



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT GRAYSON
DEPUTY PRESIDENT SLEVIN

AM2024/20

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

(AM2024/20)

Health Professionals and Support Services Award 2020

Sydney

10.00 AM, TUESDAY, 20 MAY 2025

Continued from 20/12/2024

PN1

DEPUTY PRESIDENT SLEVIN: Good morning. Thank you for your attendance this morning. I have a list of 19 parties who are on the line. The Deputy President and I are looking at you on two very big screens. It's looking very much like a chequer board to us. So you will forgive us if we don't direct our attention directly to you when you speak. The purpose of this morning's conference is to discuss the provisional views of the expert panel and the decision recently published.

PN2

We have received from a number of parties, although I note not all of the parties on my list have provided us with a written submission. That doesn't preclude you from further participating of course. We appreciate those who have provided the written submissions. That material has been received and will be considered by the expert panel.

PN3

The purpose of the conference this morning is to hear the views of the parties in relation to next steps, but also to give you an opportunity to supplement anything that you have put in writing. The way in which we will conduct the conference is I will simply call through my list in order. I think I will take those who are appearing in the interests of the employees first, and then I will move through the employer interests, and I will call on the Commonwealth last, Ms Bulut.

PN4

So that's the order that I propose to take. You're not constrained if there's something you want to say outside of those two topics that I have raised, but I just thought I would give you that opportunity. Perhaps first of all a supplementation of anything in writing, and then a consideration of what you think the next steps might be for the expert panel to take.

PN5

Look, I can indicate that arising from the material in writing it appears that the parties' preference is that a draft determination be prepared as the next step. Following that we would propose – this is a matter for the expert panel ultimately, but I am just summarising what we have been provided and what appears to be a sensible course, but we will see how we go. A draft determination followed by some written submissions in relation to that draft determination, and then a further conference or conferences.

PN6

As to how we deal with it for this award there are three distinct groups; the professionals, the pathologists and the dental assistants. It may be that we split those three for conferences in the future, but at the moment we are all lumped in together and we will see what transpires.

PN7

So having said that I might start with the Health Services Union. Ms de Plater, do I have you, are you taking the lead on that? I have got three names here, but your name is in bold. Are you the spokesperson this morning?

PN8

MS DE PLATER: Thank you, Deputy President, I'm happy to start, and if my colleagues want to add anything I'm sure they can jump in. We thank the Commission for the opportunity to respond to the provisional views of the expert panel.

PN9

We have filed a position paper and a position paper in reply endeavouring to respond to as much as we could in the position papers filed by the employee interests. Our paper focused on – well, if we start with health professionals – on the proposed new classification structure. So we have broken it up into the entry level, and then levels 2 to 4.

PN10

So with respect to the entry level our response in that respect is not so much taking issue with the use of AQF qualifications at an entry point, but just how we're going to determine how employees are assigned to a particular AQF work level.

PN11

So we read from the decision that the expert panel's view is that it should be the standard qualification for the particular profession, and then reference was made to a table of minimum qualifications in the decision. Our view is that if we're talking about a standard qualification it really should be the most common qualification for entry into a profession.

PN12

We have provided some examples in our position paper that show if you tied it to a minimum available qualification for many professions that would result in a large majority of employees being undervalued for the qualification they hold, because for many professions there are a number of programs of study available at universities across the country which are then accredited as approved programs of study for entry into the profession, either by AHPRA, if it's an AHPRA regulated profession, or by other professional bodies, and in some cases there might be, for example, one or two, a handful of bachelor courses available for the vast majority of masters' courses. So we would not like to see a situation where employees in those professions enter at the bachelor level when the vast majority have masters' courses, if that makes sense.

PN13

So that was kind of our issue with level 1. Then levels 2 to 4 there were a few particular matters we raised. We have set it all out in our paper. I don't want to go over everything we have already written, but our concern was really just ensuring that employees performing work covered at those high levels currently that fit within their current descriptors in the award aren't excluded or potentially excluded because of an adoption of a more minimalist sort of criteria or descriptives, or a very sort of narrow conception of some of the terms being used in the proposed levels 2 to 4.

PN14

So, for example, the use of the word 'specialist', just to sort of clarify what we mean by that term. I think everyone's mind sort of go to a clinical specialist. That's certainly one aspect of a health professional's work, but health professionals perform work across other sort of areas of work that may not necessarily be solely clinically focused.

PN15

So that's in research, education and quality assurance, and that they are captured in the current structure. We just want to make sure that they are still captured in the new structure at those higher levels so that people can progress beyond level 1. Otherwise we're looking at a situation where many people won't ever be able to progress beyond level 1.

PN16

And similarly with the reference to the postgraduate qualification at that level we just think that we need to be a bit careful about not having too narrow an interpretation of what that means either, because the expert panel had evidence before it of health professionals specialising clinically through a number of different avenues. That isn't just confined to a postgraduate qualification in an AQF level kind of sense, so not just getting a postgraduate diploma or a master's degree. There are many avenues by which health professionals may specialise.

PN17

We are sort of in a position where there were no papers filed in reply to our original paper. So we are keen to hear from the other parties on their views on what we have proposed. We are certainly here today and happy to engage in these conversations and are hopeful that we can make some progress in these conference processes. We think that the publishing of a draft determination is a reasonable idea. I think it certainly appears from most of the papers that are filed that everyone is looking for a bit more clarity. So that would assist, I think, and we're happy to provide further submissions. We would just like to see the process continue, I think, as quickly as possible. Obviously now that the expert panel has found that there's gender undervaluation we would like to see that rectified as soon as possible.

PN18

I suppose the other main issue that I haven't referred to is the costs, the operative (indistinct) in phasing in. Many of the position papers that were filed went to that issue. Unsurprisingly our view is that, as I said, now that gender undervaluation has been identified we would like to see it rectified as soon as possible, but to a certain extent we will have to be responsive to what proposals are put forward by the employer parties in this space.

