



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**DEPUTY PRESIDENT CLANCY  
DEPUTY PRESIDENT FAROUQUE  
COMMISSIONER TRAN**

**AM2026/10, AM2026/11, AM2026/12, AM2026/13**

**s.158 - Application to vary or revoke a modern award**

**Application by Health Services Union (051V) & Transport Workers' Union of Australia  
(179V) (052V) and Others  
(AM2026/10)**

**Victorian Local Government Award 2015**

**s.158 - Application to vary or revoke a modern award**

**Application by United Firefighters' Union of Australia (259V)  
(AM2026/11)**

**Fire Fighting Industry Award 2020**

**s.158 - Application to vary or revoke a modern award**

**Application by "Automotive, Food, Metals, Engineering, Printing and Kindred  
Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)  
(188V)  
(AM2026/13)**

**Vehicle Repair, Services and Retail Award 2020**

**Melbourne**

**10.20 AM, MONDAY, 18 MAY 2026**

**Continued from 16/04/2026**

PN1

DEPUTY PRESIDENT CLANCY: Thank you. I'll take appearances, please, starting with the hearing room here in Melbourne.

PN2

MR G MILLER: Thank you, your Honour. My name is Mr Miller, initial G, appearing for the Australian Council of Trade Unions.

PN3

DEPUTY PRESIDENT CLANCY: Thank you.

PN4

MR P LETTAU: Lettau, initial P, counsel for the UFUA in the UFUA's application, seeking permission to appear.

PN5

DEPUTY PRESIDENT CLANCY: Thank you.

PN6

MS A VAN GENT: Van Gent, initial A, appearing for the United Workers Union.

PN7

DEPUTY PRESIDENT CLANCY: Thank you.

PN8

MS K THOMAS: Thomas, initial K, appearing for the Australian Services Union.

PN9

MR J MATTHEWS: Matthews, initial J, (indistinct).

PN10

DEPUTY PRESIDENT CLANCY: Health Service Union.

PN11

MR MATTHEWS: Health Service Union, yes.

PN12

DEPUTY PRESIDENT CLANCY: Yes.

PN13

MR MILLER: Your Honour, I'm just going to jump back in here because I neglected to mention my colleague in my appearance, Ms Peldova-McClelland, initial A - - -

PN14

DEPUTY PRESIDENT CLANCY: I can't hear you.

PN15

MR MILLER: Your Honour, I'm just jumping back in to mention also the appearance of my colleague, Ms Peldova-McClelland, initial A and also Mr Gerenwell, initial T, who is appearing online today.

PN16

DEPUTY PRESIDENT CLANCY: Are they speaking or just watching?

PN17

MR MILLER: Mr Greenwell may speak to some of the economic issues that are discussed..

PN18

DEPUTY PRESIDENT CLANCY: Thank you.

PN19

MS R BHATT: Good morning, Deputy Presidents and Commissioner, it's Bhatt, initial R. I appear for the Australian Industry Group.

PN20

DEPUTY PRESIDENT CLANCY: Thank you.

PN21

MS T LAWRENCE: Good morning Deputy Presidents and Commissioner, it's Lawrence, initial T, and I of course appear with my colleague, Ms RoSland, initial K, and she will also be speaking.

PN22

DEPUTY PRESIDENT CLANCY: All right, Thank you.

PN23

MR S SCHMITKE: Your Honour, my name is Schmitke, initial S. I appear for the Australian Chamber of Commerce and Industry.

PN24

DEPUTY PRESIDENT CLANCY: Thank you. Is that everyone in the courtroom? All right. Yes, online. Do I have any appearances online, please?

PN25

MS K PRESDEE: Thank you, Deputy President. Presdee, initial K, for the Australian Manufacturing Workers Union.

PN26

DEPUTY PRESIDENT CLANCY: Thank you.

PN27

MR B ROGERS: Your Honour, my name is Rogers, initial B, for the Pharmacy Guild of Australia.

PN28

DEPUTY PRESIDENT CLANCY: Just a moment. Yes, thank you.

PN29

MS A MCDOWELL: Ms McDowell, initial A, on behalf of Clubs Australia.

PN30

DEPUTY PRESIDENT CLANCY: Thank you.

PN31

MR S MAXWELL: If the Commission pleases, Maxwell, initial S, for the CFMEU Construction and General Division.

PN32

DEPUTY PRESIDENT CLANCY: Thank you. Anyone else online, please?

PN33

MR LETTAU: Sorry, Deputy President, I'll just note, my instructor, Ms Tonia Sakkas, is online as well. Not going to be speaking but I just thought I'd note that.

PN34

DEPUTY PRESIDENT CLANCY: Thank you. All right. Now, I'll just deal with some housekeeping matters. There has been a court book prepared. Can I take it that everybody has access to that? No. Okay. But you've got all the material that's available in the Commission's - - -

PN35

MR MILLER: That's right.

PN36

DEPUTY PRESIDENT CLANCY: All right. Okay. Now, what arrangements have been made, in terms of the witness evidence? Could I just get a sense, please, for the members of the Full Bench and myself as to what sort of witness evidence we'll be hearing and how the rest is to be treated?

PN37

MR MILLER: Thank you, your Honour. You'll hear this morning from two union witnesses, Melissa Coad and Elizabeth Chatwin. It's proposed that Melissa Coad be called first. She's appearing online, followed by Ms Chatwin. I understand Ms Chatwin is not available until 11 am today, but I understand, from the discussions with my colleagues, to my left, that that's not anticipated to be an issue, based on the extent to which they expect Melissa Coad to be required.

PN38

It's proposed that after the union witnesses we deal with the employer witnesses, in the following order. Firstly, Mr Nathan Quinlavan, followed by Mr Matthew Zammit and, finally, Ms Laura Biggins. We expect that might take us up to the lunch adjournment, after which we deal with submissions, starting with the Australian Council of Trade Unions and followed by unions affiliated to the ACTU that are in support of the applications, to the extent that they also wish to speak. Then after that the employer organisations make submissions. So that's the schedule that we propose, your Honour.

PN39

DEPUTY PRESIDENT CLANCY: All right. So just confirming, the employer witnesses, it's Mr Zammit is it?

PN40

MR MILLER: Mr Quinlivan first.

PN41

DEPUTY PRESIDENT CLANCY: Mr Quinlavan.

PN42

MR MILLER: Then Mr Zammit.

PN43

DEPUTY PRESIDENT CLANCY: Yes.

PN44

MR MILLER: And finally Ms Biggins.

PN45

DEPUTY PRESIDENT CLANCY: Ms Biggins, okay.

PN46

MS LAWRENCE: Deputy President, if I might just correct you, it's Ms Biggins.

PN47

DEPUTY PRESIDENT CLANCY: Biggins.

PN48

MS LAWRENCE: Yes. Thank you.

PN49

DEPUTY PRESIDENT CLANCY: All right. Okay. Then what's the situation with the balance of the witnesses?

PN50

MR MILLER: Your Honour, we would seek to tender their evidence - their statements into evidence. The witnesses are not here today, on the understanding that they were not required for cross-examination.

PN51

DEPUTY PRESIDENT CLANCY: Okay. All right. Thank you. Now, there's been some material sent in this morning. To the extent we've been able to, the Full Bench has now got access to that material, but we will rely on the particular parties that have sent it in this morning to highlight that material and refer to it and take the Bench to the contents, as they require.

PN52

All right. Well, can we assume then we'll be hearing from Ms Coad?

PN53

MR MILLER: That's correct, your Honour. My colleague, Ms Van Gent, from the United Workers Union will be leading this witness.

PN54

DEPUTY PRESIDENT CLANCY: Thank you. Now, are any of the other witnesses online or in the courtroom? No. All right. Thank you. All right, Ms van Gent.

PN55

MS VAN GENT: Thank you. I call Melissa Coad.

PN56

DEPUTY PRESIDENT CLANCY: Ms Coad, good morning. Thank you. It's Deputy President Clancy. I'm sitting here with Deputy President Farouque and Commissioner Tran and we're going to be taking your evidence now. Just be aware of how the cameras work, that it may not appear that whoever is addressing you is looking at you because they might be focused on the screen and not the camera which is trained on them. So just be aware of that. If, at any stage, you don't hear or whatnot, you just need to indicate, with some sort of a visual cue, for us. But at this point my associate will take an affirmation from you, unless you have a Bible there with you and you wish to take an oath, and then we'll hear your evidence. Are you by yourself in the room?

PN57

MS COAD: Yes, I am.

PN58

DEPUTY PRESIDENT CLANCY: All right. What have you got access to there, in terms of documentation?

PN59

MS COAD: I've got access to my statements, our submissions and some attachments to the statement, in the form of a survey that we sent out.

PN60

DEPUTY PRESIDENT CLANCY: Thank you. If you just bear with my associate as she takes an affirmation.

PN61

THE ASSOCIATE: Please state your full name and your address?

PN62

MS COAD: Melissa Coad, (address supplied).

**<MELISSA COAD, AFFIRMED** [10.33 AM]

**EXAMINATION-IN-CHIEF BY MS VAN GENT** [10.33 AM]

PN63

Ms Coad, have you prepared a statement for these proceedings?---Yep.

PN64

Is that the statement dated 24 April 2026?---Yep. Yeah.

\*\*\* MELISSA COAD

XN MS VAN GENT

PN65

And that's a statement which is 26 paragraphs long with one attachment?---Yes.

PN66

The attachment being the results of a survey conducted by the United Workers Union?---Yes.

PN67

All right there any corrections that you wish to make to your statement?---No.

PN68

Thank you. Your Honour, I tender that statement.

PN69

DEPUTY PRESIDENT CLANCY: All right. I will mark the statement of Melissa Coad, which is dated 24 April 2026, comprising 26 paragraphs and with an attachment, as exhibit A1.

**EXHIBIT #A1 WITNESS STATEMENT OF MELISSA COAD,  
DATED 24/04/2026**

PN70

Thank you. Are there any additional matters, Ms van Gent?

PN71

MS VAN GENT: No, nothing further from us. Thank you, your Honour.

PN72

DEPUTY PRESIDENT CLANCY: All right. Is there any cross-examination?

PN73

MS LAWRENCE: Yes, please, Deputy President.

PN74

DEPUTY PRESIDENT CLANCY: Ms van Gent[sic], you're going to be asked some questions now by Ms Lawrence, who is appearing for Ageing Australia, Australian Business Industrial, Business NSW. So, if at any stage you don't hear the question you can ask for it to be repeated and we'll go from there. Thank you.

**CROSS-EXAMINATION BY MS LAWRENCE [10.35 AM]**

PN75

Good morning, Ms Coad, I'm just checking you can hear me okay and you can see me?---Yes, I can. Yeah.

PN76

Ms Coad, I understand you're currently employed as the public sector deputy director of the UWU, is that correct?---Yep.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN77

And how long have you been employed by the United Workers Union?---In total? Since 2008.

PN78

And have you been involved in other Fair Work Commission proceedings before?---Not directly examined as a witness, but I have provided statements before.

PN79

Just confirming, you have a copy of your statement with you?---Yes. Yes.

PN80

Were you also provided some documents through the UWU this morning, for you to have at hand. Do you have those with you, the ones we sent to you?---Yes, I do.

PN81

Great. Ms Coad, can I take you to paragraph 16 of your statement, which is on page 4. Here you state that, 'Workers are entitled to a vehicle allowance, under the SCHADS Award, when they travel from residence to residence to perform their duties', that's correct?---Yes.

PN82

So you accept that the SCHADS Award vehicle allowance is only payable for a travel from resident to resident, that's correct, isn't it?---Yes.

PN83

So it's correct, also, isn't it, that workers are not entitled to the vehicle allowance, under the SCHADS Award, when they travel between, say, their home and somebody else's residence, or a client?---Yes.

PN84

Yes. Thank you. Can I take you to paragraph 18 of your statement. Here you set out that the UWU undertook a snap survey of members working in the sector, and the sector being the disability sector, between 26 to 29 March 2026, that's correct, isn't it?---Yes.

PN85

And that survey, as you set out in paragraph 18, was in the form of a Survey Monkey survey, that's correct?---Yes.

PN86

So it's correct, isn't it, that it was an online survey that was provided to people?---Yep.

PN87

Via a platform?---Yep.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN88

You say, at paragraph 18, that, 'It was sent to all of our members working in the disability support sector, across Australia', that's correct, isn't it?---Yes.

PN89

So it's only sent to UWU members?---Yes.

PN90

How many people does that mean it was actually sent to?---I don't have an exact figure, it's around five and a half thousand.

PN91

Five and a half thousand. Okay. So, it's correct, isn't it, that you say, at paragraph 20, that you received 174 responses to your survey?---Yep.

PN92

So that's 174 responses out of a possible 5,000 people who it was sent to?---Yep.

PN93

So that's approximately 3 per cent of people actually responded to your survey?---Yep.

PN94

Okay. How was that survey sent to members?---I believe it was emailed.

PN95

And did you provide an explanation to members when you sent out that survey?---It had a - yes, a description in the email.

PN96

It had a description in the email, was that what you just said?---An introductory - how to describe it. There was an introduction with the email.

PN97

Okay. An introduction in the email. Is that email in evidence?---I'm not sure.

PN98

Well, is it in your statement, Ms Coad?---The email is not in my statement, no.

PN99

Is it an important email, do you think? Well, if it's an email that provides an explanation about the survey, wouldn't you say that's important?---In the context of the survey, yes.

PN100

So is there a reason you didn't include it in your statement?---No.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN101

Could I ask you to look at the email that was sent? I believe this was emailed to you. And, for the benefit of the Bench, I will hand up three copies of that email, as provided by the UWU. I might just give members a moment to read the email

or I could read it out, if you prefer. I'll just be a moment, Ms Coad. I assume you've read the email?---Yes.

PN102

Ms Coad, do you accept that this email that was sent with your survey was self-serving? It wasn't a neutral email, was it, asking employees to respond to a survey, was it?---No, I don't accept that.

PN103

Well, were you not leading the people who you sent this survey to, with the content of this email, towards the response that you wanted from them?---The survey was sent in response to information that members had been providing us and it was sent to gather additional information from members.

PN104

I want to take you, Ms Coad, to the actual survey responses themselves. These are annexed to your statement. I must say, you just need to bear with me because there's no page numbering on it, but we might just start at the first page, which has MC1 at the top of it. It's in very tiny font for everyone else but it's correct, isn't it, that the first question in your survey, as produced in your statement, says, 'Tell us the impact rising fuel costs have had on you', that's correct, isn't it? I know it's very small font, but is that the - - -?---Sorry, yes I - - -

PN105

- - - first question in the survey?---I don't have that exact question in front of me.

PN106

It's on your statement, at MC1, the very first question on the first page of your annexure, at the top. Does that not read, Ms Coad, 'Tell us the impact rising fuel costs have had on you'?---Apologies. I'm just getting that up. Sorry, I can't see that.

PN107

Are you saying that's not the first question that was asked in the survey?---I'm saying I can't - I don't have it directly in front of me.

PN108

You don't have a copy of your statement in front of you?---I have a copy of my statement in front of me, yep.

PN109

It's very small font, but I'm going to put it to you, Ms Coad, that it does say, 'Tell us the impact rising fuel costs have had on you'?---Yep, I would accept that.

PN110

Okay. Can I take you, now, back to paragraph 22 of your statement, which is on page 4? It's correct, isn't it, that here you've extracted some comments that employees provided in response to that question, in the survey?---Yes. Yes, correct.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN111

So just confirming, the comments that you've extracted at paragraph 22 are in relation to question 1?---Yes. That's correct.

PN112

When union members entered the survey did it take them straight to question 1?---I would imagine so.

PN113

So it didn't take them to an introductory statement?---It may have. I didn't develop the survey myself.

PN114

Well, I put to you, Ms Coad, that it did and I take you to a document that was attached and sent to you, which has an extract from your survey that says, 'How are rising fuel costs impacting your work in disability support work?', and I'll hand up to the Bench an extract of that page that appeared before somebody entered the survey. Ms Coad, I might just then read out what this says, if you're not aware of it. But I put to you that at the start of your survey, before somebody answered a question, they received this landing page that said:

PN115

*Fuel costs are rising rapidly, putting huge pressure on disability support workers across the country. Your union is urgently lobbying government for a solution to help with fuel costs. You're likely facing higher out of pocket expenses, especially if mileage reinvestments do not keep pace. This may significantly reduce your overall earnings and make work less financially sustainable. A reduced availability of support work also impacts the quality and accessibility of support for clients. If you're working in disability support we want to hear from you. Share how your increased petrol prices are affecting your work, your income and your ability to support clients. Your insights will help us build a clearer picture and help demonstrate the urgency to government.*

PN116

You'd agree, wouldn't you, that many of the responses that you set out, in paragraph 22, contain many of the sentiments that you put at the start of this survey? Things like: increased cost pressure; financial pressure; work not becoming worthwhile or viable, and so on?---Yes.

PN117

So you accept, don't you, that before answering this first question, where you had a free text box, you presented those propositions to the very people who were about to answer that question?---Yes. As I said, in response to those things that we had heard from members.

PN118

So your survey didn't actually seek to elicit views in a neutral or unprompted way though, did it?---If you read that as non neutral, then no.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN119

Do you read this as being neutral, Ms Coad?---No.

PN120

So it wasn't a neutral statement, at the start, before you then asked people to give a free text answer as to the impact on them?---No.

PN121

Can I take you now back to the survey, and I want to turn to question 2. Hopefully the text size is a little bit easier to read. It's on the third page of the annexure. Sorry, it's not numbered, but it's the question, it's presented as a table and it has question 2, 'How many kilometres do you travel for work?', and question 3, 'What is your shortest community/in home support shift?'. Do you see that, Ms Coad?---Yes, I do.

PN122

This question, as you've set it out in your statement, that was put to people said, 'How many kilometres do you travel for work a week?'. Was that question 2, Ms Coad - - -?---Yes, it was.

PN123

- - - in the survey?---Yes.

PN124

It doesn't distinguish, does it, between different types of travel undertaken for work, does it?---No.

PN125

So it didn't actually ask people to distinguish between travel costs they were incurring for work purposes and travel costs they were incurring in their personal life, did it?---It does as, 'travel for work'.

PN126

Good point. But it doesn't distinguish between travel between - that is paid, under the SCHADS Award and travel that maybe say, for example, between someone's home and their first client, does it?---No.

PN127

And you accepted earlier, didn't you, that under the SCHADS Award the vehicle allowance only applied to clients travelling between two residences; correct?---Yes.

PN128

But the survey question didn't actually isolate that category of travel, did it?---No.

PN129

So the responses to that question could easily, therefore, have included travel, which is actually not even subject to the vehicle allowance, is that correct?---Yes.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN130

Can I ask you now to turn to the end of that question and, again, apologies for the lack of page numbers, but at the end of that question you've got a number of pages along, you reach the end of your survey data and you've got, in bold, a number, '243.608'. Just let me know when you find that, Ms Coad. Sorry, I know it's a bit hard to follow?---Sorry, at the end of that question? Yes.

PN131

That's correct. Sorry, there's not page numbers, but - - -?---Yes. No, I have that. Yes.

PN132

What does that number represent, Ms Coad?---I believe it's the average of the responses.

PN133

Yes. The average being what? The average?---Of the number of kilometres that people entered, in response to that question.

PN134

So is what you're saying to me that 243 represents the average number of kilometres that somebody says that they travelled, in response to question 2?---Yes.

PN135

Can I ask you to now look at an extract from - that was sent to you, which actually extracts the actual question that was asked, in respect of question 2, when you clicked through the survey, and I'll hand this up to the Bench. It actually has, 'How many kilometres do you travel for work?'. Ms Coad - I might just give the Bench a moment. Ms Coad, I put to you that question 2 of the survey didn't actually just say, 'How many kilometres do you travel for work?'. It actually said, 'How many kilometres do you travel for work?', and underneath that was a comment that said, 'Rough estimates are fine, enter a dollar value'. I put that do you that that was actually the question asked at question 2?---Yes.

PN136

So despite the fact you've actually asked for kilometres, and the fact that you just told me that the data represents kilometres, you actually asked people to enter a dollar value in relation to that question, not the number of kilometres?---Yes. That's what I said.

PN137

So does 246 point, whatever the data figure was, I'll just go back to it. Does 243.6, does that represent the average number of kilometres or the average number of dollars, based on the fact that you asked for a dollar value?---I - well, given that that's there, I assumed that it was the average number of kilometres that people would enter, but I accept that it does say, 'Enter a dollar value'.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN138

So how would someone enter a dollar value for how many kilometres of travel they work a week?---I don't know.

PN139

Can I take you now to question 3 of your survey, which is on the same page as where we look at the, 'How many kilometres to travel'. I put to you that that question was, 'What's your shortest community/in home support shift'?---Yes.

PN140

Was there any guidance provided in this question, similar to question 2?---I don't know.

PN141

Well, I put it to you that it actually stated, 'In hours', after that question. It's been left off your statement, but I put to you that's actually what the survey said?---(No audible response.)

PN142

If we then look to the responses, a number of the responses here give figures far in excess of what could possibly have been worked in a shift, even if you convert that and assume it might have been a whole day or more. Figures such as 90, 30, 50, 21, 30, 46, 30, I could go on. Those answers surely can't represent the shortest hours worked in a shift, can they?---No.

PN143

So at least some of the respondents didn't actually understand this question 3, did they?---No.

PN144

Can I take you now to the next survey question, which appears, again apologies about the lack of page numbers, but it's the page after the bold 243, and it's got a question at the top that says, 'How much does petrol cost in your area?'. And then the next question is, 'Can you estimate how many dollars you are out of pocket per week because of the increase in fuel prices?'. I want to focus on this question, 'Can you estimate how many dollars you are out of pocket per week because of the increase in fuel prices?'. Ms Coad, that question doesn't distinguish between fuel used for work purposes and fuel used for personal travel, does it?---No.

PN145

So it's simply asking somebody how much they're out of pocket, in general, in relation to the cost of fuel?---Yep.

PN146

And there were no instructions in this question that actually asked someone about work travel, were there?---I don't believe so. I don't know for sure. Yeah.

PN147

Well, I put to you that there wasn't and do you have any - I put to you that there wasn't any further guidance, Ms Coad?---I would accept that.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN148

So it's true, isn't it then, that based on these responses we can't actually determine the proportion of responses that actually relate to work or the vehicle allowance, that's correct, isn't it?---Yes.

PN149

If we go back to your statement, at paragraph 21, which is on page 4, at paragraph 21 here you say, 'Survey respondents estimated, on average, they're spending an additional \$130 per week on fuel'. That isn't at all related to work related expenses, is it?---It might not be.

PN150

Well, did you not just say, Ms Coad, that you accepted that the question itself didn't make any distinction?---Yes.

PN151

So it's not possible to, in any way, rely on that \$130 figure, in terms of somebody's - for work purposes, is it, Ms Coad?---Not entirely. No.

PN152

Can I ask you now to turn to the next survey question, which is survey question 6. It appears on its own and, again, the lack of page numbers does make this challenging. But it's question 6, it's in quite small font, but the question, I believe, Ms Coad, is, 'What impact do you think this will have on clients?'.---Yes, that's the question.

PN153

What is 'this' referring to in this question?---The impact that members facing increased fuel costs would have on their clients.

PN154

But the question doesn't say that, does it, Ms Coad?---It says, 'What impact do you think this will have on clients'. Yeah.

PN155

But it doesn't explain what 'this' is. You didn't provide any further context in this question, Ms Coad?---No.

PN156

That question, though, as you rightly have just explained, asked people to say what they think will happen, it's not actually about them observing or having knowledge of anything, is it, Ms Coad?---It may be both, depending on the person.

PN157

It's asking them to express an opinion, isn't it?---Yes.

PN158

Not actually saying their experience?---Yes.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN159

Yes. Can I now get you to go to the next question, which is question 7? It's actually question 10, but it's on the page that has question 7, question 9 and question 10, or question 8 and 9 and 10. With respect to question 10, I believe the question asks somebody to state what state or territory do they - do you have the end of that question, Ms Coad?---Yes, I do.

PN160

And you've cut off the remainder of that question?---Sorry, what do you mean?

PN161

Well, if you look at question 10, what's the end of the question? It's not in your statement. It just says, 'What states/territory do', is that the question?---'Do you live in'.

PN162

'Do you live in'. Okay. Thank you. Can I take you back to paragraph 4 of your statement?---Yes.

PN163

So at paragraph 4 you identify that:

PN164

*The UWU is entitled to represent the industrial interests of workers in the disability support sector in South Australia, Western Australia, New South Wales, the ACT and the Northern Territory.*

PN165

That's correct, isn't it?---Yes.

PN166

And you mentioned earlier, didn't you, that you sent this only to union members; correct?---Yes.

PN167

So looking at the survey results to question 10, you have survey response provided by respondents in Victoria and Queensland, areas in which you don't have members, Ms Coad, is that correct?---Yes. In the survey. Yes.

PN168

So did the survey extend beyond those who you said you sent it to?---No.

