



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

VICE PRESIDENT HATCHER

AM2014/93

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/93)**

Vehicle Manufacturing, Repair Services and Retail Award 2010

Melbourne

10.11 AM, FRIDAY, 25 NOVEMBER 2016

PN1

THE VICE PRESIDENT: Firstly, can I indicate that this conference will be on record so that parties have a reference point for what is discussed today, but if any party thinks at any stage of the matter it should go off record, then they can make that request and I will deal with it at the time. Secondly, although this is a conference, I will have to sit at the Bar table so I can see the screen in Adelaide. Unfortunately, that's a bit of an impediment. The third thing is if you are wondering what the audience is in the back row, some delegates from the Transport Workers Union have come for educational purposes, so, unless anyone objects, they will be able to see the proceedings, but if any party thinks that at any stage we should go into private conference, I will deal with that request at the time. So can I take the appearances, please. Ms Burnley, you appear for the SDA?

PN2

MS S BURNLEY: If the Commission pleases, my name is Burnley, initial S, for the Shop, Distributive & Allied Employees' Association.

PN3

THE VICE PRESIDENT: Thank you. Ms Lettau?

PN4

MS L LETTAU: Yes, if the Commission pleases, my name is Lettau, initial L, for the AMWU.

PN5

THE VICE PRESIDENT: Thank you. What are the appearances for the MTA and VACC entities?

PN6

Mr J FORBES: Your Honour, I seek permission to appear on behalf of the Motor Trades Organisations, which is VACC, MTA New South Wales, MTA South Australia and MTA Western Australia.

PN7

THE VICE PRESIDENT: Thank you. Mr Smith, you appear for the AI Group?

PN8

MR SMITH: Yes, your Honour.

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THE VICE PRESIDENT: And in Adelaide, Mr Eblen?

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MR EBLEN: Yes, your Honour, and Michael Sheehan. We are having a little difficulty hearing, so bear with us.

PN11

THE VICE PRESIDENT: Make sure everyone stays close to their microphones. Does anyone oppose permission being granted for counsel to appear? No? All right, that permission is granted. Can I just indicate, briefly speaking, the order of

matters that I want to deal with. First of all, obviously, the main purpose of the conference is to give effect to the decision of the Full Bench of 16 August 2016 with respect to what will be the Vehicle Repair Services and Retail Award 2010 by reference to the exposure draft which was published on, I think, 16 April this year.

PN12

The first issue I want to discuss is the issue of the dividing line of coverage as between this award and the manufacturing award having regard in particular to what the Full Bench said at paragraph 50(1) of the Full Bench judgment. The second issue I want to deal with is the rates of pay for casual roadhouse attendants and console operators having regard to what the Full Bench said at paragraphs 74 to 78 of that judgment. Thirdly, I will deal with any other issue in relation to the exposure draft which any party wishes to raise.

PN13

Obviously I am conscious of the fact that Bissett C is also conducting a parallel conference with respect to the manufacturing award arising out of the Full Bench decision on 5 December and, accordingly, I will be liaising with her as to the outcome of this conference and what she needs to deal with in that conference.

PN14

Who would like to start off with respect to those issues?

PN15

MR FORBES: I am prepare to have a go, your Honour.

PN16

THE VICE PRESIDENT: Mr Forbes, if it is easier to remain seated, that is fine by me, given that we are conducting a conference, but that is a matter for you.

PN17

MR FORBES: I will remain standing, if that's okay.

PN18

THE VICE PRESIDENT: Yes.

PN19

MR FORBES: Your Honour, as you indicated, probably the major issue to arise out of the Full Bench decision is how do the observations of the Full Bench regarding the split, if you like, between manufacturing and other parts of the vehicle industry, how that is to be dealt with. Your Honour will recall that in the Full Bench decision, a number of observations were made where that line might fall and those observations were based on a body of evidence that you will recall having heard. What the conference today is about arises from paragraph 51 of the decision, which was that the Full Bench invited or provided an opportunity for the parties to have further input into the exposure draft and to advance their own proposals about how best to give effect to the decision. If I can indicate, your Honour, where my clients are with respect to that?

PN20

THE VICE PRESIDENT: Yes.