PN19

We haven't seen, with the exception of the Australian Industry Group, and I think there was one further paper filed yesterday, that made a specific proposal about a phasing in period, but today we don't sort of have before us any concrete modelling or concrete proposals. So we will respond to those when they're available, and there's not a lot more we can say about that at the moment.

PN20

I think that was all I was going to say. In relation to the pathology collectors and the dental assistants we are very supportive of the expert panel's provisional views. I think there were a couple of matters in relation to the dental assistants that we thought could do with a bit of clarity. So I think the definition of a single staffed centre was one of them.

PN21

I see the sense perhaps in dividing those workers off into a different conference in the future. The issues do seem to be a lot narrower with those two groups, and the employer parties that did put on position papers in relation to those groups have raised some issues, potential issues with the provisional views, but haven't explained them in full. So we would like an opportunity to have a discussion about that if possible to get an understanding of what their concerns are and how that might be dealt with. But I don't have a strong view either way. If the Commission thinks that's an efficient way to move forward then we support that. Unless there are any questions - - -

PN22

DEPUTY PRESIDENT GRAYSON: Thanks, Ms de Plater. At paragraph 21 of your position paper you have put a proposal forward for the expert panel to consider. I would be keen to hear from parties today that had an interest in that particular part of the award as to their views on that proposal. Just for my benefit, Ms de Plater, I think you said that this had been derived from the award. I don't want to put words in your mouth, but is that what you say, the level of referring to research, education, supervision, et cetera, is derived from the current award classifications, or does it come from somewhere else?

PN23

MS DE PLATER: Yes. It's certainly provided for in the current award classifications at the higher level, and Mr Leszczynski and Mr Serong might be able to provide more information on this in a second, but we also in practice in bargaining that's where this work sits, at those higher levels. So, yes, it's just reflective of the current award and current practice in bargaining.

PN24

DEPUTY PRESIDENT GRAYSON: I see. So enterprise agreements in this particular area might reference these particular areas of specialty?

PN25

MS DE PLATER: Yes, and BOOT assessments align with those higher levels of the award, yes.

PN26

MR LESZCZYNSKI: Deputy President, yes, I mean as Ms de Plater said the current award descriptors do make reference to work in these areas, but the reality is I suppose for health professionals those areas – the descriptors as initially proposed by or the structures initially proposed by the expert panel sort of really seem to make reference to, on the surface anyway, just that sort of clinical area as well as the managerial area.

PN27

And I suppose, you know, as Ms de Plater said the reality is that for health professionals those are two of the areas people work in. But particularly the education area is a really significant area that health professionals work in, and that is educating either students or their colleagues at work, and that is an area that continues to grow in terms of the importance for health professionals, in part a reflection of the growing number of students completing health professional degrees, but also reflecting again the growing health professional workforce research, and research to a lesser extent. But again that is an area where health professionals do work in and, you know, are getting in public sector and in private sector.

PN28

Quality assurance is another area as well where health professionals do do regular work. So those things are referred to in the current award descriptors, but in particular, you know, from our experience in bargaining in the sector I mean and having a fairly good knowledge of the work that health professionals do, those are other areas that health professionals do work in that may not necessarily fall into what was envisaged by, I suppose, the division from levels 2 to 4 in the award of on the one hand being a specialist, or supervisor/manager, and I suppose from our perspective the award should reflect the reality of what does actually happen in the workplace.

PN29

DEPUTY PRESIDENT GRAYSON: Thanks, Mr Leszczynski, I am keen to hear from other parties as to their views on that. One final question. I think in your reply submission the HSU talked about - and we have moved quite deliberately away from language of single man to single staff in this decision and acknowledged that that did happen. Do you have an understanding or instructions, and maybe the PCA and Pathology Australia can assist me on this, that there was this discussion in various papers about pathology collectors moving around between centres?

PN30

I wasn't clear if that was day to day, week to week, you know, year to year. So I would be assisted for a better understanding of that issue. I am happy if the HSU can enlighten me on that and then to hear from that on notice I really think for the other parties.

PN31

MS DE PLATER: Yes, thank you, Deputy President. I am aware that it is the case that pathology collectors – it is common for pathology collectors to work across different sites. I would have to take it on notice the detail that you've asked for there. I assume it would be a day to day kind of scenario rather than in the course of a day they might be at different sites. Maybe over the course of a week they do a day or two in a hospital ward or in a day at a single staff centre. I am not sure, but, yes, I think it is common for people to work across different sites, yes.

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DEPUTY PRESIDENT GRAYSON: All right. Thanks, Ms de Plater.

PN33

DEPUTY PRESIDENT SLEVIN: Thank you. I just note Ms de Plater assisted us by adding to our list of things that we would like to hear about in addition to the Deputy President's questions the question of phasing in, and the timing. Again as I indicated earlier we have got the three different groups under the award.

PN34

It appears to us, and it appears from the submissions provided, and from the reasons of the expert panel, that the professionals classifications are going to be the most difficult and perhaps the most time consuming. As I indicated earlier splitting the other two groups off maybe a useful exercise. So we would be interested in views about the ultimate phasing in of the increases and the timing or the length of that phasing in from parties as well. But thank you for that. I will move to the United Workers' Union. We have got Ms Gray-Starcevic. You're next I think.

PN35

MS GRAY-STARCEVIC: Yes. Thank you, Deputy President. We have obviously filed a brief position paper in this matter as probably supporting the HSU's position taken, and then separately a joint position paper with the HSU and the ASU. I don't have anything particularly to supplement to those papers. I think Ms de Plater has gone over what needs to be mentioned.

