



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**VICE PRESIDENT CATANZARITI**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards  
(AM2014/255)  
Airport Employees Award 2010**

**Sydney**

**10.11 AM, THURSDAY, 2 FEBRUARY 2017**

PN1

THE VICE PRESIDENT: Thank you. I will take the appearances. We'll do Sydney first.

PN2

MS S TAYLOR: If the Commission pleases, Taylor, initial S, for the Australian Manufacturing Workers' Union, in relation to the Airline Operations Ground Staff Award.

PN3

THE VICE PRESIDENT: Thank you.

PN4

MR K BARLOW: Your Honour, Barlow, initial K, for the CPSU, appearing only in the Airport Employees Award. If it please you, Commission.

PN5

MS R BHATT: If it please the Commission, Bhatt, initial R, appearing for the Australian Industry Group in relation to the Airline Operations Ground Staff Award.

PN6

THE VICE PRESIDENT: Thank you.

PN7

MS K SRDANOVIC: May it please the Commission, Srdanovic, initial K, appearing for the entities within the Qantas Group and with me is Justine Oldmeadow. And we're appearing in relation to Airline Operations Ground Staff Award only.

PN8

THE VICE PRESIDENT: Thank you.

PN9

MS W CARR: If it please the Commission, Carr, initial W, for the Transport Workers' Union. With me I have Ms Tran, initial J and we have an interest in the Airline Operations Ground Staff Award. Thank you, your Honour.

PN10

THE VICE PRESIDENT: Thank you.

PN11

MR L AMOS: Your Honour, Amos, initial L, for the Australian Licensed Aircraft Engineers Association and we have an interest in the Airline Operations Ground Staff Award.

PN12

THE VICE PRESIDENT: Thank you.

PN13

MS R WALSH: If it pleases, initial R, for the Australian Workers' Union and we appear for the Airlines Operations Ground Staff Award.

PN14

THE VICE PRESIDENT: Thank you. Then we'll go to Melbourne.

PN15

MR M RIZZO: Yes, your Honour, Rizzo, M, on behalf of the ASU and interested in the Airlines Operations Award.

PN16

THE VICE PRESIDENT: Thank you.

PN17

MR M NICOLAIDES: Thank you, your Honour, Nicolaides, M, for the AMWU, in relation to the Airport Employees Award.

PN18

THE VICE PRESIDENT: Thank you. So, the purpose of this morning, and we're putting most of this on transcript to assist where it goes on forward, is to take each of the awards and see what's left and see also if any matters have to go to a Full Bench, that we can't resolve today. So, what we'll do is, we'll start with the document, the Airline Operations Ground Staff Award.

PN19

MR BARLOW: Your Honour- - -

PN20

THE VICE PRESIDENT: You want to do it the other way round?

PN21

MR BARLOW: If I may be so bold, your Honour- - -

PN22

THE VICE PRESIDENT: Yes.

PN23

MR BARLOW: - - - there are only two parties here, being the CPSU and my colleague from the AMW in Melbourne, dealing with the Airport Employees Award, most of which relate to technical or drafting issues and there don't appear to be any substantive issues, and that may be more shortly disposed of, your Honour.

PN24

THE VICE PRESIDENT: Let's do it the other way around. You're not that bold, we'll do what's more efficient.

PN25

MR BARLOW: Thank you, your Honour.

PN26

THE VICE PRESIDENT: So let's go back then to the Airport Employees Award. So, the document that I've got in front of me is the one that's published on 4 January 2017. Have the parties got all that in front of them?

PN27

MR BARLOW: Yes, your Honour.

PN28

THE VICE PRESIDENT: And that's the revised summary of submissions, technical and drafting. Mr Barlow, do you want to take us through it where the areas of dispute are?

PN29

MR BARLOW: There are no employers present again for this conference, your Honour, so in some senses, there's no dispute between the parties. The CPSU and the AMW support each other's submissions on this, but I'm more than happy to take your Honour through- - -

PN30

THE VICE PRESIDENT: Is this the one where we wrote to each of the parties, see whether they were going to turn up?

PN31

MR BARLOW: It may have been, your Honour.

PN32

THE VICE PRESIDENT: Well, it's a bit difficult if nobody turns up.

PN33

MR BARLOW: Yes, your Honour. So, in some ways, your Honour, it's largely up to yourself and the Full Bench about how the issues that are highlighted in the revised summary of submissions proceed.

PN34

THE VICE PRESIDENT: Yes.

PN35

MR BARLOW: Most of them are in response to questions by the Fair Work Ombudsman and the Commission itself or drafting errors that the unions believe are present in the draft. Do you wish me to proceed through them, because there's certainly no addition - there's no other issues I wish to highlight, other than one.

PN36

THE VICE PRESIDENT: Well, why don't you highlight the issue you think should be highlighted?

PN37

MR BARLOW: Your Honour, if we turn to item 12, which relates to clause 23.2 in the exposure draft. This is about shift penalty payments, and whether it's ordinary rates or minimum rates and must be paid for such shift, is the submission of the CPSU.

PN38

Now, the current award provides for shift penalty payments in that clause. In the current award clause, 28.1, based upon an ordinary rate of pay, not a minimum rate of pay. Now, the exposure draft deals with a minimum rate of pay throughout the shift penalties and also schedule B1, which is the summary of shift penalties payments relevant - sorry, if we turn to that very briefly, your Honour, it's probably highlighted more appropriately.

PN39

THE VICE PRESIDENT: Yes, I see that.

PN40

MR BARLOW: It's page 60 in the- - -

PN41

THE VICE PRESIDENT: Yes, I've got that.

PN42

MR BARLOW: Yes, so if you can see there, B1.1:

PN43

*Technical Services, adult employees, ordinary shift work and penalty rates.*

PN44

So that's based upon the minimum rate. Now, this is not a new issue that has been dealt with by the Commission. I don't believe there's been any decision regarding this issue yet, but I understand in other awards, the AiG has put on submissions related to it.

PN45

But it's our submission that it may very well be that table could be misleading, given the fact that the current award, arguably applies penalty payments to an ordinary rate of pay, not a minimum rate of pay. And so that is part of the issue which is picked up at item 12 of the summary document, and I'm just expanding upon that now as the implications of proposed clause 23.2, which relates to shift penalty payments based upon a minimum rate of pay, then play out through the rest of the award, and in particular, there in the summary of rates of pay in schedule B.

PN46

So, I wanted to highlight that to your attention, your Honour, as something that has some ramifications about -obviously ordinary rate of pay would include some allowances, would be the position, whereas a minimum rate of pay probably wouldn't include those allowances, your Honour.

PN47

Other than that, I don't- - -

PN48

THE VICE PRESIDENT: So you say this issue, but not in this award, has arisen by the AiG separately?

PN49

MR BARLOW: This issue, I believe, your Honour, has been raised and discussed in other awards I've been involved in, including the Contract Call Centres Award, from memory. And I believe there are AiG submissions, which unfortunately I don't have before me, your Honour, in those other awards that refer to this issue, that try to deal with this issue of translating, in particular, the schedules to minimum rates of pay. Is it a minimum rate of pay or is it ordinary rate of pay, upon which the penalty is paid?

PN50

THE VICE PRESIDENT: And has there been a decision?

PN51

MR BARLOW: No, I don't believe there's been a decision, your Honour. What I'm saying is, it's a live issue.

PN52

THE VICE PRESIDENT: It's a live issue. Has it been argued

PN53

MR BARLOW: I'm not sure, your Honour. It has certainly been argued, I believe, in processes like this, in conference.

PN54

THE VICE PRESIDENT: Yes- - -

PN55

MR BARLOW: I don't believe it's been subject to a separate hearing.

PN56

THE VICE PRESIDENT: Subject to a full hearing.

PN57

MR BARLOW: No, I don't believe so, your Honour. But it's something I felt should be highlighted, because- - -

PN58

THE VICE PRESIDENT: No, that openness is important, because we can't do something in the absence of an employer response, in this case- - -

PN59

MR BARLOW: Yes.

PN60

THE VICE PRESIDENT: - - -which would impact on other concepts. Yes.

PN61

MR BARLOW: Yes, so I'm raising it as an issue for this award here, and how the exposure draft is phrased. As I said, it's the CPSU position that arguably, looking at the current award and the use of the word "ordinary rate of pay" and at least one or two provisions of the award there, and I'm looking in particular at 28.1, that it should be ordinary, not minimum rate.

PN62

THE VICE PRESIDENT: Ms Bhatt, I know you're not in this matter, but are you aware of the AiG in the other matters?

PN63

MS BHATT: I am. I thank Mr Barlow for raising the issue in this context.

PN64

MR BARLOW: Sorry to drop you in.

PN65

MS BHATT: Where it's arisen in other awards, the argument has been about the construction of the specific award clauses. So it's not immediately apparent to me whether the issue that's been raised is one of general relevance. It may or may not be, depending on the specific terms of the clause, which I've not looked at, because we don't have a relevant interest in this award. If it is, then that might be something that we want to have a look at, but we'd have to give that some consideration.

PN66

THE VICE PRESIDENT: But so far as you're aware, in the other awards, it's not been litigated to finality?

PN67

MS BHATT: No. No, it hasn't, Vice President.

PN68

MR BARLOW: So, your Honour, that's the issue I'd like to highlight and build upon there in item 12. But other than that, I don't have anything to add to this summary and as the CPSU and the AMWU are largely, or entirely, in foot with each other in submissions- - -

PN69

THE VICE PRESIDENT: In agreement, yes. So- - -

PN70

MR BARLOW: - - -I don't know how much work there is for me to do.