PN169

So how did you get respondents from states where you don't have members?---I don't know. It could be people entered the drop down incorrectly. I'm not sure.

PN170

Can I take you to paragraph 20 of your statement, on page 4? Here you record that, and we touched on this a little bit earlier, that you received 174 responses; correct?---Yes.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN171

Did Survey Monkey allow multiple responses from the same person?---I don't know.

PN172

Did you take any steps to ensure that responses were unique?---I'm not aware of any.

PN173

So there's no way of verifying that there were actually 174 individual separate responses, is there?---I'm not sure.

PN174

Can I take you then to look at paragraph 18 of your survey. You say - - - ?---Sorry, my statement or survey?

PN175

Sorry. Of your statement. I apologise. At paragraph 18, midway through, you set out that the survey was sent to members working in the sector from 26 to 29 March, is that correct?---Yes.

PN176

Do you know the time of day that the survey closed, on 29 March?---No, I don't.

PN177

Okay. But it's fair to say that after 29 March you closed the survey?---It may have been closed, or it may have been that we stopped looking at the results, I'm not entirely sure.

PN178

So you captured the data on 29 March?---Yes.

PN179

So you had the data available to you, in terms of the responses you set out in your statement, from 29 March?---I believe so.

PN180

It's correct, isn't it, that the UWU made its application to vary the SCHADS Award on 16 April, that's correct, isn't it?---Yes. I believe so. Yeah.

PN181

So if it is, as you've asserted in your statement, that this has had such a dramatic impact on the workers you represent and you had the survey data from 29 March, why did it then take the UWU almost another three weeks or, to be specific, another 18 days to actually file a variation application?---The survey was sent for a different purpose, it wasn't sent as part of a filing of an application.

\*\*\* MELISSA COAD

XXN MS LAWRENCE

PN182

Yes, but if you had this data saying it was having such a drastic impact, why did it take you almost three weeks to actually file a variation to seek some relief from the vehicle allowance?---I can't answer that question, I'm sorry. I don't know.

PN183

I have no further questions. Thank you.

PN184

DEPUTY PRESIDENT CLANCY: Thank you. Any other cross-examination? Anyone online intending to cross-examine Ms Coad? All right. Any re-examination?

PN185

MS VAN GENT: Yes, your Honour, just briefly.

**RE-EXAMINATION BY MS VAN GENT**

**[10.58 AM]**

PN186

Ms Coad, you were just asked about the materials that were sent out with the survey and the survey itself?---Yes.

PN187

And you said that the materials that were sent out with the survey and the survey itself were sent in response to information that had been provided to the union by members?---Yes.

PN188

Could you explain that information?---Yep. Our organising teams were having reports from members that they were struggling with the increased cost of fuel and that that was causing them some hardship.

PN189

You were also asked to provide an explanation about the difference between the closed date of the survey and the filing of this application currently before the Commission, yes?---Yes.

PN190

And, in response to that question you said that the survey was developed for a different purpose, not for these proceedings, yes?---Yes.

PN191

Could you explain the purpose of the survey?---Yes. We had intended to release a media release on the issue and potentially look at doing some lobbying to government. So we had done the survey to gather information for those purposes.

PN192

Great. Thank you. Nothing further. Thank you, your Honour.

PN193

DEPUTY PRESIDENT CLANCY: Thank you. Anything further?

\*\*\* MELISSA COAD

RXN MS VAN GENT

PN194

MR MILLER: Nothing further from me.

PN195

DEPUTY PRESIDENT CLANCY: All right. Thank you, Ms Coad, that completes your evidence. Thank you for your attendance. You can remain online and observe the balance of the proceedings if you'd like?---Thank you.

<THE WITNESS WITHDREW

[11.00 AM]

PN196

DEPUTY PRESIDENT CLANCY: Thank you. Ms Lawrence, what do you want to do with the documents you handed up? Do you want to mark those?

PN197

MS LAWRENCE: Deputy President, if that was okay, yes, I propose they'd be marked.

PN198

DEPUTY PRESIDENT CLANCY: They be marked. So noting that we've got the email, an explanatory statement, I think it was, and question 2, I'll just mark them as a bundle. I'll call them ABI1.

**EXHIBIT #ABI1 BUNDLE OF DOCUMENTS**

PN199

Thank you. All right, Mr Miller.

PN200

MR MILLER: Thank you, your Honour. The next witness is Ms Elizabeth Chatwin, who is also appearing online.

PN201

DEPUTY PRESIDENT CLANCY: I think you said she was available from 11?

PN202

MR MILLER: Indeed. That's my understanding, so - - -

PN203

DEPUTY PRESIDENT CLANCY: Your timing is impeccable. She could be online and ready to go.

PN204

MR MILLER: Ms Lawrences timing, rather.

PN205

DEPUTY PRESIDENT CLANCY: Your timing? All right.

\*\*\* MELISSA COAD

RXN MS VAN GENT

PN206

MR MILLER: Your Honour, Mr Matthews, from the Health Services Union, is leading this witness.

PN207

DEPUTY PRESIDENT CLANCY: Thank you. Good morning, Ms Chatwin, it's Deputy President Clancy. I'm sitting with Deputy President Farouque and Commissioner Tran and we're about to take your evidence now. The first thing that will occur is my associate will take an affirmation, or if you have a Bible there and wish to take an oath you can indicate that and then we'll proceed to hear your evidence. Just make sure that you are able to hear everything as you go through your testimony. If you can't, give us a visual cue that you've missed something or you can ask to have a question repeated. Can I just confirm you're in a room by yourself?

PN208

MS CHATWIN: Sorry, can you repeat that, I've got a very poor line.

PN209

DEPUTY PRESIDENT CLANCY: Which do you want me to repeat? Everything? Mr Matthews?

PN210

MR MATTHEWS: Yes, your Honour?

PN211

DEPUTY PRESIDENT CLANCY: Do you have a phone number?

PN212

MR MATTHEWS: I do. Yes.

PN213

DEPUTY PRESIDENT CLANCY: If you could give that to my associate.

PN214

Ms Chatwin, it's Deputy President Clancy, can you hear me?

PN215

MS CHATWIN: Yes, I can.

PN216

DEPUTY PRESIDENT CLANCY: Thank you. What we're going to do is we're just going to take your evidence via mobile phone. I'm not sure whether we'll get video as well.

PN217

For that purpose my associate will take an affirmation from you. Could I just confirm you're in a room by yourself?

PN218

MS CHATWIN: Correct. I am.

PN219

DEPUTY PRESIDENT CLANCY: All right. What documentation do you have with you?

PN220

MS CHATWIN: Actually nothing at the moment.

PN221

DEPUTY PRESIDENT CLANCY: Have you got a copy of your statement?

PN222

MS CHATWIN: I can grab that, yep.

PN223

DEPUTY PRESIDENT CLANCY: Have a copy of your statement, a clean copy of your statement to hand, please. You might be asked some questions about that.

PN224

MS CHATWIN: Yep.

PN225

DEPUTY PRESIDENT CLANCY: All right. My associate will take an affirmation from you, Ms Chatwin, and Mr Matthews, from the union, will ask you some questions. There might be then some cross-examination. All right?

PN226

MS CHATWIN: Correct. Okay.

PN227

THE ASSOCIATE: Could you please state your full name?

PN228

MS CHATWIN: Elizabeth Marie Chatwin.

PN229

THE ASSOCIATE: Thank you. Could you please state your address?

PN230

MS CHATWIN: (Address supplied.)

**<ELIZABETH MARIE CHATWIN, AFFIRMED [11.06 AM]**

**EXAMINATION-IN-CHIEF BY MR MATTHEWS [11.06 AM]**

PN231

THE WITNESS: I have a copy of that statement in front of me now.

PN232

MR MATTHEWS: Ms Chatwin, can you hear me okay? Good morning, Ms Chatwin, can you hear me okay?---Yes, I can.

\*\*\* ELIZABETH MARIE CHATWIN

XN MR MATTHEWS

PN233

Could you please repeat your full name and address, for the record?---Elizabeth Marie Chatwin, spelt C-h-a-t-w-i-n, (address supplied).

PN234

Have you prepared a statement for these proceedings?---I have, yep.

PN235

Do you have a copy of that with you?---Yes, I do.

PN236

Is the statement you've prepared 22 paragraphs long and dated 27 April 2026?---22 paragraph, 27th of the 4th, yep.

PN237

Thank you. Have you had an opportunity to read that recently?---Yep.

PN238

And there are no corrections to make to that statement, I understand. Otherwise, are the contents of your statement true and correct?---Correct.

PN239

Thank you. We tender the statement of Elizabeth Chatwin, your Honour.

PN240

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Elizabeth Chatwin, which is 22 paragraphs, dated and signed 27 April 2026, as exhibit A2. Thank you.

**EXHIBIT #A2 WITNESS STATEMENT OF ELIZABETH CHATWIN  
DATED 27/04/2026**

PN241

Ms Chatwin, you'll be asked some questions now. If you don't hear them or need them repeated, please indicate, all right?---Yes.

PN242

Thank you.

**CROSS-EXAMINATION BY MS ROWLAND**

**[11.08 AM]**

PN243

Good morning, Ms Chatwin, my name is Ms Rowland, lawyer for Ageing Australia, NSW Business Chamber, and Australian Business Industrial, can you hear me?---Yes, I can.

PN244

What I'm going to do this morning is ask you some questions about some parts of your witness statement and give you the opportunity to comment on them if you wish. If, at any stage, what I'm saying is not clear, please feel free to ask me to repeat or rephrase the question?---Okay.

\*\*\*

ELIZABETH MARIE CHATWIN

XXN MS ROWLAND

PN245

You've provided a statement in these proceedings, dated 27 April 2026, correct?---Correct.

PN246

And you have a copy of this witness statement with you?---Correct.

PN247

Okay. I'm going to take you to a couple of places in your statement. To start, can I ask you to look to paragraph 2, let me know when you're there?---Yes.

PN248

At paragraph 2 you state you're the home care manager and business owner of Dorset Community Care; correct?---Correct.

PN249

Are you responsible for running the business?---Correct. Yes.

PN250

Do you make financial decisions for the business?---Correct. Yes.

PN251

So I assume you're across the payroll of the business and what your employees are paid?---Correct. Yes.

PN252

Can I take you to paragraph 11 of your statement, that's on page 2, and let me know when you're there again?---Yep.

PN253

Here you say that your employees are covered by the Social, Community, Home Care and Disability Services Award 2010, is that correct?---Yes.

PN254

So you have an awareness of how that award operates and the rates of pay that are applicable under the award?---Without being a lawyer, no. I can only go from what I read, what I comprehend from the award and what advice is given to me.

PN255

Okay. Are you aware that under this award the employees are entitled to a 99 cent per kilometre vehicle allowance?---Yes, I am aware.

PN256

You're aware then, aren't you, that the vehicle allowance only compensates people travelling between clients, or when they're using their vehicle to directly support clients, such as picking up medicine?---Yes. That's correct.

PN257

The vehicle allowance doesn't reimburse employees for transport to and from their home, or any other time they use petrol; correct?---Sorry, can you say that again?

PN258

Yes. The vehicle allowance does not reimburse employees for transport to and from their home, or any other time they use fuel, does it?---No, it does not.

PN259

Dorset Community Care provides both aged care, palliative care and disability support services; correct?---Sorry, can you repeat that?

PN260

Yes. Dorset Community Care provides both aged care, palliative care and disability support services; correct?---Correct. Yep.

PN261

So you're familiar with the funding arrangements that apply in these sectors?---I'm familiar for information that is given to me and by reading and understanding it as I see it.

PN262

Can I take you to paragraph 21, that's on page 3 of your statement?---Mm-hm.

PN263

Here you say that some of your employees assist with showering and other housework for clients. Can I assume that you provide services under the Support at Home model?---Correct. Yes.

PN264

As you just told me, you're responsible for running the business and the finances of the business, so I assume you have some understanding of the funding arrangements of the Support at Home model, is that correct?---Yes.

PN265

It's correct, isn't it, that under the Support at Home model, 10 per cent of your quarterly funding is allocated to care management of each client?---Yes.

PN266

And the remaining 90 per cent is then allocated to service delivery?---Correct. Yes.

PN267

And the Support at Home model provides a single, rolled up hourly rate, covering all of the costs incurred of delivering the service, is that right?---That is correct. Yes.

PN268

And this is the amount a vehicle allowance would come out of, is that correct?---Yes.

PN269

And you can't immediately increase the hourly rate whenever costs increase, can you?---I can't increase it for the clients, no.

\*\*\* ELIZABETH MARIE CHATWIN

XXN MS ROWLAND

PN270

Does any change to the rate require consultation and agreement with the client?---Not directly with the client, no, with the aged care provider themselves. So they would dictate to me how much to charge.

PN271

So you can't immediately pass increased costs onto clients or providers, is that correct?---Correct.

PN272

Is it fair to say, if costs increase unexpectedly, the business must absorb costs, at least initially, under this model?---Correct. Yes.

PN273

Do you provide services under the Commonwealth Home Support Program?---Yes.

PN274

Under this program you receive funding under a contract to deliver a certain amount of services in a specific region, is that right?---Correct. Yes.

PN275

You then provide services within that funding allocation; correct?---Yes.

PN276

If you're operating costs increase, the same funding delivers fewer services, that's right, isn't it?---Can you rephrase that, please?

PN277

Yes, not a worry. If your operating costs increase, if it costs more to deliver the services, you have to deliver less services?---Yes, I would have to deliver less.

PN278

Does Dorset Community Care provide services to NDIS participants?---Yes.

PN279

Do you agree that NDIS funding packages operate within fixed budgets?---Yes.

PN280

As a provider you'd be aware, wouldn't you, of the NDIS pricing arrangements and price limits?---We're not a provider, we're a broker for providers, but I am aware of the cost.

PN281

Okay. This is a document that sets caps on most prices and allowances providers can claim, is that right?---Yes.

\*\*\*

ELIZABETH MARIE CHATWIN

XXN MS ROWLAND

PN282

It's the case, isn't it, that where a provider incurs travel costs, for example the running costs of a vehicle, providers can negotiate with a participant for a reasonable contribution towards those costs?---Can you rephrase that, please?

PN283

Yes, not a worry. Under the NDIS pricing arrangements and price limit, you may negotiate with an NDIS participant for the cost of - to contribute to the cost of a vehicle?---No. We have a set rate. I haven't negotiated anything like that.

PN284

I put it to you that under the NDIS pricing arrangements and price limits, it provides advice to both participants and providers of a reasonable contribution towards those running costs of a vehicle, would you agree with that?---I still don't quite understand what you're saying. We have - I don't negotiate any reasonable price with a client or their provider. We are given a value from the provider, I can't negotiate that with a client.

PN285

What's your set rate, Ms Chatwin?---Depending upon what item we are performing, or what service we are performing, whether or not it's social support, personal care, meal preparation, which we would charge in according to caps referral number.

PN286

Are you aware if there are any caps or guidance on what that amount should be?---There is, using the cap, yes.

PN287

Are you aware of what that cap is?---Well, depending upon the service.

PN288

Ms Chatwin, can I take you to paragraph 18 of your statement, that's on page 3?---Mm-hm.

PN289

Here you say that before the fuel crisis you were spending around \$120 per week on fuel and that you're now spending around \$200, is that correct?---Correct. Yes.

PN290

Is there a reason you haven't distinguished between your personal use of the vehicle and the expenses incurred when travelling as part of your job?---99 per cent of my vehicle is used for work.

PN291

I see. Can I take you then to paragraph 20 of your statement?---Mm-hm.

\*\*\* ELIZABETH MARIE CHATWIN

XXN MS ROWLAND

PN292

There you say that some of your employees have had to reduce spending in other areas of their life because of fuel costs, and you give the example of one employee

no longer being able to drive her son to participate in extra curricular sport. That's correct, isn't it?---Yes, that is correct.

PN293

You told me earlier that you understood the vehicle allowance only reimbursed employees between clients and when they're using their vehicle to directly support clients. It's true, isn't it, that the vehicle allowance wouldn't cover the scenario you spoke about in your statement, would it?---No. But that's not what I was referring to. I was referring to the fact that the crisis - the increase in fuel had meant that staff members can't do their own private work as much as what they used to.

PN294

Okay. I have no further questions for the witness. The witness is available for re-examination.

PN295

DEPUTY PRESIDENT CLANCY: All right. Is there any further cross-examination of Ms Chatwin? Does anyone online intend to cross-examine Ms Chatwin? No. Mr Matthews, anything in re-examination?

PN296

MR MATTHEWS: Yes, your Honour, just one question.

**RE-EXAMINATION BY MR MATTHEWS**

**[11.18 AM]**

PN297

Ms Chatwin, you were asked a question regarding whether or not you'll be able to, or pass costs immediately on to clients, and you said you wouldn't be able to immediately do that. Could you please clarify how you would do that, moving forward?---Well, I would need to re-negotiate with the aged care providers an increased fee. At the moment, giving an example of \$70 an hour, that is what I'm locked into with the contract with the provider so I would have to go back to them and say, 'Due to increase in fuel, I have to increase my hourly rate to compensate'. That can only be done, say, every six months or every 12 months, it's the only time they provide that.

PN298

I have no further questions.

PN299

DEPUTY PRESIDENT CLANCY: Thank you. Ms Chatwin, it's Deputy President Clancy. At paragraph 19 of your statement you refer to the 200 kilometre round trip from Scottsdale to Pioneer and back, to the doctor's appointment?---Correct.

PN300

If that was undertaken by one of the employees, the 99 cents kilometre would have been applied to the 200 kilometre trip, is that correct?---Correct.

\*\*\* ELIZABETH MARIE CHATWIN

RXN MR MATTHEWS

PN301

Thank you. Is that the conclusion of the witness evidence?

PN302

MR MATTHEWS: That's right, for the unions.

PN303

DEPUTY PRESIDENT CLANCY: For the unions. How do you want to treat the other statements? Do you want to mark them now?

PN304

MR MATTHEWS: Yes, that's what I propose to do.

PN305

DEPUTY PRESIDENT CLANCY: All right. I'll let you take me through them, please, Mr Miller, to the extent that they're yours but the other advocates might wish to also - sorry, Ms Chatwin, it's Deputy President Clancy, I should say, you're excused now. Thank you for your evidence this morning and for your attendance at the Commission. You are welcome to stay online and observe the balance of the proceedings but, equally, if you have other commitments and wish to go, you can disconnect at this point?---Okay. Thank you. I'll disconnect.

PN306

Thank you very much.

**<THE WITNESS WITHDREW**

**[11.21 AM]**

PN307

MR MILLER: Thank you, your Honour. Indeed, these are the witness statements filed by our affiliates, such as it were. But in the interests of efficiency, I propose to just take you through them.

PN308

DEPUTY PRESIDENT CLANCY: Thank you.

PN309

MR MILLER: I understand Mr Lettau will be seeking to tender the statement of Mr Shroder. So the first statement that I seek to tender into evidence is the witness statement of Ms Laura Wright-Sinclair. This statement is three pages and 21 paragraphs and is signed 24 April 2026.

PN310

DEPUTY PRESIDENT CLANCY: Just bear with me. I'll mark the witness statement of Laura Wright-Sinclair, which is signed and dated 24 April 2026, with 21 paragraphs, as exhibit A3. Thank you.

**EXHIBIT #A3 WITNESS STATEMENT OF LAURA WRIGHT-SINCLAIR DATED 24/04/2026**

\*\*\* ELIZABETH MARIE CHATWIN

RXN MR MATTHEWS

PN311

MR MILLER: Thank you, your Honour. The next statement I wish to seek to tender is the witness statement of Ms Candice Gorman, of three pages and 21 paragraphs, dated and signed 23 April 2026.

PN312

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Candice Gorman, signed and dated 23 April 2026, with 21 paragraph, as exhibit A4.

**EXHIBIT #A4 WITNESS STATEMENT OF CANDICE GORMAN  
DATED 23/04/2026**

PN313

MR MILLER: Thank you. The next statement I seek to tender is the statement of Mr Lachlan Timms. This is 41 paragraphs and it's not page numbered but it is four pages long, dated and signed 24 April 2026.

PN314

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Lachlan Timms, with 41 paragraphs, signed and dated 24 April 2026, as exhibit A5.

**EXHIBIT #A5 WITNESS STATEMENT OF LACHLAN TIMMS  
DATED 24/04/2026**

PN315

MR MILLER: The next statement I seek to tender is the statement of Mr Carlo Gibbons(?), dated 23 April 2026, of 21 paragraphs.

PN316

DEPUTY PRESIDENT CLANCY: Thank you. Just a moment. I'll mark the witness statement of Carlo Gibbons, 21 paragraphs, signed and dated 23 April 2026, as exhibit A6.

**EXHIBIT #A6 WITNESS STATEMENT OF CARLO GIBBONS  
DATED 23/04/2026**

PN317

If you're online, please, and you're not speaking or addressing the Commission, can you place yourself on hold, please. Thank you.

PN318

MR MILLER: Your Honour, the next statement I seek to tender is the statement of Ms Janelle Bailey. This statement is dated 27 April 2026 and is 35 paragraphs.

PN319

DEPUTY PRESIDENT CLANCY: I'll mark the witness statement of Janelle Bailey, of 35 paragraphs, dated 27 April 2026, as exhibit A7. Thank you.

**EXHIBIT #A7 WITNESS STATEMENT OF JANELLE BAILEY  
DATED 27/04/2026**

PN320

MR MILLER: Next I seek to tender the statement of Mr Scott Cohen. This is a statement dated 27 April 2026, of 34 paragraphs.

PN321

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Scott Cohen which is dated and signed 27 April 2026, with 34 paragraph, as exhibit A8. I should also just confirm that Ms Bailey's witness statement, which is exhibit A7, has one attachment.

**EXHIBIT #A8 WITNESS STATEMENT OF SCOTT COHEN DATED  
27/04/2026**

PN322

MR MILLER: Next I seek to tender the statement of Ms Linda Joy Revell(?), including annexures. This is a statement dated 21 April 2026 and is 18 paragraph and four pages, plus annexures.

PN323

DEPUTY PRESIDENT CLANCY: Thank you. The witness statement of Linda Joy Revell, which is signed and dated 21 April 2026, with 18 paragraphs and an attachment will be marked exhibit A9.

**EXHIBIT #A9 WITNESS STATEMENT OF LINDA JOY REVELL  
DATED 21/04/2026**

PN324

MR MILLER: The next statement I wish to seek to tender is the witness statement of Mr Tom Williams. This is a statement of 23 paragraphs and is dated 24 April 2026.

PN325

DEPUTY PRESIDENT CLANCY: Thank you. The witness statement of Tom Williams, dated 24 April 2026, of 23 paragraphs, will be marked exhibit A10.

**EXHIBIT #A10 WITNESS STATEMENT OF TOM WILLIAMS,  
DATED 24/04/2026**

PN326

MR MILLER: The next statement I wish to seek to tender is the statement of Mr Stephen Bonniker. This is a statement dated 24 April 2026 and is of 24 paragraph and four pages in length.

PN327

DEPUTY PRESIDENT CLANCY: Thank you. Now, I understand there was an amended witness statement. So I had received an amended witness statement of Mr Bonniker.

PN328

MR MILLER: Just bear with me a moment.

PN329

DEPUTY PRESIDENT CLANCY: In any event - - -

PN330

MR MILLER: Your Honour, if I can assist. As I understand it, the amended statement is also dated 24 April 2026 and I confirm it's the amended statement we seek to tender.

PN331

DEPUTY PRESIDENT CLANCY: Yes. Okay. So the amended statement, well, I must say that - so the amended statement is dated 30 April 2026, is that the one we're to receive.

PN332

MR MILLER: Regrettably, your Honour, I appear to have the wrong copy before me. But I confirm it's the amended statement that we seek to tender. So if that is dated the 30th - - -

PN333

DEPUTY PRESIDENT CLANCY: All right. Well, I'll mark the amended statement. My records suggest that it's dated 30 April, with 23 paragraphs, Stephen Bonniker, which will be marked exhibit A11.

**EXHIBIT #A11 AMENDED STATEMENT OF STEPHEN BONNIKER DATED 30/04/2026**

PN334

MR MILLER: Thank you, your Honour. Finally, when the unions filed their submissions the ACTU also indicated we rely on a bundle of documents and reports and I also seek to tender that bundle.

PN335

DEPUTY PRESIDENT CLANCY: Just bear with me. There's two witness statements of Tom Williams. Now, I marked the 24 April one, there's also one of 30 April.

PN336

MR MILLER: Your Honour, it may be that I've got the wrong statements filed by the AWU before me. Perhaps it might be something that can conveniently be dealt with in the break and I - - -

PN337

DEPUTY PRESIDENT CLANCY: Okay. And it also helps when an amended witness is filed that the amendments are apparent. Because with Mr Bonniker I had to read through the statement myself to try and ascertain what had changed between the two statements. I haven't done the same exercise with Mr Williams. So what I have done has been to mark the witness statement, dated 24 April, of Mr Williams as exhibit A10. As I understand it, there's a 30 April 2026 witness statement, submitted by the AWU. Can you get some clarity on that, please?

