



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT GRAYSON**

C2023/3473

s.604 - Appeal of decisions

**Appeal by Australian Workers' Union, The (002N)
(C2023/3473)**

Sydney

11.00 AM, WEDNESDAY, 30 AUGUST 2023

Continued from 29/08/2023

PN954

JUSTICE HATCHER: All right, so I have had my associate provide to the parties an ASIC company extract for West Coast Site Services Pty Ltd, a company which was identified in the evidence of Mr Ruffino yesterday. Unless there is any objection I'm going to propose to admit that into evidence in the appeal and mark it as exhibit 6. Is there any objection?

PN955

MR GHOSH: No objection, Your Honour.

PN956

JUSTICE HATCHER: All right, that will be marked as exhibit 6.

EXHIBIT #6 ASIC COMPANY EXTRACT FOR WEST COAST SITE SERVICES PTY LTD

PN957

So the next witness is Paul Hudston?

PN958

MR GHOSH: Your Honour, is it a convenient time for me to tender tab 7 of the bundle?

PN959

JUSTICE HATCHER: Yes, all right – just give me a second.

PN960

MR GHOSH: Pages 404 to 409 of the bundle – 404 is the title page.

PN961

JUSTICE HATCHER: Just give me a second. So it's tab 7, is it?

PN962

MR GHOSH: Yes, your Honour.

PN963

JUSTICE HATCHER: Yes, all right – is there any objection?

PN964

MR POLLOCK: No objection, your Honour.

PN965

JUSTICE HATCHER: All right, so tab 7 of the AWU's tender bundle will be marked exhibit 7.

EXHIBIT #7 TAB 7 OF THE AWU TENDER BUNDLE

PN966

Yes, all right.

PN967

MR GHOSH: Your Honour, there is one more matter that I've been asked to bring to your attention by the solicitors for Mr Hudston, who is appearing today to give evidence and that is simply to state that as a result of his injuries, he is on pain medication. So I've just been asked to bring that to the Commission's attention.

PN968

JUSTICE HATCHER: All right, so can we get – it's Mr Paul Hudston, isn't it?

PN969

MR GHOSH: That's right.

PN970

JUSTICE HATCHER: So we can get Mr Paul Hudston into the hearing, please.

PN971

THE ASSOCIATE: Hello, Mr Hudston – this is the associate in Sydney, just confirming you're able to hear us okay?

PN972

MR P HUDSTON: Yes.

PN973

THE ASSOCIATE: I'll just administer the affirmation to you. Could you please state your full name and address for the record?

PN974

MR HUDSTON: Yes. Paul Charles Hudston, (address supplied).

<PAUL CHARLES HUDSTON, AFFIRMED [11.14 AM]

EXAMINATION-IN-CHIEF BY MR GHOSH [11.14 AM]

PN975

JUSTICE HATCHER: Mr Ghosh.

PN976

MR GHOSH: I note my friend Mr Raftos is on his feet.

PN977

JUSTICE HATCHER: Mr Raftos, do you want to say anything?

*** PAUL CHARLES HUDSTON

XN MR GHOSH

PN978

MR RAFTOS: Yes, Your Honour – I would seek leave to appear in relation to Mr Hudston on the same grounds and on the same terms as yesterday with the previous two witnesses. Related to that is the medication that I am instructed that Mr Hudston is on. That has some side effects which I am instructed to alert the court to. I am instructed that the medication is Pregabalin. We could provide copies of details about that to the Commission in due course. My instructions are that medication may cause blurred vision, double vision, clumsiness,

unsteadiness, dizziness, drowsiness, trouble with thinking. I bring that to the Commission's attention and also in relation to seeking leave to appear.

PN979

JUSTICE HATCHER: All right, well, that's noted. You are granted leave to appear in the proceedings on the same basis as yesterday, Mr Raftos.

PN980

MR RAFTOS: Thank you, your Honour.

PN981

JUSTICE HATCHER: Mr Ghosh.

PN982

MR GHOSH: Thank you, your Honour. Mr Hudston, do you have either before you or access to a bundle of documents?---Yes, I do.

PN983

There may be points when I'm asking you questions that I'll refer to documents in that bundle. When I do so I will do so by reference to the page numbers in the middle of the page at the bottom?---Yes.

PN984

Mr Hudston, you were employed by Workforce Logistics in August and September 2022, that's right?---Yes.

PN985

You were engaged as a scaffolder, rigger and crane operator, that's right?---Yes.

PN986

Who first spoke to you about Workforce Logistics and the opportunity there?---Mark Read – Blake Read, sorry.

PN987

And you have a conversation with Blake Read before he set up Workforce Logistics, didn't you?---Before he set it up – what do you mean?

PN988

So the company, Workforce Logistics, was set up on 19 August – that is incorporated on 19 August – 2022. Did you speak to Mr Blake Read about the setting up of that company before 19 August?---No, I didn't.

PN989

Did you introduce Steven Biddle to Blake Read?---Yes, I gave Blake a list of names: Alex Hudston, Tommy Loader, Sam Rankin, Gary Lewis and a few others I can't remember, because he was looking for staff. He had up and coming work.

PN990

Now, you're related to Alex Hudston?---Yes, he's my son.

*** PAUL CHARLES HUDSTON

XN MR GHOSH

PN991

JUSTICE HATCHER: And are you also related to Mark Hudston?---Yes, he's my brother.

PN992

And what's his occupation?---He works for Strategic Human Resources.

PN993

What's it called – Strategic Human Resources? Is that the name of the business?---Yes, yes.

PN994

MR GHOSH: You've just mentioned up and coming work. When you were employed for Workforce Logistics, what work did you actually do for the company?---He needed swings to be developed and safe work method statements so I knew how to do them using the Acts and regs from occupational health and safety and codes of practice from Australian standards. I Googled it and developed some manual handling forklift operations, (indistinct) operations, crane operations, rigging, scaffolding. It was 10 or 15 that I developed for him.

PN995

You're familiar with how to develop those documents?---Yes, yes.

PN996

You've developed a number of them in the past?---Yes.

PN997

So how long did it take you to develop those documents in this case?---Over the month, yes.

PN998

So your evidence is that you spent 38 hours a week for four weeks developing these documents?---Yes, and probably some more, yes.

PN999

That's despite being familiar with how to do it?---Yes.

PN1000

JUSTICE HATCHER: So who had you done that sort of work for before?---Yes, I do them on site when I'm working away. In line with the (indistinct) and the development policies and procedures.

PN1001

But what business - - -?---(Indistinct) task.

PN1002

What business have you - - -?---Pardon?

