



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

1053670

JUSTICE ROSS, PRESIDENT

AM2014/232 AM2014/236

s.156 - 4 yearly review of modern awards

Four yearly review of modern awards

(AM2014/236)

Market and Social Research Award 2010

Sydney

9.59 AM, THURSDAY, 30 JUNE 2016

PN1

THE PRESIDENT: Could I take the appearances for the record in Sydney first and then we'll go to Melbourne?

PN2

MS J KNIGHT: It's Knight, initial J, for the ASU.

PN3

MR K BARLOW: Barlow, initial K, for the CPSU, your Honour.

PN4

MS S WHISH: Whish, initial S, for ABI and the NSW Business Chamber.

PN5

THE PRESIDENT: Thank you, and we have Mr Pegg in Melbourne, is that right?

PN6

MR M PEGG: Pegg, initial M, for Jobs Australia.

PN7

THE PRESIDENT: Can you see and hear us okay?

PN8

MR PEGG: Yes.

PN9

THE PRESIDENT: All right. Let me know if you have any trouble. The purpose of this conference is really just to go through the summary of submissions, and when I had the matter on for a mention it seemed that there were going to be a number of matters you were going to mutually discuss, and it looked as if that might reach an agreed position on a range of issues. I should say at the outset that, yes, I'll be trying to facilitate an agreement but I don't want you to think that just because you've reached an agreement necessarily that's one the Full Bench is going to embrace, but, if for some reason it doesn't, it will be raised with you and you'll be given an opportunity to say what you want to say to that. So that's by way of saying I haven't formed a view about any of the merits of any of the issues that you've respectively raised, and obviously if the parties consent then that's a significant consideration the Bench would take into account. Well with that I'm happy, the message out of the way. I'm working off a summary of submissions which I think was updated on 27 June. Do each of you have that?

PN10

MS KNIGHT: I do.

PN11

MS WHISH: Yes.

PN12

THE PRESIDENT: Okay. If I can go through issue 1? That seems to be agreed that the note would be retained. The note is - it simply says that:

PN13

Where there is no classification for a particular employee, it is possible that the employer and the employee are covered by an award with occupational coverage.

PN14

It may be that the wording of that could do with some slight changes, but that is that it seems a little ambivalent, sort of anything's possible, and I thought something like: Where there is no classification for a particular employee specified in this award, then the employer and the employee may be covered by an award with occupational coverage; something along those lines.

PN15

MR BARLOW: Rather than it may be possible.

PN16

THE PRESIDENT: Yes.

PN17

MR BARLOW: Anything's possible.

PN18

THE PRESIDENT: That's right, and it's really intended to direct their attention. It doesn't say much more than that.

PN19

MR BARLOW: Yes.

PN20

THE PRESIDENT: But are there any comments on that?

PN21

MR BARLOW: We'd certainly support a change like that.

PN22

THE PRESIDENT: Any concern from you?

PN23

MS WHISH: Not from us.

PN24

MS KNIGHT: We would as well.

PN25

MR PEGG: No concern.

PN26

THE PRESIDENT: All right. The second issue AFEI raised about full-time employment - I noticed they're not here - but I did have a bit of trouble following what the issue was, because when you look at - the definitions don't seem to me to be particularly different. They might be laid out differently; 6.3 in the exposure draft versus end point 2, but they seem to say the same thing. Does anybody

know what they were - I think they were going to clarify their position but I've not heard anything - can anyone shed any light on either what their concern was and also whether any of you support their concern, or you're content with the exposure draft? Ms Whish, do you know anything about this?

PN27

MS WHISH: I don't know anything further about the AFEI submission in regards to that particular clause, but I do know our position is that while we don't oppose the submission the change from "hours" to "ordinary hours" doesn't seem that it would change the substance of the clause for us, so we're content to leave it as it is. When I say leave it as it is, I mean the new wording seems to provide slightly more clarity, so we're happy to leave that.

