



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT O'NEILL

AM2024/21

s.157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective

**Social, Community, Home Care and Disability Services Industry Award 2010
(AM2024/21)**

Sydney

10.00 AM, WEDNESDAY, 4 JUNE 2025

Continued from 20/12/2024

PN1

THE DEPUTY PRESIDENT: Good morning, everybody. I'll take the appearances. Thanks.

PN2

MR SAUNDERS: May it please the Commission, Saunders, initial L. I seek permission to appear for the Australian Services Union, and my instructors are behind me.

PN3

MR SCOTT: If the Commission pleases, Scott, initial K, also seeking permission to appear on behalf of the four employer groups: Australian Business Industrial; Business New South Wales; ACPA, which is now known as Ageing Australia; and National Disability Services.

PN4

MS CRUDEN: May it please the Commission, my name is Cruden, initial L, appearing for the Australian Industry Group. I have with me Ms Kossman, initial L.

PN5

MR LEWITT: If the Commission pleases, Lewitt, S, seeking permission to appear on behalf of the Health Services Union and the United Workers Union.

PN6

MS BULUT: May it please the Commission, Bulut. I appear for the Commonwealth.

PN7

MR LETTAU: Good morning. Lettau, initial E. I'm seeking permission to appear for the ACTU.

PN8

THE DEPUTY PRESIDENT: All right. Well, permission is granted to all (indistinct) requested it. Okay. Just bear with me one minute. Excuse me. So as you know, the purpose of the conference is really – in light of the provisional views expressed by the Bench in the Gender Undervaluation decision in April, in respect of the SCHADS Award, the purpose is really to discuss concerns that have been raised with the provisional views expressed by the panel, particularly around the proposed structure – that seems to be the topic du jour – and really explore whether they can be resolved in whole or in part, or at least narrowed in some way, and to the extent that there remain issues that can't be resolved, what further hearings are considered to be necessary.

PN9

So in terms of how we proceed today, I thought that it might be most useful to start with the ASU's submissions, work through those. There may well be a number of questions and issues that other parties want to raise as we go through that. So that's what I suggest, and then we'll hear from the HSU and UWU and the ACTU, and then the AI Group and ABI and the Commonwealth.

PN10

MR SAUNDERS: I can certainly say that's a convenient course to the union parties.

PN11

THE DEPUTY PRESIDENT: Right. Let's go.

PN12

MR SAUNDERS: I think I can be most useful by speaking at a high level about the source of the ASU concerns, and some of the overlap between our position, the position of the other unions, the Commonwealth's position, and the relevant employers and employer associations. An enormous amount of common ground emerges on the various responses that have been filed between those parties, but also in respect of the decision and aspects of the provisional view. It seems to be universally held by all relevant parties that the current SCHADS classification structures need total rework from where they are, both to address gender-based undervaluation and just standard undervaluation on work value grounds, and because they don't function properly.

PN13

They're currently driving – the rates are one thing, but the structure is currently driving what could be described as application-based undervaluation, because of the high level of subjectivity that allows the decision-making process to be determined in a manner that leads to under-classification, for reasons including unconscious or conscious bias. The new structure will need to be as simple as possible. It needs to have objectively ascertainable criteria, so it can be both applied and enforced, and it's got to reflect the true skill level of each job group. That becomes complex, because the skill in this industry is driven and influenced by a range of factors unique to each individual, particular to each individual.

PN14

Qualifications are part of it, formal qualifications; experience, actual experience, doing the work is equally as significant here, and in some sectors more so, because of the lack of penetration of the AQF system. Not that the work doesn't require it, but the courses are simply not available in some parts of the country, Tasmania in particular, or it just hasn't professionalised in that way, to recognise what the work really requires. Lived experience is the most complex aspect of this to build into a classification structure. It's not something that can be easily translated into an AQF type, but it is critical, again, that it's recognised. Cultural load is part of that, the particular complexity in Indigenous and other culturally diverse groups, and the services provided to them.

PN15

It's a concept that is starting to gain some traction in enterprise bargaining. Your Honour may well have seen that a number of NTEU agreements are starting to pick it up, but it's novel to award classifications and presents its own challenges. The sector of course has other complexities. It's enormously broad. It goes well beyond disability services work, into a range of different, highly complex areas, highly different from each other. The high-level summary is set out in the ASU's submissions, but it ranges from domestic violence to

complex legal work to any number of things. Within that, there's a breadth of roles, a breadth of skills. Quite a different depth, or height, perhaps; it goes up much higher into the management levels than awards that previously been considered in the contemporary work value context, following pharmacists, teachers.

PN16

Teachers are professionals, of course, but that managerial layer wasn't really a major part of that consideration. These are roles that are appropriately award-covered, because of the nature of the sector, the nature of funding, but do require a different approach to valuation. Reducing that sector in all its breadth to just care work is, to a degree, reductive. Hands-on direct care is an incredibly complex, incredibly important part of the sector, but it's not the be-all and end-all of it, and it's just not all the same thing. It's not about relative worth, or someone being more important or less important than an aged care worker. It's just different; different depth, different skills.

PN17

Complexity is added in building a classification structure by the sensitivity of funding, both state and Commonwealth, but predominantly Commonwealth in most, but not all sectors; the state governments do come into play. That funding is critically influenced by classification. It drives a sector that is affected by funding shortages. It's described as underfunding. There's a debate about whether that's so or not, but what it means is, if there's an opportunity to reduce wage costs through classification, it will be taken. The AIG Group's submissions in this respect, as to basic (indistinct) – a point I'll return to – are illustrative of what will happen.

PN18

Across the industry, the relevant sector, the equal remuneration is – the Equal Remuneration Order, I should say, is close to a watershed moment. It's not just a Commonwealth Government, ASU stitch-up. It is considered vital, as the submissions the Commission has received made clear, by all employers. It's highly supported, preserving the rights. It is possible to describe a situation where an award has wage rates, and then the actual wage rates for a position is silly. And following the end of the phasing in process, some steps do need to be taken to rationalise that, but appropriate reforms, the position of the ASU, are ones that protect those rates. No role is moving backwards. In five years, we won't be looking at someone who would have, had no change been implemented, be making more money.

PN19

That review is obviously complex, obviously challenging. It needs to be stakeholder-driven. All stakeholders across the sector – peak groups have their role, but the smaller voices need to be heard as well. Ultimately, that process is about persuading the Commission that that's the end of the ASU's phase 3, and what we're proposing to do with that, again, I'll return to. But the relevant interested parties are only going to be able to persuade the Commission as to a new structure if we can be confident and have a proper researched, developed basis to demonstrate that it will work for the sector, that it will actually achieve these goals, and that's a major project.

PN20

Since the matter was heard, there's been a major development, the imposition of a change in circumstances, which is that the Commonwealth, as the Commission has seen from its submissions, has committed to funding and facilitating that stakeholder project; getting the work done, getting the right people in the room, correctly resource the research that it is necessary to do it, and do it properly. Again, it's not a process isolated from the Commission. It cannot be, because ultimately, it's this body that sets that rate, and we consider that the Commission's assistance during that process, as it sets out, will be critical. I'm required to be a little (indistinct) about this, but by amazing coincidence, there is an application before the Commission that has, in its third phase, a built-in structure to facilitate both this Commonwealth program working and feeding into the Commission, now that it is confirmed that it will happen.

PN21

We don't have a formal proposal as to a structure. Starting at that formal proposal we consider has an effect of ossifying discussions. It turns into, 'What's wrong with this', 'What's wrong with that', rather than starting at the right point of, 'What do we need'? What the ASU is committed to, though, is working within the very clear framework of principles that the decision shows, that the provisional view, both as to the approach to structure, but the structure itself shows that simplicity, that appropriate use of experience, rather than automatic pay points. There's a sort of quite fine distinction between progressing after three years and an annualised pay point system recognising seniority. They are different things, but that is what we anticipate being the foundation of the work that's to be done.

PN22

That takes me to the provisional view. The structure, as it is, has – sorry, the proposed structure has no support; not from the unions, not from the Commonwealth, not from industry. The reasons of the other peak bodies are slightly different, but problems are identifiable. The general thrust behind it is a different proposition. It's not that it's conceptually – it's the way that theory and that developed principle has been expressed. It just will not work for the sector. Part of the problem is, the Commission did not receive the assistance it needed from the parties in the review. The evidence was very narrowly based, almost markedly focused on disability support workers, for a good reason; that was the classification identified as the primary focus. That's how it went through, and there was the intervention of the ASU's work value application, the bifurcation of that, and that has led some parties to – it's expressly in the ABL submissions below – not focus on that broader review.

PN23

We do question whether the full breadth of evidence and the cooperative work that is going to be necessary to make this work could have been done in that time frame, but that seems to be part of the driver of the difficulties we now see. The key issues that, from the ASU's perspective, that we have with the structure, first, this introduction of basic work, basic community and support sector work. Again, we note the AIG submissions in that respect. We think that is going to – firstly, we don't think the work that is correctly described as basic actually exists, and we think it's going to lead to, ultimately, given the particular feature of employment

in this industry, that it's highly mobile, that it's fixed-term, it's contract-to-contract, it's funding-based, we think it's going to lead to, in practice, people being classified down and held at those lower classifications.

PN24

THE DEPUTY PRESIDENT: So on that, some of the language in both the original provisional view, but also in the discussion paper, what's put forward as potential further language, was drawn in part on the material that was the industry-agreed translation to the ERO, and that's where the basic came from, is my recollection. The other kind of issue about the inclusion of basic is – and I understand that this is – there's a disagreement between you and the employers on this, but the question of, if there's no basic level, then there's no role for – taking (indistinct) as an example, any role that is not Cert III or equivalent to be performed.

PN25

MR SAUNDERS: Yes.

PN26

THE DEPUTY PRESIDENT: Now, your proposition is, well, it is all at that level. That's a point of contention, but that is the rationale, that was the logic behind having some language, and the word, 'basic' came from that agreed industry translation, is my recollection.