*** PAUL CHARLES HUDSTON

XN MR GHOSH

PN1003

Sorry. What business had you done that sort of work for before?---In the past working for other contractors.

PN1004

Such as?---On site, Monadelphous.

PN1005

Monadelphous?---Yes.

PN1006

VICE PRESIDENT ASBURY: When did you last work for Monadelphous?---I'm working for them now.

PN1007

So you're employed by Monadelphous?---Yes, as a casual employee and as of January this year, I made entry-level supervisor.

PN1008

JUSTICE HATCHER: So how long have you been employed by Monadelphous for?---As a casual employee, over the last seven years.

PN1009

So you were employed by Monadelphous at the same time as you were employed by Workforce Logistics?---I wasn't – I wasn't working at the time but later that month and I explained to Blake that I do have up and coming shutdowns that I've got to attend. He said that was fine and I said I'd get the work done.

PN1010

Does it follow that it was never the case that you were going to do scaffolding, rigging or crane operation work for Workforce Logistics?---No, he didn't have any at the time, no.

PN1011

Thank you.

PN1012

VICE PRESIDENT ASBURY: Mr Hudston, at the time you were a supervisor for Monadelphous?---At the time of - - -

PN1013

At the time you were doing this work on the swings, were you a supervisor for Monadelphous?---No, that come later. I was a rigger/scaffolder/crane operator.

PN1014

So when were you appointed as a supervisor?---That was later on in 2022, early 2023.

PN1015

Okay, thank you.

*** PAUL CHARLES HUDSTON

XN MR GHOSH

PN1016

MR GHOSH: Now, Mr Hudston, you said later that month, you worked for Monadelphous, which month was that?---September.

PN1017

So you weren't working for Monadelphous or on a Monadelphous site between 29 August and 25 September 2022?---Yes, I believe it was around about the 10th, 12th I went to work for Monadelphous.

PN1018

Of September?---Of September, yes.

PN1019

And do you remember which site you were on?---I believe it was Anderson Point, FMG.

PN1020

Thank you. Did you ever do any work from Workforce Logistics premises at Unit 2, 1 Aitken Way, in Kewdale?---No, but I've been there.

PN1021

Okay. How many times do you did you visit?---Twice.

PN1022

Do you remember when that was?---It was the end of - end of August. I met with Blake and, and signing my contract, and then a week later, four to five days later, to - where I met Vince and signed my bargain agreement, to representative nomination.

PN1023

JUSTICE HATCHER: When you nominated Mr Ruffino as your bargaining representative, did you know that he was in business together with Mr Read?---No, I didn't.

PN1024

Thank you.

PN1025

MR GHOSH: Now, Mr Read said yesterday that you were introduced to him by your brother, Mark Hudston; that's right, isn't it?---Yes. Mark passed my number on to him, and he phoned me.

PN1026

What was Mark Hudston's involvement in setting up Workforce Logistics?---Got no idea.

PN1027

Did you ever discuss the Workforce Logistics job with Mark Hudston?

*** PAUL CHARLES HUDSTON

XN MR GHOSH

PN1028

JUSTICE HATCHER: Sorry, the sound cut out there. Can you just repeat the answer for that, Mr Hudston?---No.

PN1029

Thank you.

PN1030

MR GHOSH: Did you ever meet with Mark Hudston to discuss the Workforce Logistics enterprise agreement?---No.

PN1031

Those are my questions, thank you, Commissioners.

PN1032

JUSTICE HATCHER: So just to clarify a couple of things, Mr Hudston. So you said the second and last time you visited the premises at Workforce Logistics, that was when you met Mr Ruffino and you signed the bargain representative document; is that right?---Yes.

PN1033

And then you never went back there again?---No.

PN1034

Do you recall ever attending a meeting to discuss the proposed enterprise agreement?---No.

PN1035

Do you recall that you voted - do you recall voting by SMS to approve the agreement on 23 September?---Yes, I do. Yes.

PN1036

On the evidence you gave earlier, that is, after you'd already gone back to work for Monadelphous, which you said was 10 or 12 Sep?---Yes.

PN1037

So you were not working for Workforce Logistics at the time you voted?---Well, I was still doing the method statements, the SWMs.

PN1038

So you were working onsite for Monadelphous?---Yes, and on a night, I'd work on the SWMs.

PN1039

How many hours a week was the Monadelphous work?---Well, they did 12-hour shifts, so that was, like, 70, 80 hours a week.

PN1040

So you're doing 80 hours a week, but you were doing work for Workforce Logistics in addition, were you?---Yes.

*** PAUL CHARLES HUDSTON

XN MR GHOSH

PN1041

The Commission's received pay records which shows the last nominal date of you working for Workforce Logistics was the 23rd, the same date as you voted. Does that accord with your memory?---I - I can't remember that, no.

PN1042

In any event, you knew that you signed only a four-week contract with Workforce Logistics?---Yes.

PN1043

Can I ask you this. Why did you even bother voting for the agreement when you knew it would never cover you in the future because you were going back to Monadelphous?---Well, it's work in the future. I'm only a casual employee. I didn't know how much work Monadelphous have. Some months, I only have three weeks' work and three weeks off. So I'm always looking for other work.

PN1044

All right, thank you.

PN1045

MR GHOSH: Thank you, Commissioner.

PN1046

VICE PRESIDENT ASBURY: Mr Hudston, can I just clarify. When you say the work you were doing was writing SWMs, which as I understand it are Safe Work Method statements?---(Indistinct), yes.

PN1047

You wouldn't have been writing anything like a Workforce Logistics Management Plan, would you?---No.

PN1048

Or a Worker's Compensation rehab and return to work procedure?---No, no.

PN1049

So you were writing Safe Work Method statements for cranes, forklifts, et cetera?---Yes.

PN1050

Okay, thank you.

PN1051

JUSTICE HATCHER: Any questions, Mr Pollock?

PN1052

MR POLLOCK: No questions, Your Honour.

PN1053

JUSTICE HATCHER: Any questions, Mr Raftos?

*** PAUL CHARLES HUDSTON

XN MR GHOSH

PN1054

MR RAFTOS: No, Your Honour.

PN1055

JUSTICE HATCHER: All right. Well, thank you for your evidence, Mr Hudston. You're excuse, which means you can simply disconnect and leave the hearing?---Yes, okay. Thank you.

PN1056

Thank you.

<THE WITNESS WITHDREW

[11.29 AM]

PN1057

All right, so where are we up to?

PN1058

MR GHOSH: Subject to a request for a short adjournment of 10 minutes, we'd commence oral closings. Sorry, my friend wishes to tender a document, so I'll just - - -

PN1059

JUSTICE HATCHER: Yes.