PN21

MR FORBES: It might assist if I hand up a document which I have prepared. Can I indicate that this probably should be treated as a without prejudice document, which I will provide for the other parties. Your Honour, what I have provided here is, in fact, seven pages but it is three documents and I will just explain what they are.

PN22

The starting point that we have taken, and I think your Honour has already indicated it is the appropriate starting point, is the 22 April 2016 exposure draft. What the first two pages of the document do is to set out the text, the relevant text regarding coverage.

PN23

THE VICE PRESIDENT: Yes.

PN24

MR FORBES: So that is exactly as appears in the exposure draft. That is the starting point. What the next three pages do is to set out what my clients propose are the appropriate changes that could be made to the current exposure draft in order to give effect to the Commission's decision. The last two pages of the document are simply a clean copy, if that makes sense. As I said, it probably should be regarded as a without prejudice document at this point because the substance of it has been communicated to the AIG and the other parties and there has been preliminary feedback at varying degrees of agreement or rejection, but there has been preliminary feedback from the other parties, so there's probably some way to go before consensus can be reached or at least we can determine whether there is any prospect of consensus.

PN25

Can I just indicate to your Honour where my clients are coming from? We have sought to make changes to the current exposure draft in the following way. First of all is, you will see in the preamble, to identify the vehicle repair, services and retailers and industry. Currently, there is a strange notion of the vehicle industry repair, services and retail which doesn't make a lot of sense to us, but we say that there is a vehicle repair, services and retail industry and that that industry is made up of various employers. We have sought to change the setting out of the plants and undertakings and establishments that those employers are principally concerned or connected with. So currently the RS&R agreement, the coverage turns centrally on whether an employer or their establishment, plant or undertaking is principally concerned or connected with certain activities. We have not sought to change that. I have swapped the words "principally connected or concerned" around to "principally concerned or connected" because that seems to be the more common use of language, but we have not sought to change, if you like, the epicentre of the award away from it applying to employers who are engaged principally - where their establishment, plant or undertaking is principally concerned or connected with various activities. Can I say, your Honour, that, if you like, is the dividing line. It is where the employer's

establishment, plant or undertaking is principally concerned or connected with, that is, their main business is one of the following.

PN26

Then your Honour will see that rather than having it all set out in a long paragraph, I have set out the various activities which we say constitute repair, service and retail and there have been a couple of additions in there. We have added in "restoring or reconditioning", we have qualified "preparing for sale" to mean "including by assembling from manufactured or fabricated parts or components" and we have included "customising or modifying". Those are the only business activities that we have sought to include.

PN27

Your Honour, those have been included by reference to the evidence that the Commission heard and also by reference to the employee classifications which remain in the award. The previous coverage of the RS&R, your Honour, operated on the basis of the combined nature of what the employer does and the classification of the employees that are employed. The change in the exposure draft deletes any reference to employee classifications. The employee classifications are still there but they are no longer relevant to coverage. What we have sought to do is to make sure that the employee classifications or the activities of employees are also fairly reflected in the coverage clause.

PN28

THE VICE PRESIDENT: Where was the reference to classifications deleted from?

PN29

MR FORBES: Your Honour will see, if we go back to the exposure draft, which is the front page, the way coverage was defined previously, you will see the award covers employers throughout Australia of employees engaged in vehicle manufacturing and/or vehicle repair, services and retail as defined. Then, Your Honour, if you go down to 3.2, which has been struck out in the exposure draft - -
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PN30

THE VICE PRESIDENT: Yes, I see the definitions.

PN31

MR FORBES: You will see there is a definition of employees engaged in repair, services and retail means employees in the various classifications. I don't know why that has been struck out in the exposure draft but it has, and we are content with that, but the classification of employees does - and there are many, many classifications - but those classifications go into numerous activities which are not otherwise caught by reference to the employer's principal business. An example of that is customising or modifying. So what we have sought to do is to define coverage in the RS&R, if I can refer to this as the RS&R Award now, by reference to the employer's principal activity, we have sought to set out what those activities are and then the reference point is that those activities must be in respect of (i) and (ii), which is motor vehicles or engines. If we take an example, if an employer's principal activity is the selling of motor cycles, then they will be

caught by this award, as would an employer whose principal activity is dismantling rotor industrial vehicles, et cetera.