PN28

THE PRESIDENT: Okay. Unions?

PN29

MR BARLOW: A reference to ordinary hours makes sense, your Honour.

PN30

THE PRESIDENT: And Mr Pegg, are you content with the exposure draft?

PN31

MR PEGG: We don't see any problem with that, your Honour.

PN32

THE PRESIDENT: All right. I'll make a notation no other party - I just want to make sure I'm not putting you in a difficult position but - all other parties content with the exposure draft?

PN33

MS WHISH: That would be fine.

PN34

THE PRESIDENT: I might put a note in the update saying the matter will be regarded as agreed unless we hear to the contrary from AFEI within seven days.

PN35

This one was issue 3. I'm not sure - did the parties agree in the end that there was no change required to 8.3(a)(i) of the exposure draft? I think this had been a Jobs Australia matter, but it seems to have been resolved on that basis. Is that the position?

PN36

MR PEGG: Yes, I don't think we have any particular problem at all with this.

PN37

THE PRESIDENT: Okay. That seems to be the same for item 4 as well, that the parties at the mention agreed that no change was required?

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MR BARLOW: Yes, your Honour.

PN39

MS WHISH: Yes.

PN40

THE PRESIDENT: Is that right?

PN41

MS KNIGHT: Yes, your Honour.

PN42

THE PRESIDENT: Okay. Well happily for me because I'm not on the Bench, items 5, 6 and 7 have been referred to the Part-time Casuals Bench.

PN43

In relation to issue 8, this relates to clause 11.2(b)(ii).

PN44

MR BARLOW: Your Honour, if I may talk to this one, please?

PN45

THE PRESIDENT: Yes, certainly.

PN46

MR BARLOW: If I may talk to this one briefly. From what I understand, 11.2(b) just provides for ordinary rates. There's a question from the drafters of the exposure draft saying well what about overtime. The parties have then put on slightly conflicting submissions as to whether overtime would be paid or not paid. The CPSU has not put on submissions yet about that issue, but when I read, you know, your 11.2(b)(i) there you get ordinary rates, then you turn to the overtime provision at clause 14, overtime rates on Monday to Saturday: "who is required to work overtime Monday to Saturday will be paid, or Sunday." On its face you'd think overtime is paid if you work more than your ordinary hours during an excursion, like, that would be my original thought, but, however, Jobs Australia has suggested, and this is something that ASU has also mooted in their most recent submissions which were filed 10 June, that the pre-reform award from which this was created, your Honour, had a specialist TOIL provision just for excursions that hasn't made it into the modern award, and I think the ASU's suggestion is it may very well be worthwhile reconsidering the insertion of that TOIL provision, which was obviously in the pre-reform instrument to avoid any argument about what overtime rate applies or whether overtime applies or not.

PN47

THE PRESIDENT: I suppose that there are a couple of issues with it. One is if you look at the comparison between what was clause 16.5 of the current award and its exposure draft, in relation to this issue there's no difference.

PN48

MR BARLOW: No.

PN49

THE PRESIDENT: The only difference is the allowances expressed in monetary terms rather than - - -

PN50

MR BARLOW: Yes.

PN51

THE PRESIDENT: And, look, I suppose it seems clear on its face - that's not to preclude you from an argument, to the contrary - that if you're on an excursion that involves an overnight stay, then for the hours worked between 8 am and 6 pm, Monday to Sunday, you're paid at ordinary rates of pay for a maximum of eight hours per day. So, for example, if you were on the Sunday and the excursion went from 8 am to, you know, for example, 8 pm, then this would seem to suggest that - and leaving aside I'm not looking at it in context with the rest of your report - this clause alone would seem to suggest that for the first eight hours of that period you'd be paid at ordinary time rates, and for the balance you'd be paid at overtime rates. I suppose, the problem with the current clause is it doesn't really spell out what happens after the eight hours per day. Let me just test firstly, is there a dispute about what I've just said it looks like it means?