PN71

THE VICE PRESIDENT: No. So, so far as this matter's concerned, what I should probably do then is prepare a short report to go to the Full Bench, which will indicate that that's the position in relation to the other clauses, that there is agreement from the union side, so to speak, no employer having made themselves available and that you've raised squarely this issue. And the Full Bench can then determine whether it can agree to do it in this award or whether there is a more wider application.

PN72

MR BARLOW: Yes, your Honour. And I would submit, similarly with the other items, other 16 items the Commission needs to take on board, what the AMWU and CPSU have said about whether those are errors or not and move accordingly.

PN73

THE VICE PRESIDENT: So there's really nothing more you want to say today, in that sense?

PN74

MR BARLOW: Unless you want me to talk to each item separately, which I've already done in written submissions. I don't see- - -

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THE VICE PRESIDENT: No, I've read the items. I don't see much utility- - -

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MR BARLOW: No, your Honour.

PN77

THE VICE PRESIDENT: - - -because there's nobody to give a counter argument.

PN78

MR BARLOW: No, your Honour.

PN79

THE VICE PRESIDENT: All right, well that would allow you to be excused, presumably.

PN80

MR BARLOW: Thank you, your Honour.

PN81

THE VICE PRESIDENT: Thank you. So we'll just move into the next award.

PN82

MR NICOLAIDES: Excuse me, your Honour.

PN83

THE VICE PRESIDENT: You want to be excused as well? No?

PN84

MR NICOLAIDES: Excuse me, your Honour, in relation to the Airport Employees Award.

PN85

THE VICE PRESIDENT: Yes.

PN86

MR NICOLAIDES: I haven't got a lot to add to what Mr Barlow said, and I think the summary of submissions is accurate. There's just three points that we might pick up.

PN87

In relation to item 6, there are two alternatives proposed there. Subject to the views of the CPSU, I think the AMWU would prefer the first of those alternatives, that we just delete reference to 20.3.



PN88

THE VICE PRESIDENT: Sorry, the document I've got says that the CPSU has withdrawn its version. Is that not right? Mr Barlow?

PN89

MR BARLOW: That is correct, your Honour. But in the summary of submissions, if you look at what the AMWU is saying, the Commission has posed two alternatives.

PN90

THE VICE PRESIDENT: Yes.

PN91

MR BARLOW: The AMWU, I believe Mr Nicolaides is expressing a view about which one he now prefers and the CPSU will support that.

PN92

THE VICE PRESIDENT: Yes, so it's really whatever the AMWU suggests will be the suggestion that will go forward.

PN93

MR BARLOW: Yes, your Honour.

PN94

THE VICE PRESIDENT: Yes. So which proposal are you preferring?

PN95

MR NICOLAIDES: The first one, your Honour, to delete the second dot point at 20.3(d)(5).

PN96

THE VICE PRESIDENT: Yes.

PN97

MR NICOLAIDES: To the best of my reading, there is no reference anywhere else in the award to a motor vehicle allowance, so it's a superfluous reference.

PN98

THE VICE PRESIDENT: Yes.

PN99

MR NICOLAIDES: The second matter, your Honour, is that in relation to item 14, in the fourth column is reference to the relevant clause, being 24.8. That reference 24.8 was to the original draft of the award, which has since been amended to include three additional subclauses, consequent upon a Full Bench decision in relation to annual leave. So the reference to 24.8 should now be to 24.11.

PN100

THE VICE PRESIDENT: Yes.

PN101

MR NICOLAIDES: And the final point, your Honour, is on page 57 of the exposure draft is a question posed in relation to an acronym being "NOTAMS", no party has addressed the Commission on that matter.

PN102

THE VICE PRESIDENT: Yes, that's at the top of the page, yes.

PN103

MR NICOLAIDES: Yes. The acronym, "NOTAMS", is very well understood within the aviation industry, your Honour. I doubt that it needs to be elaborated, but if it needs to be, it stands for "Notice to Airmen".

PN104

THE VICE PRESIDENT: Yes, I follow that.

PN105

MR NICOLAIDES: That's all, your Honour.

PN106

THE VICE PRESIDENT: All right. There's nobody else wishing to speak on this award? Well, anybody who wishes to leave is excused, with no other interest.

PN107

MR BARLOW: Thank you, your Honour.

PN108

MR NICOLAIDES: Thank you, your Honour.

PN109

THE VICE PRESIDENT: We'll now move to the Ground Staff Award. Now what I have is two documents, one is headed, "Summary of Proposed Substantive Variations", which there are three, on 6 January. And the other one is dated 4 January, which picks up the changes. Who's going to lead the discussion in that?

PN110

MS BHATT: Vice President, if I may, we're in your hands as to how we proceed. There are a number of matters that are not resolved, that can be identified from the summary of submissions regarding the technical and drafting issues. One proposed course that we thought might be of utility, if it's convenient to the Commission, is that we work through those matters today. It's argued that a further ventilation of the parties' position might assist in, in fact, resolving some of these issues.

PN111

I think in some cases, we might not be that far apart, but I'm not sure if your Honour had that course of action in mind or whether you would simply like us to identify what remains- - -

PN112

THE VICE PRESIDENT: No, I'm here for the day. We need to be here, so to have that discussion.

PN113

MS BHATT: All right, well- - -

PN114

THE VICE PRESIDENT: So perhaps we do that. The substantive matters, presumably there's not going to be any resolution of the three substantive points?

PN115

MS BHATT: Well, from Ai Group's perspective, those claims on their base are opposed. And we would say that they are substantive matters that need to be referred to having to come before a Full Bench.

PN116

MS TAYLOR: Your Honour, I believe that in relation to the issue of the classification structure, the parties haven't had an opportunity to sit down and discuss what is being proposed by the AMW and the ALAEA. So it may well be that it ends up being referred to a Full Bench, but I think we should have the opportunity or the process should include, certainly some discussion and conferencing around the proposals.

PN117

THE VICE PRESIDENT: Well, I don't think we should be referring this to Full Bench, in the absence of having a discussion. But presumably, that discussion on classifications is something the parties should do themselves and then have a report back as to whether there is any breakthrough so the Commission can deal. And then failing that, then those three items there, including classifications, can be referred.

PN118

MS TAYLOR: Yes, your Honour.

PN119

THE VICE PRESIDENT: And how long would you need to do that?

PN120

MS TAYLOR: Well, I think we could have a report back- - -

PN121

MS SRDANOVIC: Your Honour, if I may, from the Qantas Group's perspective, there are some submissions which obviously have been filed, but the substance of what is actually being proposed by way of a variation to the award, be it in the form of an order or otherwise, is not actually clear from the face of the document.

PN122

It would be helpful for us to see that, before there is then any further discussion, so that we can at least know what it is we're speaking about. So we're not opposed to a conference, by any means, as a way of trying to narrow down the issues, if they can be. On the face, it is opposed, but the actual form of the order that's being sought is not.

PN123

THE VICE PRESIDENT: Yes, I follow that. Right, how long would it take you to get a form of an order?

PN124

MS TAYLOR: Well, I believe we could get a form of the order by the end of February. The AMW and the ALAEA need to sit down and- - -

PN125

THE VICE PRESIDENT: Well, I don't think the Full Bench is going to be that excited by a long timetable.

PN126

MS TAYLOR: In the third week of - and then we would intend to meet with the employers, give them two weeks to look at that.

PN127

THE VICE PRESIDENT: Well, that's going to blow the matter out. I'll park it for the moment and we'll come back later on in the day. But I think we need to look at accelerating the process to work out, you know, because only if there is no agreement, then to constitute a Full Bench, a separate Full Bench for this matter takes time and all the other programming, et cetera, evidence etc. And I'm reluctant to have things just drift into the never-never.

PN128

All right, well let's go back to the other document then, and see where we're going.

PN129

MS BHATT: Thank you, Vice President. If I can start with item 1, it's identified as a matter that's agreed, and I still understand that to be the case. But can I raise one issue. A revised exposure draft was published on 4 January, which purports to give effect to the matters that were agreed between the parties.

PN130

It's come to our attention only yesterday- - -

PN131

THE VICE PRESIDENT: Yes. Let me get the 4 January first.

PN132

MS BHATT: I apologise.

PN133

THE VICE PRESIDENT: I've got that in front of me, yes.

PN134

MS BHATT: Page 88 of that exposure draft, schedule B.7.2.

PN135

THE VICE PRESIDENT: Page 88, yes.

PN136

MS BHATT: The necessary amendment that has been made to other parts of the schedule is not reflected in B.7.2. That is, the word "permanent", we say, should be deleted from the heading of the fourth column. And a footnote should be inserted after "nightshift" in the third column and "nightshift" in the fourth column.

PN137

THE VICE PRESIDENT: I don't have the page open. Just repeat that again?

PN138

MS BHATT: I'm sorry.

PN139

THE VICE PRESIDENT: B.7.2.

PN140

MS BHATT: Yes. The word "permanent" should be deleted from the heading in the fourth column.

PN141

THE VICE PRESIDENT: When you say "fourth column" the version I have is, "Early morning or afternoon shift".

PN142

MS BHATT: Yes.

PN143

THE VICE PRESIDENT: "Nightshift".

PN144

MS BHATT: Yes.

PN145

THE VICE PRESIDENT: "Permanent nightshift", which is the third column.

PN146

MS BHATT: I'm sorry, I was counting from the first column that indicates- - -

PN147

THE VICE PRESIDENT: Which is blank.

PN148

MS BHATT: I apologise.

PN149

THE VICE PRESIDENT: Yes.