PN1060

MR POLLOCK: Thank you, Your Honour. I think it's without objection. It's just the statement of Mr Sadler that accompanied the submissions. I understand my learned friend doesn't (indistinct) simply being received as read.

PN1061

JUSTICE HATCHER: No, we excused him from giving evidence. I'm unsure how you'd get the statement in, but he doesn't make himself available for the hearing. I wasn't really aware of that when I excused him from the hearing.

PN1062

MR POLLOCK: Well, Your Honour, I don't think terribly much turns on it, to be honest. I understood it wasn't opposed, it was just to give some context to the steps that our (indistinct)'s taken him, the lead-up to the hearing, and that relevant knowledge of those matters. But I don't understand the arguments pressed, in any event, so.

PN1063

JUSTICE HATCHER: Just hold on a second. Where do we find the statement?

PN1064

MR POLLOCK: At tab 3 of the - yes.

PN1065

MR RAFTOS: Apologies, Your Honour. If I may leave the Bar table as my role in these matters has come to an end.

*** PAUL CHARLES HUDSTON

XN MR GHOSH

PN1066

JUSTICE HATCHER: You have leave if you wish it. The only thing I'm concerned about is that there may be submissions about the credibility of the evidence of your clients, which you might want to stay around for, but that's a matter for you, Mr Raftos.

PN1067

MR RAFTOS: I'll just seek instructions, Your Honour. Yes, Your Honour, I will seek to stay.

PN1068

JUSTICE HATCHER: All right. Well, you may remain.

EXHIBIT #8 STATEMENT OF NEIL SADLER DATED 07/08/2023

PN1069

MR POLLOCK: Thank you, Your Honour. That's the case for the respondent, subject to some submissions.

PN1070

JUSTICE HATCHER: All right. Well, is it convenient if we adjourn for about, say, half an hour?

PN1071

MR POLLOCK: Yes, Your Honour.

PN1072

JUSTICE HATCHER: Thank you.

SHORT ADJOURNMENT

[11.32 AM]

RESUMED

[12.14 PM]

PN1073

JUSTICE HATCHER: We've provided the parties with copies of some records from the Commissions case file system. I won't ask the parties to address it immediately. At some stage we'll take another break and the parties can look at those. But they are two applications for approval of enterprise agreements. One of which, Mr Mark Hudston representative from Mapien, represented the applicant, and Mr Steven Biddle of the same address was employee representative. And another one in which Mr Steven Biddle was also employee representative. And subject to any submissions any party wishes to make, we should note that those of us in the Full Bench have knowledge that Mr Mark Hudston, is well known to the Commission being a person very commonly associated with the making of enterprise agreements in Western Australia.

PN1074

All right. Mr Ghosh.

PN1075

MR GHOSH: Thank you, Your Honour. The first ground of appeal concerns the genuineness of the agreement in relation to – the genuineness of the Workforce

Logistics enterprise agreement approved 26 October 2022. I'm conscious that the Full Bench is well aware of the applicable legal principles. In this matter there are two or three that I would simply like to avert to briefly and I'll provide the references that we say are relevant in this case.

PN1076

The first is in relation to an application for approval of the workplace, sorry, an enterprise agreement. The material before the Commission needs to be considered in its totality and if it goes into more questions than answers, that may require the Commission to undertake a further enquiry. That's a proposition drawn from the case of Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Mirror Technologies. It's in our list of authorities and the page reference in the Industrial Reports is 390-391, paragraph reference is 21.

PN1077

We would note that those will be familiar to the Full Bench, the analysis in the decision of One Key Force – One Key Workforce, sorry, from pages 556 to 558. And from paragraphs 147 to 160.

PN1078

We also note from that case, the observation that:

PN1079

While there may not be something inherently wrong with a small number of employees fixing terms and conditions for the much larger number of future employees, an agreement of that sort may raise a question about the genuineness of the approval.

PN1080

And that's at page 558 at paragraph 162. The decisions in One Key Workforce and RE KCL Industries both refer to the enquiry into whether there's a genuine agreement involving questions of authenticity or moral authority. And then in respect of the decision of Midwest Port Authority, the appellant notes that decision but draws the Commission's attention to the propositions contained at paragraphs 40 and 41 of that decision and that's at the Federal Court Reports page 97 to 98. The relevant observations that we note are that in that case, the court put aside issues of active concealment of matters from the Commission in its consideration of the case, and also the court noted that where relevant facts were not presented to the Commission when approval was sought, that there were mechanisms to deal with it under the Act, including an appeal to the Full Bench.

PN1081

In relation to the issue of bargaining representatives specifically and the independence requirement of bargaining representatives under regulation 2.06 of the Fair Work Regulations. We refer to the decision of Melbourne Satellites which was authority of the proposition that where a bargaining representative is not independent, that is a matter that goes to genuine agreement.

PN1082

The Full Bench has had benefit of hearing the evidence yesterday and today and so I don't propose to do a comprehensive recitation of that evidence or every aspect of it. But I will make some observations about the points that the appellant thinks are particularly important.

PN1083

While the focus of the initial appeal was on the grounds set out in Section 188(1)(c) of the Fair Work Act, based on the evidence that's emerged yesterday and today, we considered that that raises an issue under Section 188(1)(a) as well with respect to the pre-approval steps and specifically the steps required under Section 185 of the – sorry, 180(5) of the Fair Work Act.

PN1084

The first topic I'd like to address is the material that was put before the Commission by Workforce Logistics in this matter. In the declaration that was the subject of Mr Reads evidence yesterday it was said that the workplace agreement was explained to all employees on 15 September 2022 and then there were further information sessions on the 19 and 21 September 2022. In our submission the way that declaration is framed including the use of the words all employees in relation to those meetings, indicates that the representation being made to the Commission on that occasion was that that had been explained by Mr Read to all employees at those meetings.

PN1085

What emerged from the evidence of Mr Read was that in fact, he had only spoken to half the employees. Mark Read, Daniel Walters and Vince Ruffino. And that Mr Mark Hudston an Industrial Relations Consultant had been involved in the process of explaining the Workforce Logistics agreement to Alex Hudston, Steven Piddle and Paul Hudston. We know that Mr Read was not clear on precisely what basis Mr Hudston was assisting Workforce Logistics. We also note that apparently there were no written records of what Mr Hudston told Mr Read about those meetings. Save that he was comfortable with them.

PN1086

We'd say that those meetings have not been accurately described in the Form 17 declaration. We also note that Mr Read gave evidence that there were notes or diaries of those meetings. And despite – and that's despite declaring to the Commission that there was no supporting documentation for the agreement at the time. Those written records no longer exist according to Mr Read.