PN52

MS WHISH: No, your Honour. We've actually had a much closer look at this clause since our original submissions and we agree with much of what you've just said, as long as there's a way for any new provision to clearly spell out whether it's overtime for time worked, because there will be sleeping time as well as time worked in an excursion potentially; then we'd be happy with that.

PN53

THE PRESIDENT: Yes. I suppose that too requires - this is the sort of provision that more lends itself to direct discussion between the relevant affected parties, rather than arbitration, because you'll know how it works in practise, and a black letter solution to it might not suit neither of you. Because if we end up saying well any time after eight hours is overtime and that includes sleeping time or because you were away, well it may be there are just no excursions, and that might be the response to it, and what I'm really interested in is well how does it work now. Think about what's the practical way in which this provision operates at the moment. I don't know where the labour market matters are up to in the TOIL things - I'm in the process of finalising two decisions on TOIL - but it may be if the standard TOIL provision that will go in this award anyway, and that might also assist with the employer position in relation to it.

PN54

But I think, from my perspective, it would be useful if you have a private discussion between yourselves about how that might work. What does overtime apply to here? I think it's common ground that it applies if you work more than eight hours a day on one of these days then you're entitled to overtime. The question that arises is well what is work beyond that eight hours; is it sleeping, is it - you know, what is it? Bearing in mind that you're given the sleep-over allowance, it tends to suggest you're not going to be paid overtime for sleeping. So how do you express it? And it may be that it's work in excess of eight hours per day is paid at the overtime rate; work for this purpose does not include the

time that the employee is not required to engage in activities but is, you know, resting or something of that nature. But I'm more interested in something that works for you that reflects the practical way this thing operates. So can you give some thought to that?

PN55

MR PEGG: Your Honour?

PN56

THE PRESIDENT: Yes, Mr Pegg?

PN57

MR PEGG: I was just going to say, my understanding of the practical aspect of how this operates is it's - we're talking about excursions involving adults who are job seekers and so it's not like an excursion involving, say, children or disabled people who might need 24-hour care.

PN58

THE PRESIDENT: Yes.

PN59

MR PEGG: So the activities normally would be in an ordinary working day, and the intention - I think part of the purpose of this clause is to facilitate that the mere fact of being away from home doesn't count as ordinary hours of work or count as overtime, it's the actual activities during the working day.

PN60

THE PRESIDENT: Yes. It's a bit different to the sleep-over allowance, as in aged care or other facilities where you might be sleeping there but you also have the caring responsibility.

PN61

MR PEGG: That's right.

PN62

THE PRESIDENT: Whether it's to children or to people in need of care. Yes, okay, well I'm not sensing there's any violent opposition about the proposition. It's really I just want you to think about how you express it.

PN63

MS WHISH: Okay.

PN64

THE PRESIDENT: If you can get back to me in, say, 14 days with where you've got to it. If you're struggling with it, I'd prefer a joint response if you can. If you're struggling with it I can have a crack at drafting something and see whether that suits your purpose, as long as you set out what are the parameters on it, what do you agree about how it should work. So Mr Begg, I don't sense any, you know, opposition to the general proposition. It's a question of how do you express it. I do think it would be worth clarifying what happens after the eight hours because that's a little uncertain at the moment, and it should probably cross-refer

to some overtime provision, but it also needs to reflect the point you've just raised that, well, it's when you're working after eight hours, after that eight hours per day, and that doesn't include - you know, at some point in the day you will stop and everyone will go their separate ways or et cetera, so how you frame that, and it may be it's where the employee is required by their employer to work beyond that period, et cetera, then overtime applies or something of that nature. So it becomes clear where the delineation is. I think that's the vagueness in the clause that may give rise to problems. All right?

PN65

Then in 9 I think there was a typographical error which seemed to be agreed. I think this excursions point that's been raised by the FWO is also a similar matter that I think would benefit from some discussions between the parties directly.

