



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**COMMISSIONER LEE**

**AM2014/285**

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

**Four yearly review of modern awards  
(AM2014/285)**

**Social, Community, Home Care and Disability Services Industry Award 2010**

**Sydney**

**9.07 AM, MONDAY, 6 FEBRUARY 2017**

PN1

THE COMMISSIONER: Mr Pegg in Melbourne, can you hear me okay? You can't hear me, Mr Pegg?

PN2

MR PEGG: I can now, yes. Thank you, Commissioner.

PN3

THE COMMISSIONER: Okay. Ms van Gorp in Adelaide.

PN4

MS VAN GORP: Yes. Thank you, Commissioner.

PN5

THE COMMISSIONER: Mr Scott, Newcastle.

PN6

MR SCOTT: Yes. Thank you, Commissioner.

PN7

THE COMMISSIONER: All right. Well, let's begin. I'll come back to this in a minute, but this was part of what we agreed to do last time, to have the modern awards team do a bit of work on this issue about the operation of the sleepover clause, so I'll give you a chance to look at that. Just checking, you've got copies of that in Melbourne, Adelaide and Newcastle? Anyone not have it?

PN8

MR PEGG: I don't think I do, Commissioner.

PN9

THE COMMISSIONER: That's you, Mr Pegg, is it?

PN10

MR PEGG: Yes, sorry.

PN11

THE COMMISSIONER: Just have a look and see if it's on the table there. It should have been supplied. No?

PN12

MR PEGG: No, I don't see anything.

PN13

THE COMMISSIONER: All right. One will be sent to you, so we'll come back to that. Going to the draft report that I circulated and you commented on, for which I am grateful, what I thought we would do is go back through that, really skipping over the ones that appeared to me to be resolved; but obviously speak up if I'm skipping any that you think were not actually resolved or something else wants to be said about them.

PN14

Consistent with that approach, I actually think item 4 is the first one that pops up and that is actually the item where the research paper is relevant, so we might come back to that to give us time to allow Mr Pegg to get a copy of it. We'll come back to item 4. Then the rest, to me, all appeared to be agreed up to item 10. Any views other than that? No? Item 10, ASU appeared to have changed position and propose that the exposure draft make reference to - we just lost Adelaide. Mr Pegg, have you got the research paper yet?

PN15

MR PEGG: No, it's still not here, Commissioner.

PN16

THE COMMISSIONER: It's on its way. All right. South Australia, you're back?

PN17

MS VAN GORP: I'm back now, yes. Did I miss too much?

PN18

THE COMMISSIONER: No, we have been waiting for your return.

PN19

MS VAN GORP: Thank you. This is the second time that this has happened this morning.

PN20

THE COMMISSIONER: That you've dropped out?

PN21

MS VAN GORP: Yes.

PN22

THE COMMISSIONER: Well, let's hope there is not a third. Can you hear me okay?

PN23

MS VAN GORP: Yes, I can hear you. Yes, I agree.

PN24

THE COMMISSIONER: All right. Item 10, so there was a change to the draft to reflect the words "both majority and

PN25

individual agreements". I think that was via a comment from you, Ms Svendsen. No one takes any issue with that?

PN26

MS SVENDSEN: No.

PN27

THE COMMISSIONER: No? Well, then item 10 is agreed as per the varying note. I think it could have been AiG or AFEI in reference to item 11-12 on the

word "vary" inserted there. It doesn't raise any issues for anybody? No, so that's agreed. We don't have AWU again, do we?

PN28

MS SVENDSEN: I've been advised by them, although I don't know if they have advised anyone else, that they are not going to be here for this or the Aged Care Award. They haven't given me any information about what they're seeking or - just intending that they're not pursuing these matters any further.

PN29

THE COMMISSIONER: They're not?

PN30

MS SVENDSEN: No.

PN31

THE COMMISSIONER: All right. It might be useful if they advise the Commission of that.

PN32

MS SVENDSEN: Might be.

PN33

THE COMMISSIONER: What I will do subsequent to today - as there are a number of items for both this award and the Aged Care Award where - with a note the AWU to advise if they seek to press the issues. So subsequent to today in respect of those items, I'll write to them and I'll give them a few days to respond. In the absence of any response, we'll assume that they aren't pressing the issue. That resolves item 13. The next item that still requires discussion, I think, is item 20. Is that right? I'm just reminding myself:

PN34

*No difference between the parties to have these provisions apply. Concern is moving location could create ambiguity re span of hours ... AMOD team to consider words to clarify the discrete application of sleepovers -*

PN35

et cetera. Now, that is also part of the paper that I've circulated, so again we might just come back to that, so I've got time to get across the paper. The next item was item 24. That's another AWU to advise, so no more discussion required today on that. Item 31, I just noted:

PN36

*Expectation that this matter will be clarified in other four-yearly review proceedings.*

PN37

I'm pretty sure that was your comment, Ms Svendsen. Are you talking about Supported Employment Services Award? Is that the award proceedings you were talking about?

PN38

MS SVENDSEN: No, I wasn't specifically. That's in relation to where the percentages or dollar figures went into award tables. We made a submission - I can't remember.

PN39

THE COMMISSIONER: It's all right.

PN40

MS SVENDSEN: I'm starting to lose it. The last iteration of our awards have actually come out with dollars and percentage. Whether that's just a matter that is yet to be finally determined or not, I don't actually know, but certainly the last - it might have been Pharmacy, plain language.

PN41

THE COMMISSIONER: Okay.

PN42

MS SVENDSEN: In fact I think it was.

PN43

MR LIGGINS: Percentage of what?

PN44

MS SVENDSEN: That in the tables, the dollar sign and the percentage sign went in as side figures. If you're looking at minimum rates in there, it's okay.

PN45

MR LIGGINS: Yes. That's just dollars, yes.

PN46

MS SVENDSEN: But when you get to the attachments, particularly with allowances where you have the percentages and then the dollars - - -

PN47

MR LIGGINS: Allowances, yes.

PN48

MS SVENDSEN: Yes.

PN49

MR LIGGINS: Percentage of the standard rate. That type of thing.

PN50

MS SVENDSEN: Yes, and you have got 4.32 and then you've got \$2.50 or something - well, 2.50. I mean, you can tell. It's easy to tell because it's at the top of the table, but our submission was I thought it made it clearer. It is in the latest iteration of the Pharmacy Award and it was probably the Pharmacy Award that we made that submission in relation to, but whether or not that's kind of generally accepted or not - there is probably going to be a general acceptance decision rather than one that applies to a specific award.

PN51

THE COMMISSIONER: Award, yes. All right. I'll follow that up. Item 32:

PN52

*Query is "note" required under clause 16.3 ... insert the words "full-time employee" to the minimum weekly rate heading, not completely agreed, parties to consider this in further ED draft.*

PN53

Is there anything more that anyone wants to say about that issue today?

PN54

MS SVENDSEN: The problem related to the transitional pay equity order as it applied, rather than the general premise of a clause. Most of the awards have a preamble. I don't think we had a problem as far as that concept went, but we were concerned about the implications for the ERO. That may well be answered by the researcher.

PN55

THE COMMISSIONER: It could be, yes.

PN56

MS SVENDSEN: Yes.

PN57

THE COMMISSIONER: Yes, all right. We'll return to that, if need be. Item 35:

PN58

*General view is that the ED draft should remain unchanged and AFEI to advise if they wish to press their position.*

PN59

Is anyone representing AFEI? No? Another letter. They were here last time, weren't they?

PN60

MS SVENDSEN: Yes, they were here.

PN61

MR LIGGINS: Yes, I expected Jenny to be here.

PN62

MS SVENDSEN: Yes.

PN63

THE COMMISSIONER: Yes.

PN64

MR LIGGINS: I'm not sure what's going on.

PN65

THE COMMISSIONER: The issue was, for item 35 - - -

PN66

MS SVENDSEN: It might be a listing issue, Commissioner. I think initially we said 9.30.

PN67

THE COMMISSIONER: Yes, could be. All right. We'll see what happens.

PN68

MS SVENDSEN: I'm surprised Jennifer isn't here, too. If she walks in, we'll be able to - - -

PN69

THE COMMISSIONER: We'll be ready to go, yes. It was expense related allowances. The introduction of additional subheadings means - clarify proposed - subject to subclause - my notes that I have here were, "Not a big issue", I don't think, and the proposal was to - a general view of this group was that as it is in the exposure draft shouldn't change. That's still the view.