PN36

In terms of next steps in the proceedings I would concur that it would appear appropriate to separate out certainly the questions around dental assistants and pathology collectors from the broader professional stream. I may be proven wrong at some point, but it would appear that it's a simpler matter in relation to those two streams, and the issues are more confined.

PN37

And in particular the differences between the parties do seem to be a reference to specifics around the drafting of that classification structure and those specific questions around single staff centres and, you know, whether or not it should be someone who holds a qualification or is required by the employer to have or use a qualification. So we would support separating those matters out. I think it would be useful as Ms de Plater said to have some sort of draft determination to form the basis of discussions and this matter moving forward.

PN38

In terms of the timing we concur with the HSU's position that as much as possible we would like to see the matter progress. In particular with dental assistants and pathology collectors where the matters are all confined hopefully those matters can progress slightly more quickly to avoid the delays of potential future wage increases where gender undervaluation has been identified.

PN39

Our broad submission is that especially with the support services stream where the rates of increase are less than the professional stream, and also where they're going to be implemented in the form of a change to the classification structure, the scope of phasing in and timing is probably more limited and should be

implemented as quickly as possible, and likely in one go where it's going to result from a movement within classification, rather than a change to the base rates of pay.

PN40

DEPUTY PRESIDENT SLEVIN: Thank you. Ms Luxton for the Phlebotomists Council of Australia. I think we will need your microphone turned on, Ms Luxton. Thank you.

PN41

DEPUTY PRESIDENT GRAYSON: We still can't hear you, Ms Luxton. If I had a dollar for every time I said that.

PN42

DEPUTY PRESIDENT SLEVIN: Ms Luxton, I might get you to perhaps end the call, ring back in and you will be put back into the conference and hopefully that's fixed it. The old switch it off and switch it on again trick. We will move to the Dental Assistants Professional Association. Ms Schreier-Joffe, do we have you here? I don't see you on screen. There you are.

PN43

MS SCHREIER-JOFFE: Yes, thank you.

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DEPUTY PRESIDENT SLEVIN: Yes, thank you.

PN45

MS SCHREIER-JOFFE: First I would like to say that we support the submissions made by the HSU in this matter, and in particular those just made in relation to splitting the dental assistants out, because we do feel that it is going to be simpler, and one thing that we really don't want is a delay in the introduction of any increases that have been identified by the changes proposed by the Commission in this review.

PN46

Given that there has been a finding of undervaluation one of the most important aspects is rectifying that as soon as possible. So we are very much supportive of perhaps approaching this as a distinct group, so that that can be moved along more quickly.

PN47

We were not in the position, and unfortunately we were not in a position to provide a written position paper and reply, and that is just unfortunately because of the nature of the Dental Assistants Professional Association being a totally volunteer organisation. They just could not get all of their board together in a sufficient time to be able to do so, and I ask the indulgence of the Commission to allow us to put a position paper in reply addressing some of the issues, but principally they will go to issues raised by the employer associations.

PN48

Regarding costs the Dental Association would like to make some submissions about that issue, but we do note, and we take the point made by the ATTU that there is very little information provided by the employer associations regarding those issues as to give them any force, and we say that that shouldn't be an issue for delaying the implementation, or deferring the stage process of implementation of the amendments and increases that would be applicable at least to the Dental Association, the dental assistants.

PN49

In relation to the actual position paper and the decision I don't really have much more to say that would be of any benefit in this forum, but would seek the indulgence to put on a short position paper in reply, and would seek to do so by the end of the week, just to address those issues, specifically in relation to concerns raised about costs that have been proposed by the employer associations in relation to the dental assistant changes.

PN50

DEPUTY PRESIDENT SLEVIN: We're happy for you to provide that submission by the end of the week, Ms Schreier-Joffe. There will be an opportunity down the track for the employers to express that view as well on the basis of the track that we have suggested thus far, and seems to be supported by those we have heard from to this point. Thank you.

PN51

MS SCHREIER-JOFFE: Thank you.

PN52

DEPUTY PRESIDENT SLEVIN: Do we have Ms Luxton back? It seems not. We will have to go back to Ms Luxton. Is there anyone else who wants to speak in the interests of the employees? I think I have gone through the four organisations that I had. Is there anyone else on the line who would like to speak?

PN53

DEPUTY PRESIDENT GRAYSON: For the benefit of the parties we did receive a communication this morning from the ACTU relaying that they were unable to attend today, but that they supported the submissions made on behalf of the HSU, the UWU and the ASU. Was there anything further from any employee interests today?

PN54

DEPUTY PRESIDENT SLEVIN: Thank you. Mr Tracey?

PN55

MR TRACEY: Thank you, Deputy President.

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DEPUTY PRESIDENT SLEVIN: Mr Tracey is from Pathology Australia I should have announced for those who may not know. Thank you, Mr Tracey.

PN57

MR TRACEY: Thanks, Deputy President. Yes, I appear with Mr Holding for Pathology Australia. Thank you to the expert panel for this opportunity to respond to the provisional views in the decision. We're grateful for that opportunity and we have provided a position paper which I won't do anything other than supplement now.

PN58

In essence our position would be to agree with the course that was proposed earlier by you, Deputy President Slevin, in relation to a draft determination being provided to the parties first. That would mean that submissions, as you have also indicated, could then be made, and we would be minded at that point to provide at the same time some evidence of the concrete modelling as to the cost implications of the increases provisionally determined in the decision, and that concrete modelling from our perspective would come from Mr Brown who has previously provided a report to the expert panel.

PN59

What we envisage doing is providing a new report which takes into account the provisional views, as the decision envisages might occur. So in terms of a timetable if it were a draft determination followed by submissions, and the evidence of the modelling, we would also propose producing some limited evidence on the matter of the pathology collectors and the classification, submissions about this too, but their classification, and also the cost implications to pathology collectors as well as health professionals, because we employ both groups.

