause or the clause 16, which is the overtime clause, so if we add - -
-

PN230

MR PILLE: What number is the penalty rate clause?

PN231

MS GALE: Part 5, 15 is penalty rates, 16 is overtime, and 16.5, which actually deals with both of them is that the rates aren't cumulative, and our view is that that should also cross-refer to 9.2(b)(iii) so that the penalty arising from 9.23(b) is understood to not be cumulative but where you're entitled to that rate and possibly to a 200 per cent rate under 15 or 16 you get the higher.

PN232

THE COMMISSIONER: I understand the point.

PN233

MS GALE: Yes.

PN234

THE COMMISSIONER: But all I want to know is what words do you want included at the end of 16.5? What would the words say?

PN235

MS GALE: After the penalty rates clause we would put:

PN236

and clause 9.2(b)(iii).

PN237

MR PILLE: I'm sorry, could I get you to repeat what you – what should happen to 19 – sorry to - - -

PN238

MS PUGSLEY: 19.5.

PN239

MR PILLE: No, the original.

PN240

MS GALE: 9.2(b)(iii).

PN241

MR PILLE: 9.2(b)(iii), yes.

PN242

MS GALE: To simply say we'll be entitled to an allowance - - -

PN243

THE COMMISSIONER: In the last sentence it would say:

PN244

If 72 hours' notice is not provided the employee would be entitled to a shift penalty of 150 per cent of the minimum hourly rate.

PN245

MS GALE: Yes.

PN246

THE COMMISSIONER: So we would delete the words:

PN247

an additional allowance of 50 per cent instead of any other shift penalty that may apply.

PN248

MS GALE: So the interaction with any other shift penalty that may apply is dealt with first by the statement that it's 150 per cent of the minimum hourly rate. And – not of a shift rate – and second, by inclusion in 16.5 where it's made clear that you're entitled to the highest applicable penalty rate.

PN249

THE COMMISSIONER: And so in the second sentence there:

PN250

Where an employee is entitled to more than one penalty rate.

PN251

Or the entitlement in 9.2(b) is - - -

PN252

MS GALE: Well, I would put in the first sentence.

PN253

THE COMMISSIONER: The first sentence. Yes.

PN254

MS GALE: Yes.

PN255

THE COMMISSIONER: Okay. Yes. All right. Well, what we might do is, again, make the transcript – the transcript will be available on – I think people need to think about it and come back to us about their view rather than doing it on their own. That then, I think, brings us to 16.4. There was a drafting error there and there were two different suggestions made. I think it should say:

PN256

An employee will be paid overtime or provided with time off instead of paid overtime for all authorised work.

PN257

Do you agree with that?

PN258

MS GALE: Yes.

PN259

THE COMMISSIONER: Very good. 16.5, we've dealt with that. 17, annual leave. The amendment to 17.5(a) will be consistent with what we have agreed for the academic award. 17.6, close down is a cross-referencing error. In 17.6(c) the opening line should refer to clause 17.6(b) and not clause 17.4.

PN260

MS GALE: Yes.

PN261

THE COMMISSIONER: And then with the drafting note the parties were asked to comment on whether 17.6 there should be clarified by inserting the words:

PN262

with the same employer

PN263

after the words:

PN264

and the employee employed

PN265

And the parties are agreed in relation to that. Very good. 20.2 is the substitution of public holiday point, which we've discussed in relation to the academic award and we will park that likewise. Schedule A classification definition, that's an NTEU substantive issue. Nothing in relation to schedule B. Schedule C, allowances, it's an NTEU substantive issue. Nothing in relation to schedule D. Schedule E, the AHEIA have queried the relevance of the schedule I understand.

PN266

MS PUGSLEY: I don't think it was so much querying the relevance of it as (indistinct) or the - - -

PN267

THE COMMISSIONER: No, national training wage.

PN268

MS PUGSLEY: Training wage. No, we don't query the relevance of it.

PN269

THE COMMISSIONER: All right. Okay.

PN270

MS PUGSLEY: It's a matter for submissions.

PN271

THE COMMISSIONER: All right. Then we'll leave that.

PN272

MS PUGSLEY: Yes.

PN273

THE COMMISSIONER: And nothing in relation to schedule F. Nothing in relation to schedule D. Nothing in relation to schedule H. And the schedule I definitions, we'll remove the definition of higher education industry. That seems to me to be all the issues in the general staff award unless I've missed a few. Very good. Let's move on to post-secondary education. All right, 1.1 yes, it will reflect the year in which it's made. Coverage, 3.2 with it being included there, it will come out of schedule I. Item 5.2, the NTEU makes submissions that there needed to be included in the table additional clauses 8.1(d)(ii), 8.2(d)(iii) and 15.4.