PN1087

We also note that the evidence of Mr Hudston this morning. That he did not discuss the Workforce Logistics agreement enterprise agreement with Mark Hudston. That's Mr Hudston was Paul Hudston in that sentence. That Paul Hudston did not discuss or did not meet with Mark Hudston about the workplace logistics - Workforce Logistics enterprise agreement and that Paul Hudston did not attend any meetings to discuss the enterprise agreement. So we say on that basis that the assumption that was made by Mr Read was not correct and that the requirements, at a basal level of Section 180(5) in relation to this application or in relation to that application were not met.

PN1088

JUSTICE HATCHER: That's taking his evidence at its highest?

PN1089

MR GHOSH: Yes, Your Honour. There is, I think, in our submission, reason to believe that Mr Read has at its lowest given inaccurate statements to the Commission, and in the middle has given statements to the Commission that were misleading and potentially deliberately so.

PN1090

JUSTICE HATCHER: And the evidence he gave yesterday?

PN1091

MR GHOSH: Sorry?

PN1092

JUSTICE HATCHER: And do you want to say anything about the credibility of the evidence he gave yesterday?

PN1093

MR GHOSH: Yes, I will address that in a separate topic, Your Honour.

PN1094

JUSTICE HATCHER: Yes, all right. Yes. Thank you.

PN1095

MR GHOSH: The – so on that basis, we'd say that this is one of those cases where our true position was not presented to the Fair Work Commission when approval was sought. And that as a matter of substance, the enterprise agreement was not genuinely agreed, both with respect to Section 188(1)(a) and 188(1)(c).

PN1096

Your Honours, we think that – well, the appellants admit that there is something to be drawn or there is an inference to be drawn as to the genuineness of the agreement from the timeline or the chronology of the matters in this case. Proved a very high level, Workforce Logistics came into existence on 19 August 2022 between 25 and 29 August 2022 they entered six contracts with employees. Now, I just note this for the Full Bench. Five of those contracts were expressed to be for four week terms. One of the contracts was expressed to be for a six week term and that was the contract of Mr Hudston.

PN1097

JUSTICE HATCHER: Mister?

PN1098

MR GHOSH: Paul Hudston. Sorry.

PN1099

JUSTICE HATCHER: Paul Hudston.

PN1100

MR GHOSH: The reference to Mr Hudston's contract being for six weeks is at page 270 of the bundle. All of the contracts are set out between pages 253 and page – and 303 of the bundle. That's not consistent with the evidence that Mr Read or Mr Hudston gave. And what we say the Full Bench used to do with that is to accept the evidence of Mr Read and Mr Hudston. That evidence is consistent with the payslips and it's consistent with their oral evidence. So we say in the circumstances that should be preferred to the written terms of the contracts.

PN1101

But around a week or a little bit longer, these employees are signed up onto four week contracts. There's a decision to move towards applying for a – or there's an application for an enterprise agreement. We've dealt with the materials before the Commission and the meeting sessions that were held. And then on 5 October, there's the application. On 26 October, the enterprise agreement is approved. And then by the middle of December, the company is on-sold.

PN1102

The purpose for which Workforce Logistics were set up was the subject of contrary evidence for this Commission. Mr Read gave evidence the Workforce Logistics was set up to obtain work in the mining construction and maintenance space predominantly site based in his words, but disavowed that this was a labour hire company.

PN1103

Mr Ruffino gave evidence yesterday that Mr Read had told him that he was starting a labour hire company and that Workforce Logistics was set up for the purposes of getting an enterprise agreement. That was the intention. On our submission, Mr Ruffino's evidence should be accepted over Mr Read's in all the circumstances.

PN1104

Mr Read also gave evidence yesterday that he had met with Mr Paul Hudston before starting up Workforce Logistics and that was evidence that went to his reliance on Mr Hudston in relation to actual business of Workforce Logistics as well as the experience Mr Hudston had in terms of building and construction. Mr Hudston's evidence today was that he did not meet with Mr Read prior to the entry into the Workforce Logistics – sorry, prior to the setup of Workforce Logistics and it's our submission that Mr Hudston's evidence should be accepted on that matter.

PN1105

I turn to the composition of the employees of Workforce Logistics, which we say is significant for drawing an inference that the agreement was not a genuine agreement. Paul Hudston and Alex Hudston were relatives of Mr Mark Hudston. Paul was his brother and Alex his nephew, and Alex was Paul's son. I note the President's observation about its awareness of Mr Hudston's operations.

PN1106

Steven Biddle was allegedly accepted as an employee or chosen as an employee by Mr Read on the referral of Mr Hudston, that's Mr Paul Hudston, and that was without Mr Read having met Mr Biddle. Mr Alex Hudston was accepted on the

referral of Mr Paul Hudston, and that's despite Mr Read meeting with Mr Alex Hudston. Mr Read's evidence about his contact with Mr Hudston is – was that they had very limited contact. That it was one or two meetings in a social or group context and that they never met one on one. So the basis of his reliance or his stated reliance on Paul Hudston, as distinct from potentially Mr Mark Hudston, we think is not evidence that this Commission should accept.

PN1107

Mr Mark Read is an electrician – employed as an electrician notionally under the contract of employment that he signed, and he was Mr Blake Read's brother. And then Mr Daniel Walters was someone who Mr Read had worked with previously, and as it emerged in the evidence yesterday of Mr Ruffino, and is contained now, and I think it's exhibit 6, is also in business with Mr Read, or rather is a director of the company which Mr Read owns along with Mr Ruffino of West Coast Site Services.

PN1108

I'll say a bit more about Mr Ruffino a bit later on but he was the managing director of the business that had engaged Mr Read and continued to engage him as an independent contractor. There were joint owners of West Coast Site Services and that they'd had an ongoing connection. And so what we say is to be made of the composition of these employees is that they were all within a very close personal network.

PN1109

If I might turn to the topic of the work actually done - - -

PN1110

JUSTICE HATCHER: I think exhibit 6 shows that Mr Walters is one of the shareholders in West Coast Site Services and I see Black Jewel Pty Ltd has a connection with Mr Read.

PN1111

MR GHOSH: Yes, your Honour. He gave that evidence yesterday that that was his company and it may be the trustee of his family trust, I think. So they all share ownership in that company.

PN1112

In terms of the work actually done by the employees while employed by Workforce Logistics, it's our submission that Mr Read's evidence about the work actually done was vague and unclear. It used a range of words that were not specific, even when asked for specifics and he didn't seem troubled by not knowing that information, despite being the manager of Workforce Logistics. It's notable as well that Mr Ruffino gave evidence that he was interstate on other business while apparently engaged full-time under the Workforce Logistics agreements. It's a term of those agreements that the employees - a fairly standard term for the employees to vote to their full potential of while they're working but there's also the evidence here of Mr Hudston today, which was that from 12 September he was engaged on-site by (indistinct 12.33.26) and that that essentially comprises half the time that he was under contract with Workforce Logistics.