PN150

MS BHATT: So the word "permanent" should be deleted from that heading.

PN151

THE VICE PRESIDENT: Yes.

PN152

MS BHATT: A footnote should be inserted at the end of the new heading, which will now be "Nightshift", and a footnote should also be inserted after "Nightshift" in the preceding column, to the left. The terms of those footnotes can be taken from B.6.2, which would be the same.

PN153

THE VICE PRESIDENT: Yes, I see those.

PN154

MS BHATT: Yes. So they should simply be inserted in B.7.2. We say that would resolve item 1.

PN155

THE VICE PRESIDENT: All right. As you go through this, when you say "resolved", if anybody has a different view, could they please express it with the time, rather than save it up to the end.

PN156

MS SRDANOVIC: We support that.

PN157

THE VICE PRESIDENT: All right. So that's number 1.

PN158

MS BHATT: I understand items 2, 3 and 4 to be resolved.

PN159

THE VICE PRESIDENT: Yes.

PN160

MS BHATT: Item 5 is not resolved. It's a matter that's been raised by the AWU regarding the facilitative provisions. I think there might be some context as to whether in clause 7.2 should also include a reference to clause 28.4B.

PN161

MS WALSH: I can assist, your Honour. So items 5 to 7 comprehend the three tables at clause 7, so those are the facilitative tables, whether agreements are with the employer and individual employees or the majority of employees or both. This item 5 is in relation to a specific arrangement for public holidays and agreement to take that day off on another day.

PN162

As compared to other arrangements, where there's that dual arrangement, either with individual employees or a majority of employees, this particular provision, 28.4, I suppose separates those arrangements. And so we made two submissions in relation to that clause which was to put 28.4B in the individual facilitative table and put 28.4A in the majority agreement facilitative table, which is 7.4. So that's the basis of that proposal.

PN163

THE VICE PRESIDENT: So if you just stop there. So 28.4B is an employee individual and employer may agree etc. And you want that specifically identified up in 7.2?

PN164

MS WALSH: Correct.

PN165

THE VICE PRESIDENT: What's the problem with it being identified? It is there already.

PN166

MS WALSH: Yes. It's currently in table 7.3, which provides the majority and individual agreement. We don't have an issue, your Honour, in actually splitting it out in the way that the AFWU has just identified. Equally, we're also comfortable leaving it in table 7.3, given it does provide for majority or individual agreements, so we would be happy to follow whatever course in this regard.

PN167

MS BHATT: Ai Group's position's the same.

PN168

THE VICE PRESIDENT: Well, we shouldn't have had to agree to it.

PN169

MS WALSH: Yes, your Honour.

PN170

MS SRDANOVIC: One thing that we just noticed. The exposure draft wording currently picks up the current award, so the cross-references, when you line up the tables, match the current award, which is I think, the starting point that splitting them up is - we're comfortable with that course of action.

PN171

THE VICE PRESIDENT: All right, so that we're clear for the transcript what we're actually doing, would someone like to articulate what we're actually have now just agreed to?

PN172

MS BHATT: If I may. From clause 7.3, the reference to 28.4A and 28.4B and the description of the provision should be deleted. In the table in clause 7.2, a reference to 28.4B should be inserted. In the table in clause 7.4, a reference to 28.4A should be inserted.

PN173

THE VICE PRESIDENT: Yes. Are you comfortable with that?

PN174

MS WALSH: Yes, your Honour. Shall I move to item 5?

PN175

THE VICE PRESIDENT: No, I want to make sure that, when we agree to something, it's all very clear and I've marked it off.

PN176

MS WALSH: Yes.

PN177

THE VICE PRESIDENT: So that's item 5.

PN178

MS WALSH: Yes.

PN179

MS BHATT: Yes.

PN180

THE VICE PRESIDENT: And that also deals with item 6?

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MS WALSH: It partly does with item 6.

PN182

THE VICE PRESIDENT: Yes. What's the other part that's left over?

PN183

MS WALSH: The remaining part of item 6 are the clauses that we identified in the exposure draft.

PN184

THE VICE PRESIDENT: The 14 and the 16?

PN185

MS WALSH: Correct. As being majority provisions and accordingly, we have suggested that they be moved.

PN186

THE VICE PRESIDENT: Let's have a look at those.

PN187

MS WALSH: 2.7.4.

PN188

THE VICE PRESIDENT: So, 14.2C is the employer and the majority of the employees concerned.

PN189

MS WALSH: Yes. And the same for 14.2D, there's no reference to an individual employee.

PN190

THE VICE PRESIDENT: Yes. 16.1D and 16.2E. Well, we must be very close on this.



PN191

MS BHATT: Ai Group's position is that we do not oppose the deletion of the references to clause 14.2C and 14.2D. But we do not agree with the AWU's submissions regarding 16.1D and 16.2E.

PN192

THE VICE PRESIDENT: So 14.2C and 14.2D is agreed. 16.1D - - -

PN193

MS SRDANOVIC: Your Honour, the Qantas Group also supports the Ai Group's position in this regard.

PN194

THE VICE PRESIDENT: Yes. Yes, I don't quite follow the AWU's point on 16.1D.

PN195

MS TAYLOR: Your Honour, the AMWU supports the AWU's position there. The wording in 16.1B and 16.2E refers to an employer and employees in the plural. So we say that to be a majority. There's no specific provision, as in other clauses, where majority agreement is expressed and then there's a specific provision for that, provision to be accessed on an individual basis as well. So just looking at the normal language of the- - -

PN196

THE VICE PRESIDENT: Well, it may be poor drafting. That's why we're here. But if one looks at 16.2E, you say that means that unless all the employees agree to stagger meal breaks, they can't stagger?

PN197

MS TAYLOR: Correct.

PN198

THE VICE PRESIDENT: I'm not sure I would agree with that interpretation, if I was doing this as an interpretation case.

PN199

MS TAYLOR: No.

PN200

THE VICE PRESIDENT: It doesn't insert the words, "majority of employees".

PN201

MS TAYLOR: That's right.

PN202

THE VICE PRESIDENT: That's the problem.

PN203

MS TAYLOR: But it doesn't insert the words, "and employee".

PN204

THE VICE PRESIDENT: No, I follow that too. But I mean, if you wish to refer that to a Full Bench, I think there's a problem.

PN205

MS WALSH: Your Honour, it does appear that the award makes great effort to specify that individual employees can agree or can form an agreement with the employer. It does seem- - -

PN206

THE VICE PRESIDENT: Well, the problem may be resolved by putting, "an employer and an employee may agree to stagger meal breaks".

PN207

MS TAYLOR: Your Honour, in 16.1C, the clause above, the text is, "If an employee". If what the intent of the award to have 16.1D operate at an individual level, it would have been easy to have that same wording, "If an employee and employer".

PN208

THE VICE PRESIDENT: It may well have been easy, but ultimately, if we don't agree to what the draft's going to be, it will be arbitrated.

PN209

MS SRDANOVIC: I think it's also relevant, your Honour, that in the current award, these provisions are only tabled that provide for both majority and individual agreement, and that would have been the basis upon which the parties had been operating on since the award had been made. And although they are summary tables and that is the reason why we're here, we do say that it does provide for both majority and individual agreement. Because to not be able to provide for individual circumstances- - -

PN210

THE VICE PRESIDENT: Well, that's the other alternative, is to spell it out and have both alternatives there. What do you say about that, having both alternatives there? Given the history, if it goes into a history argument, and if what you say is right, then a Full Bench would have a close look at the history. I'm in your hands, really, but I mean, it seems to me that that's more likely than not.

PN211

MS WALSH: Yes, your Honour, that would be an appropriate remedy.

PN212

THE VICE PRESIDENT: Ms Bhatt?

PN213

MS BHATT: We'd agree with that. Yes. Yes, your Honour.

PN214

THE VICE PRESIDENT: Can we put that on the record then, formally as to what - or alternatively, we can put this in later in writing.

PN215

MS WALSH: So that would be clause 16.1D.

PN216

THE VICE PRESIDENT: And 16.2E will be amended.

PN217

MS WALSH: 16.2E, yes.

PN218

THE VICE PRESIDENT: I appreciate we don't want drafting on the run and I don't want drafting on the run either. I might get the parties to submit the clause that reflects that we've just agreed to. Clearly there's no disagreement now.

PN219

MS BHATT: Well, perhaps Ai Group can undertake to draft something and circulate it to the parties. Once agreed, we can forward it to the Commission.

PN220

THE VICE PRESIDENT: That would be useful. Excellent. All right, let's move on. Next one- - -

PN221

MS WALSH: Your Honour, item 7, I think, could be resolved by the discussions that we've just had.

PN222

THE VICE PRESIDENT: Yes, that could be resolved. Yes.

PN223

MS WALSH: Item 8 is an AWU claim.

PN224

MR RIZZO: Sorry, your Honour, Rizzo, M, from Melbourne. I missed that. Was item 7 resolved?

PN225

THE VICE PRESIDENT: Yes.

PN226

MR RIZZO: Yes, okay. Thank you.

PN227

THE VICE PRESIDENT: We're on item 8.

PN228

MS WALSH: Yes. This is in relation to clause 10.B. Our submission is about the references. So clause 10.2B refers to clause 7.4 as if that clause is an operative provision, when really, it's a listing of the clauses that operate in the award. So we've suggested that that be removed and we've got some proposed wording at that clause to read, "Subject to the employer's rights", in clause 15.1, which is the operative provision. "Changes are now as may only be made by an employee in writing."