PN274

MR PILLE: Is that agreed? I'm not - - -

PN275

MS PUGSLEY: It is (ii) that is disputed.

PN276

MR PILLE: Yes, I haven't got it in front of me, I'm sorry.

PN277

THE COMMISSIONER: On the fourteenth page of their submissions. Ms Chan, did you have a view about this?

PN278

MS CHAN: No. No instructions on this in particular, Commissioner.

PN279

MS GALE: I can say that when we did run our submissions past the IEU and AEU they were content with what we'd put.

PN280

MS PUGSLEY: Can you just explain to me a bit further why you think that's necessary.

PN281

MS GALE: That the provision at 5.2 is to point to all of the facilitative provisions that are found in the award and it seems to us that those other ones we have listed are provisions that provide that the standard approach may be departed from by agreement between an employer and an individual employee or an employee and a majority of employees in the enterprise or part of the enterprise concerned.

PN282

THE COMMISSIONER: Maybe we can leave it for the employer to come back to us on that.

PN283

MS PUGSLEY: Yes.

PN284

THE COMMISSIONER: It seems uncontroversial to me.

PN285

MS PUGSLEY: Yes.

PN286

MR PILLE: As long as it reflects – I'm sorry I just don't have a copy of the - - -

PN287

THE COMMISSIONER: It seems to reflect it.

PN288

MR PILLE: I've got the old award but I don't actually have a copy with me. But if it reflects the substance of the clauses referred to then in principle - - -

PN289

THE COMMISSIONER: Right. If you just let us know about that. Great. The next item was 9.4(c). That's right. There seemed to be some different submissions in relation to the points. The parties were asked to clarify if the breaks in clause 9.4(a) and (b) are paid. The parties are also asked to clarify if clause 9.4(c) only applies to overtime on Monday to Friday and/or overtime immediately following ordinary hours. Can we deal with 9.4(a) and (b) and can we confirm that they are paid? The NTEU says yes.

PN290

MS PUGSLEY: Are you talking about 9.4(c)?

PN291

THE COMMISSIONER: I'm sorry. 9.4(a) and (b) I'm dealing with at the moment.

PN292

MS PUGSLEY: As to whether or not they were paid breaks? That would certainly be consistent with awards generally, that those tea breaks are paid. We don't know what (indistinct).

PN293

THE COMMISSIONER: We'll assume that - - -

PN294

MS PUGSLEY: Most of the employers aren't here of course (indistinct).

PN295

THE COMMISSIONER: All right. We will take that as a yes and then the next point, the parties are also asked to clarify if clause 9.4(c) applies only to overtime

on a Monday to Friday, and/or overtime immediately following ordinary hours. The NTEU submits that the breaks described in 9.4(c) apply to any overtime worked as distinct from rostered shift work on weekends. So you say it's "and"?

PN296

MS GALE: Yes. We say someone is rostered to work on Sunday and then continues working overtime, then this provision applies in the same way as it would if they were rostered on Thursday and continued working overtime on Thursday. And in your submissions, you say "notify only" - - -

PN297

MS PUGSLEY: We do, because isn't it the case that if you are working overtime on Monday to Friday, it's usually because you haven't been given notice that you are required to work on the Monday to Friday and that's where your break and meal allowance comes in? Whereas if you are rostered to work on a Sunday, you would already know that you are required to come in on Sunday and therefore there wouldn't be the requirement for a meal allowance.

PN298

MS GALE: I think you are confusing issues, because this is actually about a meal break after a certain amount of time worked, and - - -

PN299

MS PUGSLEY: A "meal break of"?

PN300

MS GALE: Yes. So we say that that overtime can be as unexpected on a weekend as it can on a weekday, but in any case it's about the right to a break after a number of hours worked and that that applies - - -

PN301

MS PUGSLEY: That assumes that you do come back to work after the break. I suppose that's what I was confusing it with, that normally with overtime, wouldn't it say that provided that you do return - - -

PN302

MS GALE: It doesn't - - -

PN303

MS PUGSLEY: Otherwise it's not a break.

PN304

THE COMMISSIONER: Well, it says "after each four hours", so it seems to assume that you're continuing to work.

PN305

MS PUGSLEY: Yes. I am wondering why the question arises.

PN306

MS GALE: The question arises because of the occasional circumstance where an IT person is called in on the weekend to fix the system that's gone down and they end up working 24 hours straight.