PN27

MR SAUNDERS: Yes, that is right. As I read the – I do want to go back to that translation and check this, and I'll come back to your Honour after I've done that. But it's more directed at the administrative work, rather than the actual social and community services work. There's a difference between – I think part of the problem is, there's a difference between, 'basic' and, 'introductory'. As I read the proposed classification structure, particularly as expanded upon in the discussion paper, it is intended to be, you move through it after 12 months. The industry – the AIG has put forward a different view in that respect, but part of it's that concern that people will get stuck.

PN28

It's related to the second pretty fundamental concern, that whether these are hard or soft barriers, you've got the – some of that's language based. We accept that, but the provisional view is very classification driven, which is not in itself a bad thing. It's an objective, measurable way to peg skills, and one of the problems with the current structure is the lack of coherent anchor points. There's about four different entry levels for someone with a Bachelor's degree, and that does need to be fixed because which one do you pick?

PN29

THE DEPUTY PRESIDENT: But the question that it raises for me – and this goes to your preferred way forward – if a classification structure isn't rooted in qualifications, and it's not rooted in simply years of experience, then what other potentially objective criteria might exist to form the basis of a different structure?

PN30

MR SAUNDERS: Yes. Part of that's the difficulty in - it's a real expression of the difficulty in imposing the full C10 driven structural efficiency approach on to quite a different industry.

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THE DEPUTY PRESIDENT: But it's not. It's really just the point of what objective criteria could there be to form the basis of a different classification structure?

PN32

MR SAUNDERS: That's certainly not a question I can answer now. It's certainly something that needs to be developed. One is jobs. Given the nature of this sector, there are - - -

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THE DEPUTY PRESIDENT: But not job titles because there's - - -

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MR SAUNDERS: There's disagreement, but - - -

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THE DEPUTY PRESIDENT: There's not uniformity or regulation about what a job title is. So that could be gained in any number of ways.

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MR SAUNDERS: Look, any classification structure can be manipulated. You know, it's good for business, but it's an inevitability of the system, but this is a system where there are, in reality, some key roles. So a caseworker is, at the end of the day, the caseworker of whatever the employer calls it. There's funding metrics to tag it to. There is an available external structure. The problem with classifications here is that issue of equivalence, which is, itself, an artifact of the metals and engineering structure. The equivalence is more commonly - it doesn't have to be, but it's commonly understood in the system as referring to equivalent qualifications either at the very prescribed way that the metal structure does it and that you can genuinely go out and assess someone's type of welding.

PN37

THE DEPUTY PRESIDENT: Yes.

PN38

MR SAUNDERS: Or there are broader references to equivalent levels of skill. It's just very difficult to objectively assess that and becomes close to impossible with lived experience. So that's easier to gain than saying this is a caseworker. This is where caseworkers come in.

PN39

THE DEPUTY PRESIDENT: But that points to, you know, potentially some scope to refine or have a better definition of equivalency within the structure, and that's something that, you know, we'd be very happy to hear any suggestions or views that might address that, but if you're not able to identify any other potential framework for a new classification structure, I have to say I'm really struggling to

see how - and the submission you indicate that the review would take six months. If you're not even at that point, I just think that would suggest to be a very, very optimistic timeframe to come up with a new structure with consensus.

PN40

MR SAUNDERS: Yes, and that's always a reality of these. We are optimistic, but things can go wrong.

PN41

THE DEPUTY PRESIDENT: Well, but if you remember, almost a year ago, the indication from the ASU was that in relation to phase 3, you were ready to go and would be ready for final hearings by the end of this year. Now, has there been - apart from the securing the Commonwealth funding proposal, has there been any other progress on a new structure, or I think you flagged in a discussion paper last time identifying the issues?

PN42

MR SAUNDERS: I've set out why the ASU is not putting a proposal forward. Can I foreshadow as a general proposition here there are some - following this discussion and this process, there are some matters that the union wishes to raise in private conference. That's as far as I can take that at this point. The equivalency is complicated.

PN43

THE DEPUTY PRESIDENT: Sorry. When you say private conference, you mean not recorded, or do you mean - - -

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MR SAUNDERS: Both not recorded and just the ASU and the Commission.

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THE DEPUTY PRESIDENT: All right. When did you want to do that?

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MR SAUNDERS: It's probably most convenient that we hear from everyone, sort it out and do it after that, if that suits the Commission.

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THE DEPUTY PRESIDENT: Well, it might suit the Commission, but the other parties might have a view about whether that's appropriate or acceptable, but anyway, we can - - -

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MR SAUNDERS: If it's objected to, it can't happen. I accept that.

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THE DEPUTY PRESIDENT: Well, I'll give you all a few minutes to just think about that and decide on your position. Okay.

PN50

MR SAUNDERS: So, equivalency, yes. That is obviously something that can be addressed, as your Honour said, by working out something in the orders as to

what that means. What that is is complex, and that takes time, and I do not have an answer today. Unsurprisingly, we've had it for three weeks. Required is the second - sorry. I didn't mean to - - -

PN51

THE DEPUTY PRESIDENT: No, no. Just I'm - you know. So these issues that you are going through now, the issue of basic, the equivalency and so forth, it's not impossible to conceive of ways through there. That leaves what you've identified as the most pressing issue for the ASU which is the rates. So I guess my question - I'm just curious - is if the issue in relation to the rates was addressed in some way, what would your position be in relation to the remaining issues as matters to - discrete matters to be contested and argued, or if it can't be resolved in discussions, or would you maintain that the only way forward is to do the industry exercise?

PN52

MR SAUNDERS: The industry exercise - I will actually answer your question, but to clarify, the industry exercise is not just about gender; it's about broader work value, and that is too complex to do. We just don't have the information yet to do through this. Of course, if the rates changed in a way that protected the ERO's rates, that would influence the ASU's position. What that position would then moderate to would depend on what the change was, but it's not hard and fast work. We're here to - we'd react to any change, is what I'm saying.

PN53

THE DEPUTY PRESIDENT: Okay.

PN54

MR SAUNDERS: It's a solid maybe, but it's not, 'Absolutely not. There's nothing that can be done'. There's just a lot that needs to be done is the point we're at.

PN55

THE DEPUTY PRESIDENT: All right. And can you just tell me is there anything else you can say in relation to - and let's just call it phase 3 - the broader work value case that is proposed to be pursued? Now, that's in relation to what is said to be work value changes since 2012, essentially.

PN56

MR SAUNDERS: Correct.

PN57

THE DEPUTY PRESIDENT: Is there anything that you can say to broadly identify what those - what sort of rank types of changes are that would form the foundation of that? You've talked about the cultural load. I'm assuming that would be part of it. Are there other dimensions?

PN58

MR SAUNDERS: Different types of work, increasing sophistication of work, increasing complexity of client need. Acuity expresses itself differently in the different sectors, but as we've seen in aged care, that vulnerability translates in

different ways across the sector. Mental health, for example, sees an uptick both in demand, user demand, and user complexity. So it's that.

PN59

THE DEPUTY PRESIDENT: But is that in relation to disability support work or at the other - - -

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MR SAUNDERS: It's across the different sectors.

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THE DEPUTY PRESIDENT: Because, you know, I'm just conscious that the findings of the expert panel in relation to disability support work has essentially found that the proposed rates reflect current work value.

PN62

MR SAUNDERS: Yes. This is - yes. It has found that, and it had an evidentiary basis to do so, but that's the point of emphasising the diversity of the sector, that that finding for disability services work does not necessarily translate to community legal work which has become more complex in a different way.

PN63

THE DEPUTY PRESIDENT: Okay.

PN64

MR SAUNDERS: In terms of the rates, obviously, it is critical. It's a classification structure. It's about what people are paid. There's two parts to the ASU's concern. Again, this is at a high level. The first is that it will see physicians' roles, classifications be paid less than they would have been under the Equal Remuneration Act, does not protect those rates in full. There's always some ins and outs in any review of the classification structure.

PN65

We do accept that the Equal Remuneration Order is a specific context. There's also a concern with the internal relativities. The different way that the C10 benchmark has been set as opposed to the C1A. I shouldn't use benchmark. What I mean to say is that certificate 3 anchor point in this award has been set in a different way than the C1A Bachelor's degree.

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THE DEPUTY PRESIDENT: So, essentially, two benchmarks that - - -

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MR SAUNDERS: That don't - - -

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THE DEPUTY PRESIDENT: I understand.

PN69

MR SAUNDERS: - - - coalesce and C1A, it's the nature of the teacher's case, and it's not the - the case that was advanced by the IEU there was bifurcated. It was either a flat 25 per cent increase to all the rates which is not a particularly

sophisticated way of adjusting wages for work value, but has been done, or the slightly more complicated moving the grad to a decompressed C1B because it's a four-year degree, and then keeping the existing internal relativities, the position that was concluded did it in a different way, but, critically, that C1A rate is set with reference to nothing but the Manufacturing Award, which is quite different to how the C3 anchor point is in this award now proposed to be set and how it was set in the Aged Care Award.

PN70

That's led to a significant internal compression which has two effects. It undervalues the - has the effect of undervaluing the bachelor's qualification in practice because it is just internal relativities matter as much as external relativities, and it gives less room to move within the structure between C10 and C1A, which is leading to the compression of diploma, et cetera, and we're, of course, conscious of the indication - the determination, I should say, in yesterday's annual wage review decision that the next cab off the rank is a review of those professional qualifications in awards, the diploma qualifications. They touch awards that my client has an interest in, unsurprisingly, and so this will be ventilated there, but it's creating a problem here.

PN71

That's also influenced the - a lot of where we're seeing people go backwards is - and where the immediate phone calls my client received from various sectors of its membership at the 567 rate, we're seeing that project backwards. And there's a difficulty with admin. I don't, in fact, read this as intentional in the classification structure. I'd say that it come in and out, that it was meant to strip admin work out of the - - -

PN72

THE DEPUTY PRESIDENT: The middle.

PN73

MR SAUNDERS: Yes. It seems to be a drafting thing. Mr Scott's raised the Clerks Award. What we anticipate happening is saying they're all clerks now. That rate is lower than the ERO rate and will lead to - if that's not fixed, but I think that's - - -

PN74

THE DEPUTY PRESIDENT: I've got to say I can reasonably confidently say that it was not a conscious thing to expand the coverage to the clerical classifications. It's something we need to grapple with.