PN32

We have tried to create something that works, your Honour, and to reflect the Full Bench decision, which, as we understand it, your Honour, the Full Bench recognised that where a business is principally involved in repair, service or retail, then ancillary activity, which might include manufacturing, will otherwise fall within this award.

PN33

THE VICE PRESIDENT: Can I just ask you one question in relation to the words that have been added after "preparing for sale". I think the evidence talked about businesses which actually sell vehicles or motor cycles of various types and they indicated that there was some assembly work in preparing that for sale, but that was a function of actually then selling the vehicles.

PN34

MR FORBES: Yes.

PN35

THE VICE PRESIDENT: Do those words mean that the assembly function could be conducted by a business which is not engaged in sales because, if it is, if it's a purely assembly function then, arguably, that is a manufacturing function and it is not ancillary at all.

PN36

MR FORBES: As is the nature of these things, there are always going to be businesses on the margin. My clients' position, Your Honour, is that where assembly is involved with respect to their being an end customer, it would be caught by this award. For example, I have been given the example by my clients on many occasions of somebody who purchases a cab chassis that they want a box put on the back, a van or whatever is put on the back, the assembly or the fabrication or customisation of the cab chassis to the customer's specification is preparing it for sale. Generally, somebody has come into a showroom and said, "I want one of those, please." So it tends to be more bespoke customer-focused preparation. I guess at the other extreme, if you had a large production line which is assembling components which have no end customer in mind, that is where the line would be drawn. There are always going to be varying degrees between the two but the focus of my clients' position is that where the work done involves the putting together of components that have probably been sourced from elsewhere with a view to that product then being sold or delivered or that being done at the request of a customer, then that would clearly be caught. Pardon me, your Honour.

PN37

Mr Chesterman reminds me there was evidence of agricultural machinery, for example, that might come in from overseas in a box - IKEA-like - and that has to be put together. I think there was evidence also from Yamaha about motor cycles that similarly come in in a box or there are components that need to be fitted. There was also evidence, I think from Yamaha, that certain things need to be done

to a motorbike in order to make it suitable for the police force, that sort of thing. We would say, your Honour, that they are matters that clearly fall within our award. "Bespoke" is probably too narrow a word, but it is where there is an end customer in mind.

PN38

THE VICE PRESIDENT: Yes, all right.

PN39

MR FORBES: Your Honour, it is the nature of industrial awards and industry that there are always going to be ones that are on the margin, but we think the appropriate locus for this award is that it ought turn on the principal activity of the business and that where there are other activities, which might include some manufacturing, where they are ancillary to the principal activity, then this award would apply. Our understanding is that that was where the Full Bench left the matter and we have sought to reflect that.

PN40

THE VICE PRESIDENT: All right.

PN41

MR FORBES: I have handed that up, your Honour, I guess in the context of conference to say that is my clients' interpretation of where the matter can effectively be taken. There has been a degree of consultation, at least in terms of providing this to the other parties, and there has been a degree of feedback, but there is certainly no agreement and, in terms of moving forward, we would certainly be looking for some time or a program for there to be further consultation and then, if that can't be sorted out, for the matter to be formally determined by the Commission. Just in relation to the other matters - - -

PN42

THE VICE PRESIDENT: I would rather deal with them sequentially.

PN43

MR FORBES: Certainly, yes.

PN44

THE VICE PRESIDENT: But can I just ask you one question. Do your clients consider that once the rest of the wording has been finalised, this award and the manufacturing award should contain a provisions which, as it were, mutually exclude each other's operation?

PN45

MR FORBES: Yes. I am glad you raised that because in terms of line-drawing, of course, that's how one operates. We say the locus of this is the principal activities of the employer and then there's also a provision which would then otherwise mutually exclude manufacturing. Difficult calls are always going to have to be made by employers and there are no bright lines, unfortunately, but this, we think, is the best one can do.

PN46

THE VICE PRESIDENT: Thank you. I will hear from the other employers and then I will hear from you. Mr Smith, can you go next?

PN47

MR SMITH: Yes, thank you, your Honour. I think Mr Forbes' description about some feedback is not exactly reflective of AI Group's view in that where we have expressed very strong opposition to this coverage clause for reasons that I will explain, but I might just, before doing that, put up another - - -

PN48

THE VICE PRESIDENT: The coverage clause proposed by Mr Forbes' clients?