PN70

MS SVENDSEN: Yes.

PN71

THE COMMISSIONER: All right.

PN72

MR ROBSON: I think most people didn't oppose it.

PN73

THE COMMISSIONER: Similarly, item 37-38, the general view was not to change the exposure draft and AFEI was to advise if they still sought to press the change. Again, I'll write if Jenny doesn't come today. Item 42 was the next that I thought was still up in the air. That's another, "AWU to advise if they want to press their claim", so that's another part of the letter to the AWU. Item 48, the notes in the draft that was circulated say:

PN74

*Agreed, the 10 or more weekends relates to a year of service. However, the HSU are reluctant to include the reference to a year of service as this may impact on right to progressive accrual. Parties to consider further.*

PN75

Any further thoughts? I know that this is all that everyone has been thinking about over the summer break.

PN76

MS SVENDSEN: This is a clause that sits in most of the awards and the issue about progressive accrual has been raised. I don't see that it has yet been determined.

PN77

THE COMMISSIONER: Determined.

PN78

MS SVENDSEN: I know it has been raised in several awards, but not all - well, not all of ours, although that might just be that, you know, we came up with it at a later stage and it didn't get raised earlier. My concern is that the issue still in relation to - the decision has been made that it is accrued progressively, but what that means in terms of wording - - -

PN79

MS BHATT: My understanding is that - I'm not sure if we're conflating a couple of issues here. The Commission has given consideration to provisions, as we talked about last time, which purport to prescribe - - -

PN80

MS VAN GORP: Excuse me, it's Adelaide here.

PN81

MS BHATT: I'm so sorry.

PN82

MS VAN GORP: Yes, you need a microphone.

PN83

MS BHATT: I'm so sorry. I'm borrowing the Commissioner's now. Last time we talked about award provisions that purport to prescribe the rate at which annual leave will accrue for shift workers and the Commission has decided that those type of provisions are inconsistent with the NES, and have been removed from a bunch of awards. I don't think the clause in this award does that.

PN84

I think that this clause simply provides a definition of "shift worker" for the purposes of the NES and if it were amended to make clear that the 10 or more weekends are to be counted over the period of a year of service, that doesn't do anything to affect the rate of accrual. It simply clarifies the definition of a shift worker.

PN85

THE COMMISSIONER: So the entitlement - -

PN86

MS BHATT: Yes, precisely. For that reason, I don't think that the proposed amendment to the definition gives rise to this issue about the rate of accrual and we don't perceive that to create any inconsistency with the NES.

PN87

THE COMMISSIONER: Yes.

PN88

MS BHATT: We also think that it would serve to make the clause clearer than it currently is.

PN89

THE COMMISSIONER: Yes.



PN90

MS BHATT: But I wonder if there is a view to the contrary. Of course we're open to hearing that.

PN91

MR ROBSON: I think there is actually some controversy about how to define it and I think the rate of accrual does come into it. If you read the submissions of the employee/employer parties, it seems the division is between - look, I wouldn't want to put words into too many people's mouths here - people who think that the triggering event for the extra week of service is - well, our submission is that it should be 10 weekends in the 12-month period over which the leave is accrued. Others have, you know, tied it to a 12-month period of service, whereas some people say a year of service with the employer.

PN92

On the one hand, if you tie it to a year of service with an employer, that ties it to a specific calendar period - start date to anniversary of start date - whereas the 12-month period of service puts it into, well, any 12-month period.

PN93

THE COMMISSIONER: What is the difference between (indistinct)

PN94

MS SVENDSEN: Well, you might not work - for the first six months, you might not do any weekends and then you might do 10 over the next 10 months. If it's from anniversary to anniversary - - -

PN95

THE COMMISSIONER: I see.

PN96

MS SVENDSEN: - - - you wouldn't make it, whereas if it's from - you know, if it covered the 12-month period from when you first did it, then it would be a year's service.

PN97

MR LIGGINS: I don't understand that argument. It's still a trigger that triggers in the second half, but applies for the full period of their - - -

PN98

MS SVENDSEN: Only if you then continue on and continue doing it. Say you only did weekends over a 10-month period and then you stopped again, then if it was anniversary to anniversary - say January to January - you would have only done it from June to December and you would have only had six weekends maybe, whereas if the trigger was when you started doing weekends over the next 10 months, then that would be - if it was ran from that - that actually is what that means. That's actually the premise that Michael was talking about.

PN99

MS PATTON: I thought it was annual leave. When you start employment is when your accrual starts for annual leave, so you're either on four weeks or five

weeks if you're a day worker or shift worker, depending the language, and as soon as you hit the 10 weekends in a row, you're now a shift worker where your accrual is at the basis of five weeks in the year, not four.

PN100

MR ROBSON: I suppose it's evidenced whether it's in each year.

PN101

MS SVENDSEN: Yes.

PN102

MR ROBSON: A year stands alone.

PN103

THE COMMISSIONER: That's the issue, is it?

PN104

MS SVENDSEN: I don't know. It's one of the issues.

PN105

MR ROBSON: The concern that was raised by my branches was - take the example of someone whose - their start date is 19 February and they work five weekends before 5 February and five weeks after 5 February, and then if the clause is amended in the wrong way, an employer seeks to rely on that to say, well, they're not a shift worker because they worked five weeks in one year of service and five weeks the next, you know, thus denying that person that extra week of leave. I'm not sure this is, you know, a completely insurmountable problem. I'm sure we can put our heads together and come to it.

PN106

MR LIGGINS: Are you saying that because there are 10 in a row, that even though they fall in discretely separate years of service, they can be classed as a shift worker for both those periods of service even though they had only worked five weekends in each 12-month period?

PN107

MS SVENDSEN: That's the point that we're actually raising. Is it a 12-month period that is anniversary to anniversary or is it a 12-month period - - -

PN108

MR LIGGINS: Well, that's what we thought it was.

PN109

MS SVENDSEN: That's a good definition of what the distinction is or the difference would be in terms of wording.

PN110

MS PATTON: Because we've never looked at annual leave as being anything other than accruing from anniversary date to anniversary date.

PN111

MS SVENDSEN: And the NES says you don't accrue from anniversary date to anniversary date. You accrue on an ongoing basis.

PN112

MS PATTON: Yes.

PN113

MS SVENDSEN: That is a change. It's a change since 2010.

PN114

MS PATTON: Yes.

PN115

MS SVENDSEN: That is the issue that is then raised again by this.

PN116

THE COMMISSIONER: Practically there is no difference, is there, because it accrues progressively per year of service. Your year of service starts on your anniversary date. I don't see that in a practical sense there is any difference.

PN117

MR ROBSON: It's about whether there is a trigger in each of those periods or not.

PN118

MS SVENDSEN: Whether it triggers at 19 February every year or whether there is a 12-month play that just goes into effect.

PN119

MR ROBSON: So it's if you have worked 10 in, you know, any of the preceding 12 months and that makes you a shift worker or you work 10 in a discrete calendar year that is, you know, set at the beginning of your employment.

PN120

MS PATTON: Then there is the language that ACT put into the technical drafting reference here, being:

PN121

*For the purpose of the NES, a shift worker is an employee who works for more than four ordinary hours on 10 or more weekends in each year of service with their employer and is entitled to an additional week's annual leave.*

PN122

Does that go to clarify that we're in agreement that it is based on a year of service; that 10 weekends has to fall in that year of service with an employer not from the date the first weekend starts?

PN123

THE COMMISSIONER: What is the actual clause in the exposure draft?

PN124

MS PATTON: 21(h), I think.

PN125

MR SCOTT: 21.2.

PN126

THE COMMISSIONER: Thanks. What was in the existing award?

PN127

MS BHATT: I think it's the same. I think it's the same clause. The words have changed. This is just a question that has been raised.

PN128

THE COMMISSIONER: Yes.

PN129

MR SCOTT: The exposure draft appears to reflect the current award clause.

PN130

THE COMMISSIONER: Yes.

PN131

MR ROBSON: During the yearly period.

PN132

THE COMMISSIONER: It doesn't say anything about a yearly period in the exposure draft, does it?

PN133

MS SVENDSEN: No.

PN134

MR ROBSON: It does, 21.2 - "during the yearly period in respect of which their annual leave accrues".