PN75

MR SAUNDERS: It's more that it's removed. It's reduced the coverage of clerical classifications is the concern.

PN76

THE DEPUTY PRESIDENT: Well, there's different concerns that have been raised. Part of it is that it now extends award coverage in the home care - in schedule E, for example, is the main - and schedule F where there are currently

not clerical classifications, but the second point is I understand there's - the hollowing out is not the avenue from the entry levels to the - beyond that level 6.

PN77

MR SAUNDERS: Yes. It was only the latter that I was addressing.

PN78

THE DEPUTY PRESIDENT: Yes. I didn't think you'd be so troubled by the other proposition.

PN79

MR SAUNDERS: No. That's fine. As I say, there are - it's not as catastrophic as the collective submissions make it look. Of course, a classification structure can be built within the framework the Commission sets. It's just how it's done. Rates, relativities, the descriptors are all - - -

PN80

THE DEPUTY PRESIDENT: And in terms of the rates, my read of it is that there's three categories where the issue is perhaps most pertinent, and they are current level 2 employees that just have - not just have - that have a Certificate 3, but not a Certificate 4.

PN81

MR SAUNDERS: Yes.

PN82

THE DEPUTY PRESIDENT: There's that issue. There's the group that are currently level 4 that don't have supervisory or leadership responsibilities, and then there's, essentially, the level 7 people who would translate to level 8.

PN83

MR SAUNDERS: I'm sorry.

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THE DEPUTY PRESIDENT: No. I'm just kind of checking in. They are the three greatest pain points, if you like, from the pay rates perspective.

PN85

MR SAUNDERS: Yes. I think that's right. The caveat, I think, is because there's just the shifting, the numbering of the levels means that I do tend to get that wrong.

PN86

THE DEPUTY PRESIDENT: You'll get lots of leeway from me on that because it still does my head in after I don't know how many hours on this.

PN87

MR SAUNDERS: I think that is right. We've got other identifiable anomalies, but it's people shifting backwards, and this is the problem with grandfathering, with red circling and the other translation mechanisms. Either - you're freezing people for years in some circumstances, and it's not as high as it was, but not a no-inflation environment which, you know, raises its own undervaluation question

of someone just steadily having their wage eroded over a lengthy - the real value of their wage eroded over a lengthy period. It creates this conflict. The complexity of a two-tiered workforce is always difficult. The size of the tiers - the size of the outliers is wrong. The size of the anomalous group that - - -

PN88

THE DEPUTY PRESIDENT: I understand that, and the point that you make is that, you know, there will always be anomalies, but a smaller number, whereas this proposal is just about everyone.

PN89

MR SAUNDERS: Yes.

PN90

THE DEPUTY PRESIDENT: So I understand that point. But if the payrates for those three categories were addressed in some way, then that would also deal with essentially, the issues with the red circling claim and the main (indistinct).

PN91

MR SAUNDERS: The rights are addressed in such a way that nobody moves backwards. And all people move forward, then that would address the difficulty. If that happens as I – there's only so far I can take these things without speaking further to my client as well. But it goes back to that fundamental point. It's not this can never happen in this way using these principles, it's just that the way that it – the way that the proposed view works in practice across the sector doesn't achieve what we take to be the benches goal of fixing gender based undervaluation. There's just no way that that could have intended for the bulk of people to move backwards. Always at the fringe for an adjustment, but - - -

PN92

THE DEPUTY PRESIDENT: Well, I'm not quite sure of the Cordis methodology in some parts, but I don't think we need to kind of delve into that at this point.

PN93

MR SAUNDERS: Yes, and Professor Cordis was working with (indistinct) we're all getting more familiar with the proposed structure, but it's part of the problem of equivalency. As she's taken – she's got data which is people's service, the current classification or their qualification and applied it that way and that's the outcome you get. The Commission's – and I should say the paragraph of my submissions that discusses this is incoherent because half of the sentence has been cut out. So it probably is worth (indistinct) at the Commission in addressing quite helpfully, the ASU's examples in the earlier correspondence is doing it slightly differently in a translation mechanism.

PN94

The Cordis report methodology is just as new. So pretending these people are Newstart are effectively – and the problem we have of course, is that we can see the merit in someone who's currently appointed to a role being presumed to be qualified for that role and of course, it's highly unlikely that anyone there has substantive patterns of overclassification in this industry. But the question is presumed by her.

PN95

THE DEPUTY PRESIDENT: But they're the kind of, you know, fundamental issue at the heart of all of this. It is, you know, in large part, the current structure is so unclear and ambiguous that an employer has an extraordinary discretion. It might be challenged legally, but good luck with that. As to what classification to apply existing and new employees too. That's - - -

PN96

MR SAUNDERS: Yes. Also – also it's 20 pages long. Like, it – and unreadable. There are many aspects of the new structure that we embrace. The fact that it fits on one and a half pages is one of them. The fact that it moves towards something that can be – and not just applied by employers but the other side of the coin is actually enforced. You can't take the SCHADS Award to a Federal Court judge and say, 'This person is in fact highly skilled but you also can't say they have an equivalent level of life experience to a Certificate III. And again, that returns to how equivalency is defined. And that's a complex project. But it's not – that – the fundamental concept is not something that the ASU is cavilling with. It's how it is to work here.

PN97

Those are the head note concerns. The proposal that – something needs to happen moving forward, it is not – the ASU is not saying, 'Kick the can down the road for six months, 12 months, however long it takes us to work through this government process'. There are things that need to happen immediately because or as immediately as they can because of the issues the expert panel has determined as to - - -

PN98

THE DEPUTY PRESIDENT: Well, but it is broadly kicking the can down the road for now 12 months or beyond.

PN99

MR SAUNDERS: Not in whole, is the submission. There are immediate things that can be done and there are some immediate steps that can be taken. But the difficulty with not doing that, is with not delaying the broader implementation is the transaction cost. On business of implementing something twice. It amplified by the complexities of funding. And the AIG has said that even if this structure, this provided structure has minor tweaks, brought in tomorrow, it would take up to 2027 to implement sensibly. Yes. That's where that's come from, but it's not easy either way.

PN100

The immediate proposal is to – or what should go ahead is that Schedule E, Disability Home Care, no difficulty with that being immediately varied to match, aged care, home care. There's no practical – the – I don't want to oversimplify it, but at the higher level, when one looks at these things, the work is functionally identical and notwithstanding the complexity of the - - -

PN101

THE DEPUTY PRESIDENT: Well, the benches may find – the panels may find into that as you say.

PN102

MR SAUNDERS: Yes. To that effect. We don't take – that – and because of those findings, it needs to be addressed immediately. The keeping the ERO until the structure is finally settled. I doubt that's actually controversial and that the Commission is not proposing to revoke the enumeration until this is done. And indicative job titles is a fix, not to the extent proposed in the phase 2, except the application's been dismissed in respect. But in the more confined manner that has been put forward in the discussion paper, with the – the coaching jobs that are at level 6 and 7, they're (indistinct) of a disability support worker, it's not a perfect fix. And as your Honour says, job titles are not universal. You can get it – they're close to – a case worker's a case worker, but you can always get an employer that says you're a – you know, a level 3 action item and it goes from there. But less of a risk in this particular sector because of that it's funding the standardisation. If you're being paid to have a case worker, and you employ someone using that funding, very difficult to say that because of the name but not actually that role.

PN103

We would say that that should just be done in the key dispute of areas, to assist in the proper application of the current classification structure, while we work through this.

PN104

THE DEPUTY PRESIDENT: Sorry.

PN105

MR SAUNDERS: Of course. Unless there was - - -

PN106

THE DEPUTY PRESIDENT: I can't remember the mechanics and the logic, but some of the issues that you raise, I'm literally just speaking off the cuff. But there was, as I recall, a pretty extensive exercise undertaken with the attraction of the ERO that was an industry engagement process to arrive at an agreed translation piece.

PN107

If the panel wasn't minded to simply defer the new structure, and was to hear from the parties and make the calls on these issues about basic and admin and so forth, would there still not be some value in a similar – turning their Commonwealth funded exercise into a parallel exercise to work through some of the issues around lived experience, for example and how that might apply? So rather – so I guess what I'm just musing about is whether one scenario would be the finalisation of a structure with a small number of issues or translations to be resolved in conjunction with the separate work value for changes in some areas, post-2012.

PN108

MR SAUNDERS: Yes. The difficulty – it's not an inherent difficulty. One difficulty with that, there is the question of equivalencies not just about translation. It's about – it's fundamental to how the structure works, so that process - - -

PN109

THE DEPUTY PRESIDENT: But we would have to come up with some – I mean, we would have to make some determination as what equivalency was and in an absolute case.

PN110

MR SAUNDERS: And at that point, what's the point of the bodies coming up to say should it mean that? I think - - -

PN111

THE DEPUTY PRESIDENT: Well, it could – it could, you know, provide the basis for a variation.

PN112

MR SAUNDERS: And again, one has those transaction costs and the difficulty of this - - -

PN113

THE DEPUTY PRESIDENT: Well, but they wouldn't be anything of the scale of – if we were to press on with a new structure now and then the industry goes away and comes up with a completely different structure.

PN114

MR SAUNDERS: Yes. Yes. Both are undesirable, but I may actually be misunderstanding, your Honour. As I took the hypothetical, it is the Bench fixes on a structure that includes these concepts of, which it will have to – equivalency to qualification and then the part of the funded project is effectively expanded in – no, I withdraw that.

PN115

Then the stakeholders go away and say what should the equivalent – what does equivalency mean and does this work.

PN116

THE DEPUTY PRESIDENT: How do we deal with lived experience. That's one of the really difficult - - -

PN117

MR SAUNDERS: That's the really difficult part but what I'm struggling with is without that – without the stakeholders putting forward at least their view on that, first before a determination as to what it should mean, how a Commission could make a final decision.