PN49

MR SMITH: Yes. We have been very unambiguous with that because it would very substantially disturb the coverage of the manufacturing award and it would not only drag a lot of employees and employers, thousands of them, out of the manufacturing award, it also would bring back virtually all of the vehicle manufacturing that the Full Bench decision put into the other award. I will explain that, but if I could just put another coverage proposal.

PN50

THE VICE PRESIDENT: Just before you do that, I just might mark these documents for reference. What I will call the MTA document I will mark as MFI1.

MFI #1 MTA DOCUMENT

PN51

THE VICE PRESIDENT: So if you can hand up your document, Mr Smith.

PN52

MR SMITH: Yes. This has been circulated to the other parties. I think just by way of background - - -

PN53

THE VICE PRESIDENT: I will just call that the AIG document and mark that MFI2.

MFI #2 AIG DOCUMENT

PN54

MR SMITH: Thank you, your Honour. Just by way of background, as we all know, there's a lot of manufacturing of vehicle parts, vehicles in total under the manufacturing award, whether that be vehicles in the context of a train, a tram, major earthmoving equipment, agricultural equipment, automotive parts for cars, there's a lot of it already under there, there's a lot of manufacturers of tow bars, bull bars, et cetera, there's a lot of manufacturers of things that go into vehicles like nuts, bolts, screws, et cetera. Everyone is well aware of that.

PN55

THE VICE PRESIDENT: That's manufacture where the manufacturer is not selling to an end customer, they would presumably sell their product to a retailer of some nature?

PN56

MR SMITH: A lot of the time there is a sale process. Whatever they do is being sold to someone, of course.

PN57

THE VICE PRESIDENT: Yes.

PN58

MR SMITH: It may well be to an end customer. But this has always been the problem where there is significant overlap between these different awards.

PN59

THE VICE PRESIDENT: What might be a practical example of that where there is a manufacturer who sells straight to end customers?

PN60

MR SMITH: If you look at, for example, lots of those little bull bar manufacturers - there's a number of those - they would sell to an end customer, but if you leave aside the manufacturing award and look at the vehicle manufacturing bit, to us, the additional words that have been added on the end of "preparing for sale", that would include the entire vehicle manufacturing function that was ousted because it is saying here: "Preparing for sale, including by assembling from manufactured or fabricated parts or components" and it is saying an employer who is engaged in the vehicle RS&R industry, where the employer's establishment, plant or undertaking is principally concerned with any of these things. Vehicle manufacturing has been brought back in by tacking it on the end of a concept of preparing for sale.

PN61

The other thing is the wording in the exposure draft has removed, or crossed out at least, the reference to classifications and Mr Forbes made some comments about that and supported that. That can't possibly be left out because, you know, if you look at this wording, someone who is a senior manager who is involved in a business that is doing any of these things is now award-covered - the managing director even. It is just ridiculous, in our view. We strongly object to that drafting.

PN62

With our drafting, we have been far more modest by seeking to exclude provisions that clearly were excluded in the Full Bench decision. Because of this difficulty with overlap, as a starting proposition and particularly in the light of the very expansive coverage clause that the VACC and motor traders have drafted, we think we do need to have something in there that protects the coverage under the manufacturing award which will also include vehicle manufacturing from being knocked out by the RS&R Award because there are very significant differences in the conditions, even things like shift loadings, completely different shift loadings, completely different hours of work structures. There was always going to be

major winners and losers in this exercise if there is a dividing line and people are put on one side or the other because there is so much overlap, there has always been a lot of overlap, and we are now where we are at after the Full Bench decision, but it is not going to be an easy thing to resolve.

PN63

One thing we do agree with that Mr Forbes said is that this is an issue that we think is best addressed by letting the parties try to resolve the issues because we are all trying to do with the same issues. The AMWU have got some significant challenges, no doubt, from the point of view of their position given the history between the metals and the vehicle functions. We are not trying to take an expansive approach with the manufacturing award, because we have got many members that are using the vehicle award as well, but we just cannot accept this form of wording or anything like it.

PN64

THE VICE PRESIDENT: So can you take me through your document?