PN1113

Now I didn't put to Mr Hudston that it was implausible or that he was not telling the truth in respect of the statement that he worked a 70 to 80 hour swing on a Monadelphous site and then spent an additional 38 hours in those weeks drafting SWMS statements. So as high as I can put the submission is that it's unlikely or implausible in the extreme and it shouldn't be accepted. So - - -

PN1114

JUSTICE HATCHER: Even taking all that evidence at its highest, there's nowhere he says there that any of the employees did any work that was actually covered by the agreement the approved.

PN1115

MR GHOSH: That's exactly right, your Honour. And Mr Ruffino gave evidence as to the work that he was doing in the workshop at the back of the Kewdale premises, but that evidence was that he was doing that work for West Coast Site Services.

PN1116

VICE PRESIDENT ASBURY: I think he was using their machinery to do it.

PN1117

MR GHOSH: Yes. And that's when the evidence emerged about the ownership of West Coast Site Services.

PN1118

So none of these employees are doing the work that they're engaged to do for the company under these agreements in the capacities that they're engaged for. Mr Read gave incredibly vague evidence about tenders that the company was – that the company had made or was attempting to gain work through, but couldn't give any real details of those tenders and we'd submit in the end that the inference is available that these employees were essentially paid to be on the books. They certainly weren't paid for building and construction work, and that that's a conclusional finding that the Full Bench can reach here.

PN1119

In relation to the length of employment that's referred to, Mr Read gave evidence that each of the employees was engaged on a four week contract and that they – that the employees voted on the enterprise agreement on the day that their employment was ended. Noting the observations about when the contracts were actually entered into, it was either on that day or a day before or two days before their employment was ending. But we say the fundamental point is that they were voting on an enterprise agreement that they were not going to be covered by, and what that means more substantively is that they didn't have a stake in the agreement.

PN1120

JUSTICE HATCHER: Well, there's two aspects. One, they didn't have a stake because their employment was coming to an end, that they were fundamentally – they had no entitlement to vote upon it in the first place because they weren't covered by it.

PN1121

MR GHOSH: Yes. Yes, your Honour. Now those matters were not disclosed to the Commission at first instance when the application was made sometime later, that is on 5 October 2022. And we'd say that that's a material omission. But we'd also say, subject to or taken in the overall context of what was not revealed to the Commission, that that was a deliberate decision not to reveal those materials. So we think that conclusion is open to the Commission in all of the circumstances.

PN1122

JUSTICE HATCHER: What, misleading by omission?

PN1123

MR GHOSH: Yes. Which we drawn a slight distinction from on the earlier point where the materials were put before the Commission that were inaccurate and misleading on their face.

PN1124

Further, we note that each of the employees was paid an identical amount for identical hours across the four weeks. That paid no heed to their quite distinct lengths of experience, ranging from 10 to 32 years in the industry. It paid no heed to the classifications under the award referred to or under the agreement. And we'd submit that though this is not a matter of evidence before the court, it's unusual for that level of uniformity to be found among different trades on different – in respect of building and construction work, and it goes again to the point that these employees were not fundamentally employed to go to building sites to do the work that they were employed under the contracts for.

PN1125

In respect of Mr Ruffino's role as a bargaining representative, we note that the agreement was signed by him on behalf of the employees in that capacity. Now he was nominated as the bargaining representative by employees that he had never met and did not know in Alex Hudston and Steven Biddle. And he gave evidence that he did no actual bargaining in relation to the agreement. There were no negotiations or changes requested. And the evidence that emerged from Mr Ruffino was he did not expressly disclose his relationship with Mr Read, though he made a statement that it was implied. But then when that question was put this morning to Mr Paul Hudston, he simply said he had no idea that he was – that Mr Ruffino had that extensive relationship with Mr Read, or had a commercial relationship with Mr Read.

PN1126

These matters go to the independence of the bargaining representative. Mr Read had known Mr Ruffino for 13 or 14 years. Mr Read was a contractor engaged and paid by Mr Ruffino in his business, Diablo Industrial Services, on various engagements across more than three years, and Mr Read was ultimately responsible to Mr Ruffino in that role. Mr Ruffino provided Mr Read and Workforce Logistics the use of the premises at Unit 2/1 Aitken Way. There was no formal lease agreement or arrangement. There was no rent paid.

PN1127

Mr Ruffino gave evidence that he worked for 38 hours per week for Workforce Logistics doing work for another company. That's a submission I've already made in relation to West Coast Site Services, that he, Mr Walters and Mr Read were shareholders of. Mr Read's brother Mr Alex Read worked on plant and equipment that was owned by Diablo Industrial Services and did not invoice for that work. Mr Read could not estimate how much of Alex's time was spent in that way and none of the aspects of this relationship were disclosed it seems to – at least on the evidence before the Commission, directly disclosed to the employees. But they were certainly not disclosed to the Commission at first instance.

PN1128

There is an indication of that relationship in the application itself which lists as the address for both the employees, representative and the employer, the premises of Aitken Way, Kewdale. So on the face of the application there is an indication of some relationship but the extent of it was certainly not disclosed and we would say that it ought to have been in the context, and that it undermines the independence of Mr Ruffino as a bargaining representative for the employees in this case.

PN1129

Mr Mark Hudston, who's a workplace relations consultant, sits in the shadow of this enterprise agreement. He has known Mr Read for more than a decade. He was alleged by Mr Read to have undertaken an explanation to this agreement to employees and relied upon to do so, but again Mr Hudston said that was not the case. He was involved in drafting the agreement and we'd say that that's again a relevant contextual factor in this matter to suggest that the agreement was not genuine, because what was not explained by Mr Read and it wasn't clear as to why Mr Hudston was doing all this work without any formal engagement. Without any – at least according to Mr Read, without being paid for that work. And so we say his involvement, at least, raises more questions than it answers and is consistent with the union's submissions that this process was a sham or a contrivance in order to obtain an enterprise agreement. Not a genuine agreement and certainly not an agreement reached at the end of any good faith bargaining.

PN1130

We say that there are certain matters that go to the credit of Mr Read directly in the evidence he gave to the Commission. I won't repeat the matters that I've said that I consider or that the union submits that he had given misleading answers to the original Commission. But the evidence this Full Bench, we say, raises very serious concerns about the credibility of Mr Read and in the first instance, the Commission should place very little weight on his evidence as to the alleged reasons that this company was set up. And in the second, we think it's likely that Mr Read has not given truthful evidence to this Full Bench. I put it no higher than that. In the absence of a transcript I don't want to put the allegation any higher than that but it may be that that emerges subsequently.