PN60

And for that reason it would be our preferred approach, subject to the expert panel's view, to keep the matters together to that point, and if it were then a case of splitting them up after that, that would be preferable, in our submission, because the cost modelling would pertain both to health professionals and pathology collectors in our case, and possibly also in the case of some private hospital employers. I am not sure about that, but certainly our cost issues relate to both.

PN61

In relation to your question, Deputy President Grayson, we agree with Ms de Plater's summary of the position with pathology collectors day to day, sometimes week to week, sometimes moving around from a single staffed centre sometimes to hospitals and other collection centres. So it can vary quite a bit, and we would hope to put on some evidence that gives the expert panel a closer understanding of those issues that would then feed into what the classification for pathology collectors would look like, in our submission.

PN62

I think we would otherwise rely on what we said in our position paper, subject to any questions that the expert panel has.

PN63

DEPUTY PRESIDENT GRAYSON: Mr Tracey, I wasn't entirely clear, and perhaps you could expand on it, as to your submission at 8(a).

PN64

MR TRACEY: Yes, Deputy President.

PN65

DEPUTY PRESIDENT GRAYSON: Of course it's a high level submission, but I would benefit from a better understanding of that.

PN66

MR TRACEY: Yes. We would obviously seek to develop that, Deputy President, but it's a situation where, and this relates to paragraph 235 of the decision, where it's proposed at 235 that there would not be a whole new classification structure for pathology collectors. However, the provisional view is that pathology collectors should therefore be classified within the existing structure.

PN67

I think our submission is going to be affected by what a draft determination as to what the classification definitions would look like in the mind of the expert panel. One issue for example is that we're not sure what the position is in relation to whether a pathology collector actually holds a certificate III or certificate IV qualification versus whether they are required to have that, and which of those is the criterion or criteria for a particular level, and the existing levels also have, as you are aware, some rather detailed wording, including at the lower levels where they're presently classified.

PN68

We are just not sure how it would best cater for what they do day to day, and that's why we would hope to put on some evidence, just because previously we didn't go into that level of detail about exactly where they work and how often they work, and the like, and exactly what structure – I am just trying to answer your question at 8(a), Deputy President – the existing classification structure not best described in the work they perform. It really arises out of our – we don't fully understand what the proposed structure is. So that's why we're not really elaborating on that at the moment. Sorry if that's not a particularly fulsome explanation, but we would hope to put on some evidence that would assist.

PN69

DEPUTY PRESIDENT GRAYSON: All right. I think in terms of when you do get that modelling I think for my part it would be helpful to have a sense of both the modelling at a global level, but also for the discrete elements, if you like, that you have an interest in; that is professionals and separately pathology collectors. I think that would be helpful for the expert panel. Did you have any view in terms of, I think it's paragraph 21 of the HSU's proposal, Mr Tracey?

PN70

MR TRACEY: The short point is that we would seek to put on some evidence that would relate to our industry, and in particular we're not – that definition, I'm just looking at the level 2.1 criteria in paragraph 21 of the HSU's position paper. We propose to put on evidence that deals with our particular lab scientists, senior scientists and lab technicians that would – as I'm presently instructed I don't

think that broad definition would fit their circumstances. So we would want a modified version of that.

PN71

DEPUTY PRESIDENT GRAYSON: All right. Thanks, Mr Tracey.

PN72

MR TRACEY: Thank you.

PN73

DEPUTY PRESIDENT SLEVIN: Mr Tracey, what arises from your view as to the next steps and the filing of further evidence is that it may be necessary for a further hearing to be conducted to resolve those matters, which may have an impact on the question of the phasing in. Do you have a view on whether the expert panel should take a view that having identified the undervaluation in the decision whether that would be the point at which increases would be made effective, which would give rise to an element of retrospectivity depending on how much time is taken for a further hearing on finalising orders? Do you have a view about that?

PN74

MR TRACEY: That isn't something I have taken instructions on, Deputy President. So I would have to preface what I say as not being a position based on instructions, but in terms of how phasing in could work what the actual phasing in, if any, looks like, will be dependent on that evidence of modelling and what's decided after a further hearing. I think that's the reality.

PN75

As you've indicated whether it should be backdated to a particular date would be certainly something as I understand it the Commission has done before. I think the short answer is it would depend on that, the modelling and the cost impact for my client's clients, and obviously the other employer interests and parties. I think we would want to be heard on that, but I can't suggest that the level of retrospectivity would be unreasonable, or it might be an approach the Commission adopts.

PN76

DEPUTY PRESIDENT SLEVIN: Thank you. I think we have you back with us, Ms Luxton. Am I right in that?

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MS LUXTON: We do.

PN78

DEPUTY PRESIDENT SLEVIN: You do.

PN79

MS LUXTON: My apologies, I had a back operation yesterday, so I am not meant to be in the office and I was trying to utilise another area, but the computer wasn't working. So my sincere apologies for that.

PN80

Our submission that we put forward was very brief. We felt that most of everything that we had submitted had been considered by the Full Bench, and that we didn't feel a need to file any further submissions to the provisional views.

PN81

We have filed a brief submission to Australian Pathologies' response, and it brings to the discussions that have been had here today, and we realise that there has been some submissions made about pathology specific classification lines, and while the view of the Full Bench was to not make that at this point in time mainly, I guess, being that there are still some fluid activities within the pathology industry with our formal qualifications being established this year, which we will make some changes and will certainly help to define the actual - where our skillset will fit and within the modern award.

PN82

I think one thing that's really important to understand about these qualifications is that this is the first time that HumanAbility has had the opportunity to engage all stakeholders of pathology, RTOs, and TAFEs, and also the pathology industry for people who are doing the training and want the training. For the previous 10 years it's only been employers.