PN229

Now, part of that proposal reflects that for a part-time employee, those changes do need to be made in writing. So, our proposal will create - well, will enable a majority to agree to various certain hours, under clause 15.1 but that as changes may affect part-time employees, they may only be made by agreement, in writing, at clause 10.2.

PN230

I understand the AMWU support that position and Qantas prefer the current wording, as is.

PN231

THE VICE PRESIDENT: Yes, it's a bit cumbersome the way it's put together. What does Qantas have to say about this?

PN232

MS SRDANOVIC: Your Honour, we think the wording should remain as it is, and that clause 7.4, it is an operative provision. It does more than just merely list the provisions. In particular, at 7.4B, it goes on to provide that,

PN233

*Where agreement is reached with the majority of employees in a workplace, that agreement binds all such employees.*

PN234

To delete it then, from clause 10.2B, would be deleting the effect of that clause 7.4B, or purporting to do so. The wording as it is currently there is in the current award, and we think it's important that it stays there, to make it clear that that clause has work to do for both part-time and full-time employees.

PN235

THE VICE PRESIDENT: So, is it your experience, that clause has been used in the current award?

PN236

MS SRDANOVIC: Yes, your Honour.

PN237

THE VICE PRESIDENT: Well, that becomes more of a compelling reason to look at it again, Ms Taylor.

PN238

MS WALSH: I think even if we kept the reference to 7.4, I wonder if we could still introduce the reference to the agreement being in writing, given that a part-time employee will already be subject to an agreement in writing about their hours, they're then subject to a majority agreement about their hours and a new agreement does need to be formed, in writing.

PN239

MS BHATT: If I may, the proposals that are being put here would amount to substantive changes to the award which, as I understand it, is not intended to be - -

PN240

THE VICE PRESIDENT: It's not intended in typical drafting, that's correct.

PN241

MS BHATT: No, it's not. The way this provision currently works is an employer has an ability to effect certain changes, by virtue of these facilitative provisions. Now, if we look at the first one that's listed, clause 14.2C, says that:

PN242

An employer can reach agreement with a majority of employees to alter the spread of hours."

PN243

Clause 10.2B, the provision about part-time employees says that that clause operates subject to the employer's ability to do so. That is, the employer can implement such a change, so long as they've complied with clause 14.2C and to do so, they do not need written agreement with a part-time employee. To delete the reference, as has been - - -

PN244

THE VICE PRESIDENT: Ironically, I should tell you that there's a Full Bench matter on tomorrow, an appeal, where a similar clause is being looked at, as to what it actually means.

PN245

MS BHATT: Probably be grateful that we're not involved.

PN246

MS TAYLOR: Your Honour, I think this is - I think we may need to await that decision if it is going to this point, because the specific rights- - -

PN247

THE VICE PRESIDENT: It's in a different context, but it is a similar clause.

PN248

MS TAYLOR: The specific right for part-time day workers to have their hours by agreement is obviously made in the context that they choose to work those part-time hours for various reasons, and it is a specific clause. Whereas the majority provisions are a general clause operating across various provisions. And it would be improbable, I'd suggest, that you could just do away with the rights of a part-time employee to have their hours agreed to in writing and then have them- - -

PN249

THE VICE PRESIDENT: On reflection, the appeal tomorrow, in a different industry, does squarely touch on that point. Because the dispute that's been - the member who decided at first instance, did form a view as to a part-time clause and a more general clause, the interrelation between the two. And it was about can

you change the part-time employees in writing. So it may well be that the Full Bench decision, of which I'm the presiding member, is of some relevance to the construction point.

PN250

Ms Bhatt, it may well be of relevance, because if you're saying that, as I understand your point, that the general provision overtakes the part-time clause. Is that what you're asserting?

PN251

MS BHATT: Yes, by virtue of the words, "Subject to", at the start of that clause. I mean, as I understand it, clause 10.2B relates to the specific hours that a part-time employee works. That is, they work from 9 am to 5 pm and when you want to change that, there needs to be written agreement.

PN252

The provisions that are identified at clause 7.4 are provisions that relate to ordinary hours of work, not the employee's hours of work, but the parameters within which an employer can set an employee's ordinary hours of work. They're two different concepts. And 10.2B already requires that if a part-time employee's specific hours of work are to be altered, that must be done in writing.

PN253

MS TAYLOR: But it would create confusion if we look at Ms Bhatt's submission, because the ordinary hours of work, the spread of hours, could, by virtue of a majority agreement, impact on the ordinary hours of work that the part-time employee has agreed to in writing.

PN254

THE VICE PRESIDENT: So, how do you say that it operates? This deals with the time of engagement, the part-time employee, say their hours are 9 to 2 and they're guaranteed five hours for three days a week.

PN255

MS BHATT: Yes.

PN256

THE VICE PRESIDENT: That's 10.2A. Then you would say, subject to clause 7.4, if the employer then decides that the spread of hours are going to change by majority, for the whole workforce, then notwithstanding the agreement in relation to the part-timer, they could be affected, if the hours changed. Is that the way you interpret that?

PN257

MS SRDANOVIC: Your Honour, I don't think it would change their start and finish time, but if, for example, a change in the spread of hours had a consequential impact on overtime or when rates would be earned, that's the kind of impact that could flow through. But to remove or- - -

PN258

THE VICE PRESIDENT: I think you redefined what the ordinary hours of work were.

PN259

MS SRDANOVIC: To remove then clause 7.4 from clause 10.2B, which is what the proposal is, would be to actually be taking away one of the employer's rights, which are currently expressed in the current award.

PN260

THE VICE PRESIDENT: Yes.

PN261

MS SRDANOVIC: And which is the effect of that the facilitative provision- - -

PN262

THE VICE PRESIDENT: All right, well that deals with 7.4 argument. Let's have a look at the 15.1 argument. How does that- - -

PN263

MS SRDANOVIC: I don't understand the AWU to be proposing to delete 15.1, although I can be corrected if I'm wrong here.

PN264

MS WALSH: We weren't proposing to delete the reference to 15.1.

PN265

THE VICE PRESIDENT: So it's really only 7.4?

PN266

MS WALSH: Yes, that's right.

PN267

THE VICE PRESIDENT: Because what I'm trying to do is bring it back to an individual situation, to understand how it actually works for an individual whose got a part-time arrangement under that clause. Ms Taylor, what do you say about that? Does it actually impact on an individual?

PN268

MS TAYLOR: Well, I think it could impact on an individual, because if an individual had agreed to work part-time hours from six, that might have been a shift, and then that 6 am to 10 am, or whatever, and then the ordinary hours were changed to commence at six, they would lose either overtime or a shift allowance.

PN269

MS SRDANOVIC: Well, it's this clause - sorry, Ms Taylor. It deals with part-time day workers only, so we're not talking about the shift workers. But to take the same example, given the span of hours is the 7 am to 6 pm, that example of starting at 6 am could be relevant, albeit for a part-time day worker. So it would be a matter of what payment does working from 6 am to 7 am attract, if there was agreement to change the span.

PN270

MS TAYLOR: Well, I take that point. So at 10.2, the part-time employee could have their overtime arrangement altered, or at 10.3, a part-time shift worker could have their shift allowance removed. And that, of course, could happen at the end of the shift either - or the end of the day hours.

PN271

MS BHATT: It might be that I've already put this inarticulately. But the way we understand this clause to work, an employer can reach agreement with the majority of employees to, for instance, increase the spread. If such agreement is reached and the employer seeks to vary a part-time employee's specific hours, such that for instance they now start an hour earlier, by virtue of the increase to the spread, the employer at that point, will have to reach agreement with that part-time employee, pursuant to this clause, and that agreement would have to be in writing.

PN272

MS SRDANOVIC: And that's already in the clause.

PN273

MS BHATT: Precisely. What isn't necessary- - -

PN274

MS TAYLOR: Now, you say 7.4, can you- - -

PN275

THE VICE PRESIDENT: Sorry, where do you say that is, the agreement bit?

PN276

MS BHATT: 10.2B requires that to change that employee's hours of work, and I'm reading in the second line:

PN277

*Changes in hours may only be made by agreement, in writing, between the employer and the employee.*

PN278

THE VICE PRESIDENT: Yes, but don't you have to read what 7.4 and 15, what they actually mean? "Subject to the employer's rights in 7.4."

PN279

MS BHATT: And the employer's right in 7.4.

PN280

THE VICE PRESIDENT: So the employer increases the ordinary spread of hours.

PN281

MS BHATT: Yes.

PN282

MS SRDANOVIC: Yes.



PN283

THE VICE PRESIDENT: The part-time worker wouldn't have to agree.

PN284

MS BHATT: But the majority of employees in 4.2C can and then because of 7.4B, if there was agreement with the majority of employees to change the spread of hours, that agreement would bind all such employees.

PN285

THE VICE PRESIDENT: Yes, it would bind them, so there's no further (indistinct) by the part-time employee at that point.

PN286

MS BHATT: There is to alter their specific hours of work. So if the spread of hours- - -

PN287

THE VICE PRESIDENT: Like I say, I don't follow that.

PN288

MS BHATT: I'm sorry.

PN289

THE VICE PRESIDENT: Because it says, "Such that the employer's rights", in clause 7.4 and 15.1. So based on 7.4, it's the employer's rights, right?

PN290

MS BHATT: Yes.

PN291

THE VICE PRESIDENT: They can change employees hours of work, right, but after exercising their rights. If their rights are to increase the spread of hours, then the agreement really becomes irrelevant, because the spread of hours has changed.

PN292

MS BHATT: Yes.