PN1131

The specific matters we raise are that there are a number of inconsistencies between the evidence given by Mr Read about four matters in relation to this company, and the other witnesses called, Mr Ruffino and Mr Hudston. Mr Read's

answers to my questions and at times the Full Bench's questions were vague and at times non-responsive to the question asked. There were inherent inconsistencies in Mr Read's evidence that Workforce Logistics engaged employees so as to be ready to accept work on short notice but did not check whether each employee needed or had a white card, which is a minimum safety qualification.

PN1132

The company was not yet ready to (indistinct) pay roll tax, GST and MyLeave because that was not necessary. We say that there are inherent implausibilities in that evidence, including in relation to what he says his reliance placed on Paul Hudston was and in relation to that relationship. That's not a comprehensive list for your Honours but those are some of the matters that we say support the two propositions that I had advanced earlier. In relation to the second ground of appeal, the position taken by the respondent is that it accepts that the Hydrocarbons Award ought to have been a relevant comparator before the Commission and that itself is a basis for allowing the appeal and obviously, we don't derogate from that statement.

PN1133

We also submit that this case is analogous to the decision of this Full Bench or of the Full Bench in the CFMMEU v Specialist People and while there was a distinction in that case in that it was conceded by the employers that if the Hydrocarbons and other relevant awards were applied, that the BOOT would not be satisfied in its application to the employees under that agreement. There is no such concession in this case. We say the only evidence before the Commission is the evidence of Mr Heath. That wasn't subject to cross-examination and that ought to be accepted. Those are my submissions for your Honours, unless there are any questions.

PN1134

JUSTICE HATCHER: All right. Mr Pollock.

PN1135

MR POLLOCK: Thank you, your Honour. I'll be brief. Just at the outset, before I dress ground 1, I didn't hear from my learned friend any further articulation of a submission that I think had been at least touched upon in writing, seeking to suggest that there was any knowledge or involvement of Workforce Logistics' current owners, Altrad, in the making of the agreement. I don't understand that to be pressed, insofar as it is. Of course we say there's nothing in the evidence to support any of that and it should be abundantly clear from the steps that Altrad has taken once it became aware of those matters, that it hasn't sought to defend the approach taken by the previous owners and managers and it's taken, in my submission, a sensible course to the matter now.

PN1136

Can I just deal briefly with ground 1: you will have seen from the written submissions that we reserved our position until we heard the fresh evidence and how it unfolded. It's plain from the evidence adduced yesterday and this morning that those matters would have been relevant to the Deputy President's assessment of genuine agreement. It plainly raises real questions of stake and of moral authority. There's no gainsaying that. To your question, your Honour, or your

observation that it might also be part of the entitlement of the employees to (indistinct) the agreement if they weren't performing the work. That will turn of course on a question of construction of those contracts of employment, and whether or not it would be suggested that those contracts were in fact a sham.

PN1137

JUSTICE HATCHER: Well, leaving aside whether they were a sham or not, the agreement applies only to work covered by the classifications and it refers to the various trades. That's the various trades there. There is no evidence that anybody did any work in those classifications.

PN1138

MR POLLOCK: Well, that is so, your Honour, and that turns on the question of whether or not one examines simply the contracts of employment to determine what they were employed to perform or whether one examines the substance of what they actually did.

PN1139

JUSTICE HATCHER: The problem is that they were engaged for four-week periods in circumstances where the company had no work for them to do in those trades and there was no chance they would get any work to do within that four-week period because the company wasn't set up for GST, MyLeave and no evidence that any employees had white cards.

PN1140

MR POLLOCK: That's so, that's so, your Honour. We don't suggest anything other than on the basis of the materials and all the evidence that's been adduced yesterday and today, that had that been before the Deputy President, that would have plainly been relevant in his consideration and one would suspect it would highly likely have impacted that assessment. One issue that your Honours will have to grapple with in assessing ground 1, however, is that there isn't at least on my understanding of my learned friend's case a suggestion that there was any error in the Deputy President's formation of his state of satisfaction on the materials that were brought before him. That is the entirety of the case that impugns genuine agreement is advanced on the basis of the fresh evidence that's advanced.

PN1141

Now, that can be contrasted perhaps – your Honour, you will recall I argued before you some years ago and that case turned on an inadvertent error in the explanation that I think your Honour picked up and bounced the ball on the day of the hearing. That of course was an error that was apparent on the face of the materials that were before the Commissioner at first instance there.

PN1142

JUSTICE HATCHER: Well, it's not a difficulty. This is an appeal by way of rehearing, not an appeal in the strict sense, and the High Court said in the Aldi decision that in an appeal on rehearing, error in the original decision can be demonstrated by reference to new evidence admitted in the appeal, because it's an appeal by way of rehearing.

PN1143

MR POLLOCK: Yes, well, your Honour, I raise it only on the basis of the analysis in *Coal v Allied*. One will see there of course there's a reference to the ability of the Commission to receive fresh evidence on the appeal but notwithstanding that ability, the appellate powers in 6073 are still exercised only upon the demonstration of error.

PN1144

JUSTICE HATCHER: Yes, but the point is new evidence can be used to demonstrate error.

PN1145

MR POLLOCK: Well, this is the question – that the relevant error is the formation of a state of satisfaction. If the case is advanced that there was no relevant error in the formation of the state of satisfaction below in the materials before the Deputy President - - -

PN1146

JUSTICE HATCHER: That's akin to saying that you could procure the first instance member's satisfaction on the basis of a deception and then that can't be (indistinct) on appeal.

PN1147

MR POLLOCK: Of course, your Honour, and of course we are conscious of the observations of the Full Court or the caveats of the Full Court in *Midwest Ports* advanced there. I raise it only as an issue that the Full Bench would need to grapple with. I don't suggest that the appeal ought not be allowed on that basis. With respect to ground 2, of course we don't press the contention that the *Hydrocarbons Award* ought not to have been considered. We do take the point with respect to the utility in granting permission to appeal on that ground, given the absence of any cogent evidence to suggest that the agreement would not have passed the BOOT, had it been assessed with respect to the *Hydrocarbons Award*.

PN1148

My learned friend says, well, Mr Heath's evidence is before the Commission and he wasn't cross-examined on it but that evidence rises higher than its own source. Now, if I can take the Full Bench to page 161 in the bundle - - -

PN1149

JUSTICE HATCHER: Sorry, what page?