PN338

MR MILLER: Indeed.

PN339

DEPUTY PRESIDENT CLANCY: And indicated how amended statements should be filed so that those of us who have to have regard to them can follow what is amended and what is the same.

PN340

But just before we move on, you can just report on that after we come back after our adjournment. Did we mark the statement of Lachlan Timms?

PN341

MR MILLER: We did, that was identified as exhibit A5.

PN342

DEPUTY PRESIDENT CLANCY: Right. Thank you. And the only other one, Pete Shroder?

PN343

MR MILLER: Your Honour, Mr Lettau will be seeking to tender that.

PN344

DEPUTY PRESIDENT CLANCY: That's the UFUA.

PN345

MR MILLER: That's right. So I would propose to first seek to tender the ACTU bundle, but I'm also happy to do that after you deal with the UFU evidence.

PN346

DEPUTY PRESIDENT CLANCY: That's all right. Now, you have what you've identified as a bundle of documents and they're about 300 pages?

PN347

MR MILLER: 370 pages.

PN348

DEPUTY PRESIDENT CLANCY: 370 pages. All right.

PN349

MR MILLER: An index bundle. I don't think it's dated, but it was filed in the Commission on 24 April.

PN350

DEPUTY PRESIDENT CLANCY: All right. The bundle of ACTU documents of 370 pages will be marked exhibit A12, with index.

**EXHIBIT #A12 BUNDLE OF ACTU DOCUMENTS**

PN351

That includes your submissions, does it, or just - no, no, just the bundle.

PN352

MR MILLER: That's just the bundle.

PN353

DEPUTY PRESIDENT CLANCY: All right. Thank you. Is that the extent of it, Mr Miller?

PN354

MR MILLER: That's the union's evidentiary case, insofar as the unions are not separately represented in the same way that the UFU is.

PN355

DEPUTY PRESIDENT CLANCY: Okay. Thank you. Mr Lettau.

PN356

MR LETTAU: Thank you, your Honour. So we seek to tender Mr Shroder, Mr Peter Shroder's statement, which is signed and dated 25 April 2026. It should be 38 paragraphs and six pages long with three attachments. Total page length is 15 pages, with attachments.

PN357

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Peter Shroder, signed and dated 25 April 2026, with 38 paragraphs and its attachments as exhibit A13.

**EXHIBIT #A13 WITNESS STATEMENT OF PETER SHRODER  
DATED 25/04/2026**

PN358

Thank you. Is that the extent of your documentation and evidence, Mr Lettau?

PN359

MR LETTAU: Yes. Thank you, that's all.

PN360

DEPUTY PRESIDENT CLANCY: Thank you. Now, there's been material submitted. Mr Lettau, I think your instructor sent through a weekly diesel prices report, from 10 May, from the Australian Institute of Petroleum?

PN361

MR LETTAU: Yes. We may refer to that in submissions.

PN362

DEPUTY PRESIDENT CLANCY: Okay. Then I think there was other material, was it the HSU that sent through material this morning, or the ASU?

PN363

MS VAN GENT: Your Honour, we will refer to some of those documents during cross-examination and I'll tender them at that time.

PN364

DEPUTY PRESIDENT CLANCY: Thank you. All right. Well, thank you. I'll take that as being, then, the evidentiary case of the ACTU and the union

parties. Is it intended now to move straight into those of the employer witnesses required for cross-examination?

PN365

MR MILLER: That's certainly my understanding of what's going to happen.

PN366

DEPUTY PRESIDENT CLANCY: All right. Well, who are we going to deal with first?

PN367

MS LAWRENCE: Deputy President, we seek to call Mr Nathan Quinlivan.

PN368

DEPUTY PRESIDENT CLANCY: Just bear with me. Good morning, Mr Quinlivan, can you hear and see me, it's Deputy President Clancy?

PN369

MR QUINLIVAN: I can, your Honour.

PN370

DEPUTY PRESIDENT CLANCY: Thank you. I'm sitting today with Deputy President Farouque and Commissioner Tran. We're about to take your evidence. The first thing that will occur is my associate will take an affirmation from you, unless you have a Bible there and wish to be sworn. You have. Thank you. All right, we'll take an oath. Thank you. Just bear with us. My associate will do that and then we'll hear your evidence. Thank you.

PN371

THE ASSOCIATE: Please state your full name and address?

PN372

MR QUINLIVAN: Nathan Luke Quinlivan, operating from Northpoint Tower, 366 Griffith Road, Lavington.

**<NATHAN LUKE QUINLIVAN, SWORN [11.38 AM]**

**EXAMINATION-IN-CHIEF BY MS LAWRENCE [11.38 AM]**

PN373

DEPUTY PRESIDENT CLANCY: Thank you, Mr Quinlivan. Can I confirm you're by yourself in that room?---I am.

PN374

Thank you. And in terms of documentation, what do you have there with you?---I have my witness statement. I have the Kirinari financials, as prompted by the union, for questioning, and a couple of prompt notes.

PN375

All right. Well, let's just put those prompt notes to the side?---Yes.

\*\*\*

NATHAN LUKE QUINLIVAN

XN MS LAWRENCE

PN376

And you'll just be referring to your statement and if taken to that other document, you'll be referring to that. Ms Lawrence will take you through the first part of your evidence and then you might have some questions for cross-examination, all right?---No worries.

PN377

Thank you.

PN378

MS LAWRENCE: Mr Quinlivan, can you hear me okay?---Yes.

PN379

Mr Quinlivan, you've made a statement in this proceeding, that's correct?---Correct.

PN380

And that statement is dated 12 May 2026, and has 31 paragraphs and no annexures, is that correct?---Correct.

PN381

Have you read that statement?---Yes.

PN382

Are there any corrections or amendments you wish to make to it?---No.

PN383

Is that statement a true and correct record, to the best of your knowledge and belief?---Yes.

PN384

I seek to tender the statement into evidence, Deputy President.

PN385

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Nathan Quinlivan which is signed and dated 12 May 2026, with 31 paragraphs as exhibit ABI2.

**EXHIBIT #ABI2 WITNESS STATEMENT OF NATHAN  
QUINLIVAN DATED 12/05/2026**

PN386

MS LAWRENCE: The witness is available for cross-examination.

PN387

DEPUTY PRESIDENT CLANCY: Thank you.

**CROSS-EXAMINATION BY MR MILLER**

**[11.39 AM]**

PN388

Thank you, your Honour. Mr Quinlivan, can you hear me okay?---Yes, I can.

PN389

My name is Mr Miller, I'm from the Australian Council of Trade Unions. I'm just going to ask you a few questions about aged care funding and then my colleagues, Mr Matthews, from the Health Services Union, will also seek to ask you a few questions. So, Mr Quinlivan, firstly, in respect to your evidence about the Commonwealth Home Support Program, can I take you to paragraph 20 of your statement?---Yes.

PN390

So at paragraph 20 you refer to your organisation, Kirinari, receiving block funding to deliver specified services, that's right?---Yes.

PN391

And this funding is delivered by a grant agreement, that's right?---Correct.

PN392

And it's true, isn't it, that these grant agreements are indexed each year?---Yes.

PN393

This is to take into account, at least in part, increases in operating costs, isn't it?---At least in part. Yes.

PN394

Some of those operating costs include increases in labour costs?---Yes.

PN395

You may be aware, let me know if you're not, but modern award minimum wages are reviewed each year and typically increased?---Yes.

PN396

And you may be aware, but let me know if you're not, that allowances, including the allowance that's the subject of these proceedings, which is a vehicle allowance, these are also adjusted from time to time?---Yes.

PN397

So these kinds of increases are representative of labour related increases in operational costs? I just need you to answer yes or not, for the record?---Yes, I believe that's what they take into account when setting the pricing. Yes.

PN398

Thank you. Those are the questions that I had for you about the Commonwealth Home Support Program. I'm now just going to ask you a few questions about the Support at Home Program?---Yes.

PN399

In your statement this is from paragraphs 23 to paragraph 27?---Yes.

PN400

So as I understand it, from your evidence, starting at paragraph 23, the relevant change to pricing is that there'll be price caps in place from 1 July, is that right?---My understanding is that government will be setting specific service based prices from 1 July 2026.

PN401

And these prices include a margin to cover the cost of capital use in delivering a service, don't they?---One would assume so, but until the government actually releases documentation on it I can't answer that.

PN402

So are you saying the new service prices haven't been released yet?---Correct.

PN403

So you can't say whether or not - I withdraw that. I'm just going to ask you a few questions about the service agreements that you have?---Yes.

PN404

So you've said that it's not practically feasible to vary service agreements?---Not on short term basis.

PN405

So they can be updated, can't they?---Absolutely. Yes.

PN406

And it's true, isn't it, that service agreements are permitted to include a clause for regular price increases, for example, by applying automatic indexation?---Yes, in line with changing pricing mechanisms. Yes.

PN407

So this also provides an opportunity for cost recovery, due to increases in operational costs, doesn't it?---Yes, when the government increases their pricing.

PN408

I have no further questions, your Honour, but I understand Mr Matthews does.

PN409

DEPUTY PRESIDENT CLANCY: Thank you.

**CROSS-EXAMINATION BY MR MATTHEWS**

**[11.44 AM]**

PN410

Good morning, Mr Quinlivan, can you hear me?---I can. Good morning.

PN411

Before I get started, if I could, please, just for the Full Bench, there's been an exchange of documentation between parties this morning. I provided a copy of that to the Full Bench this morning, electronically, but I'm happy to pass up some copies, which I'll be asking Mr Quinlivan on, momentarily.

\*\*\*

NATHAN LUKE QUINLIVAN

XXN MR MATTHEWS

PN412

DEPUTY PRESIDENT CLANCY: Is that the Kirinari Community Services Limited statutory statements for the year ended 30 June 2025?

PN413

MR MATTHEWS: That's correct, your Honour.

PN414

DEPUTY PRESIDENT CLANCY: All right. I believe we all have copies.

PN415

MS LAWRENCE: Deputy President, if I can assist the Bench, we do have a printed out copy with no markings.

PN416

DEPUTY PRESIDENT CLANCY: All right. That would be good. Thank you.

PN417

MR MATTHEWS: Mr Quinlivan, my name is Jonathan Matthews, I appear on behalf of the Health Services Union. Could I please take you to the Kirinari Community Services statutory statements for financial year 2025? Were you involved in preparing this statement?---Yes.

PN418

Have you had the opportunity to familiarise yourself with this report, in preparation for cross-examination?---Yes.

PN419

Could I please take you to page 8 of the report, I believe that's page 9 of the pdf. You'll see, at the top of this page, that total revenue for FY25, total revenue and income, I should say, apologies, for FY2025 was \$115,190,545?---Yes.

PN420

And revenue is made up, predominantly, through a combination of government funding and private client receipts, is that correct?---Yes. Primarily government funding. Yes.

PN421

Thank you. Remaining on page 8, you'll see that total expenses for FY2025 were \$112,159,819 and employee expenses were \$82,840,319?---Yes.

PN422

Do you agree that, as a percentage of total expenses, employee expenses make up approximately 73 per cent of - made up approximately 73 per cent of expenses, in FY2025?---What percentage was that, sorry?

PN423

73 per cent. I'm approximating slightly?---Yes. Yep, that looks about right.

\*\*\* NATHAN LUKE QUINLIVAN

XXN MR MATTHEWS

PN424

Thank you. The net result from total expenses and total revenue and income for FY2025, that being the line result from operating activities, is \$3,030,726, is that correct?---Yes.

PN425

Then later on, on that page, profit and loss is calculated by adding the result from operating activities to the net financial/expenses delivered in that year, in that financial year, giving the result of \$3,030,726 plus \$32,677. Therefore do you agree that the total - the profit for FY2025 was \$3,063,403, do you agree?---Yes.

PN426

Thank you. If I could take you, please, to page 9 of the first statement. You'll see, at the bottom of that page, that retained earnings for FY2025 was \$30,049,599?---As at 30 June 2025? Yes, correct.

PN427

Yes. My apologies. Thank you?---No, that's okay.

PN428

Does that figure include profit from FY2025 and the net total of earnings across all operating years?---Yes.

PN429

Thank you. I seek to tender this statutory statement, dated 30 June 2025.

PN430

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the Kirinari Community Services Limited statutory statements for the year ended 30 June 2025 as A14.

**EXHIBIT #A14 KIRINARI COMMUNITY SERVICES LIMITED  
STATUTORY STATEMENTS FOR YEAR ENDED 30/06/2025**

PN431

MR MATTHEWS: Thank you, your Honour. Mr Quinlivan, could I please take you to your witness statement that you prepared for these proceedings, specifically at paragraph 9, you comment that, 'Kirinari's fortnightly payroll averages approximately \$100,000 in vehicle expenses'?---Vehicle allowance reimbursements. Yes.

PN432

My apologies. Yes. Vehicle allowance reimbursements. Over a 12-month period do you agree that the total payments for vehicle allowance would be approximately \$2.6 million?---Yes.

\*\*\*

NATHAN LUKE QUINLIVAN

XXN MR MATTHEWS

PN433

Thank you. I'm sure you've been made aware, but in case that you aren't, the unions are seeking an increase in the allowance of 7.86 per cent. For the purposes of the following questions I will just approximate that figure to 8 per cent, to make the numbers a little bit easier. Do you agree that an increase of 8 per cent to

this allowance, over 12 months, would cost Kirinari approximately \$208,000?---Correct.

PN434

DEPUTY PRESIDENT CLANCY: Is that 280, or 208?

PN435

MR MATTHEWS: 208, your Honour. \$208,000, yes.

PN436

DEPUTY PRESIDENT CLANCY: Thank you.

PN437

MR MATTHEWS: And we've previously established that the total expenses for FY2025 was approximately \$112 million?---Yes.

PN438

Therefore, do you agree that \$208,000, that being the cost of the proposed increase over 12 months, as a percentage of \$112 million 12-month total expenses in FY2025 is approximately 0.185 per cent?---Sounds about right. Yes.

PN439

Therefore, if the unions' applications were successful, this would represent an increase in total expenses of approximately 0.185 per cent, do you agree?---Correct.

PN440

Do you then agree that Kirinari could absorb this cost to increase the vehicle allowance?---No. Not necessarily.

PN441

Well, it's just been established that the proposed increase would be 1.85 per cent. Is that not a nominal figure for Kirinari to absorb?---Personally, I don't think that's a representative way of looking at it when we run such tight margins to the bottom line. I think it'd better to be looking at underlying operating profit. I understand as the percentage of expenses it's very low, that we operate in a very, very low margin environment.

PN442

Okay. Thank you clarifying Mr Quinlivan. I have no further questions.

PN443

DEPUTY PRESIDENT CLANCY: Thank you. Is there any additional cross-examination please of Mr Quinlivan?

PN444

MR MILLER: I don't believe so, your Honour.

PN445

DEPUTY PRESIDENT CLANCY: Right, thank you. Any re-examination?

\*\*\* NATHAN LUKE QUINLIVAN

XXN MR MATTHEWS

PN446

MS LAWRENCE: Just a few short questions.

**RE-EXAMINATION BY MS LAWRENCE**

**[11.55 AM]**

PN447

MS LAWRENCE: Mr Quinlan – Quinlivan, my apologies. You were asked a question about changes to funding agreements. Could you explain how – sorry, changes to service agreements. Could you explain how the changes in pricing can occur under those agreements?---Yes. The question, I believe, was in relation to supported home packages. So when pricing is changed. So we'd expect that to be in line with 1 July. That's when we revise service agreements because then we're revising budgets and charges all in the one hit. So, it's really driven then by any government pricing changes that props it. Any changes to underlying costs that we incur within our business doesn't normally constitute a change in service agreement.

PN448

So if there was a change to the vehicle allowance how would that impact a service agreement pricing?---It simplistically wouldn't be possible before 1 July. So it would need to play through and really we're at the beholden of the government pricing mechanisms as to are they increasing budgets? Are they increasing pricing to be able to absorb that or not? But there's no ability for us to increase the service agreement just to capture the increased cost.

PN449

Can I take you to your statutory statements which you were taken to? You operate as a non for profit, don't you?---Correct.

PN450

And you were taken to the additional cost of the allowance and the impacts that that would have on your operating expenses. Could you explain what impact a \$208,000.00 increase to the bottom line would have on the operations of the non for profit?---In essence, it means that we have less availability of funds to reinvest that behind our purpose where investment of purpose primarily, at the moment, is focused on community housing and disability housing.

\*\*\* NATHAN LUKE QUINLIVAN

RXN MS LAWRENCE

PN451

You were taken to the profit that is listed for 2025 on page eight. Could you explain how the organisation is operating at a profit in 2025?---Yes. Look, I think probably the important perspective what can be seen on page eight there, firstly, is that loss has a profit of \$3,000,000. On 2025 there's also a \$2.5 million loss on 2024. And sometimes there are fluctuations through that. Not in evidence but the prior year was also in loss. So, if we consider that the two years combined was \$600,000.00, I think that brings it back to more the low margin environment that I was commenting on before. I'd also note within those two combined years we had over \$2,000,000 worth of capital grants relating to community housing. So I think that kind of illustrates just how tight the margins are and why \$200,000.00 at that

level of relevant – you know – has a lot more relevance than quoting it as a percentage of total expenses.

PN452

And looking forward you were asked questions about again the union's proposal for an increased costs of \$208,000.00 over the next 12 months. Looking forward, what is your best outlook for the next 12 months in terms of your operating environment for such an increase?---If the government passes on relevant pricing akin to such an increase we're totally in agreeance. Couldn't it – you know – very supportive of increasing the rate for employees, as long as the government sees it the same way and passes on the same relevant pricing to cover those costs. Our result will continue to have further strain. We have continued NDIS cuts and aged care reform. Assuming that pricing for support at home goes to where it probably should from a responsible tax payer perspective is only going to go make our job harder.

PN453

Right. No further questions. Thank you, Deputy President. May the witness be released, Deputy President?

PN454

DEPUTY PRESIDENT CLANCY: Yes.

PN455

MS LAWRENCE: Questions from the Bench?

PN456

DEPUTY PRESIDENT CLANCY: Thank you, Mr Quinlivan. Thank you for your evidence this morning. You're excused from further attendance and can disconnect from the proceeding if you wish?---Thank you. And goodbye.

PN457

Thank you.

<THE WITNESS WITHDREW

[12.00 PM]

PN458

DEPUTY PRESIDENT CLANCY: All right. Mr Zammit or Ms Biggins?

PN459

MS LAWRENCE: Deputy President, we seek to call Mr Matthew Zammit first.

PN460

DEPUTY PRESIDENT CLANCY: Zammit. Thank you. Just bear with me.

PN461

Good morning, Mr Zammit or good afternoon. It's Deputy President Clancy. Can you hear and see me?

\*\*\*

NATHAN LUKE QUINLIVAN

RXN MS LAWRENCE

PN462

MR ZAMMIT: Yes, Deputy President I can and I hope the same can be said on your end?

PN463

DEPUTY PRESIDENT CLANCY: Yes. Thank you. I'm sitting with Deputy President Farouque and Commissioner Tran. We're going to take your evidence now. Are you alone in your room there?

PN464

MR ZAMMIT: Yes. I am alone in my room and house.

PN465

DEPUTY PRESIDENT CLANCY: Thank you. And do you have a clean copy of your witness statement there with you?

PN466

MR ZAMMIT: Yes. It depends, well – I'll tell you what I have. I have my witness statement of 11 May. I also have the ACTU supplementary submissions of 17 May and I have the NDIS annual pricing and cost model documents, latest versions of them.

PN467

DEPUTY PRESIDENT CLANCY: All right. Thank you. All right. Now, my associate will take an affirmation. If you have a Bible there and wish to take an oath you can do that. But as we're online we generally take an affirmation.

PN468

MR ZAMMIT: Yes. The affirmation is fine.

PN469

DEPUTY PRESIDENT CLANCY: Thank you.

PN470

THE ASSOCIATE: Please state your full name and your address.

PN471

MR ZAMMIT: Matthew Justin Zammit. And my address is (address supplied).

PN472

THE ASSOCIATE: Thank you.

**<MATTHEW JUSTIN ZAMMIT, AFFIRMED [12.02 PM]**

**EXAMINATION-IN-CHIEF BY MS LAWRENCE [12.02 PM]**

PN473

DEPUTY PRESIDENT CLANCY: Thank you. Mr Zammit, Ms Lawrence, I think, will take you through the first part of your evidence.

\*\*\* MATTHEW JUSTIN ZAMMIT

XN MS LAWRENCE

PN474

MS LAWRENCE: Mr Zammit, have you made a statement in these proceedings?---Yes, I have. I made a witness statement dated 11 May 2026.

PN475

Thank you. And has that witness statement dated 11 May, was that of 15 paragraphs and one annexure?---Yes, it does.

PN476

And have you read that statement?---Yes, I have.

PN477

Are there any corrections or amendments you wish to make to it?---No, perhaps add a comma in paragraph 10 but other than that, no.

PN478

Would you like to make that amendment, Mr Zammit, or are you happy to leave it as?---I think it reads okay. But just on rereading it I noticed it and I'm repeating it sorry.

PN479

No. That's fine. Is the statement as currently before the Commission, is that a true and correct statement to the best of your knowledge and belief?---Yes, it is.

PN480

I seek to tender the statement into evidence, Deputy President.

PN481

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Matthew Zammit which is signed and dated 11 May 2026 with 15 paragraphs as ABI3. Thank you.

**EXHIBIT #ABI3 WITNESS STATEMENT OF MATTHEW ZAMMIT  
DATED 11/05/2026**

PN482

MS LAWRENCE: The witness is available for cross-examination.

PN483

DEPUTY PRESIDENT CLANCY: Thank you. Thank you, Ms Thomas.

**CROSS-EXAMINATION BY MS THOMAS**

**[12.03 PM]**

PN484

MS THOMAS: Thank you, Deputy President. Good morning, Mr Zammit. It's Kelly Thomas here. Can you hear and see me okay?---Yes. Good morning, Kelly. I can.

PN485

Thank you. Nice to see you again, Mr Zammit?---Likewise.

\*\*\*

MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN486

Mr Zammit, can I please or can you please turn up your witness statement?---Yes.

PN487

And can you please just confirm your position at the National Disability Services?---Yes. So, I'm the industrial relations lead at National Disability Services.

PN488

And National Disability Services is not an NDIS provider, is it?---No. It is not an NDIS provider. We are the peak body of NDIS providers and other disability related - services related providers.

PN489

Thank you, Mr Zammit. And when did you start there?---In February of 2023.

PN490

2023. Okay. Thank you. And Mr Zammit, can I take you to the annexure to your statement which is known as the National Disability Insurance Scheme Pricing Arrangements and Price Limits 2025 to 2026?---Yes.

PN491

I believe it's on page four of your statement?---Yes. I have the annexure here as well. Yes.

PN492

Lovely, thank you, Mr Zammit. Now, in your own words, how would you describe the purpose of this document? What is the purpose of this document?---So, I guess, in my words would be that is the document that sets pricing limits for a financial year under the NDIS scheme. So they are pricing limits that apply to NDIS registered providers which most of our members are. And they also set expectations but participants, of course, in the NDIS scheme, so that they know what prices to expect when they purchase services from disability service providers.

PN493

Thank you, Mr Zammit. And just for the purposes of anyone who is not familiar with the NDIS?---Ah - - -

PN494

The provider is an organisation who provides the NDIS services, and the participant is the client or the person who has the disability receiving those services. Is that correct?---Yes, that's right. So as soon as you said it I knew who – yes, that's right. Clients – participants – interchangeable.

PN495

No. Thank you, Mr Zammit. It's just a point of clarification I wanted to make?---Of course.

\*\*\* MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN496

Can I please take you to page 22 of that document?---Yes, just - - -

PN497

Which is 25 of your statement?---Yes.

PN498

And halfway down the page it starts with the heading 'Provider travel'?---Yes.

PN499

I won't get you to read that but can you turn over the page, and it sets out from page 23 at the top of the page 'Provider travel, labour costs time.' And then two-thirds or so of the way down it commences, 'Provider travel, non labour costs.' Can you see that?---Just bear with me. Something's playing up a bit here. Apologies.

PN500

Just take your time, Mr Zammit?---Yes. I have that.

PN501

And the paragraph under the heading 'Provider travel non labour costs.'?---Yes.

PN502

Can you just read from the last sentence of that paragraph that starts with, 'The NDIA'?---So, 'The NDIA considers the following would be reasonable contributions. For a vehicle owned by the provider or the worker up to 99 cents a kilometre and for other forms of transport or associated costs, such as road tolls, parking, other transport fares up to the full amount.'

PN503

Thank you. And I accept that NDS is not a provider but do you agree that the participants or clients can use taxis as part of their – I withdraw that actually. I beg your pardon. I should have taken you to another - - -?---Okay.

PN504

Another part of the price limits. Can I now take you to page 29?---Yes.