PN65

MR SMITH: Our document, it's the existing coverage clause marked up, so it knocks out the bits that relate to manufacturing quite simply. The only thing, I guess, that is a bit different about it, other than knocking out functions that are clearly excluded, is that we have put words in there that say that these issues, installing, servicing, maintaining, et cetera, except for employers and employees covered by the manufacturing award. We are happy to work through the issues and try to find the best form of wording, but take the agricultural implement area, the Agricultural Implement Award that has been around since the Harvester decision, that was rolled into the manufacturing award.

PN66

There's a lot of vehicle repair and so on under the manufacturing award, so somehow or other we need to find a way of protecting that. Trains, for example, all those big companies like UGL, Downer that do all the maintenance on the rolling stock, they are all under the manufacturing award, so we need to find a way of protecting that from the point of view of the employers and the employees. A lot of those major maintenance functions on mobile equipment used on mine sites and so on, you know, hard surfacing, et cetera, that's all manufacturing, or a lot of it is manufacturing. Even when you look at coach and motor body building, yes, we agree that someone might drive in with a ute, buy a ute and someone builds a tray for that, but that's vehicle manufacturing. All of those companies that sell trucks and all the builders of trays for trucks and all of the equipment that goes on the back of trucks, we see that as vehicle manufacturing. That is the mainstream thing that the vehicle award used to cover, so of that is all now going to be deemed to be repair, services and retail, the decision of the Full Bench just evaporates because it's all been just moved back in by creatively defining what is repair, services and retail, so there are major challenges here, your Honour.

PN67

THE VICE PRESIDENT: The challenges come out with a formulation which gives effect to the decision, that is, where you have got somebody whose business

is primarily sale, repair or servicing of vehicles has some ancillary manufacturing function, how you express that as staying in the vehicle award, that is the challenge we have.

PN68

MR SMITH: Yes, and it goes back to the issue that you identified perhaps, your Honour, because if you buy a ute then, yes, the organisation that sells that ute may well arrange for the body to be built and sold as part of that, but there's a whole host of coach and motor body builders that build trays for trucks and so on, they are selling those to various parties, but we don't see that as a bit of assembly and so on as part of the sales function, those are major manufacturing plants, they have boiler makers and welders and so on working in their businesses and where that line is drawn is a very difficult thing.

PN69

THE VICE PRESIDENT: All right.

PN70

MR SMITH: Thank you.

PN71

THE VICE PRESIDENT: Mr Eblen and Mr Sheehan, do you want to say anything at this point?

PN72

MR EBLEN: I think, your Honour, everything that has said by Jonathan Forbes reflects our position. I noticed reference to Mr Morelli and others in the evidence where they prepared statements and the line between mixed business and those that are separately manufacturing is pretty clear based on their evidence and so far the views of the Full Bench. I don't find the words "principally concerned with or connected with" difficult to interpret. When you go out into industry, these people form a very strong nucleus of the automotive repair, service and retail sector. We see them at regional meetings, country meetings, they work with them, as distinct from the manufacturing sectors, even in smaller business, where they are not part of that nucleus and I think the awards - this sounds biased - should reflect the sectors of the industry.

PN73

Assembly goes right across, as you have seen, in motor cycle, in farm machinery that comes down in knocked down version to a farm machinery dealer selling it to truck dealers, caravan, boat, and what we have noticed in the last year in this State, strange bedfellows, connection between the caravan repair and collision repair, businesses taking on even more mixed functions. So there's always going to be lines of difficulty even within the RS&R Award as it stands because of survival mixed function. Thank you.

PN74

THE VICE PRESIDENT: Thank you. Ms Lettau?

PN75

MS LETTAU: Your Honour, I am speaking on behalf of the Vehicle Division and the AMWU as a whole.

PN76

THE VICE PRESIDENT: They are the one organisation, or meant to be anyway.

PN77

MS LETTAU: Yes, I make that point in respect of Mr Smith's comment, that we have slightly differing interests in terms of the metals division and the vehicle division. For that reason, there are a number of interested parties within the union who would like to have the opportunity to consider the two proposals for both the parties and they haven't yet to date had that opportunity. We have set up a meeting next week with a group of affected parties within the union, so at this stage, I don't really have any instructions to speak on the matter of coverage other than that we support the VACC's proposal to move towards a consensus on the position and, if we can't, we will obviously put that to the Commission to decide.