PN1150

MR POLLOCK: 1-6-1 – and this is attachment 13 to Mr Heath's statement. Mr Heath gives two scenarios there: one, of a one-day work allocation for a basic scaffolder on a Monday day shift and one sees on ordinary hours the employee is ahead on the agreement and it is only when factoring in false hope, as it were, on the award travel allowance that one sees the balance weigh in favour of the employee being better off under the award. The same position follows in the second scenario – that is both for ordinary or for ordinary hours, overtime hours at one-and-a-half time and at double time, the employee is better off under the agreement.

PN1151

And it is only, again, factoring in full-time on the travel allowance that the employee is said to be worse off. Now, Mr Heath's evidence to support factoring in 12 hours of travel time is found at page 96 of the court book. This is at paragraph 52 of his statement. Mr Heath said this:

PN1152

It's not uncommon for employees to spend 12 or more hours travelling to remote offshore oil and gas facilities and travel of two hours had been factored into the award calculations.

PN1153

What Mr Heath doesn't say, of course, is whether or not that 12 or more hours or what that in fact comprises: whether it's travelling door to door from home to the relevant worksite or otherwise, that's significant, your Honour, because the award entitlement doesn't apply door to door from home to the relevant offshore location. I've extracted clause 20.4 in our written submissions at paragraph 21 of the outline. This is clause 20.4 of the Hydrocarbons Award. That reads as follows:

PN1154

Where an employer requires an employee to undertake remote work the employee will nominate an assembly point in a centre of population where normal amenities are available and either provide transport or reimburse the cost of transport.

PN1155

This is at subclause (c):

PN1156

Where under normal circumstances travel time between a nominated assembly point and a workplace exceeds four hours from a given location the employer will pay travelling time at the ordinary rate up to a maximum of 12 hours for one journey.

PN1157

So it is the last leg, as it were. It's the last leg for the nominated point in a centre of population where normal amenities are available and the work site, being in an offshore building context. That's the journey for which the travel time allowance within the award attaches on its face. Now, there is nothing in Mr Heath's evidence that suggests that it is common for journeys of that nature to last for a period of up to or around 12 hours. I think I set out in the written submissions with reference to the work that Mr Heath's pointed to this agreement being useful – that is work on Chevron's projects.

PN1158

Assuming for the sake of argument that Mr Heath's evidence around that agreement being used for those projects in Bright – well, the sorts of travel times that we'd be looking at would be in the handful of hours, from Perth to Barrow Island.

PN1159

JUSTICE HATCHER: From Perth to where?

PN1160

MR POLLOCK: To Barrow Island – they're not journeys that the flight time - - -

PN1161

JUSTICE HATCHER: He was talking about offshore work.

PN1162

MR POLLOCK: Yes, Barrow Island is the last point from which one accesses Gorgon, Whetstone, those - - -

PN1163

JUSTICE HATCHER: So you're saying it's not measured from Perth, it's measured from Barrow Island?

PN1164

MR POLLOCK: Even if one measures it from Perth - - -

PN1165

JUSTICE HATCHER: Yes.

PN1166

MR POLLOCK: - - - you're talking a travel time of – flight time of two hours. To examine a full, 12-hour travel time - - -

PN1167

JUSTICE HATCHER: How do they get from Barrow Island to an offshore platform?

PN1168

MR POLLOCK: A short helicopter ride, your Honour. Under no realistic circumstance – and Mr Heath having - well, this case in answer being put in the written submissions and no further reference is adduced from Mr Heath to demonstrate or to answer that. Under no realistic circumstance is there a 12-hour travel time between the last leg location, the nominated assembly point in the centre of population, and the worksite.

PN1169

And so it just simply is, we would say, in the realm of the fanciful to assume a 12-hour travel time in each direction and to factor that into the BOOT analysis, and that is, on the face of the evidence, the only - the scenario put forward to demonstrate that the agreement would otherwise fail the BOOT when assessed against the Hydrocarbons Award noting on Mr Heath's analysis that on the basis of ordinary time rates and overtime, the employees are better off under the agreement. Twenty-point-four - it's 24.4C, Your Honour. I have hard copies, if that assists.

PN1170

JUSTICE HATCHER: No. I've got it. Thank you. All right. Thank you.

PN1171

MR POLLOCK: And on that basis, Your Honour, in the absence of any - even taking Mr Heath's at its highest, given that his evidence didn't go to the question of the common length of time for travel on that last leg that just dealt with travel generally and what one can sensibly make in the context of travel door-to-door from the employee's home to the workplace, Your Honours simply don't have any cogent evidence to demonstrate that the agreement would have failed the BOOT on the Hydrocarbons Award in those circumstances notwithstanding that the (indistinct) well, we accept that there is appealable error merely in the failure to consider the Hydrocarbons Award for BOOT purposes. In those circumstances, there would be no utility in granting permission on that ground and given the absence of any cogent evidence, it wouldn't have otherwise passed the BOOT.

PN1172

JUSTICE HATCHER: All right. Can we just go back to ground 1?

PN1173

MR POLLOCK: Yes, Your Honour.

PN1174

JUSTICE HATCHER: And in putting these propositions, I'm speaking only for myself. Is there any reason why we should not find that the exercise in agreement making which your client engaged in was inauthentic, in effect, a fake that Workforce Logistics was established for the purpose of entering into a fake enterprise agreement which could then be on-sold to another entity and that its approval was obtained by way of deception, that is, by way of a declaration which was either misleading by inclusion or misleading by omission?

PN1175

MR POLLOCK: Well, I'm sure Mr Raftos will have some things to say about the latter part of that proposition given that it concerns his client as the declarant.

PN1176

JUSTICE HATCHER: Sure. Ultimately, this is the conduct of your client, the corporate entity.

PN1177

MR POLLOCK: Well, that - strictly speaking, that's so.

PN1178

JUSTICE HATCHER: Well, it's not strictly speaking. It's - that is the case.

PN1179

MR POLLOCK: Well, that is the case, Your Honour, albeit that there is some significant contextual - there are significant contextual matters, and I think the evidence and certainly these submissions I've advanced have made that clear. I think Your Honours can certainly conclude that the agreement-making process - well, the employers did not genuinely agree to the agreement.

PN1180

I think it's certainly open to say that in the - as the evidence unfolded yesterday and today that those employees, particularly in circumstances where they voted on the agreement on the final day of their employment, did not and could not have had a relevant stake in the agreement. As far as whether or not one could go so far as to say that the purpose of Workforce Logistics was to establish nothing more than an enterprise agreement and to then on-sell it.

PN1181

VICE PRESIDENT ASBURY: Well, that's, effectively, what it did, isn't it, Mr Pollock?

PN1182

MR POLLOCK: Well, it is. I accept that that is what it did.