PN505

Of that annexure?---Yes.

PN506

And under the heading, 'Claiming for activity based transport.'?---Mm.

PN507

And then we have the heading, 'Activity based transport, social, economic and - - -'?---Yes.

PN508

- - -'community participation supports.' And, again, about two-thirds of the way down the paragraph commences with, 'If a provider incurs costs.'?---Yes.

\*\*\* MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN509

Can you just read that whole paragraph?---Okay.

PN510

Right up until the end of the third dot point?---Okay. So if a provider incurs costs, in addition to the cost of the worker's time when accompanying and/or transporting participants in the community, such as road tolls, parking fees, and running costs of the vehicle they may negotiate with the participant for them to make a reasonable contribution towards these costs. The following is a guide as to what these contributions might be. For a vehicle that is not modified for accessibility, up to 99 cents a kilometre. For a vehicle that is modified for accessibility or a bus, up to \$2.76 a kilometre. For other forms of transport or associated costs, such as road tolls, parking, and public transport fares, up to the full amount.'

PN511

Thank you, Mr Zammit. And I was starting to ask you a question earlier acknowledging that NDS is not a provider. In your experience, however, do participants or clients sometimes use taxis as part of their activity based transport?---Yes. They sometimes do. And I'm aware – I have an understanding that there are NDIS participants who do use taxis sometimes.

PN512

And some need modified vehicles?---Yes, that's correct.

PN513

And some participants can have their own vehicles?---Yes. That's true.

PN514

And participants can use ride share, like Uber?---Yes.

PN515

And it can be part of an outing for a participant to ride the bus or to ride the train?---Yes.

PN516

And those other forms of transport that I just described, they're fully funded by the participants?---Yes, they are. Yes. And that's what I am aware of with discussions I have had with our members who are providers is that is a straight pass through of costs.

PN517

Thank you. And in relation to vehicles that are not modified it's described as a reasonable contribution of 99 cents per kilometre?---Yes.

\*\*\* MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN518

Are you aware of any hire charges that providers have agreed with participants up front?---I am and truthfully I am aware of one provider but (indistinct) when there was this – like it as described as the Middle East crisis in the papers for this matter in March and April when prices went up. I am aware of one provider that took a

forward step and had discussions with their participants or clients about the increased costs and did what this document says. They negotiated a higher price reflecting those fuel costs. That's one solitary provider. There may be others.

PN519

Thank you?---But that's what I'm aware of.

PN520

Thank you, Mr Zammit. I'm going to take you back to your statement at paragraph eight?---Mm.

PN521

And there you say, 'Most prices and allowances that can be claimed are capped by the limits set out in the pricing arrangement and price limits document.' The one that we just went through. And you say, 'which is reviewed and updated each financial year'. Is that correct?---Yes, that's correct.

PN522

And is the review that is updated each financial – sorry, the document that is updated each financial year is that part of the annual pricing review?---Yes, that's correct. So the annual pricing review before the end of the financial year and then that gives rise to the price limits document of the following financial year.

PN523

Thank you. And I believe that you have been provided with a document that I sent through to your solicitors earlier this morning, and it is called the '2024-2025 Annual Pricing Review'?---Yes, that's correct. I have that.

PN524

Thank you. And if I can take you to page 11 there? Item 1.3.1?---1.3.1 – DSW – Disability Support Worker Cost Model Indexation?

PN525

That's right. And the effect of this review document is that price limits that are connected to the wages established under the Social Community Home Care and Disability Services Industry Award are adjusted annually for Fair Work Commission adjustments?---Yes, that's correct.

PN526

And it goes on to say, 'The NDIA' – which is the National Disability Insurance Agency also considers broader changes, such as award reviews, sector comparisons and national employment standards when setting price limits?---Yes, that's correct.

PN527

Can I also take you then through to section 4 on page 28?---Yes. Domestic, economic conditions.

\*\*\* MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN528

And is it fair to describe section 4 as a report from the annual review – the annual price review – that this is a topic or a matter which is considered by the reviewers in formulating the next pricing assumptions that form the limits?---Yes, that's right. Within the limits but, of course, it's a look retrospectively at the financial year that was or is coming to an end and providing a blanket assumption for the following financial year.

PN529

DEPUTY PRESIDENT CLANCY: Sorry, just a moment. Ms Thomas, we've just got to get – make sure we're all on the same page.

PN530

MS THOMAS: I beg your pardon, Deputy President.

PN531

DEPUTY PRESIDENT CLANCY: Just a moment. Just while we're getting there. You were on was it page 28 of that document?

PN532

MS THOMAS: Yes, I was, your Honour. That's right.

PN533

DEPUTY PRESIDENT CLANCY: Yes, just a moment. Thank you. Thanks very much. Maybe if you go to that question again?

PN534

MS THOMAS: Thank you, Deputy President. Mr Zammit, on page 28 of this document, the annual pricing review document, at section 4 it starts with the heading, Domestic Economic Conditions?---Yes.

PN535

And this is a report from the reviewers analysing domestic economic conditions?---Yes.

PN536

When formulating its views about the upcoming prices?---Yes. That's right.

PN537

And is it right that they report, granted this was for last year, but I think that we could agree that similar matters will be considered by the review panel for the upcoming price limits?---Yes. That's fair to say.

PN538

The first being economic outlook. The second being inflation. The third being labour market conditions. Fourth being wage growth. Is that right, Mr Zammit?---Yes. That'd be right.

\*\*\* MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN539

Thank you. Now, are you aware, and I accept that this might have happened prior to you starting at NDS, so if you don't know the answer that's absolutely fine. Are

you aware of the government ever making adjustments to NDIS out of this annual review cycle?---Changes to pricing? I am. I started at NDS in February 2023, however, I should also say I've worked in different, various roles around the sector, since about 2015. And, of course, during the COVID Pandemic would be one example where adjustments were made to respond outside of the usual 12-month cycle.

PN540

Thank you very much, Mr Zammit. May I also take you to the other document that was sent to you this morning? The NDIS Disability Support Worker Cost Model Assumptions and Methodology, '25-'26?---Yes. I have that.

PN541

Is it fair to say, Mr Zammit, that this document, the disability support worker cost model determines the price limits for supports that are delivered by disability support workers?---Yes. That would be fair to say. It does other things but, yes, that's one of the things.

PN542

And so these are assumptions that the NDIA draws upon when setting the price limits and pricing arrangements?---Yes, it does. It sets out those assumptions to make those limits.

PN543

All right. So it would form part of the consideration of the document that is attached to your statement?---Yes. It would. It would consider part of it. Sorry, it would be considered part of it. I think, obviously, there's other considerations for people governed – yes, overall – the NDIS budgets and the like. But in terms of individual prices for individual line items, this is where the assumptions are drawn from.

PN544

Thank you, Mr Zammit. And can I take you to page four of that document?---Yes.

PN545

I should pause to say do members of the Bench have a copy of this document? It was the Word document.

PN546

DEPUTY PRESIDENT CLANCY: Yes.

PN547

MS THOMAS: Thank you very much.

PN548

DEPUTY PRESIDENT CLANCY: Thank you. Yes.

\*\*\* MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN549

MS THOMAS: On page four, underneath the heading, 'Introduction' about halfway down the paragraph starts, 'The DSW cost model estimates'?---Yes. But before you – yes.

PN550

Cost of a billable hour of support includes such things as the base pay, shift loadings, leave entitlements and so on?---Yes.

PN551

In that paragraph I should point out 'employee allowances' as well. And then at the commencement of the next paragraph, the cost model estimates the efficient costs of providing supports by considering. And Mr Zammit, does it list five things there?---Yes, it does. I can read them if you like. But it does read that.

PN552

Thank you. That would be great, if you wouldn't mind? Just the bolded?---Yes. The bolded. Yes. So the five considerations it lists base salary, direct oncosts, operational overheads, corporate overheads and margin.

PN553

Thank you. And these, if we go to the next page, under the heading 'Base salary and shift loadings.'?---Yes.

PN554

Under Table 1. The NDIS assumes SCHADS Industry Award Classification and Pay Rates at 1 July 2025. And in that table is it right that the NDIS assumes that providers will pay workers SCHADS Level 2.3 or 2.4 or 3.1 or 3.2 or 4.4 and that those are classification levels that connect directly with the SCHADS Award?---So, I'm just clarifying what you're asking. So it lists those different various levels of the current SCHADS classification structure. In terms of the other part which is what it assumes providers will pay. They're averages. So obviously there would be workers that are a little bit above and some that are below and some that are on that. But on average if you looked at your workforce the assumption is that on average those would be the pay points.

PN555

So it's fair to say that not everyone is employed on SCHADS Level 2.3?---Yes, that's right. And I think some – I don't have it off the top of my head but I know somewhere else in that document it makes some mention of it. I just can't recall correctly where but it does make some mention of that variability.

PN556

Yes. I think I might take you to it actually because it's a point that I'd like to make. Actually it starts in the paragraph directly below the heading 'Base Salary and Shift Loadings'. 'The NDIA recognises that some disability support workers - -?---Yes.

\*\*\* MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN557

- - - are classified as home care employee and others are classified as social and community services employees under the SCHADS Award. The costs model

takes its parameters from the Social and Community Services Employees section which has the more generous provisions?---Mm.

PN558

And the NDIA also recognises that some disability support workers are employed under enterprise bargaining agreements, however they must leave the worker no worse off overall.'?---Yes, that's right. That's what it says.

PN559

So there are some workers who the NDIS acknowledges are paid less than SCHADS Level 2.3?---Yes, that's right. Yes, that's what I was referring to before that the assumed SCHADS classifications in that table don't necessarily always reflect what each individual work, like any work force there's variability. If new starters without experience, to people that have a couple of years' experience and then very experienced workers as well.

PN560

Thank you. And so that can be said that some providers or operators provide above award entitlements?---Yes, there would be some and that's I note especially so with some that have enterprise agreements in place.

PN561

Yes. Thank you. And so it's fair to say that there is capacity for providers to depart from the award in the sense of - -?---Mm.

PN562

- - -paying more than the award?---Yes. That's right. But not less than.

PN563

Yes. And those above award payments they're absorbed by the organisations? By the provider?---Well, yes. If the providers – only – well, actually with the exception of some Victorian providers who did get supplementary funding from the Victorian Government they would now otherwise be expected to absorb those prices somewhat. But that's what I mean when I say an average price. Because, you know, the price – the assumed price is in the middle and then for every worker that you're paying above there are also workers who are inexperienced and new to the field who would be getting paid below that and so it makes that curve where they're absorbing costs on this side and you're getting paid a bit more on this side. But you're using that to offset other costs and using that to pay for training matters and expenses.

PN564

Yes. That's right. And because there's been built in those five dot points that we went through in the beginning one might say it all comes out in the wash?---You might say. Yes.

PN565

Deputy President, I seek to tender that document.

\*\*\* MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN566

DEPUTY PRESIDENT CLANCY: Thank you. We'll mark the National Disability Insurance Scheme Disability Support Worker Costs Model Assumptions and Methodologies for 2025-2026 as Exhibit A15.

**EXHIBIT #A15 NATIONAL DISABILITY INSURANCE SCHEME  
DISABILITY SUPPORT WORKER COSTS MODEL  
ASSUMPTIONS AND METHODOLOGIES FOR 2025-2026**

PN567

MS THOMAS: And Mr Zammit, I just one have bundle of questions to ask you and then I'll finish. I appreciate the time that you've spent speaking with me this morning?---No problem.

PN568

At paragraph 13 of your statement?---Yes.

PN569

You say, 'In my experience, due to the nature of NDIS funding packages, it is not common for service agreements to include mechanisms that allow the services and pricing to be reviewed and updated outside of the package being reviewed. Annual changes to NDIS price limits or the annual wage review.' Is a service agreement the agreement between the provider and the participant?---Yes. It is. It forms the contracts of the performance service and how the terms and payment under which it will be performed.

PN570

And you say there – so am I right that service agreements are reviewed at least annually?---Yes. I mean in the early days there would, you know, this was a bit new to providers and the whole document was reviewed annually. What the more contemporaneous approach now is that the service agreement, like the – you imagine it's a contract – it remains in situ and it will refer to a schedule which will be – and the schedule will be updated. So the actual service agreement itself will be the terms that endure and then they'll have a separate schedule for prices of that year.

PN571

That sounds sensible. Thank you. And so within those service packages service delivery can be – I'm trying not to be unfair to you, Mr Zammit?---No. Go for it.

PN572

I don't know how much you know about the service agreements. I, myself, have never seen one in real life. So I don't want to be unfair to you but do you know whether or not those service packages and the service delivery and the types of supports and activities that can be provided, they can be altered through either that schedule or at some other review process?---They can. Look, I should also say for all of my things I used to be an NDIS quality and safeguards auditor and so I have seen more than a thousand of the services agreements.

\*\*\* MATTHEW JUSTIN ZAMMIT

XXN MS THOMAS

PN573

I can defer to you then?---Yes. And that's why I say I saw the change in how they were structured over the years. Yes, there are mechanisms. Like the expectation – when I say 'expectation' – the status quo of it is that it's an annual process but – you know – this and look - as is an NDIS participant's funding package they get that from the NDIA on an annual basis. Although on that is some moves to make them longer of course which is sensible. But there's an annual package and then when that participant goes and purchases services they get a price which they would expect – you know – without going into the minds of every NDIS participant but the status quo I think is the expectation that those prices would endure for that financial year. Like for the time that is initially stated. And then there would be a clause in the service agreement that would usually say Schedule A, whatever it is, which lists the prices or refers to the pricing documents. I note that that is updated each financial year as per the NDIS pricing review and costs model assumption list.

PN574

Thank you very much Mr Zammit. I have no further questions.

PN575

DEPUTY PRESIDENT CLANCY: Thank you. Is there any other cross-examination from any of the union representatives?

PN576

MR MATTHEWS: Not that I'm aware of, your Honour.

PN577

DEPUTY PRESIDENT CLANCY: Yes. Any re-examination?

PN578

MS LAWRENCE: Just a few minor questions.

**RE-EXAMINATION BY MS LAWRENCE**

**[12.34 PM]**

PN579

MS LAWRENCE: Mr Zammit, you were taken to the Annexure 1 to your statement, and in particular you were taken to page 32 which outlined activity based transport?---Yes.

\*\*\*

MATTHEW JUSTIN ZAMMIT

RXN MS LAWRENCE

PN580

Can you explain if there is an increase to the cost of activity based transport what impact does that have on a participant's budget?---So if there is an increase in costs there as I said the package or the NDIS plan that a participant seeks is for one year. There are these – the various things or under different sections. So one would be core supports. One would be capacity disability supports. Others would be consumables. So things like catheters and the like, things like they use, and those budgets will be set for that year. And the expectation is that you make that last basically. So any change, any price increases are felt by the participants. And also where a service agreement refers to – you know – in its core contract or whether it being a schedule. Whether – you know – if it refers to, and they often do, the NDIS Cost Model Assumptions and Pricing Documents – those are

updated on an annual basis and the expectation from participants is that they're updated. So if – you know – if, say, you have is rounded up as \$100.00 for transport and the NDIS definitely expects that you will pay about \$1.00 a kilometre and you need 100 kilometres of transport. If that cost goes up to anything more - \$1.05, \$1.10 – then the amount of transport that you could receive in that year would be reduced by not quite the same but almost the same percentage downward.

PN581

Okay. You were also taken to the Annual Price Review document from May 2025, and that had a number of assumptions about how the numbers are adjusted annually. And, in part, that was around assumptions around the annual wage review, but also around government funding?---Yes.

PN582

Has the NDIS or the government provided any information about additional funding being on the table as a result of the union's proposal to increase the vehicle allowance in the SCHADS Award?---No. There hasn't been any indication of that. NDS and others and some others in this room as well have advocated to the government on that. And, especially, when we saw the impact of those prices – the fuel prices – sorry. And the impact it was having, especially in rural areas or continuity of the service or continuity of the services and the like. We continue those advocacy efforts but we haven't heard anything from the government in terms of adjusting prices or adding supplements to participants' NDIS plans.

PN583

So, how would you describe the current state of play in terms of government funding, if there was an increase as proposed by the unions?---Well, the current state of play would be simply that it is what it is. That NDIS plans have the funding they have if the prices of transport increase, of course, providers – you know – if that's mandated through the Award or otherwise the providers will, of course, pass that on to participants and pay that straight through to workers. And the other thing I should say is providers do – all the providers I have spoken to about this just do it as a straight – they're not charging any administration or anything on top of it, they absorb that. But they just pass those costs straight through to the participant and what they pay is an allowance to workers. If it were to change it would require also discussions with participants which would take some time. It was one of the concerns I had with the monthly variation proposal because those discussions can be complex and – you know – there's people of different communication needs and the like and sometimes it's family members involved. You don't have to make this or everyone's expectations are on the same page can take some time, but that would be a necessary process. It would be only fair to participants if they knew how much their NDIS plan was going to be charged or billed for a unit of travel.

\*\*\* MATTHEW JUSTIN ZAMMIT

RXN MS LAWRENCE

PN584

Can I maybe then ask you related to that, you were asked questions about service agreements, in particular in relation to paragraph 13 in your statement. Could you

explain what impact it can have on a relationship with an NDIS participant to change the cost of such as transport during the life of their kind of annual service agreement?---As I said, I think, a bit earlier, it would be hard for me to get into the heads of every NDIS participant, but look, I can talk about – you know, talk frankly about ones that I know of closely in my family and extended family. And I've had discussions and there have been – they have expressed concern, actually, about increased costs and travel costs and that not being accommodated in their plan, and they said to me frankly that, you know, they feel like their plans would run out if travel costs increased, if costs caused that to increase. And there is a mechanism for – while there is a mechanism for NDIS participants to request an out-of-cycle review, that takes months and months. It's almost – you know, if you're in the second six months of your NDIS plan, you might as well not do it, because by the time you get around to having that review with the NDIA, even if it all goes smoothly, you'll get the answer probably later than the next scheduled review anyway. And that's no, you know, having a go at the NDIA there. It's just the way it is. It takes a lot of time and it – and it causes a lot of stress for all parties.

PN585

If a provider seeks to amend a service agreement, can a participant just decline the increase that they seek to make under the agreement?---Well, they can. Yeah. That's right. They enter the service agreement for a particular price, and if that changes, they can make a choice on that themselves.

PN586

You were taken to the 2024/2025 annual pricing – sorry, I'll just get the exact title of the document. My apologies, Mr Zammit. 'Annual pricing review', and you were taken in particular to page 4 that set out the economic conditions that existed when this document was produced in May 2025. In your opinion, have the conditions changed for NDIS service providers since May 2025 in terms of the outlook for them?---For service providers it absolutely has, because there's a lot of things that have inflated it higher than average CPI and increases. And one that I point out is insurance. Like, insurance costs have absolutely ballooned in recent years each year, and that's not accommodated – each year that – well, it's not accommodated for because it's a rate that's much higher than inflation, and each year that it's not accommodated for, the downside effect it has on a balance sheet compounds. And, you know, we know at NDIS that many – in fact, most – of our provider members are in a – in a really difficult financial position at the moment, and in our annual census where we ask our providers questions about their operating costs and operating conditions, we know that around 70 per cent of them have said that they pay for things that are not accommodated for in NDIS pricing. So that just represents the direct underlying operating deficit for them.

PN587

Thank you, Mr Zammit. I have no further questions (indistinct) the Bench.

\*\*\*

MATTHEW JUSTIN ZAMMIT

RXN MS LAWRENCE

PN588

DEPUTY PRESIDENT CLANCY: Mr Zammit, thank you for your evidence. You're excused from further attendance. You can remain online if

you'd like to, but you're otherwise free to disconnect?---Okay. Thank you, Deputy President. Thank you everyone else. See you later.

PN589

Thank you.

<THE WITNESS WITHDREW

[12.43 PM]

PN590

DEPUTY PRESIDENT CLANCY: All right. We have Ms Biggins.

PN591

MS LAWRENCE: Shouldn't be a moment. Sorry, Deputy President. We have contacted her.

PN592

DEPUTY PRESIDENT CLANCY: Good morning, Ms Biggins. It's Deputy President Clancy. Can you hear and see me?

PN593

MS L BIGGINS: Yes, I can.

PN594

DEPUTY PRESIDENT CLANCY: Thank you. I'm sitting with Deputy President Farouque and Commissioner Tran. We're going to take your evidence now. My associate will start that process by taking an affirmation from you, unless you have a bible there and wish to take an oath.

PN595

MS BIGGINS: No, an affirmation is fine.

PN596

DEPUTY PRESIDENT CLANCY: Thank you.

PN597

THE ASSOCIATE: Please state your full name and your address.

PN598

MS BIGGINS: Laura Elizabeth Biggins. Do you want residential address or work address?

PN599

THE ASSOCIATE: Your work address is fine. Thank you.

PN600

MS BIGGINS: 492A Churchill Road, Kilburn, South Australia, 5084.

<LAURA ELIZABETH BIGGINS, AFFIRMED

[12.45 PM]

EXAMINATION-IN-CHIEF BY MS LAWRENCE

[12.45 PM]

\*\*\* LAURA ELIZABETH BIGGINS

XN MS LAWRENCE

PN601

DEPUTY PRESIDENT CLANCY: Thank you.

PN602

MS LAWRENCE: Ms Biggins - - -

PN603

DEPUTY PRESIDENT CLANCY: Sorry, just checking. Ms Biggins, you're in a room by yourself?---Yes, I am.

PN604

And do you have access to your witness statement?---Yes, I do.

PN605

Is it a clean copy?---Yes.

PN606

Have you got any other material there with you?---Other than my computer, no.

PN607

Okay. Thank you. Thanks, Ms Lawrence.

PN608

MS LAWRENCE: Ms Biggins, you've made a statement in this proceeding. That's correct?---Yes.

PN609

Is that statement dated 12 May and does it have 23 paragraphs and no annexures?---Yes. That's correct.

PN610

Have you read that statement?---Yes, I have.

PN611

Are there any corrections or amendments you wish to make to it?---No.

PN612

And is that statement true and correct to the best of your knowledge and belief?---Yes.

PN613

I seek to tender the statement into evidence, Deputy President.

PN614

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Laura Biggins, signed and dated 12 May 2026 with 23 paragraphs, as exhibit ABI4.

**EXHIBIT #ABI4 WITNESS STATEMENT OF LAURA BIGGINS, 23 PARAGRAPHS, DATED 12/05/2026**

\*\*\* LAURA ELIZABETH BIGGINS

XN MS LAWRENCE

PN615

MS LAWRENCE: The witness is available for cross-examination.

PN616

DEPUTY PRESIDENT CLANCY: Thank you.

**CROSS-EXAMINATION BY MS THOMAS**

**[12.46 PM]**

PN617

MS THOMAS: Good afternoon, Ms Biggins. It's Kelly Thomas here. I represent the Australian Services Union in this application. Can you see and hear me okay?---Yep. I mean, you're a bit small on the screen, but, yeah, I can see you and hear you.

PN618

Wonderful. Thank you. And can I ask for clarification, is your surname 'Biggins' or 'Biggins'?---Biggins, B-i-g-g-i-n-s.

PN619

Thank you. I just didn't want to get it incorrect. Ms Biggins, you don't mention it in your statement, but you're familiar with the NDIS price arrangements and price limits?---Yes, to the best of my understanding.

PN620

I'm just going to read you part of it. Can you tell me if it sounds right or not? So in the arrangements under:

PN621

*Claiming for non-direct services, provider travel, non-labour costs...*

PN622

It says – so this refers to the vehicle allowance, essentially - - -?---Yep.

PN623

- - - and it says:

PN624

*These support items are not subject to price limits. See page 19 for further information on how to claim for support items that are not subject to a price limit.*

PN625

Does that sound right?---Yep.

PN626

And if I just quickly go to page 19, under a heading of 'Claiming for support items that do not have a price limit', there's a paragraph that reads:

\*\*\* LAURA ELIZABETH BIGGINS

XXN MS THOMAS

PN627

*The provider should claim for that item by reference to the [and it's in quotation marks] 'notional unit price' if there is one set out in the catalogue or the consumables code guide.*

PN628

?---Yes.

PN629

So am I to read that non-labour costs – sorry – that particular support, 'provider travel, non-labour costs', is something that can be agreed between KompleteCare as the provider and participants?---Yes. I wish it were that simple, but that's essentially what it's saying.

PN630

And so is it right that that price limit is something that can be more than \$1 per kilometre?---So if you read further in the NDIS pricing guidelines, it says that on your claim invoice the unit price is still to remain as \$1, which is the notional price that's listed in the price limits. If you agree to a higher rate with your client or participant, they essentially want you to adjust the units of kilometres claimed to then be able to get your relevant claim amount for that line.

PN631

Yes. That's right. And so it's fair to say that some participants might be charged less than 99 cents per kilometre and others might be charged more than \$1?---Generally, we would have a fee schedule that we set, and it is in our agreement with the client and we would not be able to charge more or less than that. Well, we could charge less if we wanted to, as long as we weren't charging more.