PN83

So in terms of us understanding the roles, the descriptions of exactly what pathology workers do I think a lot of that will come out in the flesh this year, and in terms of where, you know, the Full Bench made the decision to maybe not make that full classification just for pathology collectors at this stage, we felt that that was a wise decision to make until that qualification had come into effect and we could see how it was being utilised in the industry and adopted.

PN84

So, I guess, that would be our further complete thought on those definitions and the qualification there into that one. I guess, you know, in speaking a little bit more to HSU's points about where maybe the reclassification hasn't fully captured the people in the pathology sector that do our research, and so some of those high roles of statistics who do the every day coaching, because we have so many new people in our industry that may not also have been covered within some of the descriptors of the classifications that came out.

PN85

We have, you know, had some feedback from the pathology workers who do like the fact that their work value has been reclassified so it's more suitable for the work value that they're doing. Yet our very experienced staff, some of which were a witness within the full panel, still feel that the ones can meet a top level within two to three years where there's, you know, further places for them to go once they have been in the sector for 15 years, and as much as we realise that's where we would rely on enterprise agreements we know our industry is not that very strong in enterprise agreements because of the way that it's set up, and divided workplace women, all those sorts of things.

PN86

The single staff collection issue has been raised by a few people. I guess, you know, that might come down to wording perception at a little bit. I think that was staying that way because it was a very well way to capture the environment of pathology collection for the majority of people that work in a single site environment with no support, clinical support or workplace support, or a supervisor on site, and that's where we sort of interpreted it, and we understood that there was a level of autonomous skill that was required to be at that level. So that's where we understood that to be a level of skillset that was required to be in those levels. So we felt that that was sufficient.

PN87

In terms of how often these people move around there the reality of the feedback is we have collectors, pathology collectors, phlebotomists, that work in regular clinics, and that's their regular ACC that they go to on an every day basis, and that would be – we would probably need to do some stats, but I would say that would be a good 60/70 per cent of the workforce.

PN88

Then there's probably about 30 per cent of the workforce which act as relievers or fill in people that moved around, and they can end up in a single site clinic or a site that has two to three more people in it, or they can end up on the road where they're working in a single environment and visiting people's homes. So that's sort of the majority of our collector cohort, if that helps the rest of the people to understand that single site.

PN89

DEPUTY PRESIDENT GRAYSON: Ms Luxton, I think data on that would be very helpful for the expert panel to consider.

PN90

MS LUXTON: We are in the process of doing a complete survey, so we should hope to have that completed to be able to present to you.

PN91

DEPUTY PRESIDENT GRAYSON: Do you hold a view, Ms Luxton, that the pathology collectors could be hived off as part of the conference process going forward in this matter?

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MS LUXTON: I'm sorry, Deputy President, could you just repeat that.

PN93

DEPUTY PRESIDENT GRAYSON: Yes, I will. I will just get that microphone moved a bit closer to me in a second. I was just asking whether you had a view that pathology collectors would indeed be hived off in the conference process as a separate group. So having separate conferences that we just confine to those parties that had an interest in pathology collectors.

PN94

MS LUXTON: I think that would be a very smart idea, yes, I do.

PN95

DEPUTY PRESIDENT GRAYSON: All right. Thanks, Ms Luxton. Was there anything further?

PN96

MS LUXTON: No, that's all, thank you.

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DEPUTY PRESIDENT GRAYSON: All right.

PN98

DEPUTY PRESIDENT SLEVIN: Ms Leoncio for the Healthscope Operations Pty Ltd.

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MS LEONCIO: Yes, thank you, Deputy President. I am appearing on behalf of Healthscope, Ramsay and the Adelaide Healthcare Alliance, and we thank the expert panel for giving us the opportunity to provide our response to the provisional views in the decision.

PN100

I wanted to deal with the procedural question first. We have, as you may have already had a chance to review, filed position papers in respect of or on behalf of Ramsay and Healthscope. I won't repeat what's identified there. But in terms of the procedure going forward it does seem from the position papers that have been filed by the interested parties that there are a number of issues in respect to the classification structure that have been raised, and we consider that there has been perhaps a crystallisation of some of those key issues.

PN101

We have heard what the Deputy Presidents have said in respect of the proposed way forward of issuing a draft determination. We see some benefit in that. We wanted to propose an alternative option, which would be our preference, which is to have a further conciliation or conference to ventilate those issues in respect of the classification structure first, and perhaps in that process hopefully the interested parties have some level of consensus as to either the whole of the classification structure or parts of it which we consider would be of assistance to the expert panel.

PN102

If the expert panel was not so minded to have a further conference we would agree that some further guidance would be of assistance, either in the form of a draft determination or a discussion guide as has been issued in respect of the SCHADS award, and we would ask in those instances that there be a further opportunity to have a discussion about the operative date and phasing in, because one of the difficulties is that it is difficult to prepare modelling on the potential impact without understanding or having the clarification of that classification structure and how that translates to the existing workforce.

PN103

So that is why we're proposing a staged approach, and we have on modelling that was done of course in the first stage last year have identified that there will be considerable impacts, but in terms of the accuracy and the actual impact it's of course going to be more beneficial to the Commission, to the expert panel, to have the actual classification structure in the wage rates that relate to that structure modelled.

PN104

Now, that's what I wish to say in terms of the (indistinct). As I said our preference is to have that staged conference process, but in the alternative we would support proceeding to have a more detailed explanation of the classification structure issued by the expert panel.

PN105

If I can then just turn to the second issue which is about operative date and the phasing in issue. We, as I indicated, have already identified that there will be considerable costs as per the evidence and the submissions that were filed last year. We, in addition to what has been said in the position paper, support the proposal by the AiG, and that relates to a transition period to allow for employers to determine the correct classifications and make consequential changes to their systems, and that 12 month period which has been proposed by the AiG.