PN293

MS SRDANOVIC: Your Honour, we would say that the agreement is only to the spread of hours, that that would then bind the employees. It wouldn't change an employee's start and finish time, but it may very well change what payment is attracted, by virtue of the start and finish times. If there was then a proposal- - -

PN294

THE VICE PRESIDENT: Okay, you say - you're interested in the hours and the rate of pay there.

PN295

MS SRDANOVIC: Yes, your Honour. If there was any proposal to change an individual's hours, so to change their actual start and finish time, we say picking up one on the AiG's points just now, that changes in hours may only then be made by agreement in writing between the employer and the employee.

PN296

THE VICE PRESIDENT: Is there a clearer way of expressing that, to make sure that the problem identified by the union is overcome?

PN297

MS TAYLOR: Well, by removing the reference at 10.2B, as suggested by the AWU, solves that issue. Because 7.4 will operate, as it is, if the majority decision gets up then an employer can come, as AiG are saying it operates, to the part-time worker under 10.2B and seek an agreement, if that part-time worker agrees. Whereas, if you leave the reference in there, then I think it's confusing, it's ambiguous and it would seem to do away with the part-time workers' agreement.

PN298

MS SRDANOVIC: Your Honour, we respectfully disagree with that particular submission. I think it does come back to what the agreement in 7.4 is pointing to and it's all to a spread of hours in clause 14.2(c), which is what then determines overtime if there are hours worked outside the spread of hours. To delete clause 7.4 here, we say, would be a substantive variation to the award given it would be taking away one of the rights - repeating then the submissions we made earlier - given these cross-references are in the current award as it stands today.

PN299

THE VICE PRESIDENT: So you say it's necessary to identify the clause in 10.2 to avoid confusion - is that your argument - because it wasn't there? You say 7.4 of itself would not be caught.

PN300

MS SRDANOVIC: We would be concerned, your Honour, that by deleting it there is some sort of understanding or assumption that that clause no longer has the effect, which, by keeping it in there, it's clear that it has the effect that it does because we can't see a reason for removing it from that clause 10.2(b).

PN301

THE VICE PRESIDENT: Why wasn't it put into 10.3 with part-time shift workers?

PN302

MS SRDANOVIC: Clause 14.2(c) is about the span of ordinary hours only. 14.2, you'll see, just deals with day work as opposed to the shift work.

PN303

THE VICE PRESIDENT: How does the union wish to progress this given that we have an impasse in terms of the construction, because all the employer is saying, it seems to me, "We want to make it clear that 7.4 has nothing to do in relation to the spread of hours in relation to part-time workers."

PN304

MS TAYLOR: I would suggest then if the clause operates as the AiG and Qantas submit, then the unions will draft an amended 10.2(b) to make that apparent.

PN305

THE VICE PRESIDENT: You're obviously happy to consider a draft?

PN306

MS BHATT: Of course we are.

PN307

MS SRDANOVIC: Yes, your Honour.

PN308

THE VICE PRESIDENT: All right. That's that done then. Let's move on to the next clause.

PN309

MS BHATT: It's a submission that has been made by the ASU. In summary, our position is that the change that has been suggested is not necessary. The basis for the proposal is not clear to us.

PN310

THE VICE PRESIDENT: It's not clear to me either. ASU, are you pressing that?

PN311

MR RIZZO: Sorry, your Honour, which item is that one?

PN312

THE VICE PRESIDENT: Number 9.

PN313

MR RIZZO: I don't have that document in front of me, your Honour. Which clause is it?

PN314

THE VICE PRESIDENT: Clause 11.

PN315

MR RIZZO: Casual employment?

PN316

THE VICE PRESIDENT: Yes.

PN317

MR RIZZO: I thought this was a submission by the AMWU.

PN318

THE VICE PRESIDENT: Well, on mine it says ASU. Is it supposed to be the AMWU, is it?

PN319

MS BHATT: Mr Rizzo, perhaps if I can try and assist. Clause 18.7(c) of the exposure draft, that currently appears in the casual employment provision of the award. It has now been moved to clause 18.7 which deals with payment of wages. As I understand it, your submission was that clause 11 should include

some reference or signpost to clause 18.7 given the relocation of the provision, which Ai Group says is not necessary.

PN320

THE VICE PRESIDENT: We're trying to make these things simple. We don't want to add words unnecessarily.

PN321

MR RIZZO: Okay. Sorry, your Honour, I don't have instructions from Mr Cooney on this argument.

PN322

THE VICE PRESIDENT: Well, perhaps you should get those instructions and advise us, because on its face it appears to be unnecessary.

PN323

MR RIZZO: That may be the case, your Honour. I can come back to your Honour quickly on that one after the hearing.

PN324

THE VICE PRESIDENT: Okay. We'll deal with the next one.

PN325

MS TAYLOR: Your Honour, the next one relates to the definition of casual employment. In the award at the moment, casual is defined as someone who is employed as such. That has been changed in the exposure draft to:

PN326

*A casual employee is an employee engaged on a casual basis.*

PN327

We say that is a clearer definition and that exposure draft provision should be supported. It makes it more easier to understand. There is no definition that we know of, as such.

PN328

THE VICE PRESIDENT: I presume - I haven't looked at this - in other exposure drafts that is the same wording that has been used.

PN329

MS BHATT: I don't think that that's necessarily the case, Vice President.

PN330

THE VICE PRESIDENT: Is that not correct?

PN331

MS BHATT: Ai Group has raised a concern with the definition in the exposure draft. Firstly, we say it's not clear what is meant by "on a casual basis". Secondly, we say that we're concerned that the proposed definition might give rise to arguments about an assessment as to whether or not a casual employee will require a consideration of, for instance, the casual employee's hours of work. That is, are they engaged on a basis that is casual, that is intermittent, that is irregular?

PN332

That is not the effect of the current definition. The current definition simply requires that an employee is engaged as a casual employee. That is the end of the matter. We're not aware of any difficulties or ambiguity that has arisen from the current drafting. They're words that appear in the very vast majority of modern awards. That's my understanding. We just say they should be put back.

PN333

MS SRDANOVIC: The Qantas Group supports Ai Group's position in this regard and we note Ai Group referred to a decision in its submissions of the Full Bench, which is authority for the proposition which has just been outlined by Ai Group which goes to the basis upon which you're essentially engaged at the time. We support it being that which is back to the current wording; that it is an employee engaged as such. That case, from memory, it's Telum Civil. I don't have the citation before me, but can provide that if it would be of assistance.

PN334

MS TAYLOR: Your Honour, as I understand it, the case law where it is queried - what is a casual basis - will refer back to the particular circumstance of that employee, but also back to the award. These people are employed under the award. If you're not employed as a part-time employee - and we can discern that by looking at the definitions and arrangements for part-time - or a full-time employee, then you are employed on the casual basis. Having the term actually referenced gives the reference back to the award if a dispute does arise.

PN335

Your Honour, I do need to check if the issue did arise in the Manufacturing Award, but I cannot recall the resolution there, so I would like to be able to go back and have a look at that.

PN336

THE VICE PRESIDENT: I think we just need to be consistent, because this has been considered elsewhere.

PN337

MS TAYLOR: Yes.

PN338

THE VICE PRESIDENT: I think AiG is asserting that, for whatever reason, what has appeared here is not consistent, so what is Qantas saying? Is that right?

PN339

MS BHATT: Ai Group says it is not necessarily the case that these words in the exposure draft have been adopted across the board in other exposure drafts.

PN340

THE VICE PRESIDENT: All right. Well, we need to see what was in other exposure drafts, because to change a clause would be a significant departure.

PN341

MS BHATT: Yes.

PN342

THE VICE PRESIDENT: So we'll leave it on the basis that you will have a look at the Manufacturing - - -

PN343

MS TAYLOR: I will.

PN344

THE VICE PRESIDENT: Perhaps there can be some further work done by AiG in having a look at that, as well.

PN345

MS BHATT: Yes, Vice President.

PN346

THE VICE PRESIDENT: Because I don't think it's being an impasse. It's really just whatever is best practice. All right. Let's move to the next one.

PN347

MS BHATT: This is a matter that has been raised by Ai Group. I'm happy to speak to it briefly. It's a matter that has been raised in many other exposure drafts and has consistently been met with opposition by the union, so I think this is one that will likely need to be determined by a Full Bench. The proposition is simply this though: we say that under the current award, clause 11.5.(b) which provides for the casual loading, that casual loading is to be calculated on the minimum rate prescribed by the award absent the addition of any allowances, including any all-purpose allowances.

PN348

Clause 11.2 of the exposure draft states that, "A casual employee must be paid the ordinary hourly rate", which is defined as including all-purpose allowances, plus 25 per cent. We're concerned that that would be read as meaning the 25 per cent casual loading compounds on any all-purpose allowances. We say that is a substantive change from the current award. It increases the entitlements.

PN349

THE VICE PRESIDENT: You say in the current award the casual rate was a hundred bucks. You get \$125 - - -

PN350

MS BHATT: Yes.

PN351

THE VICE PRESIDENT: - - - and then you get the allowance separately, whereas the drafting appears to suggest that you get 100, if the allowance \$10, 110, and then the 25 per cent on the lot.

PN352

MS BHATT: Precisely.

PN353

MS TAYLOR: Your Honour, we say that the exposure draft is expressed as that because this matter has been fully ventilated and determined by a previous Full Bench in FWCFB 6656. I have an extract here, if that would be useful.

PN354

THE VICE PRESIDENT: That would be useful, if the Full Bench has already decided it.