PN632

Okay. This morning, Ms Biggins, I sent to your solicitors a document, which was a printout or a pdf of the KompleteCare website. Do you have that in front of you?---Yes.

PN633

Does the Bench have a copy of that website?

PN634

DEPUTY PRESIDENT CLANCY: Yes. Thank you.

PN635

MS LAWRENCE: Thank you. So on that website, it refers to – I made sure everybody else had it; now I don't have it – it refers to the 'transport surcharge':

PN636

*General transport supports accompanying and/or transporting a participant: \$1.20 per kilometre.*

PN637

?---Yep.

\*\*\* LAURA ELIZABETH BIGGINS

XXN MS THOMAS

PN638

And then 'Provider travel: See relevant' – well, I think that's meant to be 'relevant' – 'code.' Can you see that there?---Yes.

PN639

Is this from the KompleteCare's webpage with the title 'NDIS prices, 1 July 2025 to 30 June 2026'?---Yes.

PN640

Thank you. And so this is published on your website?---Yes. This is the fee schedule that we released to be effective from 1 July 2025. We attempted to charge our \$1.20 per kilometre with our first round of invoicing in July to have them rejected by the plan managers and support coordinators.

PN641

Okay, but that was something that – that's KompleteCare's price guide – that's something that you - - -?---Well, most of the fees in there are set by the price limits in the NDIS support catalogue. Following the information in the pricing arrangements around the \$1 per kilometre being a notional figure, we attempted to increase our rate. And this isn't the first time we've tried to for our kilometres. And then when we go and do our invoices, goes off to the plan manager, who approves or rejects the invoices based on the NDIS support catalogue price limits, and we had the majority of these rejected with the \$1.20 as the price on the invoices.

PN642

Thank you, Ms Biggins. I appreciate that. Can I take you to paragraph 13 of your statement. You say:

PN643

*It is not common for service agreements to include mechanisms that allow for services and pricing to be reviewed and updated outside of a package being reviewed.*

PN644

Sorry, I'm looking at the wrong statement. I thought it sounded familiar. Paragraph 13 of your statement, I beg your pardon, Ms Biggins, you say:

PN645

*Services delivered under aged care and NDIS are subject to government-regulated funding models. These models restrict both the rates that may be charged and the types of costs that can be recovered. As a result, KompleteCare has limited capacity to respond to changes in operating costs, and where they can't be recovered, they have to be absorbed.*

PN646

?---Yes.

\*\*\* LAURA ELIZABETH BIGGINS

XXN MS THOMAS

PN647

Is it fair to say that the way that KompleteCare has tried to absorb those costs is by charging \$1 – or attempting to charge \$1.20 per kilometre?---Yeah, to cover the cost of the kilometre allowance, which is currently paid to workers at 99 cents a kilometre.

PN648

Thank you. You receive government funding for providing services?---Yes, upon claim on an invoice.

PN649

Part of those service agreements can relate to activities, can't they, activities that a participant might undertake?---Are you talking about social activities?

PN650

That's right. That's right?---Yep.

PN651

And so would a service agreement say that the social activity can be 'up to' a kilometre limit?---No. We don't have that in our fee schedule.

PN652

So in your service agreements, any participant who wishes to be driven by the provider has a set kilometre, like 10 kilometres per week, 15 kilometres per week, 30 kilometres per week. It's set? Or is it up to?---It's whatever the service requires at the time.

PN653

Thank you. Also in your statement at paragraph 20, you refer to private clients. KompleteCare engages clients privately?---Yes. We have a small number of private clients.

PN654

And those services are not subject to the NDIS – they're not part of the NDIS scheme?---No.

PN655

And so they're not subject to the NDIS pricing limits or arrangements?---No.

PN656

Okay. Thank you very much, Ms Biggins.

PN657

DEPUTY PRESIDENT CLANCY: Any re-examination?

PN658

MS LAWRENCE: No. Thank you, Deputy President.

\*\*\* LAURA ELIZABETH BIGGINS

XXN MS THOMAS

PN659

DEPUTY PRESIDENT CLANCY: Thank you. Ms Biggins, thank you for your evidence today. You are now excused from further attendance if you wish to disconnect?---Thank you very much.

PN660

Thank you.

<THE WITNESS WITHDREW

[12.55 PM]

PN661

DEPUTY PRESIDENT CLANCY: All right. So they're the only witnesses required for cross-examination. You've got some additional witness statements. do you want me to mark those?

PN662

MS LAWRENCE: Yes. Do you want me to take those to you now, Deputy – yes. The first is the witness statement of Sarah Newman dated 11 May. It has 32 paragraphs. I seek to tender that into evidence.

PN663

DEPUTY PRESIDENT CLANCY: Okay. So the witness statement of Sarah Newman, dated 11 May, with 33 paragraphs will be marked ABI5.

**EXHIBIT #ABI5 WITNESS STATEMENT OF SARAH NEWMAN, 33 PARAGRAPHS, DATED 11/05/2026**

PN664

Yes?

PN665

MS LAWRENCE: The witness statement of Marcela Carrasco dated 12 May with 31 paragraphs, we seek to tender that into evidence.

PN666

DEPUTY PRESIDENT CLANCY: I mark the witness statement of Marcela Carrasco, signed and dated 12 May 2026 with 32 paragraphs, as ABI6.

**EXHIBIT #ABI6 WITNESS STATEMENT OF MARCELA CARRASCO, 32 PARAGRAPHS, DATED 12/05/2026**

PN667

MS LAWRENCE: And finally, we seek to tend to the witness statement of Stephen Charles Burgess, dated 11 May with 15 paragraphs.

PN668

DEPUTY PRESIDENT CLANCY: Thank you. The witness statement of Stephen Charles Burgess, dated and signed 11 May 2026 with 15 paragraphs, will be marked ABI7.

**EXHIBIT #ABI7 WITNESS STATEMENT OF STEPHEN CHARLES BURGESS, 15 PARAGRAPHS, DATED 11/05/2026**

PN669

Thank you.

PN670

MS LAWRENCE: Nothing further, Deputy President, by way of (indistinct).

PN671

DEPUTY PRESIDENT CLANCY: Thank you. So there's no other evidence to be received in from either party, is there?

PN672

MR MILLER: That's right, your Honour.

PN673

DEPUTY PRESIDENT CLANCY: All right. Well, I'm going to propose we adjourn now, and when we return, we'll hear oral submissions. I'm going to work on the basis that we're going to be able to conclude those oral submissions this afternoon. And so the usual course is we presume at 2.15. Does that present any difficulties with anyone? All members of the Bench appreciate brevity, so don't feel as though you'd have to fill in time this afternoon. Just take us to what you want us to have particular regard to amongst your material and that will be very much appreciated. So we'll adjourn now until 2.15. Thank you.

**LUNCHEON ADJOURNMENT**

**[12.59 PM]**

**RESUMED**

**[2.24 PM]**

PN674

DEPUTY PRESIDENT CLANCY: Thank you. Can I assume the parties are across the fact that the President's issued a statement this morning in relation to expense-related allowances?

PN675

MR MILLER: Yes.

PN676

DEPUTY PRESIDENT CLANCY: Yes. Okay, good. Would anyone be assisted with a copy of that being provided or have you all - - -

PN677

MR LETTAU: I would be assisted, Deputy President.

PN678

DEPUTY PRESIDENT CLANCY: All right.

PN679

MR LETTAU: Thank you.

PN680

DEPUTY PRESIDENT CLANCY: Okay. We'll get that done now. Anyway, it seems to indicate the approach that the annual wage review expert panel will be taking, but it also, at paragraph 9, makes reference to this proceeding.

PN681

Does anyone else need a copy, or is it just the UFU?

PN682

MR LETTAU: I'd probably assisted by a hard copy to the extent that it's being offered.

PN683

DEPUTY PRESIDENT CLANCY: All right. Well, when my associate goes out the back. Anyone else want a hard copy? Speak now or forever hold it.

PN684

MS VAN GENT: Yes, thank you, Deputy President.

PN685

DEPUTY PRESIDENT CLANCY: We're here to serve, so three copies. Any advance on three?

PN686

MR ROGERS: Your Honour, I'm online. It'd be of assistance to me if we could be emailed a copy?

PN687

DEPUTY PRESIDENT CLANCY: Yes, we'll do that as we're going along. Thank you. We're good at multitasking, we'll just do one thing at a time. Just if you could get those copies.

PN688

MR MILLER: Your Honour, if it assists, I am able to deal with the AWU evidence issue that - - -

PN689

DEPUTY PRESIDENT CLANCY: Yes, yes.

PN690

MR MILLER: If it's useful to use the time while copies are being prepared.

PN691

DEPUTY PRESIDENT CLANCY: Yes.

PN692

MR MILLER: So I can confirm that the amended statement of Mr Stephen Bonniker was dated 30 April.

PN693

DEPUTY PRESIDENT CLANCY: Yes.

PN694

MR MILLER: And was filed with the Fair Work Commission on 5 May.

PN695

DEPUTY PRESIDENT CLANCY: Yes.

PN696

MR MILLER: I understand a tracked-changes version with the original date, 24 April was filed along with the clean version.

PN697

DEPUTY PRESIDENT CLANCY: Right. Okay. So I'll mark - - -

PN698

MR MILLER: I understand the amended copy is available on the website.

PN699

DEPUTY PRESIDENT CLANCY: Okay. Thank you. That's marked A11.

**EXHIBIT #A11 AMENDED STATEMENT OF STEPHEN BONNIKER**

PN700

What about Mr Williams?

PN701

MR MILLER: So I understand the amended statement of Mr Tom Williams dated 30 April was filed with the Fair Work Commission on 1 May and the only difference that that statement had with the original – the original statement dated 24 April was unsigned.

PN702

DEPUTY PRESIDENT CLANCY: Okay.

PN703

MR MILLER: So it's effectively inserting a signature and updating the date to 30 April.

PN704

DEPUTY PRESIDENT CLANCY: I see. All right. So nothing of substance. All right. So, thank you.

PN705

So for the witness statement of Tom Williams, that is dated and signed 30 May and with 23 paragraphs, I'll mark that A16, I think it is.

**EXHIBIT #16 WITNESS STATEMENT OF TOM WILLIAMS WITH 23 PARAGRAPHS DATED AND SIGNED 30/05/2026**

PN706

Thank you.

PN707

MR MILLER: Thank you.

PN708

DEPUTY PRESIDENT CLANCY: Thank you. A link to that will be sent through to the parties who are online. Thank you. All right. Mr Miller. Do you want to lead off?

PN709

MR MILLER: Thank you, Your Honours. Commissioner.

PN710

There is before the Commission 45 applications to vary 41 modern awards made by eight unions, supported and coordinated by the ACTU. These applications were made on 14, 15 and 16 April 2024. The applications in their original form sought to vary the awards via the proposed insertion of a new schedule, which would require adjustments to vehicle allowances in modern awards, starting with an initial increase based on the percentage increase in the private motoring subgroup published by the Australian Bureau of Statistics. And then require a monthly reassessment of vehicle allowances in each award to the extent that they're varied to include the schedule for a period of 12 months.

PN711

Yesterday afternoon, my colleague wrote to your chambers seeking to file an additional supplementary submission. That submission effectively gave notice of a significant narrowing of the union position, such that the schedule originally sought to be inserted was not being pressed and instead the ACTU, the union – the collective union position was narrowed to the point that it was only seeking that a one-stop adjustment to vehicle allowances on the basis of a 7.86 per cent uplift, which is consistent with the first proposed uplift under the original schedule in that the manner in which that uplift be achieved is maintained in that the proposal, the 7.86 per cent figure is derived by reference to the percentage movement between the private motor and subgroup index for December 2025 and March 2026.

PN712

DEPUTY PRESIDENT CLANCY: Now, sorry. So when you were using the December 2025 figure, was that the monthly result of 100.82?

PN713

MR MILLER: That's right.

PN714

DEPUTY PRESIDENT CLANCY: Right.

PN715

MR MILLER: Sorry, the monthly figure for March 2026.

PN716

DEPUTY PRESIDENT CLANCY: Yes. Subtracted from the March 2026 figure which was 108.74?

PN717

MR MILLER: That's right.

PN718

DEPUTY PRESIDENT CLANCY: Yes. All right. Now, yes, thank you.

PN719

MR MILLER: The ACTU submission also raised an additional issue which relates to the divergence in vehicle allowance rates. As Your Honours, Commissioner may have observed in these proceedings, most vehicle allowance rates are set at either 98 or 99 cents. The ACTU's research and it's outlined in the supplementary submission seems to indicate that this divergence is a product of differently timed annual wage review adjustments in the COVID-19 era arising from decisions of relevant expert panels in that era to stagger the awarded increases with reference to how significant or otherwise the effect of the COVID-19 pandemic had been on those relevant industries.

PN720

The submission is effectively, it's canvassed far more in far more detail than I can speak to on my feet, so I refer and defer to that written submission. Broadly put, the submission that I made is that at award modernisation, the allowance was set as a common rate of 74 cents in between the commencement of the modern awards at that time and the beginning of the COVID-19 era. That standard rate remains the same across the modern awards system and it's only during that COVID-19 era that there began a divergence in the rates.

PN721

We say that that divergence, in circumstances where the rate was intended to be a common rate across all awards, the position - the rate should return to that position, which we say should be done by lifting the 0.98 cent allowance awards up to the 0.99 cent awards irrespective of any other outcome that might flow from this - from these proceedings.

PN722

DEPUTY PRESIDENT CLANCY: So if you wound up with 0.98, was that because your increases were being delayed or was it the other way around?

PN723

MR MILLER: So in the 2020 Annual Wage Review, the Group 1 awards, which were the awards that didn't have a delay, were adjusted with reference to a March index.

PN724

DEPUTY PRESIDENT CLANCY: Right.

PN725

MR MILLER: And they were adjusted up, I think, to 80 cents, but the remaining awards, the ones that were in Group 2 or Group 3, were not adjusted.

PN726

DEPUTY PRESIDENT CLANCY: Yes.

PN727

MR MILLER: They were adjusted subsequent to later annual entry years, but with reference to different indexes.

PN728

DEPUTY PRESIDENT CLANCY: Yes.

PN729

MR MILLER: And generally, the lag is with reference to the ones that miss out on the initial offer.

PN730

DEPUTY PRESIDENT CLANCY: So Group 2 and Group 3?

PN731

MR MILLER: That's right.

PN732

DEPUTY PRESIDENT CLANCY: Yes. Okay.

PN733

MR MILLER: There might - it gets increasingly complex, so it might be that there's some that don't fall within that, but as broadly as I can put, that's the case.

PN734

DEPUTY PRESIDENT CLANCY: Yes. Okay.

PN735

MR MILLER: Your Honours, Commissioner, this case is about vehicle allowances in modern awards, and ensuring allowances are properly adjusted to reflect current increases in the operating costs of a vehicle, which is most relevant in the context of the current geopolitical environment in respect of the cost of fuel.

PN736

The Union's case is that modern awards should be varied by increasing vehicle allowances by the 7.86 per cent that I referenced, which would have the effect of raising allowances to \$1.06 for the 98 cent allowances, or \$1.07 for the 99 allowances. Of course, we submit that they should all be lifted upwards to \$1.07. This position is advanced on the basis of the rapid and historic rise in fuel prices caused by the war in the Middle East, which has had a material impact on fuel prices. And at the outset of this closing address, I want to emphasise the historic context in which these applications are made, because it provides important framing.

PN737

The global oil shock caused by the conflict in the Middle East and the closure of the Strait of Hormuz has been described by the International Energy Agency as the greatest oil supply shock in history. Domestically, the observed effect is to send petrol prices surging.

PN738

Now, the effect of this on workers required to use their vehicles is best told directly by those workers themselves. And there's evidence before this

Commission from workers directly telling the Commission about the impacts they are experiencing arising out of the crisis.

PN739

So there is before the Commission the statement of Ms Elizabeth Chatwin. Ms Chatwin's evidence is that the impact on the employees in her business is they're required to - I withdraw that - is that there has been an impact on her business and that she's had to redo the roster to find efficiencies to cut down on travel, and that this has had an effect of needing to change client services.

PN740

There's a statement before the Commission from Ms Laura Wright-Sinclair. Ms Wright-Sinclair's evidence is that at the peak of the fuel crisis, she was spending \$85 per week on fuel costs. Ms Wright-Sinclair states that the cost of fuel caused her to turn down a job on 24 March 2026 because she couldn't afford the cost of fuel.

PN741

There's a statement before the Commission from Ms Candice Gorman, a pathology collector covered by the Health Professionals and Support Services Award.

PN742

DEPUTY PRESIDENT CLANCY: See, how does that stand up? Because she would have, on that shift, received a vehicle allowance, and she would have, presumably on that shift, be paid for the shift, and you're saying the proposition is the differential in the fuel price meant that she was prepared to forego that which she would have received for the fuel allowance and the wage for that shift?

PN743

MR MILLER: Well, that's her evidence.

PN744

DEPUTY PRESIDENT CLANCY: Right. Okay.

PN745

MR MILLER: Similarly, Ms Gorman, covered by the Health Professionals and Support Services Award, states that she had to decline or she did decline work where required to travel even for a short 18 kilometre round trip.

PN746

The statement of Ms Janelle Bailey before this Commission is that – who's a disability support services worker, is that she cares for between two and six clients at any given time, and her evidence is that prior to the fuel crisis she would take clients for major drives within the regions, but the impact of the fuel crisis on her is that she's cutting back on these kinds of trips.

PN747

That's a summary of some of the evidence. In an attempt to reduce my closing address I don't propose to summarise it all, but the union submit collectively that

the collective evidence paints a compelling picture that workers, including workers that provide essential services in health and community service sectors, are in dire need of some relief to assist them to cope with rising fuel costs. The ACTU submits that the proposal put forward by the unions is an appropriate and necessary means of achieving that aim.

PN748

The proposal that the unions have put forward is also one that is in keeping with the usual method of adjustments to this allowance, and would ensure that the vehicle allowances are adjusted with reference to increases in price caused by the current conflict in the Middle East.

PN749

To unpack that I just intend to speak briefly to the history and nature of vehicle allowances. So as I mentioned they're mostly set at 0.98 or 0.99 cents, or for motorcycles this is usually 32 or 33 cents per kilometre. These are expense related allowances distinct from wage related allowances, and they're adjusted with reference to the applicable consumer price index figure for the private motoring subgroup, with reference to the most recently published index part of the adjustment.

PN750

They're not adjusted downwards when there's no increase like in an adjustment cycle, which will mean that often the allowances will be set in stone for a long time. So they're not necessarily adjusted each year. So for example in 2014 vehicle allowances were adjusted from 76 to 78 cents, and that rate was then in place for the remainder of the decade until the COVID-19 pandemic when some of them were raised from 78 cents to 80 cents.

PN751

The union proposal seeks to maintain increases based on the private motoring subgroup. The difference is on the basis that this reflects as close as possible the Commission's traditional approach. The difference is this time we say the adjustment should be made based on the monthly index and not a quarterly index. We say this is appropriate because changes are made (indistinct) CPI reporting mean that a quarterly CPI data is now just an average of the three monthly indexes within the quarter.

PN752

If vehicle allowances were adjusted with reference to the quarter for March 2026 this would mean adjusting allowances with reference to an index that includes the average for that quarter, and relevantly two months in that quarter, January and February, we say are not properly representative of fuel prices in the post oil shock context.

PN753

So to avoid an outcome whereby allowances that are adjusted on the basis of reference to an index that is two-thirds representative of pre conflict prices, the union submit that the increase should instead be calibrated with reference to the percentage movement in the monthly index for the CPI private motoring subgroup index between the months of December 2025 and March 2026.

PN754

Now, the selection of those two points in time is not arbitrary. It's been designed in mind with the dual goals of maintaining a harmony with the standard practice of adjusting allowances in a manner that as closely as possible tracks the traditional practice of using movement in the private motoring subgroup index, but doing so in a way that allows the full cost of the fuel prices to be fully captured in that movement, which we say in our submission can only be done with reference to the private motoring index for the month of March 2026.

PN755

In order to neutralised the transition between a quarterly and monthly index we have proposed the allowance be adjusted first with reference to movement between March quarter 2024, which was the index that was used to last adjust the allowances. That index was on the new quarterly series, 100.39, and December quarter 2025, which is 100.57.

PN756

The difference is 0.18 per cent increase, which doesn't have the effect of moving the allowance. The point that we make is that that exercise is necessary to rebase the allowance from a point in time from when it was last adjusted to a point in time where there can be a relevant comparison made to capture the movement up to March 2026.

PN757

The unions' collective proposal is then as I say to move the allowance with reference to the percentage movement between the index for the month of December 2025 and for March 2026. So as discussed before the index for December was 100.82, and for March 2026 is 108.74. This percentage increase is 7.86 per cent, and applying this increase would have the effect of lifting most vehicle allowances from either 0.98 or 0.99 cents to either \$1.06 or \$1.07 per kilometre, depending on whether the allowance is starting from 98 or 99 cents.

PN758

The ACTU and unions submit that adjusting allowances in the manner outlined is necessary to achieve the modern award's objective in order to ensure modern awards continue to constitute a fair and relevant safety net of terms and conditions. The ACTU submits that intervention is necessary to address the devaluation of the allowance which has stayed the same despite a 7.86 per cent (indistinct) in the cost of owning and operating a vehicle over the period from December to March as measured by the ABS.

PN759

The ACTU submits this is evident on the witness evidence you have heard, but looking forward is also - sorry, the necessity of the proposed variation is, we say, evident on the basis of the witness evidence that's before the Commission, but we also say it's important in terms that that establishes there's a need now and workers are struggling with the fuel crisis. But we also say there's a forward setting element to the proposal in that it's necessary to ensure the allowance maintains its value over the next 12 months in the context of historic price volatility.

PN760

The danger we say would be that if the allowance is adjusted in some other manner and prices spike again that workers will be in the same circumstances they were in March of this year, and absent another application and proceedings such as this, that won't be able to be rectified until at least likely next year in relation to the usually timed annual wage review adjustment.

PN761

To this submission I accept there's been a reduction in retail fuel prices since the unions filed their applications, and again since the first round of submissions. The Australian Institute of Petroleum report for the week ending 10 May 2026 has national average weekly prices at 183.6 cents, which is only around 10 cents higher than for the week ending 22 February, being the first full week unaffected by the conflict in the Middle East.

PN762

Nonetheless if the Commission is minded to set a new rate for vehicle allowances as I say it will need to do so in a way that has regard to ensuring allowances are properly set to compensate employees for using their private vehicles for at least the next 12 months.

PN763

In that context it's relevant that today's prices reflect government intervention to halve the excise on fuel, and also an announcement regarding an agreement with state governments to forego GST revenue on fuel. These measures have the collective effect of reducing the per litre cost of fuel by 32 cents per litre, to the cost of petrol and diesel. However, these measures are due to sunset effective 30 June, which is now only six weeks away.

PN764

DEPUTY PRESIDENT CLANCY: What's the figure you're saying, 32?

PN765

MR MILLER: Thirty-two.

PN766

DEPUTY PRESIDENT CLANCY: Thirty-two?

PN767

MR MILLER: Thirty-two cents.

PN768

DEPUTY PRESIDENT CLANCY: What does that comprise?

PN769

MR MILLER: I believe it's approximately 26 per cent of the fuel excise and the remainder of the GST factor.

PN770

DEPUTY PRESIDENT CLANCY: The GST. I thought it was 23.6 cents per litre is the excise. Is the rest GST, is it?

PN771

MR MILLER: If I can come back to your Honour on this. It's contained in the latest ACCC report.

PN772

DEPUTY PRESIDENT CLANCY: Okay.

PN773

MR MILLER: As I say I will come back on the precise figures, but if you applied that amount to the current price rate this would bring rates back up to 212.5 cents per litre, which remains well above the pre conflict rate.

PN774

The ACTU submits this demonstrates current fuel prices are being suppressed by temporary policy interventions. Whilst these interventions are welcome the Commission must keep in mind the forward looking nature of the variations that are being sought. In that regard it would be erroneous, in our submission, to set outcomes by reference solely to presently deflated prices rather than the higher and more injuring cost pressures that are reasonably expected to reemerge once these government interventions expire.

PN775

I now turn to deal with a selection of the submissions that have been filed in reply to the union's case. In doing so I will address five main topics that are collective features of the reply submissions. These are firstly the criticism about the index proposed to be used, and secondly the submission that the private motoring subgroup index shouldn't be used to adjust the allowance in response to a fuel crisis given it contains components beyond automotive fuel.

PN776

I will address the submissions of the AiG as regards electric vehicles, and also the submissions they've advanced in respect of the funded sectors. So firstly in relation to the criticism of the proposed index: there's been some significant criticism from the major employer representative organisations as to the proposal to use the index for the month of March 2026. The thrust of these submissions is to reject a permanent increase to the allowance on the basis of an allegation that this is only a temporary fuel crisis.