PN66

MS KNIGHT: I apologise, your Honour, which item are we up to?

PN67

THE PRESIDENT: I'm sorry, we're up to 10.

PN68

MS KNIGHT: Up to 10, thank you.

PN69

MR BARLOW: I think it is the same issue, your Honour.

PN70

THE PRESIDENT: Yes, I think it is.

PN71

MR BARLOW: They're just referring to it, the - - -

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THE PRESIDENT: They're referring to the pre-reform, which is 16.5; that's right, it's exactly the same issue.

PN73

MR BARLOW: Yes, which is now 10.2.

PN74

THE PRESIDENT: Then we've got item 11.

PN75

MR BARLOW: I think 11 and 12 are the same issue as well, your Honour.

PN76

THE PRESIDENT: Yes, they are.

PN77

MR BARLOW: May I speak to this one, your Honour?

PN78

THE PRESIDENT: Certainly.

PN79

MR BARLOW: This one's an interesting one. 14.2(c) of the current exposure draft provides essentially for two overtime rates on public holidays, one being ordinary time and one being overtime, if that makes sense. So if you just turn to that award now.

PN80

THE PRESIDENT: Yes.

PN81

MR BARLOW: Point 2, and 14.2(c), so during your ordinary hours of work you do 250 and 350 - now, it's the CPSU's view that that reflects part of the fact it's been now updated to percentages, what the pre-reform sets award contained, your Honour.

PN82

THE PRESIDENT: Okay. And they define ordinary hours of work?

PN83

MR BARLOW: Obviously an average of 38 over.

PN84

THE PRESIDENT: But do they define it in terms of during the day, so many hours per day?

PN85

MR BARLOW: I can't answer that question off the top of my head.

PN86

THE PRESIDENT: I suppose they must because otherwise it wouldn't make any sense. You follow me - - -

PN87

MR BARLOW: Yes - no, I understand, how would you work overtime - yes.

PN88

THE PRESIDENT: Hours of work - ordinary hours of work here - spread of hours: it can be rates for ordinary hours, ordinary hours of work between 6 am and 8 pm, Monday to Friday. So I suppose the 6 am to 8 pm, so do you read it this way, that if you work on a public holiday - two things that I understand - if you work on a public holiday you will get 250 per cent, which would be the standard. For performed between - - -

PN89

MR BARLOW: 6 am and 8 pm.

PN90

THE PRESIDENT: Whatever the hours worked are.

PN91

MR BARLOW: Standard hours, yes.

PN92

THE PRESIDENT: So where's the span of hours?

PN93

MR BARLOW: 8.2 of the exposure draft.

PN94

THE PRESIDENT: So if you work between 6 am and 8 pm on a public holiday you're paid 250 per cent. If you work, for example - well if you work for more than 10 hours on a public holiday, even though it's between the spread, are your pay day at 350 - that's one question. The second question is, and it's probably the simpler one, if you work after 8 pm on a public holiday, then hours worked after 8 pm do they attract the 350, is that the intent? The other question that comes to my mind is what if you're working on a public holiday, that is, on a Saturday, which is not Monday to Friday?

PN95

MR BARLOW: Yes, Easter Saturday.

PN96

THE PRESIDENT: What are you paid then?

PN97

MR BARLOW: One assumes 350 per cent, because it's outside the standard hours.

PN98

THE PRESIDENT: I can see why you might think that, but I think what we need is a bit of - there needs to be some clarity around how's this intended to operate. I think it's relatively clear that if it's outside the spread then it's 350, and that seems to be consistent with the current award. But the other two issues are, well, what if it's more than 10 hours per day, what's paid then, and secondly, what if it's on a Saturday or a Sunday?

PN99

MR BARLOW: Your Honour, I'm looking at 14.1(c) - oh that's part-time hours - sorry, I take it back. It deals with 10 hours, in excess of 10 hours, but in a different context. I thought there might be a provision in here that said any more than 10 hours on a single day would be overtime, but there isn't one.