PN118

THE DEPUTY PRESIDENT: We would have to. We would have to deal with that and presumably, there'd need to be some hearing, you know, to hear from the parties about that and possibly leave it (indistinct) up to you, but - - -

PN119

MR SAUNDERS: It would have to - - -

PN120

THE DEPUTY PRESIDENT: There may be no value in it. I would - - -

PN121

MR SAUNDERS: No, no, it - - -

PN122

THE DEPUTY PRESIDENT: It may be the worst idea I've come up with today.

PN123

MR SAUNDERS: It should be taken that my response is mine rather than my client, so I'm just exploring the idea with your Honour. It's not – I think that the broad point is that it's what I keep saying. There are aspects of - the fundamental bones of the structure, the way it – the principles behind it rather than the output is not – not the subject of concern. It's these specific matters about the rights, the definition, how to make it – how it actually is expressed but there is merit in that being the structure of what's explored through the working group like rather than going – go and make something completely new - - -

PN124

THE DEPUTY PRESIDENT: So how is this project currently envisaged to work?

PN125

MR SAUNDERS: Very similarly to the 2012 – the pre-application 2012 structure, largely through peak bodies but with some feed in. A research driven exercise. That is very vague. It's a very – I may as well have just said we're going to go away and think about it. It's at a pretty embryonic stage because these proceedings have been intervened. We're – they're – my instructions were at about I think this time last year that it could roll out; with the bifurcation, it just didn't. So it's – what we do envisage is seeking the assistance of the Commission as well, so running it in parallel with the normal (indistinct) process, that would occur through a variation with the kind proposed in the extreme high level by the ASU.

PN126

THE DEPUTY PRESIDENT: What if – I literally (indistinct) what if there was a bit of an incentive for the parties to reach agreement, so that the panel came to a view that the structure will apply unless within six months, the parties advised of agreed changes?

PN127

MR SAUNDERS: Deadline – a deadline always helps. There's a – things drift for a range of reasons, the Commonwealth is the Commonwealth. The union has a number of competing priorities but I can't say that a deadline wouldn't focus attention. There's a desire to get this done quickly.

PN128

THE DEPUTY PRESIDENT: Well, not just a deadline, but a kind of guillotine that's (indistinct) but something you might describe the proposed structure as but I certainly wouldn't.

PN129

MR SAUNDERS: Pressure is more what I meant. An actual impetus to change. There is a desire to get it done quickly. It's not the – the Commonwealth's commitment is not just, 'Ah well, we'll fund it', as I understand it it's coming from a deep desire to get wages right in this industry which aligns with what the Commission is doing, so.

PN130

THE DEPUTY PRESIDENT: In that sort of scenario, the bench would still need to - - -

PN131

MR SAUNDERS: Be persuaded.

PN132

THE DEPUTY PRESIDENT: - - - be persuaded. And would still need to hear the parties on - - -

PN133

MR SAUNDERS: Absolutely.

PN134

THE DEPUTY PRESIDENT: - - - sort of these contentious issues. So the parties would need to accommodate that part of the exercise in parallel.

PN135

MR SAUNDERS: This is the – I'm sorry. I keep interrupting, your Honour. This is something that I want to make very, very clear in the submissions. It is not a situation where the ASU is saying, 'Don't worry about it, we're going to go fix it up.' What we want to do is have a proposal that we can put to the commission that we can convince your Honour's of, that's - - -

PN136

THE DEPUTY PRESIDENT: Well, I'm pleased you said that, because that's not how that – that's not how I read it.

PN137

MR SAUNDERS: Yes.

PN138

THE DEPUTY PRESIDENT: I was having very much flashbacks to last year.

PN139

MR SAUNDERS: Yes, I can understand the position. It's not what's proposed. My client fully understands that the decision about what the classification structure should be is the Commission's.

PN140

THE DEPUTY PRESIDENT: I never read it as suggesting otherwise. I was simply making the point about kicking the can down the road and the timeliness of this – dealing with this issue.

PN141

MR SAUNDERS: Yes. No, the structure is not something I can address your Honour on directly, but desirable and desired.

PN142

THE DEPUTY PRESIDENT: But also what I'm hearing is, and I'm not diminishing the significance of these issues about, you know, basic (indistinct) equivalency and so forth, but they're also far from insurmountable.

PN143

MR SAUNDERS: Of course.

PN144

THE DEPUTY PRESIDENT: And six months would be plenty of time to be able to conclude whether you're going to have consensus on those or not I would have thought.

PN145

MR SAUNDERS: I can't agree or disagree but we hear what your Honour says. There was - I mean, of course it's surmountable. Your Honour has seen the proposal in the ASU's - I mean, part of the surmounting - some options include that part of the difficulty in - this is very helpfully set out in the AiG submissions in particular but both the industry reps, is the language of equivalency just has this history and so you read into it all these things that aren't necessarily there. A different word can do a different job. Equivalency immediately starts everyone going, 'Where's my competency standard implementation guide', if you're from a particular cultural milieu.

PN146

But the language is whatever it needs to be. Your Honour has seen that in terms of anchor points, there's different ways to - it's just a drafting exercise, making it clear that it's entry rather than a hard barrier and that other parts in it qualify. It's just that the proposed drafting in the ASU is an example. It's not - we're not saying put this forward as a concrete proposition but I've just taken that from other awards, other premodern awards in the sector. Yes, these things can be worked through, yes, we want to work through them but the rates are pretty fundamental, is the other issue.

PN147

THE DEPUTY PRESIDENT: Yes, yes.

PN148

MR SAUNDERS: Thank you.

PN149

THE DEPUTY PRESIDENT: Sorry, let me just see if I had any other - so on a scenario that either the expert panel doesn't defer finalisation of the structure or does so on a final provisional basis but with an opportunity for a consensus to be reached on some of the elements: in either scenario that's going to involve some further submissions and/or evidence. How long do you need and what does that look like from the ASU's perspective in terms of especially their evidence? I'm thinking in the context of scheduling hearings.

PN150

MR SAUNDERS: The answer is different for the two scenarios, I think. The first scenario that thank you, we've heard your final hearing on - the usual course concluding the provisional view, we would need to file - we would seek to file evidence on effectively the non-disability sectors, the impact, the way people are classified, the nature of the role. That could be extensive. I may need to come back to your Honour. I just need to consider one aspect of precisely what that question would be and what the permissible scope of evidence but it could be as much as running a full work value case. The submissions are in the same vein so significant is likely. With the - - -

PN151

THE DEPUTY PRESIDENT: So I read significant as at least 10 - like we're talking a week or so of hearings.

PN152

MR SAUNDERS: Yes, depending on cross-examination as well, of course, which given the level of consensus may be less of a - less of a feature than in aged care. The second option - I think your Honour put it as the second option - of you've got an opportunity to develop this consensus at large. If you've done it, we'll consider it. If you haven't we'll press on with that. That possibly requires less evidence because of the work that goes into that. It's of course not totally binary. We may reach some consensus and there's outstanding issues and, let's be realistic, probably likely.

PN153

So either way there's further hearing required but certainly it's a major call that we would put on significant amounts of material if it's the provisional view.

PN154

THE DEPUTY PRESIDENT: And some of the employers have proposed or put forward an alternative approach, which is to have a two-stream structure supporting other levels. Do you have a view about that?

PN155

MR SAUNDERS: We're still considering it. It is similar to - possible I'm misunderstanding it. It is not hugely dissimilar to the proposal to fix at least schedule E immediately in that that is keeping that. But I need a bit more time with those proposals, effectively - by which I mean today. I'm not saying we're going to go away and think about it for three weeks. We're just still working that through.

PN156

THE DEPUTY PRESIDENT: Okay. I think that was it. Did any of the other parties have any questions for the ASU? Any clarification? Okay, thanks, Mr Saunders.

PN157

MR LEWITT: Might be appropriate for me, your Honour. Very high level the Health Service Union and the UWU support the submissions of the ASU. In respect of the question that arose during the course of Mr Saunders' submissions

about moving to private conference, we would support that. I can't say that we will have particularly much to add to that private conference phase but we're certainly interested in exploring what the - - -

PN158

THE DEPUTY PRESIDENT: Well, you wouldn't be in it.

PN159

MR LEWITT: We would - we have no opposition to it. We start from a position - I'll just sort of identify very briefly what I think are the key issues. We accept obviously that this structure, the current structure, doesn't work and needs changing. We accept that it needs to be simplified. We accept at broad level the principles the Commission has identified as should inform that process. The HSU and the UWU have sort of a narrower focus than certainly the ASU and probably many of the parties. It's really primarily about disability support workers and aged care, home care workers in the current levels 2 to 3, perhaps 4 and the envisaged levels 2 to about 5 at the maximum, so that means our issues are narrower. They are fundamentally at level 2, the inclusion of basic.

PN160

We don't think that precisely identifies that which the Commission was really trying to do with level 2, is to make it introductory. But we can see how it will play out as a retardation of progression. Coupled with that, really, is the equivalence issue. We think at both level 3, that might be susceptible of a fix by indicating that's the entry level for disability support workers. So at least disability support workers get (indistinct). It's more difficult to see how we fix the equivalence problem at level 4 because the evidence at least in respect of disability support work showed that it's not so much features of the recipients of care and support, but the complexity and sophistication with which the work is done by the disability support workers which differentiates the nature of that work in that area.

PN161

And there's obviously no evidence as to whether that might be the same in home care, aged care. The aged care decision itself suggests that. But it's tricky to do with how one identifies what's the equivalent experience to enable that to occur and does - as I think the ASU points out in its submissions - does tend to make it almost an individualistic focus on the person as opposed to what we ought be striving to do, which is characterise the job or the position. So those are the fundamental issues that I think my clients have with the structure as it effects those levels.

PN162

It does appear that at various levels, including levels affecting employees, that the primary interest of my clients that at various pay points people - employees will be entitled to less under the proposed classification structure and therefore at the moment would require sort of red circling for quite a number of current employees to protect their current rates. That's problematic in this industry if it's done on a large scale for obvious reasons - the mobility and part-time nature of the work, apart from anything else. And obviously the revocation of the RO in

circumstances where the current structure appears to envisage that for the same work less pay might be provided to new entrants is problematic.