PN1183

VICE PRESIDENT ASBURY: And it doesn't appear to have done it much else because if the company was going to have a go at operating a business itself, it didn't have much of a go, did it, before it sold the business?

PN1184

MR POLLOCK: I freely accept that, Vice President. There's - - -

PN1185

JUSTICE HATCHER: I mean, you could have called evidence of if it's defined work or tenders for contracts. You could have produced evidence about all these SafeWork documents that were produced, but none of that was forthcoming.

PN1186

MR POLLOCK: Well, I - well, no doubt, Your Honour, and I think we've made - I had endeavoured to make clear in submissions that on these issues, we were in no better position than the union on this. We didn't have any of the relevant documents. By that, I mean, the corporate entity in the hands of the current owners. Now - - -

PN1187

JUSTICE HATCHER: Well, at least it's clear, is it not, that AGC - demonstrates, does it not, that AGC bought Workforce Logistics for the purpose of obtaining the use of its enterprise agreement?

PN1188

MR POLLOCK: I think you could certainly draw that inference on the basis of the evidence of Mr Kimpton yesterday. There was some suggestion of, well, there was also an advantage in having a corporate entity, but I think the exchange between Your Honour and Mr Kimpton around the ease of which we were establishing corporate entity rather bell the cat on that issue. The one point I suppose I just would raise in the evidence that cuts against that inference being drawn is this.

PN1189

The purchase price for Workforce Logistics is some \$20,000 which, I think, on Mr Read's evidence didn't cover his costs with respect to the business even to that

point. If the purpose from the outset was to establish this as - purely for the basis of making the agreement and then immediately on-selling it. One would think that - unless the suggestion is it was a particularly poorly executed business strategy, one would expect a more significant purchase price, and at the very least, Mr Read would have made his money back.

PN1190

VICE PRESIDENT ASBURY: Well, if - - -

PN1191

DEPUTY PRESIDENT GRAYSON: Well, that involves accepting his evidence about those matters.

PN1192

MR POLLOCK: Well, that is so. Even when one has, relevantly, the - - -

PN1193

DEPUTY PRESIDENT GRAYSON: I mean, we could make this an open-ended inquiry if people wished, and, perhaps, on retrospect that the appellant might have more productively called Mark - what's his name - Mark Hudston rather than Paul Hudston, and we might have made inquiry about in whose interest he was actually acting and who was actually paying for all this, but they're all interesting questions.

PN1194

MR POLLOCK: Well, indeed, Your Honour. They were all interesting questions. In any case, I raise that merely as one wrinkle in the evidence that, perhaps, doesn't - on its face doesn't support the inference that Your Honour was - - -

PN1195

VICE PRESIDENT ASBURY: Well, you'd have to accept that Mr Read did all the work on it, and with the number of Hudstons involved, I would have thought it would be more probably than not that he didn't.

PN1196

MR POLLOCK: Well - - -

PN1197

VICE PRESIDENT ASBURY: And given Mr Hudston's CV - Mr Mark Hudston's CV, one would - and the way that he helped Mr Read, he might have helped - he might have done all the work for Mr Read in which case \$20,000 was a good price to make.

PN1198

MR POLLOCK: Well, Your Honour, I don't think we have a - I mean, that - those are interesting - I suppose interesting questions to ask. I don't think we have a proper evidentiary foundation to draw those inferences.

PN1199

DEPUTY PRESIDENT GRAYSON: No.

PN1200

MR POLLOCK: But, Your Honour, I think it suffices to dispose of the appeal that on any view, the - that the process of this agreement's explanation and its making did not demonstrate that the agreement was genuinely agreed. For the purposes of the appeal, I think that is - that's as far as the Full Bench needs to take it.

PN1201

JUSTICE HATCHER: So do we take it from your submission that Workforce Logistics doesn't want to be heard against the proposition that we should grant the extension of time, grant permission to appeal, uphold appeal ground 1 and quash the approval of the decision and dismiss the approval application.

PN1202

MR POLLOCK: That's so, Your Honour.

PN1203

JUSTICE HATCHER: Yes, all right.

PN1204

MR POLLOCK: Thank you. Nothing further.

PN1205

JUSTICE HATCHER: All right. Mr Raftos, you've heard the exchange I've just had with Mr Pollock in respect of findings which the Full Bench ought to make about this matter which include going to the conduct of Mr Read. Do you want to make submissions about that?

PN1206

MR RAFTOS: Your Honour, I do. There's clearly some serious - there's been clearly some serious submissions made against Mr Read, and I understand possibly Mr Ruffino. Unfortunately, we are at a distinct disadvantage. Like my colleagues, I don't have the transcript. Unlike my colleagues, we've come involved - essentially we are strangers, and we've come involved at late notice.

PN1207

The problem of not having the transcript, of course, is numerous, and just to give an example, I understood when my colleague Mr Ghosh was questioning Mr Paul Hudston, he only asked Mr Hudston about having meetings. He did not - and I could be wrong, but my recollection is that my colleague did not ask him about discussions regarding the enterprise agreement. That was my recollection. And so with that in mind, we would be seeking to make written submissions very quickly upon receipt of the transcript.

PN1208

JUSTICE HATCHER: Can you just hold on a second, Mr Raftos? Mr Raftos, we anticipate getting the transcript for yesterday later today. So we'll provide that to you and to the other parties. If you wish to make a written submission about the matters that we've raised, we'll give you leave to file such a submission by close of business Friday this week.

PN1209

MR RAFTOS: Sorry, Your Honour. Can I just quickly get instructions on that?

PN1210

JUSTICE HATCHER: Yes.

PN1211

MR RAFTOS: Your Honour, we'd be obliged - or if you could give us an indulgence of seven days upon receipt of the transcript - - -

PN1212

JUSTICE HATCHER: No. We won't be granting that indulgence, Mr Raftos. You're here pursuant to a limited grant of leave. I think we're, in fact, offering you an indulgence. If you want the opportunity to make written submissions in relation to - in addition to oral submissions on the basis the events are heard, we'll allow you until close of business Friday this week.

PN1213

MR RAFTOS: Thank you, your Honour. We'll accept that. Thank you.

PN1214

JUSTICE HATCHER: All right. Is there anything you want to say in response, Mr Ghosh?

PN1215

MR GHOSH: No, Your Honour.

PN1216

JUSTICE HATCHER: All right. Subject to the receipt of further submissions from Mr Raftos and his clients, we propose to reserve our decision, and we'll now adjourn.

ADJOURNED INDEFINITELY

[1.13 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

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EXHIBIT #8 STATEMENT OF NEIL SADLER DATED 07/08/2023PN1068