PN135

THE COMMISSIONER: It doesn't in the one I'm looking at.

PN136

MS SVENDSEN: It doesn't in the one I was looking at either. I've got that one, too.

PN137

MR SCOTT: There is one re-published on 6 January which appears to re-insert the missing words back in.

PN138

MS SVENDSEN: Re-insert? I don't think - - -

PN139

MR ROBSON: It was never in the original - - -

PN140

MS SVENDSEN: It was never in there, no.

PN141

MR ROBSON: 31.2, Quantum of Leave, from the current award:

PN142

*For the purpose of the NES, a shift worker is an employee who works for more than four ordinary hours on 10 or more weekends ... and is entitled to an additional week's annual leave on the same terms and conditions.*

PN143

I think that causes two problems. One, it's circular because it says that, you know, a person with the additional week of annual leave - part of the definition is that they are a person who receives that annual leave and the other one is, I suppose, the first phrase "more than four ordinary hours on 10 or more weekends". I think the question here is what is the period in which that 10 or more weekends occurs?

PN144

I've already gone over, you know, our issue with saying it's a discrete calendar year of service, especially in light of progressive accrual being the standard for accrual of all other annual leave.

PN145

MR PEGG: Michael, I'm looking on my phone at the current award, on the Fair Work Ombudsman award finder web site, so the current Social, Community, Home Care Award. The words are in there, so I'm not sure - - -

PN146

MR LIGGINS: That's the 14 December version. It says "and including 14 December 2016", so this is the latest version and it has got those words in it "during the yearly period in respect of which their annual leave accrues".

PN147

MR SCOTT: Those words might have been inserted as a result of the NES inconsistencies Full Bench proceedings, I'm not sure.

PN148

MR LIGGINS: 14 December is the latest version.

PN149

THE COMMISSIONER: Okay - of the - - -

PN150

MR LIGGINS: Current award.

PN151

THE COMMISSIONER: As it currently exists. All right. That's what you've got?

PN152

MR LIGGINS: Yes.

PN153

THE COMMISSIONER: Can I just have a quick look at that clause? Okay. It says it's substituted 29 July '16. The words have been inserted -

PN154

*during the yearly period in respect of which their annual leave accrues and is entitled to an additional week's annual leave on the same terms and conditions.*

PN155

MR SCOTT: Commissioner, I've just had a look at the print number, the most recent one from 29 July 2016. It appears to be a Full Bench decision in the annual leave common issues proceedings.

PN156

THE COMMISSIONER: Right.

PN157

MR SCOTT: So it may be that this issue was addressed in those proceedings and those words have been put back in.

PN158

MS SVENDSEN: It wasn't put back in, because they weren't there before. It was inserted on 29 July last year.

PN159

MR SCOTT: Right.

PN160

THE COMMISSIONER: So if that's right, then the exposure draft, when it raised the question, was raising a question about the wrong - well, before that and the question is now actually answered by the fact that that award variation has been made, presuming it has been made on 29 July, so the issue is resolved. Isn't that right?

PN161

MR ROBSON: I think this has left the issue actually undecided. I mean, what is the yearly period in which the annual leave accrues? I think my friends will say that that is calendar year to calendar year, but I think we would say on the basis of the NES - - -

PN162

MS SVENDSEN: Progressive.

PN163

MR ROBSON: - - - it's progressive.

PN164

MR LIGGINS: Anniversary to anniversary.

PN165

MR ROBSON: But in any 12-month period of work, you will accrue four weeks of leave.

PN166

MR LIGGINS: Yes, you will.

PN167

MR ROBSON: Like the anniversary date is - that's when you start accruing. Not even your anniversary date, the date you start work is when you start accruing.

PN168

MR LIGGINS: Yes.

PN169

MR ROBSON: But if you start on 5 February, you know, you don't just get your four weeks credited at the next 5 February any more. You know, between 6 June and 6 June you will get 12 months of leave, so I think it would be inconsistent with that principle for, you know, the calendar year between anniversary date and anniversary date to be the defining factor.

PN170

MR LIGGINS: But the trigger for that is that you're employed.

PN171

MR ROBSON: Yes.

PN172

MR LIGGINS: The trigger for shift worker entitlement is that you're a shift worker.

PN173

MR ROBSON: Yes.

PN174

MR LIGGINS: There is the requirement to satisfy a trigger and then it accrues from the full period.

PN175

MR ROBSON: Yes, but when we're still talking about the period of the year.

PN176

MR LIGGINS: Yes.

PN177

MR ROBSON: I'm not sure the anniversary date, by your logic then, comes into it.

PN178

MR LIGGINS: But the anniversary date to anniversary date is the period within which the four weeks are accrued, so it should be the same period for which the additional leave is accrued - - -

PN179

MS SVENDSEN: So what if you appoint me as a shift worker halfway through the year?

PN180

MR LIGGINS: If you have satisfied the 10 weeks, you are a shift worker. Up until then, you're not a shift worker.

PN181

MS SVENDSEN: Yes, that's the point.

PN182

MR LIGGINS: You would have all your hours accrued towards that shift week entitlement for the full anniversary year if you satisfy the trigger.

PN183

THE COMMISSIONER: From my perspective, I don't think the concern is real. I just think the practical application of the way this would work is exactly as it is proposed here. You either are a shift worker or you're not. Even if the employer has not said to you explicitly, "You are a shift worker", at some point you become a shift worker if by virtue of the fact over a yearly period you have worked more than 10 shifts and it can be any yearly period.

PN184

MR ROBSON: Yes, which I think - - -

PN185

MR LIGGINS: That's the way my members have been applying this.

PN186

THE COMMISSIONER: Yes.

PN187

MR ROBSON: Yes.

PN188

MR LIGGINS: The trigger comes, bang, so their system accrues on that additional - for all of that period, because it doesn't matter that they didn't work the weekends in the first six months. Once they have triggered it, they get their accrual on the whole period, not just from the six months forward.

PN189

THE COMMISSIONER: So to put it another way, in some ways it works - in most cases you're appointed as a shift worker, so let's deal with the majority of cases we would expect in the field. In most cases, I'm putting you on as a shift worker. Payroll will just automatically start accruing the leave. Now, it may be the case that you don't actually get rostered on - despite the fact I engaged you as a shift worker, perhaps you don't meet the criteria. That might raise an issue about, well, we accrued this leave for you, but you're actually not entitled to it. It would disappear. That's one scenario.

PN190

The other scenario is I didn't engage you as a shift worker, but actually just started asking you to do shifts and as a matter of practicality you started to do weekend work. Now, at some point you'll qualify in a yearly period, but that will be a



matter of going back in those situations - which is what I think you're concerned about - and, if you like, populating the calendar.

PN191

MR ROBSON: Yes.

PN192

THE COMMISSIONER: Starting with, well, there's my first one and if I can find any period where I've hit the trigger - are you with me? - that I've got in any 12-month period - and I don't think there's anything different being said at this end of the table - then, bang, I've got the entitlement.

PN193

MR ROBSON: Yes.

PN194

THE COMMISSIONER: No problem.

PN195

MR ROBSON: No, that's what we're arguing.

PN196

THE COMMISSIONER: Yes. Personally I think that that's what it provides. I'm not sure you could find any other words that would give you any further solace than that. When I say "the words", the words as per the 16 July amendment. Hello.

PN197

MS ZADEL: Apologies.

PN198

THE COMMISSIONER: That's all right. There is a chair for you at the end. Any more on that issue? Item 48, we note the award was amended on 16 July to add those words that we've been talking about. I'll put, "The Commission has expressed a provisional view that that should resolve concern about progressive accrual. HSU is to advise - - -"

PN199

MS SVENDSEN: Whether we are going to kick up a stink.

PN200

THE COMMISSIONER: If you're going to stick up a stink, yes.

PN201

MS SVENDSEN: In actual fact, all those comments in relation to that matter predate that amendment.

PN202

THE COMMISSIONER: That amendment, yes.

PN203

MS SVENDSEN: Because they were made on the previous - - -

PN204

THE COMMISSIONER: Exactly. So I think we have been kind of running around in circles a bit, but United Voice is still - - -

PN205

MR ROBSON: No, look, the way it has been amended actually reflects the proposal that we put.

PN206

MS SVENDSEN: Yes.

PN207

THE COMMISSIONER: Yes.