PN163

In respect of the ASU's proposed view, we endorse that. We've heard what your Honour said about the possibility of pressure or guillotine or deadline. Given that we start from the position that I think everyone accepts the current structure isn't working, and so needs to be changed, and given your Honour's concern about simply kicking the can down the road, I don't have any instructions about a timeline but that seems a not sensible course to put the acid on the parties to come up with a - with a solution. But what I would say about the proposed review is this has come from an evidentiary case which was really focused upon disability support workers for obvious reasons.

PN164

There are implications for home care, aged care employees who my clients are particularly concerned about, which haven't really been - form the basis of sort of even entry case in this matter. We don't have particular concerns about the ramifications more broadly because we don't have coverage more broadly but it does seem that a more holistic review taking account of some of those categories of employee that weren't features in the - in the proceedings, probably makes some sense and will probably have to be done in any event.

PN165

Your Honour asked a question as to what evidentiary case might need to be made. In respect of simply the support workers, it might largely from our clients' case be a reprisal of some of the evidence that was provided to the Commission. Might need to be tailored somewhat towards lived experience and experience as opposed to qualifications. But that identification of the sophistication with which different employees undertake their work, probably part of the evidentiary case. We need to turn our minds to the home care, aged care, to what extent we need to give an evidentiary case there.

PN166

As to whether it would be a more limited evidentiary case, in the event that we have the sort of guillotine - sorry, the pressure approach, I just need to turn my mind to that, perhaps speak to my clients about that. But instinctively probably it is a smaller evidentiary case if what we were looking to do was modify a provisional structure at the same time as engaging with a broader exercise of that structure.

PN167

THE DEPUTY PRESIDENT: I didn't quite follow what you meant by you would perhaps reprise some of the evidence that's been led.

PN168

MR LEWITT: Yes.

PN169

THE DEPUTY PRESIDENT: Do you mean make submissions about evidence or lead further evidence?

PN170

MR LEWITT: Make submissions about further evidence but probably supplement that which has been provided for particularly that cohort of employees without formal qualification who are nevertheless engaged in what we would say is quite sophisticated care work in the disability sector.

PN171

THE DEPUTY PRESIDENT: So if the panel proceeds with its provisional views and finalises the structure, then its intention will be to do that quickly and before the end of the year. So if there is going to be significant evidence then timing and scheduling for hearings will need to happen very quickly so it's important to have an understanding of how - what duration of hearings will need to be provided for. So on that scenario can you indicate whether you're talking - give me some indication if we press on what volume of evidence you would be looking to call?

PN172

MR LEWITT: Look, I'll need to take some instructions. I don't imagine that we're looking at longer than a week's hearing, which was that which - - -

PN173

THE DEPUTY PRESIDENT: For your own part or - - -

PN174

MR LEWITT: No, no, no - for - - -

PN175

THE DEPUTY PRESIDENT: In total.

PN176

MR LEWITT: In total - but I'll just need to get some instructions about quite how many we're contemplating.

PN177

THE DEPUTY PRESIDENT: Thank you. All right, Mr Lettau, do you want to go next?

PN178

MR LETTAU: Look, the ACTU endorse and support the comprehensive submissions that have been made by the ASU and UWU and HSU. In terms of the question about private conference, we also don't object to that proposal. The ACTU supports the expert panel's recognition that the current classification structure is confusing and leads to misclassification and non-compliance, and we would echo - well, I would echo the points made earlier by - or submissions made earlier by my learned friend Mr Saunders about what the new structure should look like.

PN179

We would agree it should be as simple and usable as possible. It should reflect true skills and qualifications, including qualifications and experience. We agree that there needs to be - there's a need to address sector complexity, and that's going to require a stakeholder approach. We also note the importance of the ERO

and the principle that no employee should be going backwards under any proposed new structure.

PN180

In terms of some of the issues we've highlighted in our position paper, this is all obviously at a very high level, but the main concerns we've highlighted are rates going backwards. So that's the core concern is weight reductions under the new proposed classification structure. We're concerned as well about the revocation of the ERO and the potential impacts that could have especially when it hasn't been fully examined or addressed, and we would want - we would urge for the parties, obviously, to be given the opportunity to be fulsomely heard on that topic.

PN181

There's also other issues there, obviously, that the union parties have raised around red circling and grandfathering, which is the same problem. It's wages going backwards that is the issue there. We are in support in terms of going forward with the proposal of the ASU, which is that there can be some immediate targeted changes that rectify the undervaluation. So amending schedule E was one of those discussed, for example, but we would also support the broader idea of, you know, allowing the parties to have time and an opportunity to put the evidence and to confer and to try to reach agreement.

PN182

In terms of timelines on the evidence, at this stage, the ACTU may lead evidence. This is as much as I can really say. There's not much I can say to assist the Commission in terms of what sorts of timeframes would be required or how much evidence would be given other than to defer to the union parties on that topic. So that's all the ACTU has to add at this stage, Commissioner.

PN183

THE DEPUTY PRESIDENT: All right. Thank you. All right. I might hear from you now, Mr Scott.

PN184

MR SCOTT: Thank you, Deputy President. I think I'll deal with three broad topics. The first is the expert panel's decision and some of those provisional views, and particularly, issues of principle that we say appear to be relatively uncontroversial. The second topic is what I've described as issues for discussion as part of the conferencing process, and then, thirdly, the matter of logistics or programming.

PN185

Can I firstly just deal with the expert panel's decision. What we would say is that some of the provisional views, or, indeed, many of the provisional views appear to be uncontroversial. Firstly - and I'm speaking obviously on behalf of my clients, but first provisional view of the expert panel was that the award rates are effectively infected by historical gender undervaluation, and, of course, I'm paraphrasing the expert panel's decision. We say that's relatively uncontroversial. My clients don't contest that.

PN186

The second is the proposed alignment to the two benchmarks, so the Caring Skills benchmark and then the C1A benchmark. Again, we say that's relatively uncontroversial. The third, then, is the other levels or the other classifications that hinge around those benchmarks, and, obviously, that they are based on relativities. Based on our preliminary review of the proposed structure, we don't see anything that's outrageously wrong with those relativities. Of course, happy to have discussions with the parties, but fundamentally, they appear to be uncontroversial.

PN187

And then the fourth provisional view is that the classification structure, so the existing classification structure, should, effectively, be overhauled. We welcome that provisional view. It's something that my clients were, effectively, advocating for. So as we've discussed or we've heard from Mr Saunders, it's shorter. It's one and a half pages. It's significantly simpler, which is good, but we also accept that there are likely to be drafting issues and refinements, I think is a good word, that my clients will pursue. Other clients - other parties have obviously raised as well. So we're happy to engage constructively around how we can refine that proposed classification structure.

PN188

So as Mr Saunders, I think, indicated quite early on, there is a level of consensus from parties around some of that more fundamental architectural stuff. Mr Saunders indicated that the bones or the structure or the architecture is not the ASU's concern. So there is a level of consensus there around those elements of principle.

PN189

Turning to that second issue or the second topic, which is the issues for discussion, the organisations that I represent have filed a brief written outline, and we did endeavour to keep that brief. I know that other parties have filed more extensive outlines, but we have tried very hard to summarise the preliminary views that we have around the decision and the provisional views. We're happy to discuss those.

PN190

Our understanding of the two days in conferencing is that we work methodically through the various issues that have been raised by the relevant parties. In terms of wage rates and the translation methodologies, I think they are issues that are best worked through thoroughly and methodically. So I've seen the ASU's initial letter. I've seen the Commission's view in terms of the discussion paper. We've expressed some views about that. There would appear to be merit in, effectively, working through that, which may be quite torturous, but working through that and saying, well, how do each of these levels translate?

PN191

What was apparent to us was that some of the views from the ASU in raising concerns around the wage rates and the translations - and this was our perception and here today to try and work through that, and it may be not correct, but the idea that equivalence or equivalency had not been properly recognised in the ASU's modelling. So I think in terms of the wage rates, there's obviously a concern that's

been raised that the wage rates may go backwards or will go backwards, and I think there's the report that's been prepared by Professor Cordis. What I'd say is we kind of need to sit down, work through that and examine the extent of that issue, if it is an issue or not, and my clients don't yet have a view on that because they haven't done that work. So we think there's benefit in doing that.

PN192

We've raised concerns around some potentially inadvertent coverage changes. So the clerical - the issue that was discussed earlier. The other issue that jumps out is that the SACS stream went from level 1 to 8, and their home care stream was level 1 to 5 or level 1 to 6. So we think that needs to be sensibly worked through. Drafting amendments, of course, there needs to be drafting amendments. That's just the nature of these things. There always will be, but our view is that those issues, starting position at least, or starting view, is that those issues need to be worked through.

PN193

The Commission has listed the matter for two days of conferencing. It seems pretty clear to us that two days of conferencing is not going to allow us sufficient time to work through those issues. Whether the Commission is minded to list a further set of dates for conferencing, whether that's an intensive period, whether there's yourself, Deputy President, or another member that sits down with the parties and works to try and iron out the relevant issues and achieve those refinements, we would be supportive of that. We'd participate in that, but that would have been our starting point in terms of process. We would have thought that that's the sensible thing to do.

PN194

The issue of the government-funded working group, my clients were happy to participate in whatever working group is established to try and work through the issues constructively, but, again, our starting point was, well, we're here. We're before the Commission. This seemed to be the appropriate forum. That was what our initial views were about that. Then lastly, there is, of course, the ASU phase 3 work value case that's kind of sitting out on the sidelines at the moment, and so that raises a kind of logistical, practical issue around - there's potentially two reviews or two processes that are going to deal with this same subject matter that are at different stages and how the Commission sensibly deals with that.

PN195

If we progress through conferencing and a round of submissions and further evidence and a hearing to try and resolve or to finalise the provisional views and the Commission issues - or the expert panel issues of further decision, we've already indicated that the earliest commencement date for these changes, if they were to be finalised, would be 1 July next year. So we didn't anticipate the continuation of these proceedings to be done in a couple of months. We think that there's going to be some time there to have that play out, but it may not make sense for that to occur and for the expert panel to issue a further decision - there'd be a commencement date set for what are significant changes - and then have the ASU wish to pursue their work value case.