PN777

I make two submissions in reply to this. Firstly, there's no indication that the current crisis is temporary. Indeed other than short term government indications such as the measure to halve the fuel excise and states foregoing GST collection on fuel, all indications suggest the crisis is far from over. Certainly the status of the cease fire in the Middle East is at best unclear, and potentially in some jeopardy. The Strait of Hormuz it would appear remains closed, and the price of Brent crude oil remains, the last time I checked it, \$US109 a barrel, 53 per cent above the pre conflict price of \$US71 a barrel.

PN778

Secondly, in my submission there should be nothing controversial about a permanent uplift to an expense allowance, so long as it reflects increases in underlying costs. The adjustment of expense allowances by reference to rise

movements has been a consistent feature of wage fixing principles since at least 1978 when the Australian Conciliation and Arbitration Commission adopted a principle permitting allowances that reimburse expenses to be varied from time to time reflect relevant changes to those expenses. That is in substance precisely what is being proposed here.

PN779

Now, I do accept that they are relying on the private motoring subgroup index for March 2026. That ACTU seeks an adjustment that reflects what may be the peak, or at least is the peak in the current - like the peak so far in the current crisis of fuel costs arising from the current Middle East crisis. However, I reject any framing that such an approach is cherry picking. The March CPI figure for the private motoring subgroup remains, in our submission, the most appropriate measure of cost increases in the ownership and operation of motor vehicles in that it captures prices entirely from the period following the onset of the conflict in the Middle East and the resulting oil shock.

PN780

The Australian Industry Group submits at paragraphs 45 to 51 that it's unfair for the allowance to be effectively pegged to the March 2026 index on the basis that it locks in a higher rate despite potential subsequent declines in fuel prices. The short answer to that submission is this reflects the ordinary and well established operation of indexation.

PN781

It's correct that the union's proposed mechanism would lock in an elevated rate, but that's not an aberration, it's just how index allowances are intended to operate. Each time the index reaches a new peak the allowance is adjusted and they're not adjusted at all in the intervening period, and that new level becomes the operative minimum moving forward. Now, we say there's nothing (indistinct) or unfair in that approach. Indeed it is a feature of the system rather than a flaw.

PN782

The AiG submission also overlooks the fact that this system can operate to the detriment of employees within a given cycle. So, for example, if an index rises to a new peak, and then subsequently falls within a cycle before the relevant reference period, usually the March quarter times of the AWR, those earlier increases are not captured if the index is lower at the time of the AWR. This is, effectively, what happened during the last decade. Vehicle allowances were lifted to \$0.78 on the basis of a new peak in the index at that time, and then did not change again until the COVID-19 era.

PN783

Now, the employees seek to characterise the 0.8 per cent increase, that the unions are proposing, is somehow manifestly unfair, or large, both as an initial increase, and because it would be locked-in forever. However, the unions submit it's a proportionate increase in the context of the current circumstance, and shouldn't be seen as inherently inflated, or even particularly out of the ordinary.

PN784

For contrast, in 2022, allowances in many modern awards were adjusted from \$0.80 per kilometre to \$0.92 a kilometre. So, for example, in relation to the SCHADS Award, the relevant determination is PR740949. So that's a 12 per cent increase in an allowance, which is \$0.04 cents higher than is being sought in this case. And, as far as I'm aware, there were no objections at that time from employee groups about the allowance increasing by that amount at that time.

PN785

Against that background, the criticism that the proposed approach locks in a higher rate, doesn't provide, we say, a principal basis for rejecting it, when reference is had to the usual method of adjustment. Moreover, and if anything, the present uncertain environment also tells in favour of a result where the allowance is locked in at a rate that's sufficiently high to insulate workers against rising fuel costs in the context of a historic oil shock crisis, and ongoing volatility.

PN786

During uncertain times, commodity markets tend to be very volatile, reacting strongly to the flows of statements in governments, and major actors, across the system. And we say that's what has happened in this instance, in that the price of oil and the price of fuel has been highly linked to the situation in the Middle East, and announcements particularly by the US government, and developments in the Strait of Hormuz.

PN787

Given this, it's not inconceivable that developments provide for an easing in the cost of fuel in one month, and then a reversal of that easing in subsequent months, even putting aside the full excise cut. We say the danger would be if the Commission were to adopt a different measure to adjust allowances, or not adjust them at all, if they were to then rise again to the previous peak, or above, an outcome which we say can't be ruled out given the instability, and Australia's reliance, on imported fuel from Asia.

PN788

The Australian Industry Group also advanced the submission at paragraphs 52 to 54 that adjusting the allowance with reference to the Private motoring sub-group index is inappropriate on the basis that the index includes non-fuel price components. It's true that the non-fuel components of the index have also increased for the period between December 2025 and March 2026. However, we struggle to see how that's relevant. The use of the private motoring index to adjust vehicle allowances has been uncontroversial for the last 16 years. That one particular component of the index has risen recently, especially quickly, is not a proper basis to discount price rises in other components of the index, because they affect other increases in the costs of owning and operating a motor vehicle, which is ultimately what this allowance is intended to be compensating for.

PN789

In respect of electric vehicles, the Australian Industry Group submits that electric vehicles should be excluded from any new or temporary rate. This submission should be dismissed. The small, but growing, use of EVs has some impact on the private motoring sub-group of the CPI. But one possible impact is that the growing use of EVs is placing downward pressure on the waiting of the

automotive fuel component of the CPI, because drivers are using less fuel. That might mean that the sub-group, and therefore the index, are lower than they otherwise would have been, but for the inclusion of electric vehicles.

PN790

Secondly, it's a very hypothetical position that's been put by the AiG. Because the level of ownership among modern award-reliant employees, we say is likely to be imperceptible. Only 1 to 2 per cent of cars on the road are electric vehicles, according to the Electric Vehicle Council. And the average annual wage of a modern award-reliant employee is about 42,000, based on the ABS Employee Earnings and Hours survey, whereas, Drive Magazine puts the average price of an electric vehicle well above this at 86,000, whereas petrol and diesel cars average 54,000.

PN791

In that context, it's fair to say that it is unlikely that any modern award-reliant employees would own many of those electric vehicles. That unlikelihood is compounded when it's considered that not all modern award-reliant employees are using private vehicles at work. We say, in that respect, that the AiG proposition is both highly hypothetical and, effectively, technically impossible, to resolve as to how a new allowance would account for electric vehicles.

PN792

In relation to the funded sectors, the ACTU accepts, as a broad principle, that employers operating in aged and disability care sectors are doing so in an environment that constrains pricing. And, in that context, there's some factors that are unique as to how increases in labour costs can be absorbed in those sectors. However, simply asserting this is a basis to contend that the Commission ought not increase allowances, absent a funding commitment from government, is a significant overreach. Also, the evidence suggests that there are ways in which the system is able to operate to respond to increases in labour costs without a need for a separate funding commitment.

PN793

Mr Quinlivan accepted in cross-examination that Commonwealth funded home support programs are indexed each year to account for labour costs. And in respect of the support at home system, Mr Quinlivan said that the current service prices are unknown after 1 July. But he agreed that it's possible for service agreements to be varied. In respect of the National Disability Insurance Scheme, the set prices are reviewed annually, and published on 1 July.

PN794

The Fair Work Commission typically adjusts modern award minimum rates each year, and commonly increases expense-related allowances at the same time. These increases are not made subject to funding, nor am I aware of such a submission that they should be, having previously been advanced by the Australian Industry Group, or the parties represented by Australian Business Lawyers.

PN795

The parties represented by the Australian Business Lawyers draw upon the example of the Aged Care Work Value proceedings. The ACT submits this is not a proper comparison. Those proceedings resulted in significant pay rises, including an initial interim pay rise of 15 per cent. Such an increase was, and is, historic. By distinction, these applications concern only one allowance, which is not paid to all employees, and is only a 7.8 per cent increase. Relevantly, it's smaller than the increase of \$0.12 awarded in some, if not most, modern awards in 2022, and for which employer parties, as far as I'm aware, never submitted should be made conditional on additional funding.

PN796

I will now respond briefly to the submissions of the Australian Chamber of Commerce and Industry, which raised slightly different issues to the other employer submission I've responded to. The Australian Chamber posit that the test of necessity in these applications is to demonstrate the extant allowance is insufficient to cover the cost of fuel. The ACT rejects this framing. The allowance is not intended to only cover the costs of fuel. Rather, it's directed at vehicle-related expenses generally.

PN797

Necessarily, the greater proportion of the allowance that's spent on fuel, the less reimbursement there is for the other components. This is borne out in the evidence of Mr Timms, whose evidence is that he, in the course of his work, incurred a damaged tyre, but didn't have sufficient funds to replace it.

PN798

The parties represented by Australian Business Lawyers, late yesterday, filed a supplementary submission that proposed – just bear with me one moment – proposed an alternative method of adjusting allowances, which they frame as being a direct cost methodology. In the time that's been available, I'm not able to respond fulsomely to those submissions, but I just wish to place a few matters on record.

PN799

Firstly, the fuel efficiency measure that underpins the calculations, that that submission is advanced on, assume an 8.2 litre per 100 kilometre car fuel efficiency. We say, a fuel efficiency rate of 10.5 to 11 litres per 100 kilometres is a more credible measure. The ABS measure is 11.1 litres per kilometre, and I understand that that measure has been cited elsewhere in the submissions by the parties represented by Australian Business Lawyers.

PN800

The other thing that I wish to place on record in - - -

PN801

COMMISSIONER TRAN: You would say that's not an appropriate measure, the ABS one?

PN802

MR MILLER: No. The ABS measure, we say, is appropriate.

PN803

COMMISSIONER TRAN: Is appropriate.

PN804

MR MILLER: That has the fuel efficiency at 11.1 litres. The measure, as I understand it, that's been used in the ABI calculations is 8.2 based on the International Energy Agency.

PN805

The matter that I wanted to put on record is that the ABI calculations are only based on petrol prices, and petrol usage. However, more than 20.1 per cent of the fuel consumed by passenger vehicles is diesel based on the ABS. Diesel prices remain significantly high still. The price has come down, but it still remains \$0.67 higher than the pre-crisis levels. And that's based on the Australian Institute of Petroleum reporting.

PN806

And, finally, we say the ABI calculation will not adequately capture the losses that workers have seen due to the fuel crisis spikes in March, because it's forward-looking only, and it's based on contemporary prices. Although, we do acknowledge the excise has been factored in.

PN807

Ultimately, in this matter, we submit that the Commission should be guided by the stories that is heard from workers. Those stories paint a compelling picture that, firstly, workers are, and have been, struggling to absorb the rise in fuel costs. And, secondly, that this is having an impact on behaviours, including in relation to decisions as to whether to accept shifts in industries and sectors that provide essential community services.

PN808

The ACTU submits this establishes the necessity of the variation sought. And as to the section 134 considerations, I repeat and rely on my submissions to those matters that are included in our written outline of submission.

PN809

The final thing that I wish to address your Honours and Commissioner on, is to simply reassert the submission that was made in writing, which is that, in the ACTU's submission, the outcome of this proceeding should be flowed on to all awards, at least in regards to the equal allowances. This is on the basis that the features of this proceeding, we say, are, on the face of it, a relevance to all awards, and there's a public interest in maintaining consistent rates between awards, absent industry-specific reasons for a different rate being set.

PN810

Unless your Honours, Commissioner, have any questions, those are the submissions.

PN811

DEPUTY PRESIDENT CLANCY: So at the narrowing of your position, you've outlined your quantum. So when would you say that that ought take effect, and how would it be implemented? What's the implementation?

PN812

MR MILLER: The original applications included draft determinations.

PN813

DEPUTY PRESIDENT CLANCY: Yes.

PN814

MR MILLER: Those are, obviously, somewhat out of date, even before the narrowing of the position. Because they included a start date that is well in the past. The difficulty with the 7.86 per cent rate is – so, if I can put it this way: we seek to adjust all the equal allowances, on the basis of the 7.86 per cent rate. Of course, they're not all uniform. So I said, in our supplementary submission, this would raise allowances to \$1.07, but the exercise isn't as simple as varying awards to just include the \$1.07 rate, because some allowances, properly, having a different starting point.

PN815

So to that extent, I accept that the Commission would need to be informed as to what the adjusted rates are for the remainder of the allowances, the ones that don't start at \$0.98 or \$0.99, and that are captured by our submission that they should rise to \$1.07. Given the timing of the narrowing of the union position, that's not been able to be put forward. But we can provide those rates, and provide a draft determination.

PN816

DEPUTY PRESIDENT CLANCY: Yes. But even with the narrowing of your position, when do you say it should apply from, and to?

PN817

MR MILLER: Well, we say it should apply to all awards included - - -

PN818

DEPUTY PRESIDENT CLANCY: I'm talking dates.

PN819

MR MILLER: Dates.

PN820

DEPUTY PRESIDENT CLANCY: To start when, and to end when?

PN821

MR MILLER: To end, we say it should be a permanent uplift.

PN822

DEPUTY PRESIDENT CLANCY: Right.

PN823

MR MILLER: And we say it should start - I think, draft determinations could be published, and then parties could be given two weeks to comment on the draft determinations.

PN824

DEPUTY PRESIDENT CLANCY: Do you want to file an updated draft determination?

PN825

MR MILLER: I can do that.

PN826

DEPUTY PRESIDENT CLANCY: Well, it's a different question; do you want to?

PN827

MR MILLER: Well, I'm minded of our other consideration in this matter, which is to try and deal with these things quickly, but it won't take me very long to prepare draft determinations. I am minded the ACTU, of course, doesn't have standing to ask for an award to be varied, so it's a matter of coordinating this with our affiliates, but that can be done.

PN828

DEPUTY PRESIDENT CLANCY: Thank you. Who's next from the union's group?

PN829

MS THOMAS: Just to keep you on your toes, Deputy President. This is targeted financial relief for award-reliant workers whose employer requires them to use vehicles, their own vehicle – whose employer requires them, let me repeat that, to use their own vehicle to perform work for their employer.

PN830

The ASU adopts the submissions of my friend, Mr Miller, and the ACTU. I wish to make just seven very short points in relation to the funded NDIS sector. I'll do that very quickly. First of all, the evidence that was presented by ABI points to an incapacity to pay multiple increases.

PN831

So if you look at the Burgess statement at paragraph 13, it refers to the increases, if it's uncapped, and there's no funding. Mr Quinlivan say at 28, 'They can basically accept an isolated increase. It's the ongoing uplift that's the issue'. Mr Zammit, at paragraph 15(a), clearly identifies it's the change each month. AiG brought no evidence about incapacity to pay. But in light of the narrowed union application, much of that evidence just simply falls away.

PN832

The second point is that employers do not need to incur the allowance. They have other options that are available to them to avoid having to pay the allowance. So, for instance, Burgess and Quinlivan – Burgess at paragraph 10, and Quinlivan at

paragraph 7 – testify to the use of fleet vehicles. So organisations already have their own tools at hand to avoid having to pay the kilometre allowance.

PN833

Mr Zammit, this morning, also referred to ride shares and taxis, and public transport, as being options in which the activities and the travel can be provided consistent with the care plans, the service agreements, of the participants, and that does not incur the vehicle allowance.

PN834

Thirdly, the system already builds in ways in which organisations can absorb these costs. So KompleteCare already ask clients to pay more than the set rate than under the NDIS. It might be that sometimes that isn't paid, but there is clearly evidence of some providers building into the service agreements a higher rate than what is paid to the employees under the award.

PN835

There are also clearly productivity gains in the cost assumption model that underpins the NDIS pricing limits, and arrangements. So Janelle Bailey is paid \$28.88 per hour that she works, but the lowest of the cost assumptions is \$36.75. So for every hour that Ms Bailey works, her employer has that hourly rate difference.

PN836

On that as well, the cost assumption model also builds in various offers. It includes margins, it includes operating costs, it includes base salary, it includes direct on-costs, operational overheads and corporate overheads, as well as a margin. This indicates that there is already a buffer or a capacity to pay that is already directly funded.

PN837

There are also some examples of employers voluntarily increasing the allowance. BaptistCare voluntarily increased to \$1.05. Ms Coad, at 25, suggested a company, an employer - I've forgotten the name of – Novita, increased the allowance to \$1.09. I believe Mr Zammit referred to at least one provider, that he is aware of, has already increased the allowance.

PN838

The fourth point is that it is not true that all providers are entirely government funded. While it is true that that might form the bulk of their funding, it doesn't end there. So, for instance, Mr Burgess, at paragraph 10, for Flagstaff, refers to commercial functions engaged in at Flagstaff. Ms Biggins, this morning, at KompleteCare, talked about private clients where those are funded directly from clients, but are not subject to the price limits of the NDIS.

PN839

Fifth – and this is a critical point – the Commission cannot make this variation conditional upon government funding. AiG and ABI have tried to suggest that this is how the Commission approaches this task. But this must be rejected. There have been previous Full Benches of this Fair Work Commission

which indicate that the decision of this tribunal comes first. This tribunal does not need to be dictated to by the government and told what the funding protocols are.

PN840

This morning, I emailed through to your Honours the Full Bench decision, [2025] FWCFB 292. At paragraph 132:

PN841

*We are conscious that the restrictions imposed by funding arrangements do not dictate the determination of the Commission as to what is necessary to ensure a fair and relevant minimum safety net of terms and conditions in a modern award for the purposes of section 134(1) of the Act.*

PN842

I won't read it out, but I'd also draw you to the decision cited therein, paragraph 138, which is set out. Paragraph 132 of the Full Bench decision, that I just took to you, was only handed down in December last year. This is a very recent consideration of this Commission.

PN843

Six, despite that, it is also the case that government often responds to the decisions of this Commission. We've heard there was sufficient evidence that the NDIS, at least, the annual price review will occur every year; participants, service agreements, update every year; the price limits are updated every year. We also heard that there are circumstances where government have responded to a crisis, or an out-of-cycle process, and that happened in 2021 with the COVID addenda.

PN844

Finally, whether employers can absorb their voluntary payments, AiG mentioned this at paragraph 64 to 65 of their submission. We submit that there's just simply no need to do that. Once the Commission makes, if it makes, the decision to uplift the increase, then what employers do thereafter, as long as they comply, is up to them.

PN845

Unless I can be of any further assistance to the Bench, those are my submissions on behalf of the ASU.

PN846

DEPUTY PRESIDENT FAROUQUE: Ms Thomas, Deputy President Clancy (indistinct) about the effective date of any increase if it were to be granted, do you have anything to say on that matter at all?

PN847

MS THOMAS: We, obviously, support and will sit with the joint unions. We would add to it that it should be implemented as soon as practicably possible. Janelle Bailey is a person who is on the receiving end of these hardships, and we think that that should be addressed as soon as possible. Thank you.

PN848

DEPUTY PRESIDENT FAROUQUE: Thank you.

PN849

DEPUTY PRESIDENT CLANCY: Thank you. Yes. Thank you, Mr Lettau.

PN850

MR LETTAU: Thank you, Deputy President. So these submission on behalf of the United Firefighters Union of Australia in support of its application to vary the vehicle allowance in the Firefighting Industry Award, I'll endeavour to be fairly brief today.

PN851

So we rely on our written outline of submissions that have already been filed, and we also support and rely on the submissions of the ACTU, including the supplementary submission that was filed yesterday.

PN852

The UFUA also supports the alternative proposal that's been put forward there; what's been called 'the collective unions' position'. And just anticipating the question that's just been put to my friends in relation to implementation, the UFUA, again, support the ACTU's position there, and we say as soon as practicable as well, and that it should be a permanent increase.

PN853

Now, as far as we're aware, no employees with an interest in the Firefighting Industry Award have filed any submissions or any evidence in respect of the UFUA's application. So we rely on the written statement of Mr Schroder. Mr Shroder is a leading firefighter. He's employed by FRV, so Fire Rescue Victoria. And his evidence is that he uses a vehicle quite regularly. He uses it – and these are the key, I guess, critical uses of the car – (1) for 'standby duties'. So standby duties is when you're called back to work, basically, to your home fire station when there's a shortage of firefighters.

PN854

And the second example is, or key example, is what's called 'recall duties'. So that's where you're called to go another fire station that's under strength, so to - - -

PN855

DEPUTY PRESIDENT CLANCY: Do those scenarios attract an allowance us the agreement?

PN856

MR LETTAU: They do, yes.

PN857

DEPUTY PRESIDENT CLANCY: Right. So you get an allowance, and you also get the agreement rate for fuel allowance.

PN858

MR LETTAU: There's an agreement rate. We point this out at paragraph - - -

PN859

DEPUTY PRESIDENT CLANCY: \$1.20?

PN860

MR LETTAU: It's \$1.20, yes. The thing with the agreement that it's a big agreement with many references to vehicle awards. Some of them are tied to the award, so the award is still relevant to the agreement. Although, at this point in time, the particular vehicle allowance that Mr Shroder refers to is, indeed, higher than the award rate, but it's still pegged to it, or refers to it.

PN861

His evidence is that he drives an average between 500 and 1000 kilometres per month. He's also using his vehicle, by the way, for various other duties. So work on committees, which is common among firefighters; working parties; station inspections; other ad hoc work-related travel. So I'd say there's really only two or three key points I would highlight in the oral submissions.

PN862

The first is just to note a few points in our written outline. So paragraph 15, we set out conclusions we say are open to the expert panel to make in respect of the Firefighting Industry Award. And at paragraph 18, we address, briefly, the modern award objectives, and this is intended, obviously, to supplement what's already been said by the ACTU. But, in particular, we highlight, as a matter of policy, that the cost of travel undertaken in the course of employment in emergency services, particularly firefighting, should be one that's borne by the employer, not the employee, or at least should be something that is properly and adequately compensated for for the obvious reason. We're talking about private assets, a vehicle, that are in effect being mobilised to support public good, which is firefighting.

PN863

I will refer the expert panel to clause 4.2 of the award in that respect, which defines the firefighting industry. And I think it's probably common sense, but we know that it involves extinguishing fires; it involves handling toxic spills; it involves obviously providing emergency services, so it's a critical public good. That's a relevant situation, we say, under section 134(1)(d) in 'The modern award objectives', which is:

PN864

*The need to promote flexible modern work practices, and the efficient and productive performance of work.*

PN865

Now, a second point we would make just in respect of the evidence that the expert panel's heard today. That evidence has been dominated by evidence about the care and community sector, and a lot of that evidence has concerned funding, and related matters. We would just make the submission that the vast majority of awards are not, what you might call, 'funded sectors', in the same way that the evidence - - -

PN866

DEPUTY PRESIDENT CLANCY: Well, it's firefighting. Who funds that?

PN867

MR LETTAU: Well, it's not funded in the same sense that we've talked about today.

PN868

DEPUTY PRESIDENT CLANCY: It's public financed.

PN869

MR LETTAU: It's publicly funded, indeed. But it's not a funded sector in the sense that providers are limited by the funding they are provided.

PN870

DEPUTY PRESIDENT CLANCY: Not in Victoria.

PN871

MR LETTAU: So the only submission we make there is to caution the expert panel in putting undue weight on that evidence in respect of the vast majority of other awards.

PN872

Thirdly, my friend at the ACTU has taken the wind out of my sails, actually, on this one, so I don't really have much to say on this point. But in respect of the alternate proposal that was put yesterday by the parties represented by the Australian Business Lawyers, I guess I'm echoing what my friend has already said here, but we would make the following point: (1) that method, as we understand it, relies solely on the petrol price figures produced by AIP. We'll be asking - and I'm sure Mr Shroder will be asking this as well, because he drives a diesel powered Mitsubishi Triton, which he says at paragraph 25 - 'What about diesel?'

PN873

My instructor has sent to the Commission a copy of the 10 May report in respect of diesel. Page 6 has some figures there on the numbers. I mean, put as simply as this, diesel is still very expensive. Diesel has not had the same sorts of adjustments that regular petrol has had.

PN874

I guess what we would say is a conclusion that the expert panel can draw from that is that, (1) the Australian Business Lawyers parties have not included diesel. Diesel remains considerably high. It represents 20 per cent approximately of transport vehicle usage, according to the ABS. The only conclusion to draw there is that, even on the methodology proposed there, it's going to be a higher increase than what is suggested by the calculations in that submission from the Australian Business Lawyers parties.

PN875

DEPUTY PRESIDENT CLANCY: So what you're saying, it's 20 per cent of total vehicles.

PN876

MR LETTAU: 20 per cent of total vehicles, according to the ABS.

PN877

DEPUTY PRESIDENT CLANCY: Yes.

PN878

MR LETTAU: Diesel usage represents 20 per cent of total fuel consumption in respect of transport.

PN879

DEPUTY PRESIDENT CLANCY: How does it translate, then, to you were talking before about the ABS kilometre rate per litre. What's the equivalent for diesel?

PN880

MR LETTAU: I would have to take that question on notice. It's not something I know off the top of my head.

PN881

DEPUTY PRESIDENT CLANCY: Okay.