PN208

MR ROBSON: I think as they've been put in, the words "over which the leave is accrued" are the significant ones. I think leaving it to simply a reference to a year would bring to life the problem we have described. I don't think the current words of the award, you know, raise the issues that like I suppose the proposal from ACE would have raised for us.

PN209

THE COMMISSIONER: Sure, yes. I'm taking it that the proposal from ACE was a function of us operating on a misnomer. When we had our discussion in December, we had already moved on and we didn't realise that.

PN210

MS SVENDSEN: Yes.

PN211

THE COMMISSIONER: I didn't realise that, so I'm just saying I think that we are resolved. ACE won't be pressing that change because we're in another space. All right. I didn't have any other issues, so we'll go back. Now, everyone has got a copy of the research paper?

PN212

MR PEGG: Yes, Commissioner.

PN213

THE COMMISSIONER: All right. Excellent. We have been joined here by - it's Jenny, isn't it?

PN214

MS ZADEL: Yes.

PN215

THE COMMISSIONER: Second name, sorry?

PN216

MS ZADEL: Zadel.

PN217

THE COMMISSIONER: Zadel. You're AEI?

PN218

MS ZADEL: AFEI.

PN219

THE COMMISSIONER: AFEI. Now, Ms Zadel, item 35 and item 37-38, I'll just jump back to those.

PN220

MS ZADEL: Yes. AFEI does not press its position in relation to those items.

PN221

THE COMMISSIONER: Right. Thank you. Neither 35 nor 37-38?

PN222

MS ZADEL: That's right.

PN223

THE COMMISSIONER: Thank you. I'll just give you all time to go through the paper and let me know when you're ready to start. Are we ready to go? Start with item 4. The first query is does the bit of analysis there add some value and reflect the discussion and concerns that people had.

PN224

MS BHATT: It's certainly of assistance. I have had some discussions internally this morning and I think our organisation's view is that the issue of the interaction between the award and the equal remuneration order is a very complex one. I don't know that I have sufficient instructions today to speak to that in too much detail. Can I just say this though: any variation to the award that creates an obligation to pay rates that are payable pursuant to the equal remuneration order would be opposed by Ai Group.

PN225

The reason for that is this: currently the award does not create an obligation to do so. The award and the order are two separate enforceable instruments that create separate sets of obligations and the order does not have the effect by its terms or otherwise of varying the award or requiring - - -

PN226

THE COMMISSIONER: It's not part of the safety net.

PN227

MS BHATT: It's not. Not in that sense.

PN228

THE COMMISSIONER: It's a separate - - -

PN229

MS BHATT: Precisely.

PN230

THE COMMISSIONER: Yes.

PN231

MS BHATT: So the insertion of any such - - -

PN232

THE COMMISSIONER: We all agree on that.

PN233

MS BHATT: I hope we do.

PN234

THE COMMISSIONER: That's what I would have thought. That's a matter of fact, but - - -

PN235

MS BHATT: Yes.

PN236

THE COMMISSIONER: The issue is, as I recall it, this was about clarity - - -

PN237

MS VAN GORP: Sorry, somebody needs to grab a microphone.

PN238

THE COMMISSIONER: This was about clarity and everyone understanding, using the award instrument, what it is that they were meant to pay.

PN239

MS BHATT: Look, we have no difficulty with that in and of itself. The concern is this: if, for instance, the definition of "minimum hourly rate" or whatever other terminology that's used in the exposure draft is amended such that it includes the amount payable pursuant to the order, which means that every time that term is used in the award it requires the amount payable pursuant to the award and any additional amount payable pursuant to the order, then you're creating a new legal obligation under the award to pay an amount pursuant to a separate instrument. If an employer - - -

PN240

MS SVENDSEN: Can we just say something? With respect, this argument has been held about 10 times and the dual obligation has been rejected. I mean, you're not creating an obligation that you would be able to be sued for separately or anything of the sort. That's the decision.

PN241

MS BHATT: I'm not aware of that decision.

PN242

THE COMMISSIONER: What are you referring to there?

PN243

MS SVENDSEN: Now I can't remember. I just said this to Michael. I said haven't we had this discussion and had a decision that in fact it didn't create separate legal obligations; that it creates one. Look, I'm going to have to go back through it. I can't remember off the top of my head even vaguely, but my understanding was that we have had this argument on multiple occasions.

PN244

THE COMMISSIONER: Okay.

PN245

MS SVENDSEN: And that a decision had been made that that wasn't a creation of separate obligations. Look, I hear what you're saying, but, Ruchi, this actually doesn't propose that at all. It actually proposes a couple of different versions - - -

PN246

THE COMMISSIONER: Ms Bhatt was still going, so we'll complete - I think she was going to another point.

PN247

MS BHATT: The reason I raise this is because I think some of the proposals that have been put in this research paper would have the effect that I have just outlined so the reason for me putting all of this is because any such option would be rejected by our organisation or would be opposed by our organisation.

PN248

THE COMMISSIONER: Yes.

PN249

MS BHATT: If there is an alternate way of getting there and of obtaining the clarity that we spoke about last time then that won't necessarily end up with the same objection but I raise that at the outset because - - -

PN250

THE COMMISSIONER: Okay. Understood, yes.

PN251

MS BHATT: Thank you.

PN252

THE COMMISSIONER: So then looking at what's raised in the discussion paper in item 4, just focussing in on there versus (v), which was actually, well, perhaps a slightly different issue – it's connected but essentially the – getting - the meaning of the – this paper is, and it's probably right that the Full Bench has been more inclined to use the word, "the", which I think is what we've got in the exposure drafts, but views on that particular issue?

PN253

MS BHATT: Ai Group's view is the same as it was last time. We have consistently been concerned that there could include over award payments - - -

PN254

THE COMMISSIONER: Yes.

PN255

MS BHATT: Which I think this paper also makes reference to and so for that reason we don't think it's appropriate that the exposure draft adopt that terminology.

PN256

THE COMMISSIONER: (Indistinct) views on that (indistinct)?

PN257

MR ROBSON: For United Voice's part, you don't have to accept the transition from there to thou in the exposed draft. Our only concern was to include a reference to the employees' level and pay point so that it's clear that it's not simply the minimum entitlement be paid for working at that classification, but the appropriate point within that is the minimum entitlement for the specific employee.

PN258

THE COMMISSIONER: Yes. I'm not – we possibly had this discussion last time but doesn't it – isn't the fact that the rest of the application of the terms of the award mean that they will be paid their appropriate classification because the award terms provide a set of definitions that you must be paid in accordance with those appropriate rates. So when you say, "the rate", it follows that – yes, but you've got to read the instrument together.

PN259

MR ROBSON: The instrument.

PN260

THE COMMISSIONER: Yes.

PN261

MR ROBSON: And look, I agree with that.

PN262

THE COMMISSIONER: Yes.

PN263

MR ROBSON: But I think it's a – the language of the modern award was there appropriate, correct?

PN264

THE COMMISSIONER: Mm.

PN265

MR ROBSON: I think this replicates the intention of their appropriate rate which is that they should be paid the minimum rate of pay for their classification level and paid according to (indistinct).

PN266

MS SVENDSEN: We're actually not – we're actually not – we've not argued that this applies, and we don't – and that it applies to over award payments or that we've even seeking to do that. Our concern is that the concept of the minimum

rate could either be read as, and there's really two ways of reading it, one is the minimum rate is level 1, pay point 1, and the other is that the minimum rate is always the level, pay point 1, as opposed to whatever level they're at.

PN267

THE COMMISSIONER: Yes.

PN268

MS SVENDSEN: And that's always been the concern. So it's not about including over-award and payments of any sort. And we've been pretty clear, I think, that that's our concern as opposed to it being something else. I - - -

PN269

MR ROBSON: Have you never heard of that happening?

PN270

MS SVENDSEN: That's why - - -

PN271

MR ROBSON: Like, instead of having - - -

PN272

MS SVENDSEN: Yes. Yes.

PN273

MR ROBSON: Having employers done that?

PN274

MS SVENDSEN: Yes. I'm not suggesting it's the vast range of employers but the problem is when we start playing with wording in awards people start looking at those particular issues and, look, these are arguments we've had about range of things on, you know, both sides of the fence about a change to the language that people are concerned about that they might not have even thought about or reflected on previously.