PN106

We then also support the AiG proposal in respect of the phasing in. Of course again this depends on exactly what the classification structure will look like and what those minimum wage rates will ultimately look like, but we consider that the proposal by AiG, which is at a minimum, a staging over five years appears to be from our perspective a sensible proposal.

PN107

There was a question that was raised by Deputy President Slevin in respect of retrospective operation. I don't have instructions at the moment in respect of that point, but I suppose I can indicate without instructions that it would be dependent of course on the particular modelling and the impact as to whether or not that's appropriate, and we would of course wish to be heard on that point.

PN108

There was also a question that was raised by Deputy President Grayson in respect of the proposal by the HSU at paragraph 21, and apologies, I don't have specific instructions in respect of that, but we can take that on notice, and if there is a further conference we would hope to be in a position to be able to respond to that in a bit more detail.

PN109

DEPUTY PRESIDENT GRAYSON: All right. I had understood, Ms Leoncio, you were representing slightly different parties in December. I had understood from your position paper that your interest was largely focused on the health professional classification. But is it right that you would have a small amount, or your clients would have a small amount of pathology collectors and dental assistants engaged by them? Could you enlighten me.

PN110

MS LEONCIO: Sure. No, my instructions are that our interests or my client's interests are only in respect of the health professionals. They're a kind of subset of interested parties that are represented at this conference. So we don't have an interest in respect of the support stream employees.

PN111

DEPUTY PRESIDENT GRAYSON: Okay. So that would lead to a conclusion that it might be more sensible from your client's perspective to hive off phlebotomists and dental assistants in this matter?

PN112

MS LEONCIO: From our perspective we can see the sense in that. I suppose I'm also conscious that there are interested parties such as Australian Pathology which have indicated that they may need to happen together, but from our perspective we can see how there may be utility in dealing with the health professional issues because there are so many that arise from the proposals in respect, or the provisional views that have been stated by the expert panel.

PN113

DEPUTY PRESIDENT GRAYSON: Thanks, Ms Leoncio.

PN114

DEPUTY PRESIDENT SLEVIN: Thank you. Ms Cook, you're representing Early Start.

PN115

MR BRETT: Thank you, Deputy President, this is Tom Brett on behalf of Early Start Australia. We're purely here in an observational capacity today. Thank you for the opportunity nonetheless.

PN116

DEPUTY PRESIDENT SLEVIN: Thank you. Mr Marshall from the Australian Dental Association.

PN117

MR MARSHALL: Good morning, Deputy Presidents. Thank you for the opportunity to add to what we have put in our position paper which we filed on behalf of the ADA last week. I guess in addition to what's in that position paper, and also noting what's already been addressed this morning by other parties, I think it's fair to say that the position of the ADA is obviously solely focused on the dental assistants and support stream. So to the extent that there may be a separation of the different streams from the Association's perspective we obviously have no issue with that occurring, given our singular focus on dental assistants.

PN118

As has been acknowledged by the expert panel in its decision we are in a situation where there is somewhat of a gap or, I guess, a lot of questions to be asked about the cost impacts of what's been proposed in the provisional view, both in terms of how the new classification structure might translate into the way in which dental

assistants have traditionally been classified in a range of different clinics and situations, and also in relation to the impacts of wage increases and how that can be amortised or managed over time.

PN119

Similar to, I think, the proposal from Pathology Australia that Mr Tracey had put forward a bit earlier, yes, we would certainly see the benefit potentially in the draft determination being issued, so we can see in more detail how specifically revised classification structure may operate and how these specific definitions may be enhanced.

PN120

It was a point that was acknowledged by the expert panel in the decision, that there does seem to be some imperfections in terms of how the current classification structure might relate to what the expert panel has determined in terms of the gender undervaluation issue. So certainly that additional detail would benefit all of the parties in relation to dental assistants.

PN121

What the ADA would propose in terms of next steps and a way forward again would be similar to the position of Pathology Australia in that we would like to put on some evidence in relation to cost modelling, the cost impacts on businesses. I don't have specific instructions at the present point about what the particular phasing in period, or particular issues to be considered, such as backdating, might look like, but certainly the ADA is aware that those issues will need to be considered, and that the evidence and submissions will need to address those issues.

PN122

These are again matters that we think would benefit from specific targeted evidence, and again if there is a need for a further hearing to determine that we would suggest that that's an appropriate way to address it.

PN123

So in addition to those brief comments and noting what was in our position paper last week that's our position in summary, and unless there's any questions, Deputy Presidents.

PN124

DEPUTY PRESIDENT GRAYSON: No. Thanks, Mr Marshall.

PN125

DEPUTY PRESIDENT SLEVIN: Thank you. Mr Pearson for the Australian Diagnostic Imaging Association.

PN126

MR PEARSON: Thank you, Deputy Presidents. The ADIA I think broadly follows Australian Pathology's position in relation to the proposal set out by Deputy President Slevin this morning. We are in the position that we only deal with the professionals' stream, and so we would be supportive of the matter being split into those streams. That appears to be the most efficient way forward.

PN127

Like the other employer representatives here today we would seek to then have a little more detail from the expert panel as to the proposal, so that we could provide the Commission with more detailed evidence and modelling as to the cost impact, which I think then addresses the phasing in issue and the potential for retrospectivity as well. Noting that we're a kind of small subset we would seek to put on some submissions and evidence in respect of how the proposed classification structure would model against our employees.

PN128

DEPUTY PRESIDENT GRAYSON: Mr Pearson, do you have any instructions in terms of the proposal put forward by the HSU at paragraph 21 of their submissions?

PN129

MR PEARSON: I don't, sorry, Deputy President, and I will take that on notice.