PN882

MR LETTAU: The second point in respect of that proposed methodology of the Australian Business Lawyer parties, it uses a point in time which is based on the May report, but there's no submission, or evidence, or explanation, as to why that particular point in time is the appropriate point in time to choose. It's speculative. Like, they're using last week's numbers last week in the report, so there's no basis, we would say, on which the expert panel can be satisfied that's a reliably selected baseline for the projection of future vehicle allowance rates.

PN883

The last point – and this is really the bottom line – is that the approach that's been put forward there is highly unorthodox, fairly, as far as we can tell, ad hoc. It departs in contrast to the ACTU'S proposal from the, you know, orthodox private motoring index method that's used in the award, and has been used in the award for some time. So that's our response to that proposal.

PN884

Unless there are any questions from the expert panel, that concludes our submissions.

PN885

DEPUTY PRESIDENT CLANCY: Thank you.

PN886

MR MAXWELL: Your Honour, I believe that I'm going next.

PN887

DEPUTY PRESIDENT CLANCY: Thank you, Mr Maxwell.

PN888

MR MAXWELL: Thank you. The CFMEU filed a written submission in reply on 12 May 2026. In that submission, the CFMEU generally supports the position of the ACTU, and the other unions.

PN889

Our submission dealt with three matters. The first was the application by the AMWU. Our concerns mainly went to what we saw as a complexity of the draft determination. Those concerns have now evaporated given the narrowing of the position of the unions as set out in the ACTU supplementary submission.

PN890

The second issue was the travel allowances in the construction awards, and the proposal that any decision that is made by this Full Bench flows on to other awards. In our submission, we have identified that the relevant CPI used in construction awards are a mixture of the transportation group, and the private motoring sub-group. The private motoring sub-group is part of the transportation group. So, overall, the CPI index figures are fairly similar. But we would not seek to depart from the traditional CPI that is used for the travel allowances in the construction awards being used.

PN891

The third issue went to the CPI adjustments more generally. And, as noted by your Honour before, that matter has now been addressed by the statement that was released this morning in [2026] FWC 1755. And to the extent that we have any concerns in regard to that matter, we will make comment to the Full Bench in accordance with the timetable set out in paragraph 10 of that statement.

PN892

Unless there are any questions of the Full Bench, they're the submissions we wish to make today.

PN893

DEPUTY PRESIDENT CLANCY: Thank you. Thank you very much.

PN894

MS PRESDEE: Your Honour, I believe I am the next one on our list.

PN895

DEPUTY PRESIDENT CLANCY: Yes, thank you. Thanks, Ms Presdee.

PN896

MS PRESDEE: Thank you, your Honours and Commissioner. I would, firstly, like to say that the AMWU supports and adopts the submissions made by my colleagues, the ACTU and the ASU, including in terms of when any proposed increase should take effect, namely, as soon as practicable.

PN897

We also strongly support the submissions of the ACTU and UFU in relation to any increase needs to take into account the use of diesel, not just petrol. Particularly, in the manufacturing sector, tradesmen tend to rely on a mix of either petrol or diesel vehicles, and so we would wish to ensure that those concerns are taken into account, and not just solely confined to increased or retail prices of petrol.

PN898

The final submission that the AMWU wishes to make today is in relation to the proposal put forward by the CFMEU in relation to travel allowances in construction awards. We note that we have met members who are affected by vehicle allowances that are determined not by the private motoring group index, but by the transport group index. And we support the CFMEU's suggestion that those allowances also be increased, but in a similar manner, using the transport index for the relevant period.

PN899

We also see no reason to disturb the current arrangements for the index, other than it be applied. The price increases have affected those members under those awards as well, and we would submit that they need to be assisted as soon as practicable.

PN900

If there are any other questions of the Bench, that concludes our submission.

PN901

DEPUTY PRESIDENT CLANCY: Thank you very much, Ms Presdee.

PN902

MS PRESDEE: Thank you.

PN903

MR MILLER: Your Honour, that concludes the unions' submissions at first instance.

PN904

DEPUTY PRESIDENT CLANCY: Thank you. All right. Now, from the employer parties, please.

PN905

MS BHATT: Yes. Thank you, Deputy President. The Australian Industry Group has filed written submissions in this matter, which we continue to rely on. And for the purposes of today's proceedings, I seek to amplify certain key issues and concerns as they arise from the amended claim that was filed by the ACTU on behalf of the unions yesterday.

PN906

There's obviously some implicit acknowledgment in the submission, that was filed accompanying that amended claim, that goes to various submissions advanced by employer parties about the administrative burden that would have flowed from the original claim. I acknowledge that some of those concerns have been allayed by the amended claim that has been filed. But many of the other issues that are ventilated in our written submissions remain, and we don't demur from the detail of those matters that has been set out.

PN907

Can I also just say before I deal with the substance of our submissions today, that there is, it seems to me, a degree of uncertainty as to how the amended claim would operate. Perhaps I have misunderstood this, but there was a submission

from the ACTU today that the amended claim would involve some kind of rebasing proposition. That, as I understand it, is described at paragraph 85 of the ACTU's submission, at the first dot point. Now, we understood that this was a feature of the original claim that was advanced. It does not appear to be a feature of the amended claim.

PN908

Secondly, there was an exchange between Deputy President Clancy and Mr Miller about how the figure of 7.86 per cent, which is found at paragraph 2 of the amended claim, has been derived. I thought – and I hope that the Deputy President will excuse me if I have misapprehended this – but I thought that the Deputy President put to Mr Miller that that had been calculated on the basis of the difference between the March and the December monthly CPI figure for the private motoring sub-group.

PN909

DEPUTY PRESIDENT CLANCY: Yes.

PN910

MS BHATT: Unless my maths is wrong, that doesn't seem to be the case. Rather, it seems to have been calculated on this basis: that if one increases the December index by 7.86 per cent, you achieve the March quarter index, which is obviously a different proposition to the one that was put previously, and confirmed, by the ACTU.

PN911

One other matter that I wish to raise from the outset is that it is not entirely clear, from what has been filed, as to how this would interact with any outcomes that flow from the annual wage review. That is, I'm not sure if what is intended, or being proposed, is that submissions are made to this Bench that it should make a variation in accordance with the ACTU's amended claim swiftly, and, indeed, such a variation might take effect before variations are made to expense-related allowances as they are usually dealt with in the course of the annual wage review, or following the annual wage review. And that there then be a further increase to vehicle allowances flowing from that process.

PN912

Now, I have to admit, I haven't fully thought through the mechanics of how that would work in the context of the amended claim. But I think it's fair to say that that hasn't been clarified by those that have advanced the amended claim either. Obviously, if that is what is being proposed – that is, that there is an increase that flows from this Bench, and then a further increase shortly afterward – that would only serve to compound the concerns we have about the impact that would flow, in terms of increased labour costs for employers. That also could not be said to be consistent with the need to ensure a stable award system.

PN913

If I can move then to deal with one of the key issues that I want to address the Bench on today, and that is the selection of the March monthly CPI figure. What you have before you is a claimed increase, a vehicle allowance, on the basis of temporary increases to the cost of fuel. And we acknowledge that although there

was a sudden increase to the cost of fuel in the month of March, following the start of the war in Iran on 28 February, it has since fallen substantially.

PN914

At least if one looks at the retail price of petrol, and Mr Miller has made those submissions already today, the retail price of petrol in the week ending 22 February, immediately prior to the commencement of the War, was 171 cents per litre. That can be seen on page 4 of the ACTU bundle. I don't need to take you to it. I'll just give you the reference. It peaked during the week ending 29 March at 253 cents per litre; that's on page 44.

PN915

As of the week ending 17 May, so that's the week that ended yesterday, it was sitting at 184 cents per litre. So that's \$0.60 lower than the peak, and \$0.13 higher than it was immediately before the war. Can I just pause there. I filed a document with Deputy President Clancy's Chambers this morning. That is the AIP report for the weekly price of fuel for the week ending 10 May.

PN916

DEPUTY PRESIDENT CLANCY: Yes.

PN917

MS BHATT: That's the previous week. During the course of today's proceedings, the subsequent report for the week commencing 17 May became available. If I may, I will file that this afternoon. I've just not had an opportunity to do that.

PN918

DEPUTY PRESIDENT CLANCY: Yes.

PN919

MS BHATT: Thank you. Now, we say that, on one view, these matters are relevant to whether it is necessary to provide any relief at all. At the very least, it is relevant to the question of any form of relief that the Commission grants.

PN920

It is, as we have said in our written submissions, and we make this submission respectfully, it is self-serving to use the March figure. It inflates the vehicle allowance to reflect a temporary increase in the price of fuel, which has since subsided. Not only that, it would permanently embed that aberration into the safety net on an ongoing basis, in perpetuity.

PN921

There is – and this has been confirmed by the ACTU today – there is no proposition in the amended claim, nor was there any proposition in the original claim, that there would be any reversion of the vehicle allowance if increased by this Bench to some lower amount when this crisis ends. This cannot be described as a form of 'temporary' or 'targeted' relief. And it is referred to in the ACTU's submissions as a 'temporary' measure. I believe the word 'temporary' was used in the original draft determination that was filed by the ACTU; the schedule that was proposed for insertion in awards.

PN922

The ACTU's submissions also make reference to the approach that was adopted by this Commission during the COVID-19 pandemic. That is, there were certain variations that were made to modern awards on a temporary basis in light of the circumstances that then applied. What is being proposed here is a far cry from the steps that were taken by the Commission at that time. They were genuinely temporary measures that applied for a short period of time. They then ceased operation.

PN923

Now, we say that the proposition that the figures that were seen in March effectively be entrenched in the safety net simply, cannot be justified. Now, one of the arguments that has been advanced by the ACTU today in favour of this approach, is that it simply reflects the ordinary approach that is taken to adjusting expense-related allowances.

PN924

Now, I understand that to be a reference to the standard clause in awards that deals with this issue, and I acknowledge that the way that clause operates is that the allowance may be increased. It does not expressly contemplate a reduction to any expense-related allowances. But that clause was developed in a very different context. It was not developed in circumstances where the Commission was considering significant volatility in ABS figures, or, rather, certain cost components that make up the relevant CPI figures.

PN925

One of the submissions that's been made today is that the price of fuel may rise again in a context of this crisis. Now, we can't deny that possibility. Yes, they may rise again. But they may not. Reference has been made to the halving of the fuel excise, which is slated to end at the end of June. I think as high as we can put it is those are the announcements that have been made by government to date. It is not clear whether there will be any ongoing form of government intervention.

PN926

Now, if it turns out to be the case that there isn't, and that petrol prices or fuel prices rise again, and, indeed, rise to the levels that we saw in March, it would be open, of course, to the Commission, either on application, or on its own motion, to move at that time to provide some form of relief. But on the material that is before you, and in the circumstances that this matter is being heard, it is, in our submission, not clear that it is necessary for you to grant the relief that is being sought by the unions.

PN927

In its written submissions, the ACTU say that they rely 'in part' on section 160 of the Act on the basis that there is some uncertainty as to the application of the standard adjustment clause that relates to expense-related allowances. They say that that uncertainty arises because it would now require a comparison between a monthly CPI figure and a quarterly CPI figure. Even if that is the case, the Commission could not be satisfied that the relief that the unions have proposed is appropriate.

PN928

Obviously, the issue that they have raised, that is fundamental to the operation of that standard allowance, is of broad import. And it has now been dealt with, or, rather, there is a proposed course of action that has been set out in the statement that was published by a different full bench of the Commission earlier today.

PN929

It is, in our submission, also relevant that disruption to global energy markets, and the result in increases in the cost of fuel, is also impacting employers. Many employers are exposed to supply chain disruptions, increased costs of road transport services, costs being passed through supply chains, weaker customer demand, and, overall, challenging and uncertain economic times. And the impact of what has been proposed by the unions must be considered in this context.

PN930

There are obviously certain unique challenges for sectors that rely on government funding, such as those that are covered by the Social, Community, Home Care and Disability Services Industry Award, much has been said about them today. Clearly, they do not operate under usual market conditions.

PN931

Under the National Disability Insurance Scheme, the extent to which providers can claim additional costs associated with travel will be dependent upon whether a participant is prepared to allocate a greater proportion of their funding to these travel costs. Clearly, there is no certainty from a provider's perspective as to whether or not that will occur. And to date, no funding commitments have been announced from the Commonwealth.

PN932

There's been some submissions made today by the ASU that there is a – I think the word 'buffer' was used, or words to the that effect, in the existing funding arrangements. We would oppose any such contention. It is entirely inconsistent with our understanding of the manner in which that funding operates, and the feedback that we consistently receive from employers who operate under the scheme.

PN933

Can I deal, then, with the question of implementation date, because it has been raised by the Bench with some of my colleagues. I wish to simply reiterate what we have already put in writing, and that is that if the Commission makes a variation in the form proposed, that it should not commence operation for at least two weeks from the date of the Commission' decision, and it should then take effect in relation to particular employees from the first full pay period thereafter. And we've set out the reasons for that in our written submission. I won't repeat them.

PN934

I want to raise one issue of detail, and that is that there are three clauses that are identified in the table at schedule A that is attached to the ACTU's submission, which do not appear to be vehicle allowances of the sort that are being considered

in this proceeding. If members of the Bench have that submission to hand, that would be useful. Otherwise, I can simply provide the references.

PN935

DEPUTY PRESIDENT CLANCY: Sorry, which - - -

PN936

MS BHATT: I'm looking at the ACTU's submission that was filed on 24 April.

PN937

DEPUTY PRESIDENT CLANCY: Yes.

PN938

MS BHATT: It's schedule A, which is attached to the submission. It's a table.

PN939

DEPUTY PRESIDENT CLANCY: With the awards?

PN940

MS BHATT: Yes. It extracts various provisions from a number of awards.

PN941

DEPUTY PRESIDENT CLANCY: Yes.

PN942

MS BHATT: If the Commission were to look at row 3, the Air Pilots Award.

PN943

DEPUTY PRESIDENT CLANCY: Yes.

PN944

MS BHATT: Clause D.4.2(d)(i), there is an allowance that is payable there for \$0.98 per kilometre instead of provision of transport. But if one was to read the clause – I won't take up the Commission's time with this now – but if one was to read the clause, you will see that it does not, in fact, contemplate the usage of an employee's private vehicle. Now, it might be that that occurs in the circumstances contemplated by this clause. But that is not necessarily the case, and it's certainly not required by the provision.

PN945

I also note that the standard adjustment clause for expense-related allowances in the Pilots Award identifies that this clause is to be adjusted by reference to the transport group CPI figure as opposed to the private motoring sub-group. I just raise that for the Commission's consideration. A similar submission can be made about clause B.1.4(a)(ii) of the Aircraft Cabin Crew Award. That appears over the page.

PN946

And, finally, in relation to the Road Transport (Long Distance Operations) Award, clause 19.5, which is extracted at page 27 of this table, we say the clause that's been extracted there is a travelling allowance. It's of an inherently different nature. It appears to be intended to compensate employees for costs associated

with accommodation and meals. It certainly does not contemplate travel by a private vehicle. I do note that there is not application on foot that's been made to vary that award, but there's a submission that the Commission should do so of its own motion.

PN947

COMMISSIONER TRAN: Which award are you referring to there, Ms Bhatt?

PN948

MS BHATT: I'm sorry, the Road Transport (Long Distance Operations) Award.

PN949

COMMISSIONER TRAN: Yes.

PN950

MS BHATT: Clause 19.5. I then wish to respond to the submission that's been made by the ACTU about the \$0.01 deviation that appears in a number of existing vehicle allowance clauses. In our submission, this effectively amounts to a new proposal, or a new claim, that has been raised very, very, late in the piece. It is not a matter about which we have had an opportunity to consult our membership. It appears, at first blush, to affect a large number of awards. And I say that based on a brief review of this table that is attached to the ACTU submission.

PN951

The ACTU submits that it is squarely relevant to these proceedings in the written submission they filed yesterday. But, with respect, it's not. On its own submission, it is a matter that has arisen from historical issues concerning the manner in which any wage review increases were implemented previously. But the justification for the increases now sought, do not relate directly to matters associated with the increased costs of fuel that employees are now facing.

PN952

I mean, to be blunt, we have members that are concerned about an increase of small increments, including \$0.01. It may seem like a small amount in the abstract, but in the context of employers who have a number of employees using private vehicles, these increases can have, or do have, a cumulative impact. Now, given the late stage at which this has been raised, we say that it should be rejected out of hand.

PN953

Finally, I just wish to make a few very brief comments about the supplementary submission that was filed yesterday by Australian Business Lawyers & Advisors. Perhaps, inadvertently, at paragraphs 2.1 and 2.2 of that submission, we say that the statutory task appears to have been misdescribed. And what I mean by that is, the submission seems to suggest that the Commission will first consider whether it is necessary to make a variation, and then give thought to what that variation should be. We say that the test of necessity is to be applied in the context of a specific proposed variation. That is what it applies to. Not a question at large as to whether any kind of variation should be made in the present context. But that's a small point. I leave that there.

PN954

At paragraph 2.5, there seems to be some suggestion that CPI methodology would not be an appropriate tool or reference point for making a variation in these proceedings. We don't accept that. I mean, we don't think that the March monthly CPI figure is the correct one to use. But if the Commission was to look at quarterly CPI figures, we think that that's entirely appropriate. That would be consistent with the long established practice of this Commission, and it would have the virtue of certainty and transparency. Now, it's not to say that it's a perfect measure, but it has been used for a long period of time as a proxy for measuring movements in costs associated with private vehicles.

PN955

There's then two specific methodologies that have been proposed. I mean, I have not had an opportunity to verify the specific calculations that are attached to this submission. I just make the short point that, firstly, if we were to use weekly average fuel prices, there's an obvious question that arises as to how frequently it would be necessary to revise those calculations. Any suggestion that awards would then need to be varied frequently would run into the many concerns that we raised in our submission about the ACTU proposal.

PN956

To the extent that the take home pay methodology assumes that the halving of the fuel excise has come to an end, we just make the obvious point that it has not come to an end yet. And to that extent, it overstates the amount that should be payable.

PN957

And as for the alternate methodology that is suggested, it appears to involve a multiplication of the vehicle allowance by the degree of movement in fuel price. So we say that that too would result in an unjustifiable inflation of the vehicle allowance, which, in fact, compensates employees for various costs associated with using a private vehicle, not just fuel.

PN958

Now, ultimately, if the Commission is minded to use this methodology, or any other methodology, which has not been proposed by the applicants, or some other way of addressing the issues that arise in these proceedings, then we say that, as a matter of fairness, parties should be given a further opportunity to be heard. And even in relation to this methodology, it's not something that we've been able to put to members in the time that's been available since that submission was filed.

PN959

Unless the Commission has any questions for me, those are our submissions.

PN960

DEPUTY PRESIDENT CLANCY: Thank you.

PN961

MS LAWRENCE: Okay. Thank you, Deputy President and Commissioner. I first just want to start by addressing some of the matters that Ms Bhatt has just brought to your attention so as to save you from hearing me repeat the same

issues. I just want to put on record that, in reviewing the supplementary submission filed by the ACTU yesterday, we had the same understanding as to the proposed methodology, and how that was to be calculated in practice. We had the same understanding in terms of where that increase came from. We also were of the understanding, having considered the wording overnight, that the rebasing process was no longer a part of the ACTU's application because of the way in which paragraph 11 had been phrased.

PN962

Whilst we had noted the footnote referred to the basis upon which this new claim was being made, we'd understood that it was simply the same basis, but not the same claim that had previously been advanced in terms of rebasing, and then applying a CPI increase to that rebasing process. We had understood it was simply a one-off increase based on the increase between the two periods that have been selected of 7.86 per cent. But if we are incorrect about that, perhaps if the Bench would be able to clarify that, and provide us a further opportunity to comment on it, that would be appreciated.

PN963

We also share the same concerns with respect to the annual wage review, and the lack of understanding as to how the ACTU's proposal interacts with it. In order to address this in our submissions, we proposed a simple solution that if somehow the annual wage review came up with a magnitude that was greater than any temporary allowance, that the greater of them apply.

PN964

Now, that probably was relevant prior to this morning when the President issue a statement about his proposed approach in terms of expense-related allowances. I don't expect, given those comments, that it's likely to be a problem. But what still is not clear is whether or not the ACTU's proposal is suggesting that these are compounding or whether, during the period of the temporary schedule, any increase that shall apply as a result of the standard adjustment would not apply at the same time.

PN965

Putting those issues to the side, what I wish to first explain is what the current position is of AG Australia, Australian Business Industrial and Business New South Wales, just so it is clear. Consistent with the position we previously advanced, we do not have outright opposition to the idea of an increase. I hope that is clear, perhaps, in particular from our supplementary submission last night. What we do take issue with is the rate proposed by the unions, both in their original submission and the revised position in their supplementary position, and the mechanics for which they say that is to operate.

PN966

In terms of whether the relevant test is made out, I would just draw the Bench's attention to a few things that have come to light as a result of this morning's evidence. One of the issues we find ourselves grappling with is the fact that had this application been made during the actual original increase, like, for example, in the other chain order proceedings which we've seen in relation to diesel, there would be a lot greater certainty in terms of what this is seeking to

address. However, on the unions' own evidence, they were aware of these issues in March 2026, which each weekly period in March is where we saw the quite substantial percentage increases based on the Australian Industrial of Petroleum weekly data. But post that period, we've only seen decreased throughout that month of April, with a very slight increase in the last weekly data set.

PN967

With that in mind, we struggle to see how this can be characterised as something that is urgent, or has such a grave level of necessity as was asserted by my colleague just earlier. If it was such an imminent issue, why was an application not brought during those four week periods where we saw increases in some circumstances in the double digits in terms of percentage increase?

PN968

In addition, we have concerns with relation to the evidence that is relied upon by the UWU, particularly with respect to the survey data and the evidence that was put before Ms Coad this morning with respect to the way in which that survey data was put together. To this end, we do wish to draw the Bench's attention to the Victorian Employers' Chamber of Commerce and Industry, AM2010/147, in which there was some very relevant comments of the Full Bench in relation to reliance on surveys that are, (1) small and self-selecting, but also not based on the same statistical rigour that we'd expect to see of survey data that is relied upon in these types of proceedings.

PN969

If I might turn now to the question of the appropriate methodology. Firstly, with respect to the ACTU's revised position, it is our position that we remain concerned that the ACTU has somewhat arbitrarily, or perhaps I don't see this to be overly offensive, but it does appear to which they have just cherry-picked data which is convenient in order to get an outcome of the number that is more favourable, rather than basing it upon an explanation as to why picking that data provides support to people on an ongoing basis that is justified.

PN970

With that in mind, after seeing their revised position yesterday, which did address, and we appreciate the fact it addressed, our concerns with respect to the monthly variation which was causing our memberships significant concern. We turned our mind to what else could be done to truly reflect the period of volatility, and protect people should that period of volatility be repeated.

PN971

With that in mind, we did put forward a supplementary submission. And to that end, I thought it might be of assistance just to address some of the issues that have been raised, particularly, with respect to the first proposal that we have put forward. With respect to this proposal, what it seeks to do, we say, is we accept that the fuel allowance isn't simply about reimbursing people for the cost of fuel. If that was the case, there would be no need to increase the amount. Because it is more than sufficient to compensate people when you breakdown what that allowance is there to compensate people for.

PN972

We appreciate that it, in reality, is about take home pay, and what people walk home with at the end of the day. And at the end of the day, people feel like they have less money in their pocket now than they did before the commencement of the Middle East conflict, and that is a truth. So the methodology we applied, which is set out in annexure A, it tends to put people back in the same position.

PN973

We accept that that is an imperfect science, or calculation. But, in doing that, we had to make some assumptions and run some models, and we have picked the most, I suppose you could say, generous towards employers. Whilst we've extracted three different models here, we did run it across different averages across different years, and the most generous percentage uplift was applying, simply, the AIP average figure for the week ending 22 February.

PN974

Now, I note the comment earlier from the ACTU about the fact that we didn't include GST. We did turn our minds to that. The difference between the fuel excise and GST is that the government has announced that the fuel excise is going back on from 1 July. There has been no such similar announcement with respect to a 5.7 cent increase being added back onto the price of fuel as a result of the States agreeing to put GST back on, or perhaps agreeing to the reverse of that.

PN975

I would say, however, it's probably worth noting if you did – and I appreciate we haven't provided these calculations to the Bench, but we'd be happy to do so – if that amount was added back in, the percentage uplift still gets you to 3.7 per cent for both. And the resulting number of that is an increase to \$1.02 or \$1.03, so you end up back at the same number as our alternative methodology in terms of the volatility measure.

PN976

With respect to the comments that have been made both by the ACTU and the UFU with respect to fuel efficiency, and only using the petrol figure, we would say this: the data that is used in respect of AVS data for fuel efficiency, the number that was referenced as 11.1, is a data source that ceased in December 2020, and we did not consider it an appropriate measure for the following reasons: firstly, since that time, the government has introduced new vehicle efficiency standards. Those vehicle efficiency standards have applied – well, that legislation passed on May 2024, but has applied to all vehicles sold in this country since 1 July 2025.