PN196

That may lead to potentially two rounds of changes to the award, and that - depending obviously - depending on the extent of the changes and the outcome of the ASU work value case, that may be undesirable for the industry. The question for the Commission is what do we do about that. My clients don't have a firm view one way or the other, but we think there needs to be a sensible path forward. We would have thought the Commission would have a role in convening conferences between the parties to work sensibly through the issues.

PN197

We suspect that that's going to take some time. It may be that there needs to be a series of intensive conferences, you know, over a series of weeks, potentially, but the cloud looming over us is the ASU work value case, and so my clients would be keen to understand, well, how quickly is that matter going to be programmed? It raises the question of do we defer the current process to deal with that matter? Do we defer the ASU work value case to deal with this matter? I don't have any solutions, but that's - they're really the practical issues that the Commission will have to deal with in terms of programming and finalising where we're at at the moment.

PN198

THE DEPUTY PRESIDENT: Well, it's essentially a part of the Commonwealth stakeholder project. There's the broader work value piece as well, not just the remaining issues in this matter. So the timeframe for that is some - well, on option B, six months, or, otherwise, whatever decisions are made if the panel proceeds with its provisional views.

PN199

MR SCOTT: I think that's right, and from my client's perspective, we're very keen to participate in whatever, you know, working groups, whatever projects are established to progress the matter. You know, ordinarily, I would have thought it's a matter for the applicant party in bringing another application as to how quickly they want that application dealt with, whether they are effectively deferring that matter or seeking to expedite it, and in that context, whether they then make an application to have this process slowed down or expedited.

PN200

So we're largely in the hands of the ASU as to what's been proposed. My clients don't have any opposition to a government-funded working group being established, but as I said earlier, our starting point would have been, well, we're here now. Is that not something that the Commission can assist with? But I don't think any party's going to turn down government funding to try and work through this.

PN201

THE DEPUTY PRESIDENT: Well, it's interesting, the point you make, because before you started speaking about potentially further conferences, what was occurring to me was is there any value or need in the second conference on the 17th in circumstances where there's significant disagreement about some fundamental elements of the provisional view which are going to have to be the subject of determination, and so it's just not quite clear to me what - until those matters are resolved - consensus, what issues could be resolved in working

through the translation. Certainly we could kind of canvas the Commission's or the staff's assessment of the translation at different levels and if there's value in that, that's something that we can consider. But it became an open question to me, whether there's the need or a value for the second conference, let alone additional ones, if we're going to have to have hearings to deal with these outstanding issues. We may as well just crack on and program that to get done.

PN202

MR SCOTT: Well, I mean, my response to that would be what I've heard this morning is that the ASU are not disputing or cavilling - for the most part at least - their findings in principle in terms of benchmark rates, you know, the fact that there's historical gender undervaluation, et cetera, et cetera, in Mr Saunders' words, the bones on the structure is not the concern. It seems to be the outcome. So the question for the Commission might be, well, if there is scope for the parties to sit down and work on what I described as refinement - so we work on the proposed new classification structure and seek to explore to what extent there is agreement to refine that classification structure to get it to a point where it resolves some or all of the concerns, the question is, is there a benefit in doing that, is there scope to do that or are we wasting our time?

PN203

THE DEPUTY PRESIDENT: When you say refinement, do you mean settling on an agreed position, for example, on what equivalency is?

PN204

MR SCOTT: That's right. So there was discussion this morning about whether the term, 'Basic', is the appropriate term and how we might define that, equivalency and how we might refine that. You know, coverage issues, translations, translation methodologies: all of those things were the things that come to mind when we talk about refinement. For my part, I would have thought there is absolutely benefit and scope to sitting down and working through that, to see, to explore to what extent there can be a level of consensus around those things. But it's a question of if the bones and the structure is not the concern, well, let's deal with what the concerns are and see whether we can reach agreement.

PN205

Or is it the case that the ASU say, well, the rates are wrong. There is no way to fix the rates under the proposed classification structure. So, i.e., it's not a case of refining it to getting it to a point where it's satisfactory. We have to throw it out, rip it up and start again with something completely different. I was coming from the first. My client's preliminary view at least is that there is scope to refine it. We can work with it. We think the principles are sound. We think the bones of it are not a concern. We just have to work through the devil in the detail. But if it's a case of other parties saying, 'Well, we have a fundamentally different view. We don't think it's a case of refinement. We think it's a case of we have to do something completely different', well, then it might be that we are wasting our time doing that.

PN206

THE DEPUTY PRESIDENT: Okay, thank you.

PN207

MR SCOTT: If it pleases.

PN208

THE DEPUTY PRESIDENT: What's your position on the ASU's request for a private conference?

PN209

MR SCOTT: Our position is we don't - we're not opposed to it. Ordinarily it might be something that there might - you know, it's difficult to say because I don't know what the issue or the concern is, whether another member of the Commission can be made available to assist with that. I'm not opposed with your Honour dealing with it. The risk in doing that is whether it raises some issue that creates implications for the finalisation of the matter. My clients are not opposed but I think if there's another party that is opposed, then it shouldn't proceed.

PN210

THE DEPUTY PRESIDENT: Okay.

PN211

MR SCOTT: If the Commission pleases.

PN212

THE DEPUTY PRESIDENT: All right, thank you. Ms Cruden.

PN213

MS CRUDEN: Thank you, Deputy President. At the outset, Ai Group emphasises that there is an exceptional level of anxiety that's been expressed by the many employees that we've been able to consult with in the time available and the nature of those concerns go not only to the increase in costs and that potential for significant and adverse impacts that they aren't currently able to absorb under the funding arrangements, there's also significant concern about the sheer volume of work and associated costs with that work in terms of mapping employees to classifications, reconfiguring payroll systems and communicating this to their workforces. This is the case in the context of a sector where there's ongoing viability issues for many providers with, you know, year on year losses and inadequate funding arrangements. We have filed quite a detailed response to the discussion paper, which contains our positions for the purposes of today's conference. So I won't reiterate those and simply rely on our paper. But noting there's not yet been any provision for reply process, I do have some brief, very brief additional points.

PN214

I'll start with just addressing a couple of points that came out through the submissions of Mr Saunders and also comment from you, Deputy President. One area is referred to as Ai Group's position in our paper concerning the level 2 basic and introductory. Obviously there is a quite a divergence of views in relation to that. We would however seek to constructively engage with the concerns and any alternative proposals that might be available to endeavour to work through that, bearing in mind, Deputy President, you identified that there would appear to be a

need for something that comes before level 3. It seems to be a question of what it is appropriate that that be.

PN215

There's also an issue around this concept of, 'Is there basic, is there introductory', and what is intended to be meant by that. You referred, Deputy President, to one of the parties having put a possible proposal of a support stream classification versus another. That was proposed in Ai Group's paper and had some from some constructive member feedback. That proposal is again at a very early infancy in its proposal but we would certainly be open to further developing or working through that. The other issue that came up in our course of consulting with members regarding this issue of basic and trying to characterise the work and I believe, Deputy President, when exchanging with Mr Saunders you indicated if it's not skills, then what is it?

PN216

Some of the feedback we had in consultation is that there may be classifications anchored to skills as one possibility. Another alternative is potentially work type or the needs of the client or client base that's being served as characterising the nature of the work itself, which I believe Mr Saunders touched on briefly. What's been suggested in some of our consultation is that the difficulty comes when there's an attempt to have a combination at skills, combining skills required by the employee and characteristics of the work and client needs as complex and whatnot and it's those interactions or interplay between two that cause some difficulties.

PN217

So to the extent that both that as a proposition and potentially the option of having a support stream versus another stream might be ways forward. We're certainly happy to continue to develop and constructively engage in either of those propositions as potential alternative avenues. In terms of some other comments by way of general reply, would agree broadly with what's been put that there doesn't appear to be a general consensus in particular that more time is required and whether that's to either continue to finesse the existing provisional classification structure including resolving the definitional issues, the scope and the transitional arrangements in the discussion paper or whether that's to permit a stakeholder-led, government-funded review to take place.

PN218

Ai Group endorses that a sensible period of time being allowed for either of those to take place is appropriate. We have outlined in our position paper at paragraph 107 a potential pathway forward that is more focused on working through the range of issues that we had identified in the position paper. The starting point of that would be for the criteria descriptors for each of the proposed levels in the new structure to be finalised before the other items of sequence occur and obviously whether or it's any further conference in process or whether or not it's a stakeholder-led, government-funded review that gets us to that point of having the criteria description squared away.

PN219

It's Ai Group's position that that's necessary in order to then be able to soundly proceed with the further works such as the translation methodology for the

Commonwealth and state funders to understand the implication for funding and to potentially address that and then of course there is the issue of what to do about award provisions that the operation of which may have become uncertain or difficult as a consequence of the revised structure from that. Secondly - - -

PN220

THE DEPUTY PRESIDENT: The one thing - there's only two areas that there seems to be consensus, essentially, and one is that in terms of the translation methodology, it's option 2 is the one to follow and secondly, there's been no opposition to the provisional view about the excision of family day care and moving that across to the Children's Services Award.

PN221

MS CRUDEN: Yes, Deputy President, I would agree with that as a general proposition from what emerges from the submissions that have been filed. In terms then of the next steps and the timeframes for that, Ai Group does maintain its position that the earliest time that any change could potentially commence is 1 July 2027, although that is heavily dependent on the pathway followed from here. In essence we contend that any change to the classifications should not be operative for a period of 12 months from the date that the terms of the variation are settled and then that would enable employers adequate time to then prepare for the implementation with associated payroll costs, which need to be known before they can proceed with the work that's required in that regard.

PN222

The second point in reply that we make is that funding concerns have almost been universally been raised in the parties' submissions, although with difference perspectives about that. Whilst Ai Group identifies in its submission employee concerns associated with rate increases where funding may not follow, we acknowledge the concerns that have been otherwise raised around the potential for funding decreases where rates go down and the associated implications and we have heard some similar concerns from members who might be differently affected in that regard as well.