PN78

THE VICE PRESIDENT: Thank you.

PN79

MS LETTAU: Thank you.

PN80

THE VICE PRESIDENT: Ms Burnley, do you want to contribute to this?

PN81

MS BURNLEY: Your Honour, I had thought the SDA might be able to avoid becoming entangled.

PN82

THE VICE PRESIDENT: Well, you can, you can just sit down.

PN83

MS BURNLEY: Yes, I could sit down, but as a good industrial officer of the SDA, that wouldn't be doing my job with the proposal which has been put up by the motor trades organisations as MF1 and the concern that I have got, and I haven't worked through in this short time that I have been reviewing it, is the change from having the vehicle industry repair, services and retail to vehicle repair, services and retail industry. The vehicle industry, repair, services and retail can be tracked back to 1965 as being the terminology used to cover the areas included in this and I think that if there is a change to that order, there could be some subsequent effect, or some effect we don't know, such as it could cover more of the retailing operations which are now covered by the general retail industry award and the SDA would be concerned if that was going to occur, so I think that is an issue that we would flag today would need to be addressed at some stage and in some of the conversations that we will obviously be now involved with with the parties, but that would be our concern, that there should be no encroachment of the current award coverage into other areas which have separate award coverage. If the Commission please.

PN84

THE VICE PRESIDENT: Thank you. Ms Lettau, when did you say your conference was?

PN85

MS LETTAU: With the AMWU parties?

PN86

THE VICE PRESIDENT: Yes.

PN87

MS LETTAU: Monday, I believe. It is yet to be confirmed.

PN88

THE VICE PRESIDENT: All right.

PN89

MS LETTAU: Certainly early next week.

PN90

THE VICE PRESIDENT: Thank you. I will come back to it, but that is probably as far as we can take that issue for the moment.

PN91

I will now turn to the issue of the console operators and roadhouse attendants. Mr Forbes, do you want to say anything about that?

PN92

MR FORBES: I will, but only very briefly, your Honour. My clients are still considering the Full Bench observations in relation to that and to agree to any alteration, we need a mandate from the various motor trades organisations, but I think it is fair to say that we can see that it is a matter which can probably be resolved with some discussion. I think there is an observation that one could embark on a work value case to finally resolve the matter. We don't think that is necessary and there is probably a prospect of consensus given a little time.

PN93

THE VICE PRESIDENT: I think one easy solution should be that the casual classifications bear the same relativity to each other as the permanent classifications do, which, on the basis of the permanent classifications, have been properly work value assessed.

PN94

MR FORBES: Yes. We have noted that observation and that would appear to be a way forward, but I can't say "yes" to that right now.

PN95

THE VICE PRESIDENT: Yes, all right. Do any other employers want to say anything about this?

PN96

MR SMITH: We think, your Honour, this is an issue that should benefit from some discussions and we will see what the next step might be.

PN97

THE VICE PRESIDENT: All right, thank you. South Australia, any observations about this issue?

PN98

MR EBLEN: No further addition, your Honour, thank you.

PN99

THE VICE PRESIDENT: Ms Burnley, do you want to say anything about this?

PN100

MS BURNLEY: Yes, this is the issue that the SDA had raised that there was some underpayment being made to the level 4 casual employees in this award who are the casual console operators and casual roadhouse attendants. We have been considering what sort of work value case we were going to run, which would be quite involved at times, but if the employers are being genuine in going to consider this and reach a position, that may be the way through. If it is going to be by consent, then the SDA is happy to deal with that. However - - -

PN101

THE VICE PRESIDENT: I think what the decision points to is that with or without consent, if you have the permanent classifications, which are presumably properly work value assessed and bear a certain relationship to each other, then prima facie, even without a full work value case, what is the reason why the casual classifications should not bear the same relationship to each other? That is the proposition which the decision is advancing.

PN102

MS BURNLEY: Yes.

PN103

THE VICE PRESIDENT: Even if there is no agreement, that might be sufficient to establish work value reasons for the alteration.