PN355

MS TAYLOR: Yes. At paragraph 110 of that decision, the bench says:

PN356

*The general approach will remain as expressed in the exposure drafts, namely, that the casual loading will be expressed as 25 per cent of the ordinary hourly rate -*

PN357

i.e., including all-purpose allowances -

PN358

*in the case of awards which contain any all-purpose allowances and will be expressed as 25 per cent of the minimum hourly rate in awards which do not contain any such allowances.*

PN359

The Airline Operations Award does contain all-purpose allowances.

PN360

MS BHATT: I don't have the decision to hand. There has consistently been some disagreement between the parties as to how that decision is to be read, because there is a passage that we say says that that is the general approach that will be adopted by the Commission, but that in certain instances it may be open to the parties to argue otherwise based on the construction of a specific provision.

PN361

THE VICE PRESIDENT: I haven't read the decision or, if I have, I've forgotten it.

PN362

MS TAYLOR: I do have the extract and the reference, if that is useful.

PN363

THE VICE PRESIDENT: I think it's more than the extract. It will be the whole decision.

PN364

MS TAYLOR: Yes.

PN365

THE VICE PRESIDENT: Because the employer is asserting effectively that there is an out in the decision.

PN366

MS TAYLOR: That may be in some awards. However, that decision of the Full Bench was arbitrated in the context looking at casual loading clauses that were expressed in the same way as expressed in the Airline Operations Award, so we say that if there was a different arrangement there would be scope for discussion and argument, but given that the clause is the same, we believe that the issue has been resolved.

PN367

MS SRDANOVIC: Your Honour, our written submissions have previously indicated a support for Ai Group's general position on this. We have, however, been considering our position and consider it would be worthwhile to perhaps review the decision which Ms Taylor is referring to; give it some further thought. Perhaps there can be further submissions or conference between the parties about it, because can see some support for the position that is being advanced by the AMWU.

PN368

THE VICE PRESIDENT: Yes, we should have a look.

PN369

MS SRDANOVIC: I don't have the resolution that - - -

PN370

THE VICE PRESIDENT: What we don't want to do is do things unnecessarily. If we have to have another Full Bench which is likely to end up with that - - -

PN371

MS SRDANOVIC: It is our understanding from the employer's perspective that there are a number of allowances in here which are all-purpose allowances and they have been included. I can see though that Ai Group - the sentence that they're pointing to does say it's 138 plus, so - support for both, but I'm happy to reconsider the position which we have put in writing at least.

PN372

THE VICE PRESIDENT: All right. Okay. Well, that will be parked then. What I'm contemplating is we develop this - whether we should have a report back on all the outstanding matters in a couple of weeks, which will give you plenty of time to work out whether we really are arguing about stuff. At the end of today, whenever we finish, I'll put a report back date. All right. Let's move on to the next clause. That's agreed, number 12?

PN373

MS BHATT: I understand both items 12 and 13 to be resolved.

PN374

THE VICE PRESIDENT: Yes.

PN375

MS SRDANOVIC: Your Honour, before we move on, I agree - items 12 and 13, I understand them to be resolved. I think the AMWU had also raised a separate



issue about casuals. Whether this is the appropriate time for that issue to be ventilated or not before we move on to item 13. It was around the deletion of - in clause 11.2, the proposal is to delete the last sentence, as I understand it, which we do not agree with.

PN376

We think it's important for that sentence to remain in the award. In particular, that the loading be expressed as clearly compensating casual employees for various matters and that it's important for it to have any reference to terms which are excluded by the terms of this award and the NES, which is the basis of the casual loading.

PN377

THE VICE PRESIDENT: Yes, I follow that.

PN378

MS TAYLOR: Your Honour, this issue came up at the last conference and the President commented that he understood that this matter had been ventilated before and that the decision had been where the parties agreed to retain those awards, identifying which matters were said to compensate for the 25 per cent - could stay. Where it was not, they would be removed. We were asked to provide additional submissions in relation to that matter and we did in a submission of 15 December.

PN379

THE VICE PRESIDENT: Yes. What do you want to say about it?

PN380

MS TAYLOR: What we say is that the exposure draft as it's expressed is not accurate. When the casual loading of 25 per cent was determined in 2008, the bench commented that the reasoning of the Full Bench in the Metal Industry Award casual loading case was still relevant. When you looked at the reasoning in the Metal Industry Award casual loading case, there were a range of matters which were said to constitute the amount of 25 per cent. Those range of matters are not included in the text, so it's misleading to indicate what the 25 per cent is for.

PN381

THE VICE PRESIDENT: I didn't bring that document up. What did you actually say you wanted that clause to read?

PN382

MS TAYLOR: The last sentence should be deleted.

PN383

MS SRDANOVIC: Your Honour, that doesn't seem to us to be an appropriate resolution to that last sentence not including everything, because, by deleting it, then it doesn't have any reference whatsoever to what that 25 per cent compensates a casual employee for. As it's currently drafted, where it does say instead of entitlements to leave, if the suggestion was, for example, to call out the types of leave, we would be happy with that by calling out types of leave, but it

would be important to still retain reference to other provisions excluded by the terms of this award and the NES given casuals are not entitled to redundancy pay.

PN384

THE VICE PRESIDENT: Have you analysed their submission? Have you analysed the union's submission on this?

PN385

MS SRDANOVIC: We have read it and considered it, and think that the sentence should remain.

PN386

THE VICE PRESIDENT: No, but in that submission they give the detail of what - the history of it. Presumably somebody could draft the detail and, rather than delete it, say, "This loading included the following."

PN387

MS SRDANOVIC: We would be happy to consider it in further detail and to propose a form of words which might answer the AMWU's queries in this regard by drawing out the matters that does compensate for.

PN388

THE VICE PRESIDENT: I think that would be a better way, rather than a deletion.

PN389

MS TAYLOR: I will just point the parties - if it hasn't been picked up before - to the Full Bench decision of 23 December 2014. The exposure drafts, when they were made in relation to the casual employment clause, had a provision which said:

PN390

*The following provisions of this award do not apply to casual employees.*

PN391

Then there was a note:

PN392

*Parties are asked to provide a list of provisions which do not apply to casual employees.*

PN393

The decision at [2014] FWCFB 9412 says at paragraph 69:

PN394

*This proposal generated significant controversy among interested parties ... we have decided that the above subclause and note will be removed from all the exposure drafts. If any party wishes to pursue the insertion of this provision into a particular award, then this can be raised by parties at the award stage.*

PN395

THE VICE PRESIDENT: Well, that is what has happened.

PN396

MS SRDANOVIC: Yes. We are happy to undertake to draft a form of words up. I think as it's currently there, it's just meant to be general, but anything that is excluded by the award and the NES - my concern is that by then starting to identify and itemise all the items, that that makes the award longer and more cumbersome.

PN397

THE VICE PRESIDENT: Well, it may.

PN398

MS SRDANOVIC: But we can have a look at that in further detail.

PN399

MS TAYLOR: It's also impossible to include provision, as was established in the Manufacturing Award and Metal Industry Award case - that that 25 per cent includes provision for such nebulous things as not being able to advance through the classification structure, for not being identified appropriately because you are a casual within the classification structure, for shorter hours, the impact of - - -

PN400

THE VICE PRESIDENT: It's not going to be a 100 per cent clause which has ever nuance.

PN401

MS SRDANOVIC: No.

PN402

THE VICE PRESIDENT: There will be some catch-all at the end of it, I assume, in their draft.

PN403

MS TAYLOR: It would need to, otherwise it would be misleading.

PN404

THE VICE PRESIDENT: Well, let's just see what they draft.

PN405

MS SRDANOVIC: Yes, your Honour.

PN406

THE VICE PRESIDENT: Are you aware of anybody that has drafted a clause that catches everything?

PN407

MS TAYLOR: No, your Honour. This clause is not - I've had a look at the many of the modern awards. It is probably in about half and is excluded in half.

PN408

THE VICE PRESIDENT: Yes.

PN409

MS SRDANOVIC: I just don't think the answer is to delete the sentence, but we'll draft up an alternative.

PN410

THE VICE PRESIDENT: Presumably AiG can look at it, as well.

PN411

MS BHATT: I'm sorry, Vice President?

PN412

THE VICE PRESIDENT: You can look at it, as well, in terms of the suite of the ins and the outs.

PN413

MS BHATT: Of course, yes.

PN414

THE VICE PRESIDENT: All right. What is the next clause?

PN415

MS BHATT: I think the next issue is item 14, which relates to clause 12.17 of the exposure draft. We agree in principle with the concern that has been raised by the AMWU. If I can put a proposal as to how it might be addressed. I think the proposition is simply that clause 12.17 relates to the matter dealt with under clause 12.16, so if that clause were renumbered 12.16(e), I wonder if that would address the concern raised.

PN416

MS TAYLOR: That was our suggestion, to retain it as a subclause.

PN417

THE VICE PRESIDENT: Between now and the next time, just have a draft if it looks like it's going to work.

PN418

MS BHATT: Yes, Vice President.

PN419

THE VICE PRESIDENT: Yes.

PN420

MS TAYLOR: Your Honour, item 15 is an AMWU proposal and it was consistent with a Full Bench decision in this matter. Unfortunately, I don't have it with me, but it is just really to indicate that consultation is required when a proposal to change hours of work is being considered, so that it would make the award easier to read and people more aware of their obligations if a reference to the consultation clause was included at 14.2(c).

PN421

MS BHATT: If I can say, firstly, I don't have a copy of the decision to hand up either, but, if memory serves, the decision was made in the context of specific provisions in some exposure drafts where the Commission determined that it is

appropriate to include a cross-reference. We say that in this instance it's unnecessary. It's not helpful and, therefore, should not be included.