PN100

THE PRESIDENT: No.

PN101

MR BARLOW: There is for casuals and part-timers, but not for full-timers.

PN102

THE PRESIDENT: Yes, all right. So for full-timers it's really over a 38-hour working week?

PN103

MR BARLOW: Yes.

PN104

THE PRESIDENT: That might answer that question. So the current provision comes from 28.2. Where does the overtime provision come from? 28.2 provides the 250 per cent for working on a public holiday, and is it the overtime agreement which deals with it?

PN105

MR BARLOW: The overtime clause deals with the penalties on public holidays.

PN106

MS WHISH: 23.2(c)?

PN107

THE PRESIDENT: Yes, I see. So what the exposure draft has done (indistinct) enough is put 23.2(3)(c) and the public holiday provision in the one spot. So the issue really becomes what's meant by work performed outside ordinary hours. Is that right?

PN108

MS WHISH: Yes, it seems to be.

PN109

THE PRESIDENT: I know it's slightly irritating for you because it probably hasn't arisen, but now that you've got it in front of you it does raise a question about what does that mean. I don't think the exposure draft incorrectly transposes the award. On the face of it, it seems to be an accurate transposition of the award, but having accurately transposed it, it raises a question about how does it work, and ultimately we want to make sure that if an individual employer or an employee looks at this award they'll know what that means.

PN110

MR BARLOW: There's also the conflict with clause 20.2.

PN111

THE PRESIDENT: Of the exposure draft?

PN112

MR BARLOW: The exposure draft. So there are issues with the fact that you've got two rates there for public holidays, and then if you turn to 20.2 of the exposure draft you've got another - - -

PN113

THE PRESIDENT: An employee who works a public holiday will be paid at 250 per cent, yes, and you ask how it interacts with - - -

PN114

MR BARLOW: The suggestion from Jobs Australia, I think, in submissions, your Honour, was that you could amend 20.2 to refer to ordinary hours, which

would make the cross-reference correct but not resolve the other issues that you've just identified as ordinary hours in - - -

PN115

THE PRESIDENT: That's true, I think that would make sense, and you could have a cross-reference provision there - you know, see clause.

PN116

MR BARLOW: Yes.

PN117

THE PRESIDENT: I think that mentally deals with that issue.

PN118

MS WHISH: We would certainly agree with Jobs Australia on that point.

PN119

THE PRESIDENT: Okay. So it should be four ordinary hours?

PN120

MR BARLOW: Yes. But you're suggesting that parties should work out what ordinary hours means?

PN121

THE PRESIDENT: I think that it'd probably be helpful, because otherwise, you know, it may generate a dispute later.

PN122

MR BARLOW: Yes. Interestingly, your Honour, I'm looking at the sets, the 1999 pre-reform instrument, which in ordinary hours or dealing with overtime did deal with overtime for full-time workers - this is clause 18.2.1 - where an employee works more than 10 hours in one day, or outside of the spread of hours. That's missing from the modern award.

PN123

THE PRESIDENT: Yes.

PN124

MR BARLOW: But it may very well guide our thinking, although it doesn't resolve the Saturday issue.

PN125

THE PRESIDENT: No.

PN126

MR BARLOW: There's only Easter Saturday that falls before - - -

PN127

THE PRESIDENT: Yes, but I think that issue, the overtime after 10 hours, is really something you'll need to make a claim about, because that's not - I follow your argument it's in the pre-reform instrument, but really I'm dealing with the modern award.

PN128

MR BARLOW: Yes - yes, sorry.

PN129

THE PRESIDENT: So if you want to change that, then you'd need to advance an argument and propose a variation. For the moment I think the issue is - I think there would be general agreement that it's worked outside the spread of 8 to 6; that seems to be agreed. The issues in contention are is Monday to Friday, so is overtime paid if it's a public holiday on a Saturday, and the over 10 hours, and it may be, you know, that without wanting to do the split - it may be that you're able to agree that it's hours outside the spread or in excess of 10 hours on a public holiday and you don't worry about the Monday to Friday. You just deal with those two issues, and that, you know, part of the deal might be that you don't press a claim that you may have wished to press about overtime generally except for time worked in excess of 10 hours, so you don't seek a change to the modern award.