PN223

But in either case, Ai Group submits that that reinforces our position that no changes should be implemented until such time as the Commonwealth and state funders have had time to consider and communicate the funding response and for this to be considered in the appropriate transitional timeframes that are required for the parties. Thirdly, and this is my final point in response to the ASU's proposed way forward: we agree that it may not be necessary to delay the proposed award changes in their entirety, pending any further review and consultation process. Whilst we don't - haven't identified a specific interest in family day care, for example, you did just mention, Deputy President, there doesn't seem to be opposition to what's been proposed in respect of that.

PN224

However, Ai Group does disagree with the ASU's assessment as to what may be sensibly implemented now in terms of interim measures and we would oppose the proposition that there be some work done to combine schedules E and F on an interim basis and also the insertion of indicative job titles for disability support

worker and some other parties. I'm happy to elaborate on that now. I'm happy to elaborate. So in relation to the concern around condensing schedules E and F on an interim basis - and again, this may go to how long a period we're actually talking about, at a high level the notion of a single stream classification structure for the award is very appealing in terms of its simplicity in understanding an application.

PN225

So Ai Group submits that with any review of the social and community services sector with a view to developing a new classification structure for the award should in our submission also include those broader considerations regarding how home care is going to be able to be merged into a single stream structure. There isn't a precise proposal in terms of what merging E and F into one another would look like but presumably again we would need some level of translation mapping and some phase-in period to occur. Again, this would still represent substantial time and cost for the employers who are impacted by that who are currently operating in a home care disability stream in circumstances where the outcome might be disrupted by further consideration of the other streams.

PN226

So on that basis we maintain our position that no increases should be implemented until such time as the Commonwealth and state funding position is announced and it's clear whether or not if there is going to be a single stream, because that will obviously dictate whether or not homecare would continue to sit outside it on an ongoing basis. In relation to the second proposal, which concerns the insertion of an indicative job title for disability support worker, the ASU's proposed list based on the premise that all disability support work is being incorrectly paid under schedule E, we acknowledge that whether or not the homecare stream applies to disability services workers is a contentious area.

PN227

However, in our reply submission in this proceeding in November last year we disagreed that it cannot properly have application. We also don't accept that all disability service work must be classified at level 2 and some of it may be at level 1, and in this regard, we note that the expert panel in determining the definitions to apply to the provisional classification structure has retained the reference to disability in the definition of home care.

PN228

In relation to the other indicative job titles that might be included, bearing in mind that we don't have those at the moment - I'm conscious that Mr Saunders has said that it's not an intention to reopen the full extent of what had been previously proposed, but, again, I think there is likely to be some difficulties in terms of where particular positions sit. Presumably, it will be the most contentious positions that are sought to be included by way of indicative title, and it's difficult to see how that, you know, won't require opportunities for parties to put on evidence and potentially submissions in relation to that.

PN229

Deputy President, that was all by way of reply from AI Group. The final matter is in relation to the ASU's proposal of a private conference. As a matter of fairness,

AI Group does oppose that and submits that parties should be present at any conference that takes place.

PN230

THE DEPUTY PRESIDENT: If the panel proceeds with either option A or option B that we've discussed, what's AI Group's position in respect of evidence or submissions for potential hearing?

PN231

MR SAUNDERS: Deputy President, the aspect of the process that we have flagged in our position paper that may require evidence and submissions is the part that concerns resolving aspects of the award that currently only apply to some employees and not others. So as to whether or not a lot of the issues being discussed can be resolved without the need for evidence and submissions, I think it remains to be seen whether or not the parties can sensibly progress any alternative thinking on the aspects of contention and whether or not evidence and submissions are required, but, certainly, the point at which it may become clear that it's not possible to, effectively, leave those impacted award terms in play and include some sensible clarification to maintain a status quo position, if there's going to be any substantive movement in the application of award entitlements that haven't previously applied universally to all employees, then we would see a need to have evidence and submissions in relation to that, including going to the historical basis for the difference, and whether or not there continues to be a need for that distinction to maintain, and if so, how that should be formulated in the award, taking into account the new language and classification structure that's being used.

PN232

I believe there's potentially eight impacted clauses, around eight that were identified, most of which, in our assessment, you know, would need to be addressed to have some clarified operation. I think it would be a matter of whether or not a status quo position could be reached by some changed wordings first as to whether or not any evidence or hearing process would be required. So I think it really depends on whether that can be narrowed or resolved in terms of the conceptual framework AI Group has proposed in the position paper for addressing award terms that don't operate uniformly.

PN233

THE DEPUTY PRESIDENT: Mr Saunders, are you able to indicate from the ASU's perspective whether that proposition that in terms of other clauses to the award, status quo, would be the agreed intention for the parties?

PN234

MR SAUNDERS: Yes. I think that's the proposition. We're still working through those clauses, and, of course, I haven't addressed AIG's proposal to introduce an exemption rate either, but I don't - as we understood the Bench's question, it was about standardisation, rather than a whole raft of new claims.

PN235

THE DEPUTY PRESIDENT: Yes.

PN236

MR SAUNDERS: I can conveniently deal with a couple of things that have been raised. It's correct there's no difficulty with - there's no opposition to the family day care being moved. Same in respect of translation.

PN237

THE DEPUTY PRESIDENT: I wasn't quite ready for you. I was just literally wanting to interpose just to - - -

PN238

MR SAUNDERS: Just as soon as I start, your Honour.

PN239

THE DEPUTY PRESIDENT: Because it's going to have a significant impact, potentially, on how many further hearings might be required.

PN240

MR SAUNDERS: Of course.

PN241

THE DEPUTY PRESIDENT: So we'll come back to you in a minute, but I'll just let Ms Cruden finish.

PN242

MR SAUNDERS: Sorry.

PN243

MS CRUDEN: Deputy President, that was the end of my submission. So I'm in your hands in terms of any further questions.

PN244

THE DEPUTY PRESIDENT: Okay. So assuming kind of that that's the - there's consensus that any changes to other clauses in the award would be dealt with on the basis of maintaining the status quo, then that would reduce any evidence or submissions that you would need to prepare on that issue. So leaving that aside, do you anticipate needing to call any evidence or make any submissions in relation to these other remaining issues?

PN245

MS CRUDEN: Not currently, Deputy President. Potentially, obviously, in response to whatever may be put on by other parties, but nothing proposed at present.

PN246

THE DEPUTY PRESIDENT: Well, there would still be these issues around the disagreement about an introductory or slash basic disability support or SACS work and administrative work, the meaning of equivalency, et cetera. So in relation to those?

PN247

MS CRUDEN: In terms of the - well, again, if they can be resolved through discussion between the parties and some consensus, whether it's the stakeholder

government-funded process or whatnot, then, I mean, it may not require hearing. So we haven't contemplated requiring a programme of evidence at hearing for that.

PN248

THE DEPUTY PRESIDENT: Well, no. Just to be clear, there's kind of, at least - the two pathways that we've broadly canvassed is after hearing from the parties, whatever issues remain, and if we haven't reached agreement on equivalency, for example, then - and the expert panel decides to proceed with its provisional views, then there will be - need to be some hearings to determine a final position on those issues.

PN249

Secondly, if the expert panel was to say, well, this is - still here in relation to those matters, but provide an opportunity for consensus position to be reached through the Commonwealth project, then that's the other alternative, but both scenarios involve - unless you all are going to sit around the table today or in the next few days and reach agreement on these matters, aren't going to involve some hearings in the near future to deal with these issues.

PN250

MS CRUDEN: In AI Group's position paper, the point in time that we've contemplated that we would certainly seek to file evidence and submissions would be in relation to once those aspects have been settled, whether it's through agreement between the parties or determination by the Commission, evidence in relation to the resource cost and time considerations associated with the implementation of what it is that's being settled. So certainly, we would seek an opportunity to be heard at that point with likely evidence in terms of the evidence and the impacts for employers.

PN251

THE DEPUTY PRESIDENT: Right.

PN252

MS CRUDEN: Thank you.

PN253

THE DEPUTY PRESIDENT: Thank you. Mr Scott, I forgot to ask you the question in terms of evidence or submissions.

PN254

MR SCOTT: Well, obviously, I think it's the case that we'll obviously want to put on submissions. As to whether it's evidence, I suspect it would be largely - to the extent there's evidence, it would be responsive to what's put by the other parties around whatever it may be that are the contentious issues. My clients would also support what's just been put by the Australian Industry Group around having an opportunity to put further material before the Commission on operative date, and operative date, our views on that will hinge on the extent of the changes, and the extent of the changes are not known until a final decision is made. So that would be our position.

PN255

THE DEPUTY PRESIDENT: All right. Ms Bulut.

PN256

MS BULUT: Thank you, Deputy President. I'll be very brief. On the question of private conference with respect to the ASU, we don't wish to be heard in that regard. That's a matter for the Commission. I'll restate the overarching position of the Commonwealth is that the real wages of low-paid workers should not go backwards as a result of the gender undervaluation review, and that was stated in our written response.

PN257

With respect to the project and project funding that was identified in our written submission at paragraph 5, just to identify or highlight two matters in that regard. Firstly, what was intended is for that project to assist the Commission as part of its processes, for which the Commonwealth is certainly supportive of. And so the intention behind that project was them to feed into the work being done by the Commission, and the second feature of that project or what's being identified there is that it's very much a stakeholder-led project, and so the precise parameters of that would be largely driven by the stakeholders to that project, but the commitment of the Commonwealth is to fund that, essentially, that project, to feed that into the work of the Commission.

PN258

THE DEPUTY PRESIDENT: Does that funding involve a particular timeframe?