PN275

THE COMMISSIONER: Yes.

PN276

MS SVENDSEN: And I know that some of these things have been raised by both of us but that's the issue. I have been really clear, that's the issue we have. Not the issue about trying to include over award payments or any of those things. The issue is what has become about making that clear.

PN277

We'll live with whatever comes out of it at the end of the day but that's the issue that we've been concerned about and there isn't - which is why there was a suggestion by us collectively at - you know, like we've made slightly varied suggestions but the issue was reflecting that the minimum rate meant the rate that's applicable to that employee for their classification and pay level, not some other thing that's outside the award.

PN278

THE COMMISSIONER: I don't know if we talked about this last time but is it a matter of them - it just all sounds too complicated, too many words running against the plain English issue. Is it a matter of if you said just the employees minimum hourly rate.

PN279

MS SVENDSEN: That or a definition were the two proposals that we've made. There was - - -

PN280

THE COMMISSIONER: But you could live with employees.

PN281

MS SVENDSEN: Yes, yes. Look, it's not that we haven't had this discussion in conference in other awards because we have and, you know, the nurses outcome was to add this, "Their classification" blah blah blah, to every time it was raised, which to me was just stupid.

PN282

THE COMMISSIONER: Over cooking it.

PN283

MS SVENDSEN: Over cooking it. More than over cooking the egg, and that - yes, so any of those suggestions - there were several of those sort of suggestions that have been raised that probably most of us have talked about and so, yes - - -

PN284

MS BHATT: I do understand what your concern is. I think our view is that we might be jumping at shadows here, but I understand the concern nonetheless and I didn't mean to allege that you were seeking to have something more put in. I'm just cautious about what the effect of the various remedies might be. Commissioner, you've just put to us, I think, the employees' minimum hourly rate. I'd be concerned that that gives rise to the same problem as their minimum hourly rate - - -

PN285

THE COMMISSIONER: The over award issue.

PN286

MS BHATT: The over award issue. I'm looking again at the various definitions that were proposed by the unions in their originating submissions, and that is that minimum hourly rate be defined by reference to the rates prescribed in clause 16. I wonder if we just need to go back to that - - -

PN287

THE COMMISSIONER: Go back to that. What about the award minimum hourly rate? You take out over award from it?

PN288



MR ROBSON: I think - look I think there's value in a definition of minimum hourly rate because it is a technical term. It is not a natural usage, it's been introduced by these proceedings and so there is liability for confusion amongst, you know, less industrially sophisticated employers, and we know that there are a lot of small employers covered by this award. I think a definition will assist.

PN289

THE COMMISSIONER: Does that mean we don't have to write these words - - -

PN290

MS SVENDSEN: Anywhere else but once.

PN291

THE COMMISSIONER: Anywhere else but in one place.

PN292

MR ROBSON: I think the AWU's definition I think of the three of us, four of us, is probably the best one that's been put.

PN293

THE COMMISSIONER: To be clear that's the one that reads:

PN294

*Hourly rate means the minimum hourly rate applicable to employees' classification level and pay point as set out at the applicable clause 16.1, 16.2 or 16.3.*

PN295

MR ROBSON: Yes, include that one so no one can turn to us and say we didn't understand, and I think that's really what we're trying to - - -

PN296

MS SVENDSEN: We don't need to double up on applicable.

PN297

MR ROBSON: We can get rid of applicable. We're okay with that.

PN298

THE COMMISSIONER: All agreeing here? Any other views? Right. Thanks for playing, so we're agreeing to include a definition of minimum hourly rate consistent with that submitted by the AWU on 6 July 2016. That resolves item 4. Item 20 and 21 are the ERO issue aren't they? Is that right?

PN299

MR LIGGINS: It might be item 32, Commissioner.

PN300

MR ROBSON: That's about excluding sleepovers and 24 hour excursions.

PN301

THE COMMISSIONER: Item 32, yes. It's also item 20. Has everyone had a chance to look through this bit? Do you need any more time? No. The

implications of using the phrase "the minimum hourly rate". We now have a definition of the minimum hourly rate courtesy of our last discussion. This paper canvasses as option one the definition that we have just agreed to include, but as it points out that doesn't address the issue of the interaction between the minimum rates of the award and the ERO. Applicable hourly rate, we sort of end up back in the same conundrum. They're sort of - they're separate concepts, so if we were to go with the applicable hourly rate we would forget about the agreement we just reached a minute ago, and we would - - -

PN302

MS PATTON: If we've got minimum hourly rate referring to classifications pay level and then the ERO refers to - in the note, "employees and classifications in schedules B and C", by putting minimum hourly rate now is defining it as classification level and what have you. Are we able to say we've satisfied our concerns about the ERO because it also refers to classification? So we're both saying classification here, classification there, marry it up and you'll land over here with an ERO or not with an ERO, depending where you are.

PN303

THE COMMISSIONER: Yes. Yes.

PN304

MS SVENDSEN: The provision in - sorry, where is it? I've forgotten where it is now. The provision that:

PN305

*An ERO also applies to employees and classifications in schedule B and schedule C of this modern award.*

PN306

Which is the overarching provision that's actually written in the award that they asked for the order to apply, which has been there since the order, then means that you - I mean you still go to 16.1, 2 or 3 and then if an ERO applies it goes on top of that and that's the - and that's the provision that applies no different to what it does now. But there's no reference any further or anywhere else, and I think that then regardless of whether it's decided or not it meets the AIG's concerns about not providing another obligation. It's the single obligation that's there now. Does that - - -

PN307

MS PATTON: Sorry, so yes, that's - - -

PN308

MS SVENDSEN: I don't think it does. Doesn't it - - -

PN309

MS PATTON: That's what I'm saying. So we're not looking to make any amendment to the current language of the award because the minimum rate of pay currently will now say that it's a classification level or pay point. The wages section refers to the ERO for a classification and the classification section says that on appointment you'll be told your classification. So there's enough - it would

seem there's enough linking points across the award to say do we need to include an applicable rate that has a new minimum rate plus appropriate ERO, if applicable, when we've already got other things that link people back to say I'd know if it's applicable because when you start I give you a contract or something which confirms your classification in the minimum rates based on your classification, and these classifications have an ERO.

PN310

So I think we're saying the same thing. I'm thinking we're saying the same thing and that is we don't need to over-complicate it by including a new definition of applicable rate as provided here in the example, when there's enough things in the award that link things through to say if an ERO applies we'd be able to link it through by finding the classification or defining someone when they start.

PN311

MR PEGG: Commissioner - - -

PN312

THE COMMISSIONER: Yes.

PN313

MR PEGG: If I can just - I think I was suggesting at the last conference some wording around applicable rate. I think what we'd say is at the very minimum the status quo currently is that there's simply a note of reference it's the ERO or the TPEO. I think the problem that we were trying to solve when suggesting some wording around "applicable rate", and I have to confess I'm not quite sure I understand the AiG issue.

PN314

The problem that we've observed is that the note as it

PN315

stands doesn't actually clearly signal that in many circumstances there will be an additional payment that's required, and we've had a number of instances of new entrants to the industry, so new employers in this industry proceeding to simply pay the minimum award hourly rate for a number of years before they realised that they've been underpaying and not paying the ERO.

PN316

For us there is just a simple clarity issue. We think it's fully settled that the ERO applies to employees employed in these classifications, so our question is just well firstly, we would say the note needs to be there as it currently is and the question is, is that sufficient and we've just got a concern that in practise it hasn't actually served employers well by pointing them clearly enough to what they need to do.

PN317

THE COMMISSIONER: You're then proposing that there might be a tweet to say something like this may require an additional payment beyond these rates.

PN318

MR PEGG: Yes, it could either - either something along the lines that we toyed with at the last conference or perhaps reproducing the wording of, I think it's section 5.3 of the ERO, which says that you have to pay a minimum of either the minimum wage rate set out in clause 16 or the minimum wage in the relevant transitional minimum wage instrument. But that's getting complicated and it's got jargon in it. But I've missed something in the AiG argument. I'm quite happy to sort of reconsider if there's something that I'm not understanding.