PN130

MR BARLOW: Mm.

PN131

THE PRESIDENT: So do you want to each think about that might be a solution to this? Are you happy enough to consider that, Mr Pegg?

PN132

MR PEGG: Yes, we'll have further discussion.

PN133

THE PRESIDENT: Okay, well I'll leave that to you to have the discussion and let me know where you're up to with that in 10 days. That might be a way through. That brings us, I think, to item 13, because 11 and 12 were the same.

PN134

MR BARLOW: Yes.

PN135

THE PRESIDENT: Item 13 is being dealt with by the annual leave Full Bench, you'll like that - oh yes, okay, this issue's in abeyance, it's with the ACTU really. We've said in one of our previous decisions it's a matter for them to agitate and bring forward. We thought the issue had been resolved by a full Federal Court decision. There was some discussion about a bill floating around, but it didn't actually get into legislation; with Parliament being prorogued I think the bill dies, so we've taken the view that that matter's adjourned generally. It can be re-listed at the request of any party, but that's where that's up to at the moment. So you shouldn't assume that we'll necessarily be determining it. We are waiting to see whether we need to deal with it.

PN136

MS KNIGHT: Okay.

PN137

THE PRESIDENT: I think it was a cold Full Court. If you track through the annual leave Full Bench decisions, and there have been about four or five, you'll see in there how we've dealt with this particular matter. Probably look at the most recent one.

PN138

MS KNIGHT: Thank you.

PN139

THE PRESIDENT: Which I think was May or June. Any other questions on that? No? In relation to the classifications, Jobs Australia's forwarded - I don't know if you've had the chance to have a look at this, but they've forwarded some proposed classification definition changes. Is there anything you wanted to say to that, Mr Pegg?

PN140

MR PEGG: It's really a housekeeping exercise from our point of view, so if there are strenuous objections to anything, we're not necessarily going to press it to any great extent, but it's just a tidying up clarity sort of thing.

PN141

THE PRESIDENT: Am I right in reading it this way that you're really trying to align the descriptors to what people actually do?

PN142

MR PEGG: Yes, and we had contemplated a more extensive set of revisions, but because the nature of the work has changed significantly in the last 15 years - so these classification definitions are 20 years old - but trying to do anything more extensive just throws up a whole lot of other issues, so we've limited it to just a little bit of clarity and a little bit more generic wording.

PN143

THE PRESIDENT: I think we're all reaching the point of reform fatigue, Mr Pegg, if it's any consolation.

PN144

MR PEGG: Yes.

PN145

THE PRESIDENT: Have you had a chance to have a look at it? Do you have anything you want (indistinct)?

PN146

MR BARLOW: It's not on the Avant website yet.

PN147

MS KNIGHT: Yes, so I think we received it yesterday, is that right, Michael?

PN148

MR BARLOW: So if we could have a few weeks to look at it, give us a chance to respond, and if we do object to parts of it maybe we need another conference.

PN149

THE PRESIDENT: That's fine.

PN150

MR BARLOW: But if it's not, then we don't.

PN151

THE PRESIDENT: On the face of it, can I take you to one of them, which is that: "An administrative assistant performs certain functions under the direction of" - and previous to this is A.1.2(b) - - -

PN152

MR BARLOW: Yes, the first one here.

PN153

THE PRESIDENT: - - - "under the direction of the project manager or another employee with delegated supervisory responsibility." That's been taken out and it just says "their supervisor," which, you know, on the face of it, well yes, and that's also made - though there are some that talk about certificate qualifications that I'm not sure about; others, on the face of it I think I would endorse Mr Pegg's comments that they seem to be tidying up. Having said that, there might be some unforeseen consequence so I'm not suggesting you shouldn't have a look at it. We'll post the corro on the website for certain, and perhaps if we can have a general proposition that you'll come back in three weeks and I'll cover off on all the issues you'll come back about, okay?