PN104

MS BURNLEY: Yes, but then it is how the work value reasons are established and what evidence is required by the Commission or if the Commission is happy to act on its own motion. There's a whole range of possibility options, as you can well imagine, that the SDA has been engaging with, but if the employer organisations have now reached the conclusion to have some discussions, which we have had previously and we have previously had many discussions over casual console operator rates going back to 1994 which have ended up in arbitration at each stage, so we do approach this with some caution and not with too much optimism, given my experience in this area, but we would request then that if there is going to be some movement, that there be a timetable, we would suggest, before this matter gets subsumed by the bigger argument about what should or shouldn't be the coverage clause of the manufacturing and the parties be distracted by that. We think this is a critical matter that should be resolved prior to the

manufacturing coverage clause being finalised because it has been indicated that it isn't proposed to split the awards and rearrange the awards until the end of 2017, I think is the indication that the parties have given.

PN105

THE VICE PRESIDENT: That is when it would be given effect, but we would want to resolve the actual wording well before that, obviously.

PN106

MS BURNLEY: Yes, perhaps, but we would also anticipate trying to resolve this work value issue of the casual rate well before that and having it implemented at some stage next year. So we would hopefully, maybe, request that if the motor trades organisation could give an indication of a position prior to Christmas to the SDA as to what their view might be on this issue.

PN107

THE VICE PRESIDENT: On this issue and the coverage issue, everybody is here. Is there any benefit in me leaving you to have at least some preliminary discussions about this? I know you have to go at 12, Mr Smith, but that is still an hour away.

PN108

MR SMITH: Yes, quarter to 12, your Honour. I just have to give a presentation.

PN109

THE VICE PRESIDENT: That is 50 minutes away.

PN110

MR SMITH: Yes.

PN111

THE VICE PRESIDENT: Is there any benefit - and I am not suggesting that you will come up with some magic solution in half an hour - but is there any benefit at least in exploring in a preliminary way your positions privately and at least agreeing upon a program by which you might take this further?

PN112

MR FORBES: Your Honour, I suspect not, only because there is the coverage issue, which we have talked about, there is the console operator issue, then there are a raft of other issues, and I think when one aggregates all the issues, as I understand it, there's probably in excess of a hundred of them.

PN113

THE VICE PRESIDENT: A hundred?

PN114

MR FORBES: Yes, I think that is right. I think the AMWU alone have got 80, we have got a few and I am sure AIG have got a few. So there is a body of matters, many of which interconnect, and my submission, your Honour, would be that the best way forward would be for the Commission to program discussions, or at least require the parties to engage in discussions and report back in a period

of time. I think everybody does want to talk, but I don't think much can be achieved right now.

PN115

THE VICE PRESIDENT: All right, does any other party take a different view about that?

PN116

MR EBLLEN: No, your Honour.

PN117

MR SMITH: Your Honour, we would just support that. We would like to try to work through these issues, as difficult as they are, so we would support the idea that there be a direction that the parties have discussions and report back at an appropriate time. If you take the coverage issue, it may become apparent sooner rather than later whether there is any scope for agreement or whether the parties are so far apart that that is a matter that is just going to have to be arbitrated. It is an extremely difficult issue. Take that issue of caravans that came up. There are major caravan manufacturers, some of the biggest ones under the manufacturing award. Now they sell those caravans, so wherever you look, this issue is a problem, but I think sitting down and talking through it between the parties, hopefully there is sufficient good will to at least agree on a lot of it, even if we can't get to the final position. Thank you.

PN118

THE VICE PRESIDENT: Mr Smith, did you want to raise any other issues about the draft today?

PN119

MR SMITH: No, your Honour, except to say that the exposure draft for this one and the manufacturing one, there are a very large number of issues and problems and I think that does point to the benefit of giving the parties time with both of those to work through. We have scheduled a couple of significant discussions on the manufacturing side and we will schedule a lot more, but I think the same thing needs to happen with the vehicle award over a series of discussions and just to work through the issues.

PN120

THE VICE PRESIDENT: All right. Mr Forbes, can you identify or do you have a list of what these other issues are?

PN121

MR FORBES: I can lay my hands on at least what ours are, your Honour. I think our list of matters was attached to the reply submission we put before the Full Bench.

PN122

THE VICE PRESIDENT: If you can just identify the date of those submissions?

PN123

MR FORBES: 20 May. Yes, there was a reply submission filed. Mr Chesterman will find it for me, but attached to that reply submission of 20 May, your Honour, that is our list and as far as the AMWU is concerned, I have just heard anecdotally that I think there are 80 or 85 on their list.