PN319

MS BHATT: I understand what you're putting, Mr Pegg, and if the note were amended to make clear that the equal remuneration order magnifies to an obligation to pay something more, it may do so, then I don't think that our organisation would have any difficulty with that. I recall that last time, and I'm not sure if this was your proposal or someone else's, that we talked about amending the preamble in clause 16.1, 2 and 3, at least in those clauses where the ERO applies, to require that an employer must pay the minimum wage set out in the exposure draft plus the amount payable under the ERO. That's what I was trying to get to earlier that that creates a positive obligation under the award, which is what we oppose. Your first proposal might get us there.

PN320

MR PEGG: So to have something - - -

PN321

MS BHATT: That is to simply highlight that something more might be payable and therefore readers of the award need to go and look at the other instrument to work out if that's so, and if so what it is.

PN322

MR PEGG: That would address the concern I'm raising. Words along - to the effect of following on from the notice that exists and this may require payment of a higher rate in accordance with the ERO, something like that.

PN323

THE COMMISSIONER: Can I just get that again? So an additional sentence that would say this may require an additional payment - - -

PN324

MR PEGG: An additional payment, yes.

PN325

THE COMMISSIONER: In accordance with the terms of the ERO?

PN326

MR PEGG: Yes, that would be fine.

PN327

THE COMMISSIONER: So that would just follow after items 30A(6) and (7), you would just add that sentence in there:

PN328

*Before an employer must pay employees.*

PN329

MS BHATT: I'm sorry, Commissioner. I had understood this proposal to relate to the second note. Mr Pegg will tell me if I'm wrong. So the second note that relates to the equal remuneration order as opposed to the transitional pay equity order.

PN330

THE COMMISSIONER: Yes, that's at 16.3 isn't it?

PN331

MS BHATT: At 16.1.

PN332

MR LIGGINS: Note 2.

PN333

THE COMMISSIONER: Thanks. Is that right, Mr Pegg?

PN334

MR PEGG: Sorry, you faded out there. Can you repeat it please?

PN335

MS BHATT: Mr Pegg, these additional words, your proposal is that they appear after the second note at clause 16.1, is that right?

PN336

MR LIGGINS: It probably needs to be after each note because they're two separate instruments, at the risk of repetition.

PN337

MS BHATT: Then again at 16.3.

PN338

THE COMMISSIONER: Again at 16.3, yes, it's whether we put the sentence in twice. So let's just be crystal clear about - let's be crystal clear about the proposal. It's to include a sentence:

PN339

*This may require an additional payment in accordance with the terms of the equal remuneration - - -*

PN340

MR PEGG: Well perhaps:

PN341

*The relevant transitional pay equity order or equal remuneration order.*

PN342

You could have a single sentence.

PN343

THE COMMISSIONER: We'll say:

PN344

*The relevant equal remuneration order -*

PN345

and we would insert that sentence after note 2 in 16.1.

PN346

MR PEGG: Yes.

PN347

THE COMMISSIONER: Of the exposure draft, obviously we're always talking about, and after 16. - after the note and after the words:

PN348

*Items 30A(6) and (7) -*

PN349

MR PEGG: Yes, in 16.3.

PN350

THE COMMISSIONER: In 16.3.

PN351

SPEAKER Except, Commissioner, at 16.3 the ERO doesn't apply to the employees, so it would be good to take the ERO out of the reference at the bottom of that note. Just leave it with the other one, the transitional.

PN352

THE COMMISSIONER: Right. I think that's the point Ms Bhatt was making before. Is that right? It doesn't apply.

PN353

MS BHATT: That's right. The sentence that's been proposed can be inserted but without a reference to the equal remuneration order so it only refers to the TPEO.

PN354

SPEAKER: That's at 16.3.

PN355

THE COMMISSIONER: I see. Yes, and so after note 2 - sorry, so you insert a sentence after 30A(6) and (7) which would say:

PN356

*This may require an additional payment in accordance with the terms of the TP&CA Act*

PN357

Et cetera, et cetera. Yes.

PN358

MS BHATT: In accordance with the transitional pay equity order (indistinct) refer to the Act.

PN359

THE COMMISSIONER: Transitional Pay Equity Order, yes. Did everyone get that? The sentence that would go in after 16.3 30A(6) and (7) would read in its entirety:

PN360

*This may require an additional payment in accordance with the terms of the transitional pay equity order.*

PN361

Does anyone disagree with that proposal as a means of resolving item 32? Going, going gone. Now we go back to item 20 and 21. Sleepovers. We can go by way of vote, we've got four options. Who wants to go first.

PN362

MS ZADEL: Commissioner, I think the drafting options put forward are reasonable. I'm not sure if they any interactions with the new award though. It may have no intended consequence at the moment. We raised this concern because the sleepover provisions had been moved into the clause with the ordinary hours, I think, or they had been moved into rostering and we were of the view that sleepovers, 24 hour (indistinct) excursions were arrangements of ordinary hours. It looks like the drafting options are focusing on the issue with the interaction of the span of hours in the ordinary hours, but I don't think that that's necessarily the only concern. For example, the excursions clause provides ordinary hours per day of 10 hours, and then the hours of work clause provides eight or 10 per shift.

PN363

THE COMMISSIONER: Yes.

PN364

MS ZADEL: Where the excursions - where someone could be on an excursion that could potentially just be one long shift for a period of time. If it were then that they could only do eight or 10 ordinary hours per shift overtime would then kick in very early on on that excursion. But the excursion clause currently says 10 per day so then arguably you would be able to do 10 ordinary hours each day you're on that excursion. I'm not sure that that's addressed in the drafting options at the moment, because it's focusing on the span of hours issue rather than daily hours or anything else. That's in the ordinary hours clause.

PN365

THE COMMISSIONER: Even option 3 doesn't deal with that?

PN366

MS SVENDSEN: Option 3. I don't think. Span of hours is a separate clause. It's 13 and sleepovers in 14 which is rostering, how you roster employees which notionally fits because sleepovers is a method of rostering employees, although

one that is discreet in its own right. Which is - I understand what Jennifer's saying about - like the intersection might not be clear but it is a rostering clause not actually a span of hours clause. Our point about span of hours is that it actually has no work to do but that's - I'm not - - -

PN367

SPEAKER: We don't necessarily agree - sorry, we don't oppose that necessarily.

PN368

MS SVENDSEN: No, I know and particularly in this award which - there's not - it intersects - Commissioner, it intersects with - span of hours intersects with a provision in pre-existing New South Wales awards which kind of said that if you worked outside the span of hours you got overtime rates, which doesn't apply in this award. So the span of hours has no work to do because you don't get overtime because you work outside the span of hours. I don't think it has any work to do and where it complicates things my answer is therefore it shouldn't be there but the modern awards all have span of hours clauses and I'm not sure that that's going to be a solution that will be perceived positively by the Bench generally.

PN369

THE COMMISSIONER: Yes.

PN370

MS SVENDSEN: But that I think sometimes creates us with some problems in 24 hour a day, seven day a week industries, or it's certainly creating me in a number of our awards some significant problems. So yes, my solution to that is to move it. The other position that you're talking about and whether the rostering - the problem is that they're almost discreet but not entirely.

PN371

MS ZADEL: Our issue is really the interaction between the ordinary hours clauses and the sleepover and excursions clauses. It maybe matters less what their - what title they fall under but just to properly understand the interaction, to know which ordinary hours are actually applying on a daily basis is the position that we want to end up at.

PN372

THE COMMISSIONER: Option 4 is attributed to you.

PN373

MS ZADEL: Yes, sorry, I'll revise what I said earlier. The first three options aren't addressing the daily hours issue but our option would do, which is to revert it how it had been.

PN374

MR LIGGINS: What's the problem with the interaction between the span of hours clause and 14.5, the sleepovers?

PN375



MS ZADEL: I'm not sure the sleepover clause is the main concern. There's a specific span of hours set out for the excursions clause and it's different to the span of hours generally.

PN376

MS SVENDSEN: Given that it is, doesn't it just apply? I don't understand why when something is said - when something's set out that's different, it's different in the sleepover clause too although it doesn't refer to it as the span of hours. That provision applies for that particular issue, doesn't it? If you set something out - like the ordinary applies, the exception is span of - is sleepover or excursions where something else applies.

PN377

THE COMMISSIONER: So why don't we exclude option 1? Because that's all it says (indistinct) just to clarify those issues, forget about it.

PN378

MR LIGGINS: Well, look, I - - -

PN379

THE COMMISSIONER: (Indistinct) good reason not just to simply take this (indistinct) approach.