PN154

MR BARLOW: Yes, your Honour.

PN155

THE PRESIDENT: All right. 15, I don't think there is any objection to the proposed wording, and I think that's it. So can I just re-cap with the matters that - so on item 2, I was going to update the website, summary to indicate the AFEI has raised their issue; all other parties are content with the exposure draft. AFEI will have 14 days in which to clarify their position in respect of this. I think then we got to the clause around - - -

PN156

MR BARLOW: Item 8.

PN157

THE PRESIDENT: - - - 8 and 9 - yes, just 8. This is about overtime, excursions, et cetera, and you'll have some discussion about that, and also you picked up item 10 I think.

PN158

MR BARLOW: Yes.

PN159

THE PRESIDENT: And then there was the issue around the public holidays and how that works, and that also picked up a couple of, I think, items 11 and 12, and

the suggestion for you to think about is that hours worked in excess of 10 or outside the spread would attract an overtime penalty on a public holiday, but you wouldn't deal with the Saturday/Sunday and just leave that, and nor would you press a more general proposition that any hours in excess of 10 is open to overtime. The last issue is the last one we raised, which is the classifications, and you'll have a look at that.

PN160

I encourage you to - I mean, have a discussion between yourselves of course - if possible nominate one of you to respond on a particular issue, on an agreed basis. You don't have to agree on the issue but reflective of the parties positions are, and that will be making me sure that you've exchanged the view and which understand where you're up to. If necessary we'll have another conference. I'll look at what the degree of difference is, and it may be that it's quicker just to have the matter resolved by short submissions and see if you want a hearing. None of these matters seem to particularly lend themselves to that; they're really merit arguments, which you can advance, or whether you're content for the matter to be resolved by written submissions.

PN161

So when you come back with the report in three weeks on those issues, also, if they're all agreed well then that's the end of that, and if for whatever reason the Full Bench has a different view I'll let you know, and you'll be put on notice about it; we'll raise it with you. But if there are matters that are still outstanding, I do want you to say how do you see them being resolved - do you think another conference would be useful or do you think it would be actually quicker to narrow a point, quicker dealt with by written submissions; you want so many, you know, a couple of weeks to file them and then you're content for the registrar to deal with them, or do you want an oral argument or do you want the evidence, or how you want to deal with them. Okay?

PN162

MS WHISH: Thank you very much.

PN163

THE PRESIDENT: Anything else?

PN164

MR BARLOW: No.

PN165

THE PRESIDENT: Okay. Thanks very much.

SHORT ADJOURNMENT

[10.41 AM]

RESUMED

[10.59 AM]

PN166

THE PRESIDENT: Can I just have the appearances for the record, please?

PN167

MR FERGUSON: Ferguson, initial B, for the Australian Industry Group.

PN168

THE PRESIDENT: Thanks, Mr Ferguson. In relation to this matter, there are a range of issues that when we dealt with it at the mention that are issues to be dealt with on the (indistinct), they were all matters that Ai Group had raised, there didn't seem to be any particular involvement from anyone else. How do you want to proceed with all this?

PN169

MR FERGUSON: For most matters we're content for them to be dealt with on the papers.

PN170

THE PRESIDENT: Yes.

PN171

MR FERGUSON: There were two issues that I'll address you in relation to though. One matter we thought was quite contentious, and the solution to it might be difficult to identify - we've done some further work on it, and we're likely to withdraw it, but I'll explain it to you in brief.

PN172

THE PRESIDENT: Sure.

PN173

MR FERGUSON: That's issue 2 in relation to paragraphs 386 to 388 of our submissions.

PN174

THE PRESIDENT: Yes.