PN124

THE VICE PRESIDENT: Ms Lettau, this 80 to 85, is this all in relation to this award and not the manufacturing award?

PN125

MS LETTAU: Yes, in relation to this award. We are in the process now of compiling a table as such of all of the concerns. We have finalised about half of them. We circulated some of those to the parties as an example yesterday, I believe, or the day before.

PN126

THE VICE PRESIDENT: I am having trouble understanding how so many issues can arise. There are issues that have been resolved by the Full Bench which need to be reflected, but apart from a decision of the manufacturing parts of the award, there weren't that many other changes, were there?

PN127

MS LETTAU: The majority of the issues in this award are fairly minor so far, from what we have picked up. They are more drafting concerns, references to incorrect clauses, or they have narrowed the scope of the provision, so they are not sort of major losses of entitlements which we have concerns with in the draft of the manufacturing award. It is our position that there probably won't be too much disagreement between the parties on how to resolve those and that if there are any issues in dispute, it will be narrowed down substantially. But we had put it to the parties, and I believe there is consensus, that we work towards starting meetings sort of late January and maybe the parties circulate a similar table to each other before Christmas this year.

PN128

THE VICE PRESIDENT: I want to speed things up because the full review has to end at the end of next year and the rate we are going, we are going to have a car crash in about November/December. How soon can the parties file and exchange a list of other issues in respect of this award?

PN129

MS LETTAU: We probably need another week.

PN130

THE VICE PRESIDENT: All right, can everyone do seven days? Again, Mr Forbes, if your clients don't have anything to add to the earlier submission, I will take that as the list and likewise, Mr Smith, can you do that in seven days?

PN131

MR SMITH: Yes.

PN132

THE VICE PRESIDENT: All right. Ms Lettau, if your union has any alternative formulation with respect to the coverage issue, you have got your meeting next week.

PN133

MS LETTAU: Yes, so - - -

PN134

THE VICE PRESIDENT: How long might that take to do?

PN135

MS LETTAU: I would assume, off the back of that meeting, within a day or two.

PN136

THE VICE PRESIDENT: So if I give you 14 days?

PN137

MS LETTAU: That would be plenty, yes.

PN138

THE VICE PRESIDENT: All right. So 14 days for the AMWU coverage proposal and, again, if any other party wishes to make a coverage proposal, they can do so within 14 days. How soon do the parties think they can start meeting? Let me put it this way: is it viable for me to schedule a report back shortly before Christmas?

PN139

MR SMITH: We are happy with that, your Honour, if the other parties agree to meet.

PN140

THE VICE PRESIDENT: I won't pin you down as to precisely when, but I will try and find a date. I could have a report back on 22 December or the 23rd. What is the last date before Christmas of which you are available for the MTA interests?

PN141

MR EBLIN: We have a commitment in the afternoon on the 23rd, so the 22nd.

PN142

THE VICE PRESIDENT: What about 9 o'clock on the 20th?

PN143

MR EBLIN: Okay.

PN144

THE VICE PRESIDENT: By that stage, particularly with respect to the coverage issue, I would like the parties to be in a position to report either that they are making progress and further discussions would be useful, with or without the assistance of the Commission, or, alternatively, that there is not going to be an agreement and then we can program the matter for final determination in the New Year.

PN145

Similarly, with respect to the work value issue about console operators and roadhouse attendants, I would hope the parties could report the same thing, that either they are making substantial progress or that they require determination by the Full Bench. Is there any other issue any party wishes to raise at this stage?

PN146

MS LETTAU: Your Honour, just one more thing that we thought was worth raising would be the date of effect of the split of awards. We wish to indicate that we are in support of the Commission's proposal to do that towards the end of 2017.

PN147

THE VICE PRESIDENT: All right. Does any other party take a different view? All right, the parties can assume that, broadly speaking, that is the approach the Full Bench will take. Thank you for your attendance. I hope for the delegates this has been educational, though somewhat boring, and I will now adjourn.

ADJOURNED INDEFINITELY

[11.07 AM]

LIST OF WITNESSES, EXHIBITS AND MFIs

MFI #1 MTA DOCUMENT..... PN50
MFI #2 AIG DOCUMENT PN53