PN307

MS PUGSLEY: Because the estimate from your point of view that - the question has arisen from the Commission, I presume, because it's a question that's been asked with respect to exposure draft, and I was wondering - - -

PN308

THE COMMISSIONER: I think it's just being asked just for the sake of clarity.

PN309

MS GALE: Our view is that it is.

PN310

THE COMMISSIONER: I think it is clear on it.

PN311

MS GALE: Our view is that it is - - -

PN312

THE COMMISSIONER: I think it's uncontroversial. So then we move on to minimum wages and on page 15 of their submissions the NTEU have requested an amendment. I think it's a bit lost what the amendment was. Academic teachers, full-time or part-time.

PN313

MS GALE: This is the same issue as relates to the work value level of step A - level A, step 6 should, in our view, have the same asterisk and note in the full-time rates as is the case in the Academic Award and that is reflected in the academic casual rates issue as well.

PN314

MR PILLE: This is your substantive claim, isn't it? There is essentially a claim to include a number of what on its face are additional provisions, additional to the Post Secondary Award and the thrust of the NTEU's submission is the - of the derivation of what went into the Post Secondary Award was in the Act, even the Higher Ed awards and you should import everything in the that's in the Higher Ed awards into it.

PN315

The parties opposing it have indicated, well, you're now essentially redrafting the Post Secondary Award. You're including additional entitlements. On its face, it's an increase in the rate of the casuals and runs into, amongst other things, the work value point. So I think the same issues arise for the Higher Ed academic award, but there's additional issues (indistinct).

PN316

THE COMMISSIONER: Yes, but it's been dealt with in the substantive case.

PN317

MS GALE: It is the substantive case.

PN318

THE COMMISSIONER: So we just (indistinct) put the draft in perspective.

PN319

MS GALE: The other question there is the question around rounding.

PN320

THE COMMISSIONER: I think everyone was a bit agnostic about rounding.

PN321

MS GALE: Yes - - -

PN322

MS PUGSLEY: It used to be during the days of national wage, didn't it?

PN323

MS GALE: It used to be a rare issue in the days before computers calculated the wage changes for us.

PN324

THE COMMISSIONER: Yes. We will move on from that, I think. Then on page 19, parties are asked whether the "ordinary rates of pay" in clause 11.2(d)(iii), with the minimum rate can be included or can it include penalties. So this is 11.2(d)(iii) and (e).

PN325

MS GALE: Our submission was simply that it should be the ordinary rate payable for working at that time, which may include penalties.

PN326

MS PUGSLEY: Yes, that makes sense. We just also make the point that we can't imagine that it would be applying to our members, because they would pay annualised rates.

PN327

THE COMMISSIONER: But an indication from a drafting perspective. Leave it, yes. That brings us to 14, penalty rates. There is a drafting note under 14.1(c). Parties are asked to clarify whether the minimum payment of four hours applies to a substituted day and the consensus position is yes.

PN328

MS PUGSLEY: Yes.

PN329

THE COMMISSIONER: Then at 15.5, overtime, the drafting note, parties are asked to clarify whether the rate payable in clause 15.5(d) is at overtime rates or the minimum hourly rate. AHEIA says the minimum hourly rate and the NTEU says something more.

PN330

MS GALE: Yes, it says the penalty rate that it was accumulated at.

PN331

THE COMMISSIONER: How do we resolve this? Ms Pugsley, what do you say in answer to what the NTEU has submitted there on page 16?

PN332

MS GALE: I just said that the clause applies to people at level 8 or 9 who are excluded from the penalty rates for overtime at 15.1 and instead get overtime at hour for hour and that's at 15.5(a). So our view is that overtime paid out on termination would be at 100 per cent of the relevant hourly rate, that that might include higher duties allowance for example, and not including the penalty loadings.

PN333

MR PILLE: So (indistinct) 5.5(d) is essentially hour per hour and paid at the minimum hourly rate. Is that - - -

PN334

MS GALE: Including allowances, yes.

PN335

THE COMMISSIONER: So if they're receiving overtime rates at that time, they get them?

PN336

MS GALE: Well, they wouldn't be. They're not entitled to overtime rates because they not level 8 or 9.

PN337

MS PUGSLEY: So having said that Linda, do you agree that in 15.5(a) the time off in lieu should be at the basis of time for time, because - - -

PN338

MS GALE: That's what it says here.

PN339

THE COMMISSIONER: One hour for each hour worked.

PN340

MS GALE: Yes, yes.

PN341

THE COMMISSIONER: So when they get paid out, they are paid at minimum hourly rates?