PN175

MR FERGUSON: In short, the old award had certain clauses that were only applicable to regular employees, and we were concerned that that was a subset of permanent employees. We've had a look though at the history of the award and at the relevant predecessor award, and it seems that the term "regular employees" in that instrument included full-time and part-time employees, so it may just be there was an anomaly in the transition to the modern award, and that as a result the approach adopted in the exposure draft is basically concerning - represents full-time, part-time employees in place of regular, probably is consistent with what should have been intended originally, and on that basis we don't press that point.

PN176

THE PRESIDENT: Okay.

PN177

MR FERGUSON: The only other issue we have raised, which I'd like to withdraw, is at item 10. It relates to public holidays.

PN178

THE PRESIDENT: Yes.

PN179

MR FERGUSON: There was a concern that a cross-reference in that clause to provisions that dealt with payment for public holidays might have been anomalous, in part because it didn't accommodate the fact that there were time in lieu arrangements.

PN180

THE PRESIDENT: Okay.

PN181

MR FERGUSON: On reflection we don't think that's worth pressing and we withdraw that.

PN182

THE PRESIDENT: Okay.

PN183

MR FERGUSON: All the other matters I think are quite easily dealt with on paper - - -

PN184

THE PRESIDENT: Yes, they seem to be.

PN185

MR FERGUSON: - - - unless your Honour wants to raise something.

PN186

THE PRESIDENT: No. It did occur to me that some of them have also been dealt with by Full Benches, for example, item 3 - this is the casual loading is paid instead of the range of things. I think the general proposition has been not to try and have an elaboration of what it covers, and I think that was the group 1 - one of the Full Benches. We are going to publish a - probably early in July, or at some point in July - a summary of what the outcome of those various iterations has been, but I think that really deals with that point.

PN187

MR FERGUSON: Right.

PN188

THE PRESIDENT: Whether it's in the current award or not; it would probably look anomalous compared to other awards to have it here but not in anything else, so it's probably better to come out.

PN189

MR FERGUSON: Yes, I think, and I may be wrong, but from memory this was only, you know, an issue specific to this award but we were saying keep it as it is.

PN190

THE PRESIDENT: Yes, that's right.

PN191

MR FERGUSON: And there was just one word that was subtly different and probably not usual.

PN192

THE PRESIDENT: Yes, well it's really just whether we should have any reference at all to what it's in the - and just give some thought to that.

PN193

MR FERGUSON: All right.

PN194

THE PRESIDENT: Because that's probably making it consistent with other awards, and it might look odd, even though it might be in the current award, it won't be a complete statement of what casual loadings paid for, and it's more apt to confuse than clarify, so it's probably better not to have it.

PN195

MR FERGUSON: And in the context of this award, I just note as well, we've got an interest but it's not a particularly large interest, as your Honour would probably appreciate.

PN196

THE PRESIDENT: Yes - no, that's right, and I work on the fact that you've taken an interest in it because nobody else has. To deal with it on the papers, can I suggest this, that the outcome of the conference can be that you'll file a submission which can essentially be what you've already put in but withdrawing -
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PN197

MR FERGUSON: Yes.

PN198

THE PRESIDENT: And replacing your previous submission, so rather than be read in conjunction it just makes it easier.

PN199

MR FERGUSON: Yes.

PN200

THE PRESIDENT: So this is now your submission on these matters. You don't press the previous matters, et cetera.

PN201

MR FERGUSON: Yes.

PN202

THE PRESIDENT: If we can get that in, say, you know, end of next week.

PN203

MR FERGUSON: No problem.

PN204

THE PRESIDENT: Then the process we'll adopt is provide 14 days for any other interested party to comment on the submission, and we will make our decision based on the submissions filed without a need for any further hearing.

PN205

MR FERGUSON: Thank you, your Honour.

PN206

THE PRESIDENT: Okay, we'll adjourn. Thanks.

ADJOURNED INDEFINITELY

[11.16 AM]