PN380

MR LIGGINS: I think the span of hours does do a little bit of work. There is at least - it provides a means of distinguishing between a day of work for a shift worker. I'm - you know, I'm not sure someone who was a day worker could be rostered to work a sleepover shift. I mean if they're a worker whose ordinary hours were worked between 6 am and 8 pm that's important and I'm sure there are employees who would appreciate the notice that they're entitled to if they're moved into shift work.

PN381

THE COMMISSIONER: Well, in fact a day worker because their shift starts in the daytime and you can have a shift working in beside of a sleepover, you can still be a day worker and do a sleepover.

PN382

MR LIGGINS: Yes, potentially. But look, I think there is something that's working on there and that sounds actually like the span of hours clause would apply to 14.5. Is the issue really 14.6 and 14.7, because they do provide different means of structuring ordinary hours which the sleepover clause doesn't. Maybe that's what we're talking about and we want to look for, you know, a specific note there. Because like I just can't see there's anything I could agree to in relation to 14.5 if the span of hours does have some work to there and I think the interaction between the two seems fairly clear.

PN383

THE COMMISSIONER: Are you thinking of this practically though and I'm talking from (indistinct).

PN384

MR LIGGINS: Well, I'm proposing a - I'm proposing what I think might be practical. I think it might be worth setting aside sleepovers because I can't see what we need there.

PN385

SPEAKER: Can I respond to that?

PN386

MR LIGGINS: Sorry, and then I think we want to look at 14.6 and 14.7 perhaps separately, and then if we could talk through the actual interactions with the span of hours that are problematic, that might be the place to do it. Especially since it seems to be only, you know, the reason this has come up is that the award's being restructured, the rostering and ordinary hours have been broken into different locations. If the wording of the awards served in the past and we currently don't have a problem with it, I sort of want to know what the exact problem is that we're trying to fix before we add something that, you know, says that something doesn't apply. On the fly I think we may be missing out on a more limited, more practical, more targeted solution rather than trying to go for something big and overwhelming.

PN387

THE COMMISSIONER: What's your limited, targeted and practical solution, for example?

PN388

MR LIGGINS: Well, I'm not sure and I suppose it's not necessarily my problem to fix but I think 14.7 - look, I think a note, and I'm speaking off the top of my head and I'd need to follow this up with my union first. Maybe a note, you know, something that says that this provides certain exceptions to other clauses. There is a different way of structuring ordinary hours of work. There is a different way of accruing overtime and time in lieu but again I agree with Leigh's point that this is a specific derogation from the general - and again with 14.6, you know, if you want to include notes citing exceptions, again there are exceptions to ordinary hours of work, shift length. I'm not exactly certain of the wording that we could use there but maybe we focus on those ones.

PN389

MR ROBSON: Can I just make a point. I was concerned about what you said about sleepover because in home care the overwhelming majority of employees are day workers by this definition. They're the employees who do sleepover, and they don't do it often but they are the ones who do the sleepovers. So if there wasn't some clarification, that span was excluded there, who's going to do the sleepovers? They are the ones who do it. I mean Monday to Friday, up till 8 pm in this award. Or is it Monday to Saturday, I can't remember.

PN390

MS ZADEL: Sunday.

PN391

MR ROBSON: So they are the day workers.

PN392

MR LIGGINS: Yes, of course, I probably overstepped the mark a little bit there but I think then in that case - - -

PN393

MR ROBSON: That's the only point I was trying to make.

PN394

MR LIGGINS: - - - there is still work being done by the day worker definition. I mean if the - - -

PN395

MR ROBSON: See I can't - what Leigh said before about not opposing removal of it, well neither do we because we don't believe it does any work because the shift worker, and the only work a definition does is for the annual leave in this award because there isn't an overtime issue. So I still come back to what's wrong with 1. If you can tell me the specific thing that would be overlooked by having 1, which is the simplest way to exclude those clauses - - -

PN396

THE COMMISSIONER: Well, the sentence at the end of (indistinct).

PN397

MR ROBSON: Sure.

PN398

THE COMMISSIONER: 2(a) and (b), and there'd be a sentence inserted at the end there which would say:

PN399

*These provisions do not apply to employees engaged on a sleepover 24 hour care or excursion.*

PN400

MR ROBSON: Certainly the simplest but I'm mindful that if you can indicate to me what might be the unintended or impact of that I'm happy to discuss that. But I just can't think what it is.

PN401

THE COMMISSIONER: But you're not on board with that though, are you, or could you - does that solve your concern?

PN402

MS ZADEL: It goes some way to solving our concern. There's still the issue with the excursions, that's what's come up mostly for our members, but it sounds like - - -

PN403

MR ROBSON: But if they're excluded from the span as well, the three of them, what's the additional issue?

PN404

MS ZADEL: It's not just the span that we have concerns with. It's the (indistinct).

PN405

MR ROBSON: Yes, there was other issues, yes.

PN406

MS ZADEL: So if there clarifications in the excursions clause as well, along the lines of what United Voice was going towards, that could assist. I'm not sure on the 24 hour care issue, I'd have to look at that further if there is an exception there but the main issue for us - - -

PN407

MS SVENDSEN: I don't think it makes any difference.

PN408

MS ZADEL: - - - is the interactions with the excursions clause and the ordinary hours clause.

PN409

MS PATTON: Is there another set of wording you could put in for the ordinary hours of work under 13 that then differentiates or as otherwise provided - sorry, or as otherwise provided, like in another section of the award being 14.6, 14.7 and 14.5. So at 13 where you talk about ordinary hours and standard hours, if in that section it was something to say "or as otherwise provided" whatever language, would that go to - that would look to resolve it?

PN410

MS ZADEL: That would go towards resolving it as well. There's a couple of options.

PN411

MR ROBSON: There's two issues. One's the interaction with the span and one's the interaction with the ordinary hours you can work on the day and some of those things.

PN412

MS ZADEL: That's right.

PN413

MR ROBSON: So the span's resolved by the addition of that sentence that the span of hours clause for those three, then it's just a matter of trying to identify or maybe having a word in those clauses where you say the problem exists.

PN414

THE COMMISSIONER: Further comments on that proposal? Ms Bhatt, thinking about it. Reserve position.

PN415

MS BHATT: Reserve our position, I'd like to (indistinct) on that.

PN416

THE COMMISSIONER: I'll give you a bit of time to think about it but this is not rocket science.

PN417

MS SVENDSEN: I'm actually a little bit confused about what interactions we're talking about.

PN418

THE COMMISSIONER: Look, there's a few. I mean I remember the last time one of the things that popped up was say on excursions, as I recall, you've even got the interaction between - isn't it about these things. If you're on a sleepover you're on 24 hour care, if you're on an excursion you're - - -

PN419

MS SVENDSEN: No, you're not. 24 hour care and sleepover is completely different.

PN420

THE COMMISSIONER: I'm not saying anything different to that. They're all - if you're on each of those, you're subject to those particular unique provisions.

PN421

MS SVENDSEN: Yes.

PN422

THE COMMISSIONER: So for example if you're on an excursion - well actually I'll withdraw that, that doesn't - because they're all separate.

PN423

MR PEGG: Commissioner, I think the reason that there's an excursions clause or a 24 hour care clause is to facilitate something different to the ordinary - to the otherwise standard ordinary hours. So their facilitative clauses and so again it's just - the whole reason for their existence is that they are different.

PN424

THE COMMISSIONER: So everyone's in furious agreement about that and the concern - the mischief we're trying to resolve is the concern that the - that you get tripped up by a requirement, despite the fact that when you're operating under one of those provisions you're in an exclusive zone, if I can introduce that terminology, that you don't have to get fitted up with other payments or entitlements.

PN425

MS SVENDSEN: Can I just go back one step. I've just gone back to the current award. Span of hours and rostering are all in one clause, not in two separate clauses. Ordinary hours of work is 25.1, span of hours is 25.2, rostered days off is 25.3, rest breaks is 25.4, rosters is 25.5, broken shifts is 25.6, sleepovers is 25.7, 24 hour care is 25.8, excursions is 25.9.

PN426

THE COMMISSIONER: Yes.

PN427

MS SVENDSEN: I don't understand how - - -

PN428

MS ZADEL: So previously it did all exist in one clause, so you'd have to read it altogether and now it's been broken up into two different clauses is my understanding of ordinary hours and rostering. That's the - - -

PN429

MS SVENDSEN: Because it's been broken into two clauses.