PN977

We've also seen significant technology improvements since 2020, particularly with the introduction of hybrid vehicles, and the increasing popularity of electric vehicles. To this end, we say that fuel efficiency in general is not best measured by the ABS data source that is now over six years old. It is for that reason that, in trying to identify a more appropriate measure, that we decided to look at the International Energy Agency data to try and find a more accurate contemporaneous figure that landed us at 8.2.

PN978

With respect to the submissions that have been made about the fact that we have only used petrol data, and not diesel data, we would point out that we also haven't factored in electric vehicles. We think it's one of the same-twice of the other. At the end of the day, we know that 35 per cent of vehicles in this country are now electric, the ones are being sold, or hybrid. That makes up a large proportion of vehicles that are on the market. There is no ABS data source beyond the 2020 data about the makeup of vehicles being driven in this country.

PN979

We understand that the 20 per cent data source, if it is ABS figure, would have to be from 2020. With that in mind, we say the better measure is simply to pick the petrol price, rather than try to factor in diesel, factor in electric, and, kind of, put some hoggedy-poggedy thing together, rather the better option is to simply use the petrol figure.

PN980

With respect to the comments that our approach is somewhat unorthodox, perhaps we should just draw the Bench's attention to the fact that we somewhat sought our inspiration as to approach from the contract chain order proceedings. In that proceeding, a \$2 figure was picked in terms of what will return people to normal. And would, therefore, justify the end of emergency measures. With the same idea in mind, we thought, 'Well, what kind of drops people back to normality?', 'How do we get them back to a normal position?', and that's why we came up with the first methodology.

PN981

I do, however, note that – and I appreciate that we've made the submission very late, and that may have been a cause for it – we also put forward an alternative proposal to the more complicated take home pay calculations that is simply based on a cumulative movement. If you were to look at the percentage increased up and down since the commencement of the war based on the weekly figures, you would end up almost flat back at the same percentage. The average movements are 0.4 per cent. We didn't think that that was a fair representation of what's actually happened during that period, because there have been significant fluctuations.

PN982

It's for that reason that we propose to look at the cumulative movements. And I note this data isn't yet before the Bench. But even if you were to factor in this week's 17 May movements, you would still end up with the same cent increase to the \$0.99 allowance to get you to \$1.02 or \$1.03 even with that slight increase in the most recent data that will be released that, I believe, my colleague, Ms Bhatt, will provide to the Bench later.

PN983

I'm not sure whether there are any particular questions as to our approaches that we have put forward. We do appreciate that they are not perhaps the usual approach of adopting CPI, but we think that this is an extraordinary circumstance. It warrants considering a different approach to simply cherry-picking CPI data based on the monthly data that you like, or simply applying the quarterly data. We don't think that either of those approaches get you to a fair

outcome in the circumstances where what is proposed is a temporary measure to assist people to deal with a high level of volatility that is not usually seen in petrol prices, noting that they, by their very nature, otherwise do have a level of volatility.

PN984

With respect to the ACTU - - -

PN985

DEPUTY PRESIDENT CLANCY: Just before you move.

PN986

MS LAWRENCE: Yes.

PN987

DEPUTY PRESIDENT CLANCY: The fuel efficiency measure of 8.2, what's the explanation by that?

PN988

MS LAWRENCE: The explanation was that the ABS data is from 2020. So it was a - - -

PN989

DEPUTY PRESIDENT CLANCY: Yes. But what does the 8.2 reference to? Where does that - - -

PN990

MS LAWRENCE: That is the figure that is provided by the International Energy Agency for the fuel efficiency of petrol vehicles in Australia.

PN991

DEPUTY PRESIDENT CLANCY: Right.

PN992

MS LAWRENCE: It was the most, kind of, independent source that we could find that wasn't – we could not locate anything from a government source in Australia that had a fuel efficiency figure besides the ABS 2020 figures, which we felt were outdated.

PN993

DEPUTY PRESIDENT CLANCY: All right. Then you've got your annexure A.

PN994

MS LAWRENCE: Yes.

PN995

DEPUTY PRESIDENT CLANCY: And you come up with the figure of 12.2 kilometres per litre. So what's the calculation that gives rise to that?

PN996

MS LAWRENCE: So that is simply looking at when you factor in the price of petrol before the conflict commenced, and you factor in what the actual price is

per cent that somebody's actually paying. To be honest, in the calculations, we probably actually don't even require that figure. We think it just, kind of, assisted in seeing what actually is the amount that somebody is compensated.

PN997

DEPUTY PRESIDENT CLANCY: Right. I'm just trying to get a sense of – does the fuel efficiency reading of 8.2 feed into the kilometres per litre, or?

PN998

MS LAWRENCE: No, it doesn't.

PN999

DEPUTY PRESIDENT CLANCY: Right.

PN1000

MS LAWRENCE: It simply is dividing the 100 kilometres by the fuel efficiency of 8.2, which gets you to kilometres per litre of 12.2 based on that fuel efficiency.

PN1001

DEPUTY PRESIDENT CLANCY: Right, okay. And the fuel efficiency is derived from the International Energy Agency report, or their measure?

PN1002

MS LAWRENCE: That's correct. I would say we're not married to that figure. We were just trying to find something that was the most independent more up to date figure than the ABS data, which we felt, particularly based on the government reforms, and the increasing prevalence of people driving different types of vehicles, including hybrid and electric, that it was a more fair assessment than the 11.1 figure.

PN1003

DEPUTY PRESIDENT CLANCY: Okay.

PN1004

DEPUTY PRESIDENT FAROUQUE: Is that cars for sale in Australia now, or?

PN1005

MS LAWRENCE: Sorry, what was that?

PN1006

DEPUTY PRESIDENT FAROUQUE: That figure, the IEA figure, is that - - -

PN1007

MS LAWRENCE: I'll have to take that on notice.

PN1008

DEPUTY PRESIDENT FAROUQUE: Yes.

PN1009

COMMISSIONER TRAN: Ms Lawrence, could you supply the Bench with Excel version of the calculations, please.

PN1010

MS LAWRENCE: Yes, not a problem.

PN1011

COMMISSIONER TRAN: Thank you.

PN1012

MS LAWRENCE: If it would assist, we could also include them based upon the more recent data that Ms Bhatt is going to provide, because we have simply inserted that data point today. And, as I mentioned, it adds \$0.01 to each, and it gets you to figure of 3.7, no matter if it's the \$0.98 or the \$0.99.

PN1013

You're happy I continue? Okay. I'd now just like to touch upon the mechanics of any variations. The ACTU has proposed a 12 month operative period. We respectfully submit that that is not temporary in nature, particularly in circumstances where the mechanism that has been provided actually does not allow for any reversion. It effectively locks in that price on an ongoing basis. We say that that sits particularly uneasily with the evidence.

PN1014

As we can see from the weekly data that has been provided by both the ACTU and AiG, prices have risen substantially, but they've also fallen materially within the recent weeks. We submit that in bidding a response like that to a short term spike over a 12 month period, and with no ability for reversion, is inappropriate in the circumstances.

PN1015

Our view is that any variation should be limited and confined to three months. That reflects a position that is consistent with what occurred during the COVID period. We would not, however, be opposed to union parties having liberty to apply for that to be extended, or to, as occurred during COVID, confer with employer parties to seek whether we can reach a joint position with respect to that should there be an unexpected price volatility in those coming months.

PN1016

With respect to reversion, I do apologise we hadn't addressed this matter in our written submissions. In actual fact, like many other employer parties, we'd actually received it on the basis that we believed that that was a drafting oversight. To be honest, we found it difficult to understand how the proposal could operate in any other way, particularly given the use of the word 'temporary'. We don't believe that the justification of the standard adjustment never going down is appropriate in circumstances where we are seeking to do something outside of the usual course, particularly in circumstances where the proposed uplift by the unions is so significant.

PN1017

I now just wish to briefly turn to the discrete matter, which concerns the position of government funded sectors, in particular aged care and disability, particularly because the evidence in this proceeding, as it stands, suggests that those sectors are materially different to other employers, and that is directly relevant to the

Commission's task. Mr Quinlivan and Ms Biggins both gave evidence today that under the NDIS and aged care funding frameworks, they had no real practical ability to pass on increased costs. Of course, they can do so periodically, and if for some reason they can get agreement from the person they are providing care to. But, in reality, that is not a practical option.

PN1018

That was also confirmed by the witness' own witness, Ms Chatwin, who, in cross-examination, confirmed that she would have to herself absorb any cost increase. And she also indicated that in respect of Commonwealth home support program services, that would actually require a reduction in her services. Further, both the evidence of Mr Zammit and Mr Quinlivan have been that there is no indication from government currently that they are going to fund any increase in the vehicle allowance.

PN1019

That should also be understood in terms of the broader operating context, and the evidence that they provided with respect to that, where both Mr Zammit and Mr Quinlivan indicated that they faced significant economic headwinds, particularly given the recent NDIS reforms, and the transition to the support at home framework.

PN1020

The evidence of Ms Biggins was also particularly helpful in understanding the practical difficulty that providers face when trying to adjust rates. She explained that she had attempted to increase her vehicle allowance in accordance with the fee schedule that had been put to her that is available on her website.

PN1021

However, as her evidence made clear she had repeatedly been rejected by plan managers in terms of her request for reimbursement at that rate, as it was not consistent with NDIS pricing arrangements and caps which only permit recovery up to the current 99 cent rate.

PN1022

Against that backdrop, we say that these providers operate in a tightly prescribed funding framework which means that they only have a set amount of funding. They are constrained in terms of the fact that they have to deliver their services and they have limited, if any, capacity to actually pass on those increased costs, unlike most other employers.

PN1023

That has two practical consequences. It means that they either require additional government funding or they have to absorb the cost. And consistent with the position that was taken by Ms Bhatt earlier, we have significant issues with the submission that was put earlier that there is a buffer that these providers have. We would actually suggest that the evidence that we have put on to date, in the six witness statements, Ms Bhatt makes very clear the providers in this sector do not have any buffer to absorb these types of costs.

PN1024

Finally, with respect to deviation, perhaps in allowances, as has been proposed in the ACTU supplementary submission, for brevity I might just suggest that we adopt the submissions of Ms Bhatt in respect of that. We don't think that that is a matter that should be dealt with in these proceedings. Or if they are, they should be subject to a further application by the unions.

PN1025

DEPUTY PRESIDENT CLANCY: This is the 98 cents and the 99 cents. Is that -  
- -

PN1026

MS LAWRENCE: Yes. We don't think this is the appropriate forum. Or if it is it should have been subject to an amendment to a variation to the application. Finally, just in terms of implementation as I note that that has been raised, as I outlined, we believe an appropriate period is three months.

PN1027

However, I also just wanted to make clear that the evidence from the employers that we have put on, particularly that of Mr Zammit and his statement at paragraph 15 and Ms Caruso at paragraph 28 of Hammond Care. Both explained the level of manual intervention that will be required by some in the disability and aged care sectors, should the rate be changed out of step with usual arrangements.

PN1028

To that end we, consistent with the position of AiG, we believe an appropriate period before any change would be in the range of two weeks to allow employers to make necessary arrangements in terms of payroll to ensure that there are no errors.

PN1029

If the Commission pleases, they are our submissions. Unless there's any further questions?

PN1030

DEPUTY PRESIDENT CLANCY: Thank you.

PN1031

MR SCHMITKE: Your Honours, Commissioner, the Australian Chamber of Commerce and Industry seeks to rely on the written submissions that we have already filed in this matter. I do want to make a few brief comments just to highlight elements of those submissions and respond to some comments from the ACTU.

PN1032

But look, firstly, we oppose this application. We submit that it should be rejected. We say that the relevant legislative considerations have not been made out to the extent necessary to warrant any change from the existing approach used to determining vehicle allowance is Modern Awards. There is no evidence before the Commission to demonstrate that the existing allowances are in any way insufficient and there is certainly no evidence before the Commission today that

would justify what we would say is a radical departure from the conventional approach used to adjust vehicle allowances.

PN1033

The panel will recall that the original application filed in this matter attached to the schedule and submissions which contained words, such as unpredictable, short term, fuel spikes and it even proposed a schedule which was expressed as an emergency temporary schedule.

PN1034

But as the amended application now reveals we have a proposal before the Commission which involves permanent increases. Those increases are quite significant in nature. We say that they have been determined or justified, or attempted to be justified with respect to cherry-picked data, all under the banner of fuel price volatility.

PN1035

Now, that is an approach, we say, that the Commission should object. We say it's inconsistent with the task of this Commission, in so far as maintaining a reasonable safety net of minimum entitlements for employees.

PN1036

As our submissions say, the existing approach to determining vehicle allowances is entirely appropriate. It adequately compensates employees and, in some circumstances, more than compensates employees, for the costs incurred in using their private vehicle at the direction of their employer.

PN1037

And to that end I refer the panel to paragraphs 44, to 46 in our submission which does some calculations. It demonstrates this. Those calculations are, in fact, based on some of the perhaps extreme – if I can use that phrase – materials arising from this survey. Evidence from the unions, for example, uses an expected per kilometre fuel rate of \$3.25 for an employee that travels 1400 kilometres.

PN1038

And it demonstrates that even under the existing allowance those employees are more than compensated, not only for the cost of fuel, any increase. And, of course, responding to the ACTU's comments earlier we accept and understand that they incorporate other elements for the costs of running a private motor vehicle.

PN1039

We would also say that Modern Awards are not intended and the way to adjust allowances in Modern Awards are not intended to respond to short-term fluctuations in certain price components or indexes that may be used to adjust allowances. That is not an appropriate approach. The existing approach is entirely adequate. The existing approach is determining those rates as structured. It's evidence based. It's systematic. And it's an approach which smooths volatility and fluctuations in prices, but at the same time takes account of and where relevant increases, those allowances to adjust those particular increases.

PN1040

That approach ensures consistency, predictability. It delivers what we would say is a fair and reasonable outcomes in terms of safety net and does so in a way which we say is administratively efficient and effective.

PN1041

We say, also, that there's no evidence today before the Commission to justify any deviation from that approach. And to the extent that we have heard evidence today relates to, as the Commission noted in an earlier exchange, those sectors involving funded services, or perhaps services that are in some way funded by government.

PN1042

Now these are not the only awards that are affected. There's a range of awards that are sought to be varied by this particular application. Clerks, pharmacy, fast food, retail, manufacturing, security, clubs, cleaning, repair services and retail, even the wine industry award. There's a range of awards. And, of course, the ACTU have made a submission that this shouldn't backflow onto all other Modern Awards to the extent that they deal with the equal allowances.

PN1043

There is no evidence that's been brought by anybody or any of the unions with respondent coverage of those awards by any employee to demonstrate or indicate that there is an issue or a problem or that the existing approach to determining vehicle allowances is inadequate.

PN1044

For those reasons, we would urge the Commission to reject this application and unless there's any questions they are our submissions.

PN1045

DEPUTY PRESIDENT CLANCY: Thank you, Mr Schmitke. Is there any other employer organisation online that wishes to address the Commission? All right. Thank you. Any submissions in reply, please?

PN1046

MR MILLER: Yes, your Honour. And I'll just be brief. Firstly, I think these submissions generally relate to issues that were raised collectively by the Australian Industry Group and the parties represented by Australian Business Lawyers.

PN1047

Firstly, in relation to the comments about rebasing. If I can allay the concerns of my friends, the comments that I made in oral submissions about rebasing were only done so in an attempt to explain the basis for selecting, as the period of relevant measurement of movement, the movement between December and March in circumstances where the proper comparison point would otherwise be between March 2024 and March 2026.

PN1048

To be clear the amended, the narrowed union position is as put in the supplementary submission which is to adjust awards on the percentage increase between those two indexes, and in so far as my submissions about rebasing in oral submissions that was only ever intended to help supplement and explain the basis for that approach.

PN1049

There was some comments from my friends about the maths.

PN1050

DEPUTY PRESIDENT CLANCY: I'm still confused by this I must say. I'm wondering whether I'm missing something but maybe you can clarify now?

PN1051

MR MILLER: Well, it might be that I'm confused too. My maths says that the percentage movement between the December index is 100.82 and March 2026 was of 108.74.

PN1052

DEPUTY PRESIDENT CLANCY: Yes.

PN1053

MR MILLER: Is 7.86 per cent. So the proposal was to lift allowances by that amount.

PN1054

DEPUTY PRESIDENT CLANCY: So you're adding your 7.86 to 100.82?

PN1055

MR MILLER: No. The – yes, that's right.

PN1056

DEPUTY PRESIDENT CLANCY: I think that's 7.92 – that's all.

PN1057

MR MILLER: I think in so far as that would assist in this way, in my research and examining the way the Commission usually deals with these things. There's a spreadsheet that divides the later index by the newer index and that rate is then applied to adjust the old rate. So that brings you, I believe, to effectively 7.86 per cent.

PN1058

DEPUTY PRESIDENT CLANCY: Okay.

PN1059

MR MILLER: Which is then applied to the - - -

PN1060

DEPUTY PRESIDENT CLANCY: Well, if you could perhaps just point us to that subsequent to today it would assist.

PN1061

MR MILLER: There was some comments about the instruction between our proposal and the annual wage review. We say there's no disharmony and to be absolutely clear and as I mentioned earlier we can file – or we will file draft determinations setting out the variations. So that would represent a new vehicle allowance rate and a substantive body of the award, not in a schedule or anything of that nature.

PN1062

If allowances are then adjusted in that manner, there's no difficulty in terms of interacting with the AWR because the standard adjustment term would operate, subject to anything else that might happen as part of the review that's been determined to adjust, to consider the comparison between the most recently used index to adjust the figure – which would be the March figure. And the most recently available index, which would be the April indeed.

PN1063

Now, unless there's some sort of unforeseen – well, indeed April is already over. So, it seems extremely unlikely that that would result in a further increase in considering the decline in petrol prices over the month of April that's been ventilated in these proceedings.

PN1064

To the extent that there was an uplift beyond 108.74 in the index, which in my submission is unlikely, although I am not a fortune teller. Then it would operate to again lift the increase, to lift the allowance again, rather.

PN1065

In relation to the fuel efficiency measure and the submissions that were related – that were advanced by my friend – when I have attempted to source the International Agency source that appears to be relied on that appears to indicate the eight litre fuel efficiency is based on new cars. It also – which we say is inappropriate precisely because a lot of employees may not be driving brand new vehicles which may not have the new levels of efficiency. And so we maintain the proper fuel efficiency measure in so far as one is required, should be the ABS measure.

PN1066

The International Energy Agency that report as well, in so far as I am accessing the correct report also is from 2021.

PN1067

So in so far as there's criticism from my friends about using the ABS survey from 2020 that's – there's not a huge amount of difference between 2020 and 2021.

PN1068

The key issue, we say, is the International Energy Agency fuel efficiency measure which is appearing to be relied on seeks to be a measure of new cars only which we say would appear to explain why the fuel efficiency is much better.

PN1069

In relation to the deviation issue, I accept that it is regrettable that these issues were not put in these proceedings sooner. I think as I mentioned in the supplementary submissions that this wasn't done, I think was a product of this truncated timetable more than anything else.

PN1070

Nonetheless, we do say they fall within the boundaries of these proceedings given vehicle allowances are being closely examined and it felt in that context it would have been negligent of me to have been aware of this issue but not brought it before the attention of the Full Bench.

PN1071

In the event that the Commission is persuaded by my submissions in that regard, but nonetheless has concerns about procedural fairness – like the issue falls away if the Bench is not persuaded by my submissions – but, in the event that it is we wouldn't be opposed to a further period of submissions dealing with that issue only on a truncated basis.

PN1072

The final issue I just will make – the final issue I will just speak to is a lot of the comments from the employers appear to allege that this application was framed on a temporary basis, or seeking temporary relief and there's been allegations about the use of the word 'temporary' in our applications and draft determinations.

PN1073

In my submission, our applications would clear that they were seeking a permanent uplift. The only temporary aspect to the applications was the proposal to increase the frequency of adjustments. And I say this was clear on the terms of both our application and the schedule.

PN1074

The only other matter I wish to deal with, your Honours, is there was some discussion or there was an exchange, Deputy President, between you and I earlier about the fuel excise. So the 32 cents per litre is based on the latest ACCC report which I can provide shortly.

PN1075

DEPUTY PRESIDENT CLANCY: Yes. I have been looking at the ACCC. So is it the – perhaps if you could just tell me which report it is we can then follow it up.

PN1076

MR MILLER: Yes. It's for the week ending 15 May.

PN1077

DEPUTY PRESIDENT CLANCY: Thank you.

PN1078

MR MILLER: The reference I'm looking at, if it assists, is at the beginning of page five.

PN1079

DEPUTY PRESIDENT CLANCY: Thank you.

PN1080

MR MILLER: Unless there's any questions from your Honours I have nothing further.

PN1081

DEPUTY PRESIDENT CLANCY: No. Just a moment. Thank you. Mr Miller, I think the Bench would be assisted by the ACTU and the affiliates putting before the Commission what the draft determination now being sought is. Just that there's been a few moving parts with the application since it was lodged and we recognised with that that it may then necessitate an opportunity for the employer parties to respond and that sort of starts to make the process go on a bit. But it's just that the positions have changed a bit over the last week.

PN1082

MR MILLER: I certainly appreciate and acknowledge that. In terms of draft determinations these could be provided at relatively short thrift, perhaps in two days.

PN1083

DEPUTY PRESIDENT CLANCY: Okay. All right. And then to the extent that the position is outlined in the draft determination it doesn't have to be the draft determination as such but the Bench would be assisted by the calculation methodology that you rely on that lies behind the draft determination so that we understand where that lands as well.

PN1084

MR MILLER: Yes.

PN1085

DEPUTY PRESIDENT CLANCY: All right. And, obviously, depending on what that says you may wish to comment upon it. I don't know.

PN1086

MS BHATT: Indeed we might. It's a little difficult between the (indistinct) Bench how long we might need without seeing the draft determination and whatever is filed by way of explanation as to the methodology. I anticipate, though, that we would need at least a week but I'm happy – if the Bench needs submissions in support of that I can make them but we have a number of competing priorities over the next week in the form of a number of other time sensitive matters that are being dealt with by our Full Bench as we are genuinely – just facing some challenges.

PN1087

DEPUTY PRESIDENT CLANCY: Well, may be we'll start from this proposition. We'll see what the draft determination says.

PN1088

MS BHATT: Yes.

PN1089

DEPUTY PRESIDENT CLANCY: And we'll go from there.

PN1090

MR MILLER: Thank you, your Honour.

PN1091

MS LAWRENCE: Deputy President, would it be possible to request that we received a marked-up copy of the draft determination so we could identify changes between the previous and the next? Unless it is so substantial it doesn't warrant that. But it may just assist in speeding up the ability to respond if we understood exactly what was being amended.

PN1092

DEPUTY PRESIDENT CLANCY: Well, yes. That might assist. It just depends on what you're coming up with.

PN1093

MR MILLER: Indeed. I suspect it won't assist your Honour because the original draft - - -

PN1094

DEPUTY PRESIDENT CLANCY: It might look a complete shambles - - -

PN1095

COMMISSIONER TRAN: Sometimes a different approach.

PN1096

MS LAWRENCE: If there are substantial changes then it's not required.

PN1097

MR MILLER: Well, in fact, it could be done. Order one of the draft determinations effectively required the insertion of the schedule.

PN1098

DEPUTY PRESIDENT CLANCY: Yes.

PN1099

MR MILLER: And order two required what the new rate is. And there's effectively no adjustment. There's no change to the calculation that would produce that new rate. So the draft determination could be strike-through text throughout the schedule and then order two just filling in what we say the number is.

PN1100

DEPUTY PRESIDENT CLANCY: All right.

PN1101

MS BHATT: Can I raise one other issue? Mr Miller's explanation of what that might look like has just raised a specific issue in my mind. And that is there are some awards that contain an allowance that is a way of different quantum. The ACTU alluded to this earlier today. For instance, the Fast Food Award contains

an allowance that, I think, is around 52 or 53 cents for certain categories of employees. It would assist if the draft determination identifies with specificity the variation that is also sought in respect of those allowances.

PN1102

MR MILLER: If it assists, your Honour, that's certainly intended which might be why it may be easier, rather than trying to do a marked-up version that there just be a new draft determination which just seeks to outline what the new, what the new rate is in each award.

PN1103

DEPUTY PRESIDENT CLANCY: All right. Well, I think we'd better wait and see what it says. All right. Well, Mr Miller you're saying you can have that submitted what – by 5.00 pm on Wednesday the 20th? Is that - - -

PN1104

MR MILLER: Yes. That's possible.

PN1105

DEPUTY PRESIDENT CLANCY: We'll seek after that an indication from the interested employer parties as to what they propose in terms of a response if they intend to respond. We'll go from there. All right. Thank you.

PN1106

The Bench thanks the parties for their materials that they have filed ahead of today's hearing and for their assistance during the course for the conduct of today. We'll proceed on that basis and see where things develop after the submission of draft determination. Thank you. We will adjourn.

**ADJOURNED INDEFINITELY**

**[4.49 PM]**

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