PN259

MS BULUT: I don't have instructions as to that, that is, I don't have instructions that it's limited to a particular timeframe, and relevant to that, in terms of the next steps as to whether there is a timeline put in place for that project or the like, we're obviously in the Commission's hands in that regard. In terms of any further submissions or evidence that the Commission - I'm sorry - that the Commonwealth might wish to put on to the Commission, I certainly expect that there may well be some further submission with respect to phasing. That was dealt with, to some degree, in the written submission filed to date, particularly around the National Disability Insurance Agency's work and the requirement in terms of two to three months into their implementation, but, certainly, the Commonwealth supports a phased approach to manage potential workforce macroeconomic and fiscal impacts. And so to the extent that the next phase involves hearing on those matters, I anticipate the Commonwealth will put on at least some further submissions in that regard. Unless there's any further questions for me, it's all I wish to say.

PN260

THE DEPUTY PRESIDENT: No. Thank you.

PN261

MS BULUT: May it please the Commission.

PN262

THE DEPUTY PRESIDENT: All right., Mr Saunders. Back to you.

PN263

MR SAUNDERS: Thank you, your Honour. The family daycare, no objection. So that's why it's not mentioned, but I apologise for the lack of clarity. Translations, if it is to be translated, it really does need to be option 2, just as - that's a matter of principle rather than saying we support the translations, but having reviewed it, we don't disagree with them. It's not a precise science with this award. There's scope for variation. I think that much is obvious.

PN264

THE DEPUTY PRESIDENT: Well, sorry. When you say you don't disagree with them, do you mean you don't disagree with the particular translations or that that's the approach?

PN265

MR SAUNDERS: Sort of both. If a translation was necessary, it would need to be that approach. We've looked at a high level of those translations, and they look like they're correct.

PN266

THE DEPUTY PRESIDENT: Roughly right.

PN267

MR SAUNDERS: But we - you know, for what that's worth, and there's a degree of variance possible, obviously. 18 June, the only thing I wanted to draw your Honour's attention is that the employer groups that are here today, Mr Scott's clients, their interest is in the disability sector primarily as I understand it. I'm just - my instructions are - and we're not sure who AIG represents. The broader point, leaving aside my misunderstanding of Mr Scott's instructions, all aged care operators, is we do anticipate some specific social and community service bodies attending on the 18th. Whether that's useful or not is different, but ACOSS, et cetera.

PN268

THE DEPUTY PRESIDENT: Well, okay. So that's a very significant point, but in light of the discussion that we've had this morning, what do you see as potentially achievable through those discussions?

PN269

MR SAUNDERS: I'm reluctant to say not much, but it depends on where we land in terms of programming, and there are some further things I can say about that. In terms of disability, the funding has been announced. The evidence was of, course, that it is in fact funded at level 2, and as I understood the decision, that was the finding. So the opposition is a bit difficult to see. The final thing I want to do, I want to have - given that the only opposition is from AIG, and I now understand it's just a procedural fairness point, I want to have another crack at this private conference aspect. Would it be possible to go off record to do it?

PN270

THE DEPUTY PRESIDENT: Yes. All right. We'll cease recording. Just confirming, and that's happened. Okay. We're off the record.

PN271

MR SAUNDERS: As I understand the objection - - -

PN272

THE DEPUTY PRESIDENT: Sorry. Just a moment. Sorry.

PN273

MR SAUNDERS: I could do my usual thing and speak slightly too softly and quickly to actually be transcribed.

PN274

THE DEPUTY PRESIDENT: Yes. But then you're going to have to repeat it for my benefit anyway. Okay. We just need to confirm with the monitors. So we'll just take a minute.

OFF THE RECORD

[11.46 AM]

ON THE RECORD

[12.28 PM]

PN275

THE ASSOCIATE: I'm just waiting for the monitor to confirm that recording is on here – so this - sorry.

PN276

MR SAUNDERS: Okay.

PN277

THE DEPUTY PRESIDENT: We're having some difficulty getting a response from the monitor so I'm sorry, we just have to wait for a moment.

PN278

THE ASSOCIATE: Deputy President, we are now on and recording.

PN279

THE DEPUTY PRESIDENT: All right. Mr Saunders.

PN280

MR SAUNDERS: Thank you, your Honour for accommodating that and we express our gratitude to the other parties in the same way. In terms of next steps, I think is what I can most usefully discuss, your Honour has canvassed with us a sort of option A, option B process of how there might be necessary further hearings in this matter would intersect with the stage 3 projects, to – just so (indistinct) what I'm talking about.

PN281

We're broadly supportive of the idea of what I think was option A – of the idea that effectively the provisional view be used as a guillotine and if – unless we go away and come up with something better. There are a number of matters of detail in that respect that need to be canvassed to avoid a proposal where it is done inefficiently. Myself and my client need a bit of time to work through that and propose some directions. I think that makes the conference on the 17th futile to

work out what's happening next and gives us the opportunity to talk to the various other stakeholders about the proposition as well.

PN282

So I think what I'm saying is next steps is, we might have reached where we're going to reach today and the – I don't think we need a direction to do this. I can just say that the ASU at least will put forward a proposal for a formal directions or a structure in advance of the next conference which we'll circulate (indistinct).

PN283

THE DEPUTY PRESIDENT: Well, you would also need to come with what directions you'd be seeking and if the alternative is the expert panel proceeds with its provisional view.

PN284

MR SAUNDERS: Yes, and I'll be in that position to do that in terms of a particular – informed by the – what I've helpfully heard from the employer, the stakeholders today as to what needs to be programmed. But again, I do need a little more time in that respect.

PN285

THE DEPUTY PRESIDENT: Your description of option A was perhaps a little bit different to what I had in mind. But what I had in mind might in fact create its own difficulties. But I had in mind a parallel process of a program of hearings to deal with the provisional view, if you like to arrive at a position that would be the guillotine that would be the outcome in the event that an alternative consensus position isn't reached.

PN286

At least in some respects that might have its own challenges. But that was what I had in my mind.

PN287

MR SAUNDERS: Yes. Yes.

PN288

THE DEPUTY PRESIDENT: The other thing I should have asked you earlier, but I neglected to, was in your response to a discussion in relation to the pay points issue.

PN289

MR SAUNDERS: Yes.

PN290

THE DEPUTY PRESIDENT: You indicated at paragraph 26 that you intended to canvas alternatives at and following the conferences. I'm not sure that you've done that.

PN291

MR SAUNDERS: Yes, it was more aspiration than intention. I apologise. It is poorly put.

PN292

THE DEPUTY PRESIDENT: So you don't have a particular proposal.

PN293

MR SAUNDERS: No.

PN294

THE DEPUTY PRESIDENT: Well, can I ask that you pay some attention to that and come to the conference on the 17th with some suggested options. I've been turning my mind to it in relation to the three categories that I raised earlier that seemed to be the most significant categories where there might be on one view an issue and have some thoughts that we might canvas it for next conference. But I want to hear from other parties about if they agree it's an issue and if so what options there might be.

PN295

MR SAUNDERS: I doubt I will come with a schedule of dollar figures that my client has signed up to but what I can speak to is that I need some more - the point needs more developing. If I can reach that point I will and will endeavour to. I just foreshadow that - but it's more a question of principle, really, like how - - -

PN296

THE DEPUTY PRESIDENT: Well, let me give you - so the three groups that I spoke about earlier, starting with the easiest one, maybe, which is existing level 7 employees who are under option B on our analysis would translate to level 8. So there's the level 8 rates, 2204.80, and the level 7 rates range from 2212 to 2305. It may be an option to adjust the proposed level 8 rate, because there's a very significant kind of window in dollar terms between the level 8 and level 9 rates in the proposed structure. So conceivably at least if there was consensus the rate for level 8 could be a higher rate.

PN297

MR SAUNDERS: Yes, it is - I mean, I think your Honour can anticipate that what proposal we do bring back will involve higher rates. But not to - - -

PN298

THE DEPUTY PRESIDENT: I accept that. The point I'm making is in response to the comment that you just made that you didn't - weren't confident that you'd be able to come with a schedule of revised rates and so many other options that might involve picking up the proposition that you make that the current pay point progression and the schedule B is not - is based on satisfactory performance and attainment of skills. So it's not an automatic progression. So that might provide some flexibility to adjust the descriptors in level 6 and level 4, potentially, which might address the other issues if there was some consensus.

PN299

MR SAUNDERS: Yes.

PN300

THE DEPUTY PRESIDENT: So, for example, the second group that I've identified is existing level 4 employees without a supervisory or leadership

responsibility. Now, the proposed levels 6.3 and 6.4 might be adjusted and rendered progression to level whatever based on X years of satisfactory performance at the level. So there might be some language descriptions, classification description changes that people want to put forward for consideration to address the pay points issues that have been raised. And similarly, the third group was the existing level 2 employees with a Certificate III or equivalent and again, the issue is arguably most pointed at the certainly pay point 4 point.

PN301

And at that point somebody will have at least three years' satisfactory performance with a Cert III or equivalent and conceivably that might be deemed to be equivalent to a Cert IV and push a person into a level 4 under the proposed structure. So I'm not just looking at kind of revised rates. I'm looking at are there changes to the descriptors that would address those issues.

PN302

MR SAUNDERS: Yes, I take your Honour's point. It's a package deal is the thing. You can't really - it's all interdependent so that adds to the complexity. Yes, we'll make our best endeavours.

PN303

THE DEPUTY PRESIDENT: Well, and that's a request to all of the parties, to have a look at those issues and come forward with any suggestions. I mean, the more we can get concrete proposals, whether it's alternative language for basic or equivalency or any of the other matters in contest, the greater the chance of any progress in narrowing the issues on the 17th and depending on how that progresses on the 17th, well, then I'll then make the call about whether further conferences would be useful if that still suits. I don't think there is anything further that we can progress today. Is there anything anyone else wishes to contribute?

PN304

MS CRUDEN: Deputy President, if I could just mention there's - with the suggestion from Mr Saunders there be some proposed directions, obviously the parties would seek an opportunity to comment, make submissions in relation to the proposed directions which I assume is what was intended? Excellent. Thank you.

PN305

THE DEPUTY PRESIDENT: All right, well, thank you all for your participation today and I'll see you in Melbourne on the 17th.

ADJOURNED UNTIL TUESDAY, 17 JUNE 2025

[12.49 PM]