PN130

DEPUTY PRESIDENT GRAYSON: Thank you.

PN131

DEPUTY PRESIDENT SLEVIN: I have got Mr Berry for the Clinical Laboratories. Did you want to say something, Mr Berry?

PN132

MR BERRY: No, Deputy President. I am here purely as an observer.

PN133

DEPUTY PRESIDENT SLEVIN: Thank you. And Mr Henry from Sonic Healthcare, did you have something to say?

PN134

MR HENRY: No, thank you, also just as an observer.

PN135

DEPUTY PRESIDENT SLEVIN: Thank you. I have got Catholic Health Australia and Victorian Aboriginal Community Controlled Health Organisation noted as having observers present as well. Did anyone from either of those organisations want to say something, despite their earlier indication?

PN136

MR KARA: No, thank you, just observer.

PN137

DR WATT: No, thank you, just observer.

PN138

DEPUTY PRESIDENT SLEVIN: Thank you. I will move on to you, Mr Stanton, from the Ai Group.

PN139

MR STANTON: Thank you, your Honour, yes. Well, firstly I can be succinct on what is the major point; that is, the proposition that the next step be the release of a draft determination, and agree that this matter really does call for a sensible sequence of activity, and in our submission we boldly requested that, and that would appear to be the way forward.

PN140

I think in terms of what follows will largely be informed by the responses to that classification structure, your Honour. We have dealt with other issues in the submission, and as I understand it they have been received and they will be considered by the expert panel; matters such as translation, phasing, critical issues to us. Other parties, notably Ramsay, have indicated support for that. We can address those further and in more detail post consideration of the draft determination.

PN141

A question had arisen this morning about paragraph 21 of the HSU position. I should just indicate too the submissions were made in relation to the health professionals stream; not the other streams, just the health professionals stream; not the support services. I don't have instructions on the proposition at paragraph 21.

PN142

If I could make some observation, and it was that it's not obvious to me that the structure there represents a reconfiguration, can we say, of the current structure. It may be that perhaps we will need to hear further on that from those that have authored it. I say that because on the current structure supervision and managerial responsibility they're not obvious provisions, they're not expressed in that way.

PN143

So we would be concerned if what is proposed represents the establishment of new classifications that don't correspond to existing provisions, but perhaps we can keep our powder dry until such time as we see what is proposed. May it please.

PN144

DEPUTY PRESIDENT GRAYSON: I am assuming from that, Mr Stanton, that given you're only here with an interest in relation to health professionals that you wouldn't have any concerns with the three streams, if I call it that, being hived off separately?

PN145

MR STANTON: Look, I confess I haven't – it's been raised this morning, I haven't given that detailed consideration. Perhaps we could come back to that.

PN146

DEPUTY PRESIDENT GRAYSON: All right.

PN147

DEPUTY PRESIDENT SLEVIN: Mr Arndt, from the Australian Business Industrial and Business NSW.

PN148

MR ARNDT: Thank you, Deputy President. I will be brief, noting that we're one of the parties who didn't file a position paper prior to today. My current instructions are more by way of observation, but we anticipate that those instructions may develop as we get some more feedback from membership, or just general enquiries from employers who are affected by these proceedings.

PN149

We want to continue to be in a position to engage with this process, and based on the feedback we have received so far I anticipate our interest and focus would be on the phasing issue, and perhaps to anticipate a question from the Bench I imagine or anticipate that our interest would be on the health professional side of the equation, as opposed to the more confined issues.

PN150

I don't have anything to propose or take issue with today, only to say that the sequence proposed by the Bench of draft determination, submissions and conference is something we would accept and hopefully engage with.

PN151

DEPUTY PRESIDENT SLEVIN: Thank you. Just before I get to you, Ms Bulut, you're not on my list, but I see you on my screen, Mr LoPresti for the Australian Physiotherapy Association. Did you have anything to add?

PN152

MR LOPRESTI: Just to reinforce the issue around the phasing in as being one of the most critical things to limit the impact around practice liability as is outlined in our position statement there.

PN153

Probably the only other piece of information to add around the AQF levels; so from a physiotherapy perspective we do have minimum entry into the workforce as an AQF7 degree, but we equally have – we have around 13 universities that provide AQF7 courses, but we then have around 18 that provide graduate entry at AQF8, and we have about 19 at AQF9.

PN154

So we're not a homogenous group in terms of physiotherapists coming out at AQF7, and indeed we have quite a few at AQF8 and 9. And so, I guess, further clarification as to whether this is just going to be a profession minimum entry standard that you sat, or whether there is individualised consideration around AQF8 and 9 entry points as well was probably the only other thing I would add.

PN155

DEPUTY PRESIDENT GRAYSON: Mr LoPresti, in your submission you refer in paragraph 4 to an expert level physiotherapist. Can you just enlighten me, is that an AQF9 level therapist, or is there some other - - -

PN156

MR LOPRESTI: So what we have, we have a specialisation program that as a professional body run. It's a two year program, and usually these are

physiotherapists that have been out in the workforce for quite a number of years and would be regarded as real clinical experts. We have a training program. So it sits outside of the university model, that particular program, but it is professionally led by us as an association and it is quite a robust and rigorous course.

PN157

DEPUTY PRESIDENT GRAYSON: And is there a prerequisite to that; that is, that there's some level of qualification or time in the industry, or anything along those lines?

PN158

MR LOPRESTI: Yes, there is. So there's various levels of training and assessment courses and hurdles that lead into that, as well as experience that sits within that, but I can definitely provide more specific information around that one.

PN159

DEPUTY PRESIDENT GRAYSON: Yes. Just one other question. I think you proposed perhaps a regional, or something different in regional and remote areas. I'm looking at paragraph 32.