PN422

Can I just say that the way we read this provision is that an obligation to consult under clause 31 may arise in relation to some employees, but not necessarily all. I don't think it's useful to start inserting cross-references to various other parts of the award that may or may not in fact be relevant, which is the basis for our opposition to the AMWU's proposal.

PN423

MS SRDANOVIC: Your Honour, we concur with the AiG's submissions in this regard.

PN424

THE VICE PRESIDENT: Yes. The current clause says:

PN425

*The spread of hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned.*

PN426

MS TAYLOR: Yes, your Honour. Our proposal to put it at 14.2(c), I don't think makes sense, but a general reference to this clause - your Honour, can we think about this?

PN427

THE VICE PRESIDENT: You can think about it, because we don't want to just keep duplicating stuff when we're trying to simplify stuff.

PN428

MS TAYLOR: Yes.

PN429

THE VICE PRESIDENT: Because there is the overarching consultation clause in 31.

PN430

MS TAYLOR: Yes.

PN431

THE VICE PRESIDENT: All right. I'll leave it to you to come back. Let's go to number 16.

PN432

MS BHATT: I understand 16 to be resolved.

PN433

MS SRDANOVIC: Yes.

PN434

MS BHATT: I understand 17 to be withdrawn.

PN435

MS SRDANOVIC: Yes.

PN436

MS BHATT: Item 18 is also resolved, which takes us to item 19. This is a matter that has been raised by Ai Group consistently in a number of exposure drafts. I understand from comments made by his Honour the President at the commencement of the hearing that we had in December regarding these awards and others in Group 4C, that the Commission will in due course be issuing a decision regarding all Group 3 exposure drafts; that the matter we have here raised will be considered and dealt with by the Full Bench in that decision.

PN437

I wonder if, in light of those remarks, it would be appropriate to simply park this matter for now. I expect that the Commission's decision will shed some light on how it is to be dealt with.

PN438

THE VICE PRESIDENT: Yes, that seems the appropriate course.

PN439

MS BHATT: Thank you. Happy with that?

PN440

MS SRDANOVIC: Yes.

PN441

THE VICE PRESIDENT: That goes right through for the next couple of - - -

PN442

MS BHATT: I'm not sure that it does, Vice President. I think item 20 is a separate issue.

PN443

MS TAYLOR: I think that has been resolved.

PN444

THE VICE PRESIDENT: Has it been resolved?

PN445

MS TAYLOR: Yes, it has been resolved.

PN446

THE VICE PRESIDENT: How has it - - -

PN447

MS SRDANOVIC: It related to the permanent night shift.

PN448

THE VICE PRESIDENT: That's the one you - okay, yes.

PN449

MS SRDANOVIC: 20 and 21.

PN450

THE VICE PRESIDENT: Yes. It's resolved. 21 is resolved.

PN451

MS WALSH: Your Honour, 22 is an AWU claim. It's a proposal to change the heading to the negative expression to reflect the substantive clause, so to change the heading from "Continuous afternoon and night shift" to "Non-successive afternoon and night shifts".

PN452

THE VICE PRESIDENT: Qantas don't agree with that?

PN453

MS SRDANOVIC: Your Honour, we don't agree with that. We think that the clause should remain as is. It's a clause of long standing. It has been in the same form for a long time. It has been the subject of disputation in the past. We think to start changing the heading of the clause could interfere with the interpretation of the clause and that it would be important for it to remain in its current form, which is the form that's in the current award, as well.

PN454

THE VICE PRESIDENT: Where do we see other awards with the phrase "non-successive afternoon"?

PN455

MS SRDANOVIC: We don't, as far as we are aware.

PN456

THE VICE PRESIDENT: Where do we have that?

PN457

MS WALSH: I don't think I can assist on the spot.

PN458

THE VICE PRESIDENT: Well, why are we pushing something that is really pushing the envelope?

PN459

MS WALSH: I think it was an innocent submission on the basis that it reflected the entitlement under the clause, your Honour. I can't say more than that.

PN460

THE VICE PRESIDENT: Perhaps you should withdraw that. Think about withdrawing that one, because I'm not sure you get much sympathy in relation to that one.

PN461

MS WALSH: I'll consider that clause, your Honour, and I'll write to the Commission.

PN462

THE VICE PRESIDENT: Yes. For the report back, we'll have to deal with that one.

PN463

MS WALSH: Yes.

PN464

THE VICE PRESIDENT: All right. The next one?

PN465

MS SRDANOVIC: I think this was an ASU primary submission which seems to raise a question about where there are multiple shifts, do you earn the amount - if there are four or more, do you earn the \$4.07 per roster week for the first three and then \$4.61 after that? We understand that to be the position, so if there is any uncertainty arising from it, perhaps the wording in the exposure draft could revert back to the current award, although the current award wording is a bit longer and more complicated, but I think we're all in agreement about what should be achieved by this clause.

PN466

THE VICE PRESIDENT: I must say I don't find 17.6 in the exposure draft ambiguous.

PN467

MS SRDANOVIC: Nor do we, your Honour, but I think it was initially raised by the ASU.

PN468

THE VICE PRESIDENT: It looks pretty straightforward.

PN469

MS TAYLOR: Your Honour, the AMWU had proposed some wording. I'm not sure if the parties have had an opportunity to consider that.

PN470

THE VICE PRESIDENT: But that's not actually right.

PN471

MS SRDANOVIC: No.

PN472

THE VICE PRESIDENT: It's not on top of the \$4.07. That doesn't make sense, your wording.

PN473

MS SRDANOVIC: Because that might give you \$8 and something - - -

PN474

THE VICE PRESIDENT: Your amendment would potentially give you \$8. That's how I read your amendment.



PN475

MS BHATT: Yes, we agree, your Honour.

PN476

THE VICE PRESIDENT: The parties might want to give some thought, from the unions' side, about that. It does look like, on my view at least, 17.6 is very clear; they realise once they get to shift number 4, they're going to get the higher amount. It's hard to see an ambiguity or a dispute arising down the track. Give some thought about that.

PN477

MS BHATT: Yes.

PN478

THE VICE PRESIDENT: Okay. The next one?

PN479

MS BHATT: Items 24 through to 29 are all resolved. That takes us to item 30, which is a matter raised by the AWU. Can I just say from Ai Group's perspective, we don't have any difficulty with what has been proposed, except for one practical matter and that is this: clause 18.3, which is the cross-reference, does not in fact prescribe ordinary hourly rates. It only prescribes the minimal hourly rates. It seems anomalous to say that the percentages are of the ordinary hourly rates prescribed in clause 18.3 when 18.3 does not in fact prescribe those rates.

PN480

THE VICE PRESIDENT: That's a fair point.

PN481

MS WALSH: I will have to admit I skipped over that, having thought it was agreed. Was AiG's suggestion that that be - - -

PN482

MS BHATT: We think it can be left as is. The exposure draft can be left as is.

PN483

MS WALSH: Right.

PN484

THE VICE PRESIDENT: Give some thought to that.

PN485

MS WALSH: Yes.

PN486

THE VICE PRESIDENT: It seems to me it should be left as is.

PN487

MS WALSH: Yes.

PN488

THE VICE PRESIDENT: Let's go to number 31. That's agreed.

PN489

MS BHATT: Item 31 is agreed. Item 32 is agreed, which takes us to item 33, which is again an AWU issue.

PN490

MS SRDANOVIC: It's about changing the reference, your Honour, here from full-time to permanent employees. We indicated we don't agree with that proposal because under the award you're engaged as a full-time, part-time or a casual, so it's appropriate we say to retain the reference to full-time at clause 18.7(c), otherwise you're introducing a different concept.

PN491

THE VICE PRESIDENT: You are introducing a different - yes.

PN492

MS WALSH: Yes, we take that point. I don't think we're overly attached to that position.

PN493

THE VICE PRESIDENT: All right. 33 also is agreed then - sorry, not agreed. It's withdrawn.

PN494

MS WALSH: Correct. Item 33 is withdrawn.

PN495

THE VICE PRESIDENT: Yes. 34?

PN496

MS BHATT: I understood 34 to simply be an observation about the redrafting.

PN497

MS WALSH: Yes.

PN498

MS BHATT: That it's not opposed and it doesn't to be opposed by anyone else either.

PN499

THE VICE PRESIDENT: Yes.

PN500

MS BHATT: 35 is withdrawn, which takes us to item 36.

PN501

MS SRDANOVIC: On this one, your Honour, the AMWU had identified - the question arose, rather, from a question in the exposure draft where the parties were asked to identify whether the reference to the CAO was still current or was it obsolete and did it have any ongoing relevance. We have made some inquiries, as well, and it appears to us that it may be obsolete, but if the AMWU has actually identified that it has ongoing relevance, we're happy to have further discussions with them about it or to see the basis upon which that submission has been made.

It seems like something we should be able to agree on. It's just a question of whether or not it still has any relevance.

PN502

THE VICE PRESIDENT: You'll talk about it between now and the report back?

PN503

MS SRDANOVIC: Yes, your Honour.

PN504

MR AMOS: If I can just make a comment.

PN505

THE VICE PRESIDENT: Yes.

PN506

MR AMOS: I have made some inquiries about that and that CAO has indeed been repealed, but it is reflected in the regulations. I don't have the specific regulation that it is encompassed in, but we should be able to assist in those discussions, as well.

PN507

THE VICE PRESIDENT: Excellent.

PN508

MS BHATT: Perhaps if the AMWU and the ALAA could provide that to us before any of those discussions and before the report back.

PN509

THE VICE PRESIDENT: Right. 37 is agreed?