PN342

MS GALE: My quibble about minimum hourly rates is not penalties, it's allowances, such as higher duties. It's their rate that they're paid at the time of termination.

PN343

THE COMMISSIONER: So it's minimum hourly rate, plus any allowances?

PN344

MS GALE: Yes, applicable allowances.

PN345

THE COMMISSIONER: Yes. All right. If it had that in brackets after than sentence then, that would address the issue?

PN346

MR PILLE: Can I just check conceptually - so the employees work the hour, they may well have been paid the relevant allowance, whatever it might have been, because they have worked that hour and then they're going to get an hour off in respect of which they wouldn't be doing any work. Doesn't it therefore depend upon whether the allowance attaches to the performance of the particular work as to whether it's then payable - an allowance is payable on - - -

PN347

THE COMMISSIONER: But if it says minimum hourly rate plus any applicable allowance, that deals with it, because it might not be an applicable allowance.

PN348

MS GALE: Our concern is that the termination payment should not necessarily be calculated at the minimum rate. It may be calculated at the rate that the employee is being paid at the time of termination, which may include some allowances. It's not the rate relating to the hour in which it was worked, it's the rate - - -

PN349

MR PILLE: So they're getting a higher (indistinct).

PN350

MS GALE: Yes, because in fact at the time they were not paid for the hour, otherwise it wouldn't have accumulated.

PN351

MR PILLE: Well, they worked that ordinary time for the hour and presumably would have been paid their allowances. They get time off in lieu.

PN352

MS GALE: No, they weren't paid ordinary time, they weren't paid anything - if they work overtime, they're not paid for it. They accumulate the hours. It's effectively a - - -

PN353

MS PUGSLEY: You're conflating the overtime with the - - -

PN354

MS GALE: They're actually excluded from overtime. So they receive no payment for this hour.

PN355

MS PUGSLEY: I think the use of the word "minimum hourly rate" is a bit confusing.

PN356

THE COMMISSIONER: So it's minimum hourly rate, plus any applicable allowance.

PN357

MS PUGSLEY: Yes, as opposed to - yes, so it would be what we would understand as ordinary rate.

PN358

MS GALE: Yes, those - - -

PN359

MS PUGSLEY: And the decisions around - - -

PN360

THE COMMISSIONER: We are going to move forward with what I suggest.

PN361

MS GALE: Yes.

PN362

MR PILLE: Are there any allowances in this (indistinct).

PN363

MS GALE: There is higher duties, which is why I mentioned it.

PN364

THE COMMISSIONER: Public holidays, 20.2 is the substituted public holiday issue, which we're parking in relation to all three awards.

PN365

Schedule A; there's nothing in Schedule, nothing in Schedule C and D. Nothing there. Schedule E. Nothing in Schedule F. Nothing in Schedule G. Nothing in Schedule H. Clear Schedule I. We are just deleting reference to the Post Secondary Education Service Industry.

PN366

Ms Chan, have I missed anything?

PN367

MS CHAN: No, that clause sounds to be in order.

PN368

THE COMMISSIONER: All right. Have I missed anything - - -

PN369

MS GALE: I don't think so. Because we can't deal here with matters that are the subject of the Casual and Part-time Full Bench and there are three outstanding issues from the IEU in respect of which they haven't made any submissions and I've corresponded with them to see whether they are still pursuing those as part of the casuals Full Bench and I haven't heard back at this stage.

PN370

THE COMMISSIONER: Did you give them a deadline?

PN371

MS GALE: No, but I sent the email a couple of weeks ago.

PN372

THE COMMISSIONER: So I think that what I will do is we will make a note on the transcript there are some points which people have indicated they will come back to my chambers in respect of. If I could ask people to do that within a week. Then what we will do is we will produce a further amended version marked up of each of the exposure drafts and again provide the parties with an opportunity to comment and indicate that it is consistent with what occurred here today. Is there anything further we can do usefully today? Shall we get the substantive files out? No.

PN373

MR PILLE: The list (indistinct), Commissioner, the current listing for 6 and 7 June, which is the general Full Bench listing at present and apart from our selective plea for clarity we don't need to turn up, that would be appreciated.

PN374

THE COMMISSIONER: All right. I will follow that up and my chambers will come back to you. Ms Chan, anything further this morning?

PN375

MS CHAN: No. Thank you, Commissioner.

PN376

THE COMMISSIONER: Thank you for your attendance in Sydney and thank everyone for their attendance here today. Good morning.

ADJOURNED INDEFINITELY

[11.31 AM]