PN160

MR LOPRESTI: Yes. What we've heard is a heightening concern from those in rural and remote areas in terms of workforce availability and impact around potential cost impacts being heightened even more so. So we're just hearing from those particular areas the potential concern if something is not phased in appropriately over time. There's a lot of concern and impact there, because their workforce is probably more entry level physiotherapists.

PN161

So they gain a lot of entry level, but what we find is people once they have got their early on years and jobs and experience many venture back to where they're from, and so they're kind of constantly dealing with that entry. So they've probably got a weighted distribution to the early levels of the workforce than where some of our metro or more urban areas would have.

PN162

DEPUTY PRESIDENT GRAYSON: So would you say that should be taken into account in assessing kind of what standard approach to transition or phasing in is applied, or are you proposing – (indistinct), Mr LoPresti – or are you proposing something separate and distinct for those people in the regional areas?

PN163

MR LOPRESTI: I don't think separate and distinct. I think just the element of the phasing approach being systematic and pragmatic, being just as important as others, but I don't think there will be a specific model that would sit there for that group as opposed to others.

PN164

DEPUTY PRESIDENT GRAYSON: All right. Thanks, Mr LoPresti.

PN165

MR LOPRESTI: Thank you.

PN166

DEPUTY PRESIDENT SLEVIN: Thank you. I did say I would call on Ms Bulut last, but I am not going to close off discussion there. If anyone has anything further to say we might see if we can use the technology and you can put your hand up, so we get a little yellow hand on the screen. It doesn't have to be yellow, but generally it is. All right. Thank you. Ms Bulut?

PN167

MS BULUT: I can see two hands, Deputy President. I believe Mr Tracey had his hand a moment ago.

PN168

DEPUTY PRESIDENT SLEVIN: You would rather hear from Mr Tracey. I was going to let you go, Ms Bulut, and then - - -

PN169

MS BULUT: I see. I didn't - - -

PN170

DEPUTY PRESIDENT SLEVIN: I anticipate some may have something – I'm sorry, Ms Bulut – I anticipate some may have something to say in response to the Commonwealth's position as well. So it was more of – sorry for talking over you there as well, Ms Bulut. Go ahead.

PN171

MS BULUT: Thank you, Deputy President. The Commonwealth has filed a short response to indicate that it doesn't wish to raise any issues regarding the provisional views expressed by the expert panel.

PN172

On the question of phasing in we do wish to express our support for a phased approach to allow the (indistinct) to operationally respond to the wage rises to minimise impact for service delivery, workforce retention and service liability.

PN173

So at the appropriate time, noting what was discussed or proposed today, that is that the next stage there will be a draft determination, we don't wish to be heard against that, and then at the appropriate time following that, whether that be by way of conference, further written submissions, or indeed a further hearing, the Commonwealth will wish to be heard on the question of phasing in, including the provision of factual information on those matters or issues relating to phasing in. So at that point in time we will wish to be heard further on that subject matter.

PN174

DEPUTY PRESIDENT SLEVIN: Thank you. I have got two hands, Ms Luxton and Mr Tracey. I might go with you first, Mr Tracey.

PN175

MR TRACEY: Thanks, Deputy President. I only wanted to make one brief observation, that we read the room and we, I think, can sense some mood for the hiving off into separate conferences the pathology collectors in our case, and we're not going to be heard against that in those circumstances.

PN176

My understanding though is that if there is to be a further hearing where evidence as to cost implications is heard and submissions are made about it that that would continue to be universally – it would be across all classifications, including pathology collectors. If that's the case then we certainly don't object to the conference phase being hived off.

PN177

DEPUTY PRESIDENT SLEVIN: Thank you. Ms Luxton? I've got two hands from you, Ms Luxton.

PN178

MS LUXTON: I hit my buttons twice to make sure they work sometimes. I just wanted to make note, as I didn't previously, our position with regards to the phasing in for pathology collectors. It was noted that this had been well heard by the Full Bench in your provisional views, and we would just like to also support that, and a lot of it had relied on a hope of government support towards the pathology sector, which at this point has not been supported by the government.

PN179

So we would like to see that the phasing in process for pathology collectors, that there is no phasing in time, and that the change is put through as speedy as it can be with the processes that we have in place, and this is purely based on the industry need at the moment, especially in outpatient pathology.

PN180

We have a huge amount of skills shortages at the moment that is affecting the Australian public's ability to access bulk bill testing, and a huge skill shortage at the moment as well, and purely that is because we have skilled workers leaving our sector to go and work in unskilled sectors. So one point that we would like to just reinforce is that something we would support greatly is that there is no phasing in when it came to the pathology collectors decision.

PN181

DEPUTY PRESIDENT SLEVIN: Thank you. Ms Schreier-Joffe, I noticed your hand is up as well. Something to add?

PN182

MS SCHREIER-JOFFE: Thank you very much. I echo Ms Luxton's comments. They apply very much equally to the dental assistants, and I addressed that originally. I put my hand up just to make clear that in terms of the process that you have suggested, or the Bench has suggested, that we would support a draft award for comment, and of course we support a splitting of the pathology and dental assistants off from the other professional health professions.

PN183

DEPUTY PRESIDENT SLEVIN: Thank you for your attendance today. Do I have another hand up there? I have a number of hands. I'm starting to feel like a game show host. Who was the first? I might get you to speak up. If you're not on camera I don't have your name in full. The hands came up and then they went away. It might be someone has bumped a button. All right. Again thank you all for your attendance today. The matters discussed today will be reported back to the expert panel, and keep an eye on your inboxes and on the dedicated website for the matter, and we will outline the next steps as soon as a position is reached here. Again thank you for your attendance today. I will adjourn the conference and you're free to leave the call now.

ADJOURNED INDEFINITELY

[11.26 AM]