PN510

MS BHATT: Item 37 is agreed, Vice President, but can I just raise one matter. It's highlighted in the comments there that we identified some allowances - - -

PN511

THE VICE PRESIDENT: Yes.

PN512

MS BHATT: - - - that aren't included in the schedule. They're not included in the revised version of the exposure draft either, so I just identify that as an outstanding issue.

PN513

THE VICE PRESIDENT: When you're writing - let's put them back in, so make sure they're there.

PN514

MS BHATT: Yes, Vice President. 38 is agreed. We then go to 39.

PN515

MS SRDANOVIC: Your Honour, this is an item which is not agreed. The union proposal is to change the amount of the indemnity and insurance reference in clause 21. We have put on written submissions about this, but in essence we say that to change that amount is a substantive variation. If it is being pursued, then we would seek that it be dealt with in accordance with whatever process we establish at the end of today for dealing with substantive variations, because it is opposed.

PN516

THE VICE PRESIDENT: Is it being pursued?

PN517

MS TAYLOR: Your Honour, I think the AMWU and AWU and the other unions need to hear our position and we will advise - - -

PN518

THE VICE PRESIDENT: Okay.

PN519

MS WALSH: Yes, I can confirm that, as well, your Honour. The AMWU is certainly of a view that it would be appropriate to adjust those rates in order to reflect the - - -

PN520

THE VICE PRESIDENT: Maybe if you think about whether you wish to pursue it. If you don't, it will be over. If you do, it will have to go to a Full Bench presumably. Work out whether it's worth it. Number 40?

PN521

MS BHATT: This is a matter that is raised by the AWU and it relates to the current clause 32.1(c) which does not appear in the exposure draft. The proposal is that it be re-inserted. If I can just explain our position. We say that that is not necessary for this reason: that clause in the current award explains how the hourly overtime rate is to be calculated, but because the exposure draft expressed rates of pay throughout the instrument as hourly amounts, we say that provision isn't necessary any more. That calculation doesn't actually need to be done and so, for that reason, it's appropriate that it's not included in the exposure draft.

PN522

THE VICE PRESIDENT: I follow that. What do the unions have to say about that?

PN523

MS WALSH: I think our submission is somewhere in the middle of it, being, yes, helpful, or otherwise potentially unhelpful. For that reason, it's out there and if there is enough opposition to it, I'm not sure that we would push it.

PN524

THE VICE PRESIDENT: All right. Well, when you come back, that one - - -

PN525

MS WALSH: Certainly.

PN526

THE VICE PRESIDENT: Let's go to 41.

PN527

MS WALSH: Your Honour, this is another AWU submission. I'm just going to the clause. The basis of this submission is that the reference to 14.2(c) may be too specific, in that there are further clauses at 14 and 15 that comprehend arrangements.

PN528

THE VICE PRESIDENT: Qantas say, no, that doesn't work.

PN529

MS SRDANOVIC: Yes, your Honour. That's right. We don't agree with the AWU's proposal to amend that clause. It does have a specific reference to the span of hours. That reflects the current wording in the award and clause 14.2(c), the primary provision, which establishes the span of hours within the workplace.

PN530

MS WALSH: I think, regardless, that it may not be that way in the - is your submission that it was different in the current award or in the - - -

PN531

MS SRDANOVIC: No, our submission is that the exposure draft reflects the current award.

PN532

MS WALSH: Right.

PN533

MS SRDANOVIC: We say that's the way that it should be. We can't see a reason for broadening out the cross-reference to clause 14 and clause 15.

PN534

THE VICE PRESIDENT: Well, if it reflects the current award, you should take that on notice and come back to us on the next occasion. It's a difficulty that - to change it from reflecting the current award.

PN535

MS WALSH: Well, the reference is to ordinary hours, your Honour, and there is more to the ordinary hours than the span of hours at 14.2(c), but of course I'm happy to report back on that item.

PN536

THE VICE PRESIDENT: I think you should have a look at it. All right. The next one?

PN537

MS BHATT: I think the next outstanding issue is items 44 and 45, which relate to the schedules of hourly rates of pay.

PN538

THE VICE PRESIDENT: This is a dispute between Qantas and AiG.

PN539

MS SRDANOVIC: Yes. We have had some discussions about this just before. Our position is that we don't think the schedules should be cumbersome and that we should be adding pages to it, but, having spoken with AiG, we don't understand that to be their proposal. I think there was a misunderstanding between the parties. The AiG's proposal about just ensuring that the references are to what they should be, we support, so I can perhaps let the AiG advance that submission in more detail.

PN540

THE VICE PRESIDENT: Well, don't advance it. Just put it in writing. There is not going to be a divergence of opinion ultimately, is there?

PN541

MS BHATT: No. I'm not sure what the position of the unions is. The AMWU has put a proposal which we say doesn't alleviate the concern that we have raised. It's not clear to me what the position of the other unions is.

PN542

THE VICE PRESIDENT: Well, you should circulate your proposal to the parties.

PN543

MS BHATT: Yes.

PN544

THE VICE PRESIDENT: That would make it faster. I can't see that the unions would oppose that. It's not a substantive issue.

PN545

MS BHATT: No, but it has been met with opposition in the context of other exposure drafts.

PN546

THE VICE PRESIDENT: Yes. All right. Well, let's go to 45.

PN547

MS BHATT: Item 45 relates to item 44. That's the same issue.

PN548

THE VICE PRESIDENT: Yes, so they will be linked.

PN549

MS BHATT: Yes. 46 and 47 are resolved. Item 48 is not.

PN550

THE VICE PRESIDENT: So that's paragraph 25.

PN551

MS SRDANOVIC: Your Honour, the way that this has arisen is that there is a disagreement between the parties as to what hours a shift worker would attract for overtime worked on a Sunday. We have put on some detailed written submissions which set out our understanding and interpretation of the clause. We disagree with the union's position on this. To the extent it's being advanced or the union is proposing that all hours worked on a Sunday by a shift worker - not being a continuous shift worker, but by a shift worker, attract double time, we would see that as a substantive variation. I can follow through our interpretation, but - - -

PN552

THE VICE PRESIDENT: If that's what is being advanced, there is certainly going to be substantive argument.

PN553

MS SRDANOVIC: Yes.

PN554

THE VICE PRESIDENT: It's not a technical drafting.

PN555

MS SRDANOVIC: No.

PN556

THE VICE PRESIDENT: Have there been any further discussions about it or just - - -

PN557

MS SRDANOVIC: No, your Honour.

PN558

THE VICE PRESIDENT: Is the union going to have some further discussions on that or are we going to move that into the substantive column?

PN559

MS TAYLOR: I think we will have a - well, it's the AWU's submission. We support it. I think it's worthwhile reviewing and having some discussions prior to the report back to this - - -

PN560

THE VICE PRESIDENT: It's hardly something I'm going to be able to resolve administratively through technical drafting.

PN561

MS TAYLOR: No.

PN562

THE VICE PRESIDENT: All right. The last one, the Full Bench - - -

PN563

MS TAYLOR: We say that the casuals do receive overtime under the award. It is being considered by the Full Bench generally. It may need to be reviewed once that decision is made.

PN564

THE VICE PRESIDENT: Yes, that's right. All right. Before I re-program the matter, is there anything further people want to say today? In terms of timing - not dealing with the substantive matters, only dealing with these matters - how long do you think the parties would need to usefully reach a position?

PN565

MS BHATT: Can I have one moment, Vice President?

PN566

THE VICE PRESIDENT: Absolutely.

PN567

MS BHATT: Thank you, Vice President. I think that if there are some discussions amongst the unions and amongst ourselves and Qantas, but also some further discussions independent of the Commission between all of us, I'm hopeful that we might be able to resolve some additional matters. On that basis, I wonder if the Commission would allow us a period of three weeks to report back to the Commission.

PN568

THE VICE PRESIDENT: All right. Can you open up in that period the substantive discussions, as well, on those substantive points?

PN569

MS BHATT: Yes.

PN570

THE VICE PRESIDENT: See whether there is actually going to be a program for a substantive case.

PN571

MS SRDANOVIC: Your Honour, might that time then provide a date by which the unions would actually propose the form of the order that is being sought with respect to the substantive variations, because otherwise, without that, I'm not sure if the discussions will be meaningful or we'll just be asking for the form of the order that is being sought.

PN572

THE VICE PRESIDENT: Would you have a form of the order within that period?

PN573

MS TAYLOR: Yes, we would, and we will provide it to the parties prior to the teleconference which we have, which is listed prior to the report back.

PN574

THE VICE PRESIDENT: All right. Let's have a look when we will do this. What about Wednesday, 22 February?

PN575



MS TAYLOR: Excuse me, your Honour, I have child care responsibilities on Wednesdays and Fridays.

PN576

THE VICE PRESIDENT: That's not an issue. What about Thursday, 23 February?

PN577

MS BHATT: That is suitable to Ai Group.

PN578

MS TAYLOR: I have an appointment at 2.00. If we could do it either early in the morning - - -

PN579

THE VICE PRESIDENT: It will be in the morning.

PN580

MS SRDANOVIC: The morning is suitable for us, as well, and the afternoon is not, so we're happy to do the morning.

PN581

THE VICE PRESIDENT: Why don't we have a report back at 9 o'clock on the 23rd.

PN582

MS BHATT: Thank you, Vice President.

PN583

THE VICE PRESIDENT: All right. I thank the parties for the significant progress that has been made. The Commission is adjourned.

**ADJOURNED UNTIL THURSDAY, 23 FEBRUARY 2017**

**[11.46 AM]**