PN430

THE COMMISSIONER: Yes.

PN431

MS SVENDSEN: Are you kidding me?

PN432

MR ROBSON: No, you have to read the entire award with each other. Like, I just think - - -

PN433

THE COMMISSIONER: I think that's what I said (indistinct).

PN434

MR ROBSON: Yes. Well, I know and it remains wise. Look, I suppose when you raised that with me I think we were making the point that an additional bit of wording to assist someone to understand a newly introduced technical term would be useful.

PN435

THE COMMISSIONER: It's all right, you don't have to defend the attack.

PN436

MR ROBSON: That's quite all right. In this case I think even just taking the words of excursion. 14.7(a) says:

PN437

*Where an employer agrees to supervise clients in excursion activities involving overnight stays from home, describing the situation where this applies, the following provisions will apply.*

PN438

I get - - -

PN439

MS SVENDSEN: Which was exactly the same as the current award.

PN440

MR ROBSON: That is an exclusion. That specifically says these provisions apply over the general provisions of the award. I think Leigh and Mr Pegg are right and, you know, my issue of say deleting the span of hours clause is at this

stage I don't necessarily know all the work that has been done. I'm not we've put enough thought into that and I'd prefer to leave that wall up rather than tear it down and find out later that there was a reason for it to remain there. Even if it was small and even if I can't remember it now, deleting words from the award will change the way that it works. It's there now, I don't see any way to remove it. I think, you know, adding in notes about exceptions, I mean, when do we stop with that?

PN441

I mean there are, you know, numerous clauses in this award that provide exceptions to have a clause in it or modifications or, you know, different ways for them to apply. You know, like the 24 camp clause provides a different way to pay an employee, the different ways to structure rostering, you know, even exceptions to the way a break's meant to work. Isn't it obvious from the way that the award is structured and the way that these are written because they are significantly changed from the current draft. These provide alternate ways of structuring different entitlements for certain set piece types of rostering, like a sleepover, you know.

PN442

THE COMMISSIONER: I think we agree with that.

PN443

MR ROBSON: Yes, so do we need to change it?

PN444

MS SVENDSEN: I don't think we need to change it.

PN445

SPEAKER: It sort of start moving from technical draft into substantial.

PN446

MR LIGGINS: I don't think it goes that far but I'm not sure that anybody's pressing that those things don't still (indistinct) and that they're not separate.

PN447

THE COMMISSIONER: They sit as an exclusive arrangement.

PN448

MR LIGGINS: Yes.

PN449

THE COMMISSIONER: For the time that the employee's engaged.

PN450

MR LIGGINS: The way it's always been interpreted and no one's suggesting that changes because of where they exist in the award now albeit your organisation's concern is that it could be.

PN451

MS ZADEL: More like a clarity about how they apply for the reader, I think, and

- - -

PN452

THE COMMISSIONER: Have you had problems on the ground?

PN453

MS ZADEL: Yes. We get a lot of concerns about how the excursion clause actually links back to the hourly, daily or span of hours. We get a lot of questions about that and members who have potentially it incorrectly and incurred additional penalties or overtime rates - - -

PN454

THE COMMISSIONER: Yes.

PN455

MS ZADEL: - - - because of that. If we are going through this exercise to clarify the award, it's been broken up into ordinary hours and rostering, we think it would be valuable to them to provide clarification there so that these issues aren't arising.

PN456

MS SVENDSEN: Can I just say I think that is a problem with the current award. I mean - well it is, it's the current award that you're having problems with and the fact that they have replicated it because it is exactly the same clause in the ED means that there is a problem with the excursion clause going forward as well. I agree there's a problem with the excursion clause because it's actually not complete but that is a substantive matter, not an ED matter.

PN457

It is a problem with the current award and it is a problem that needs to be fixed in the sense that it is not entire and it doesn't refer back to other things that it should, or it doesn't make provision for things that by the way it actually is written appears may be excluded or may not be excluded. I don't think that this is actually an ED matter. I think in that respect Justin's absolutely right, we're now into a substantive change because the clause is exactly what it was before and the fact that it's been moved slightly in the sense that span of hours has been - ordinary hours, span of hours has been separated from rostering, I think makes no difference to that.

PN458

MS BHATT: But is it - - -

PN459

MS SVENDSEN: I can't see any difference to it at all. Sorry.

PN460

MS BHATT: No, sorry, I did cut you off. I'm just trying to understand this myself. Is it your concern that the restructuring potentially gives strength to the contrary argument that in fact it does apply, and that that is an argument that might be put against us later, irrespective of what we're all saying at the Bar table right now? That's a real concern.

PN461



THE COMMISSIONER: Further to that this specific issue is about span of hours and so we don't need to go (indistinct). Which leads me back to if there is anything to be done about this, it's either option 1 or option 2. You might put something in the span of hours clause (indistinct) or I actually think I'm probably leaning towards option 2, which is the (indistinct) picking up on what you're saying, Ms Zadel, that there's confusion about the allocation so you'd be better off as per option 2 (indistinct) having the exclusion (indistinct) to the provision so when people are picking up the document they would see the span of hours clause doesn't apply. That's set out - the way that would be done in the attachment (indistinct). It's clear as day, at the start of the clause 13.2, 24 hour care (indistinct).

PN462

MS ZADEL: Apart from that one issue of the daily hours, I'm not certain if that's addressed within the excursions.

PN463

MS BHATT: Can that be addressed by amending the proposed subclause (d).

PN464

MS ZADEL: Yes.

PN465

MS BHATT: So that it refers to clause 13.1 - - -

PN466

MS ZADEL: (b)?

PN467

MS BHATT: 13.1(b) and clause 13.2.

PN468

MS ZADEL: Yes.

PN469

THE COMMISSIONER: So you'd add that in. So clause 13.1(b) and clause 13.2 (indistinct) sleepover, the same words, (indistinct). 13.2 and 13.1(b). Is it 13.1(b)?

PN470

MR LIGGINS: Yes.

PN471

THE COMMISSIONER: (Indistinct).

PN472

MS ZADEL: 13.1(b), it would be (a) and (b).

PN473

MS VAN GORP: Excuse me, it's Adelaide. I can't hear anyone at the moment. Thank you.

PN474

MS ZADEL: Really the daily hours - - -

PN475

THE COMMISSIONER: Microphone.

PN476

MS ZADEL: It's the daily hours in 13.1(a) and (b) that we're concerned about. The maximum shift length.

PN477

THE COMMISSIONER: Is it the - - -

PN478

MS ZADEL: It could be, "and maximum shift length at 13.1(a) and (b)".

PN479

MS BHATT: 13.1 describes what the maximum ordinary hours of work are and then provides for - - -

PN480

MS VAN GORP: Sorry, microphone.

PN481

MS BHATT: Sorry, Ms Van Gorp.

PN482

MS VAN GORP: Thank you.

PN483

MS BHATT: Clause 13.1 describes what the maximum ordinary hours of work are then provides for the manner in which they can be arranged, and the effect of 13.1(b) is that 10 ordinary hours in a day can only be worked by agreement. Whereas the excursion clause does not require agreement and it's - - -

PN484

MS ZADEL: Per day as opposed to per shift.

PN485

THE COMMISSIONER: Yes.

PN486

MS BHATT: That's right.

PN487

MS SVENDSEN: That's exactly the same as what it is now.

PN488

MR ROBSON: And I think that, you know, excursions require the agreement of the employee - - -

PN489

MS SVENDSEN: To even go on them.

PN490

MR ROBSON: I think the assumption would be an agreement to go on an excursion is an agreement to work a 10 hour shift. Then anything beyond that's either overtime or time in lieu under the excursion clause.

PN491

MS SVENDSEN: That's exactly what's there now.

PN492

THE COMMISSIONER: So it's really 13.1(b).

PN493

MS SVENDSEN: The difference is that instead of being 25.1(b) it's - - -

PN494

MS ZADEL: It would be both (a) and (b), sorry.

PN495

MS SVENDSEN: But it's the same, there's no difference, there is absolutely no difference except that it - so if we're talking about getting rid of the difference, the difference is instead of it being 13 and 14, it should be 13. That's the sum total of the difference. So if you stopped, if you had 13 that ran all the way through to presumably you remember where we get to then because there's two more clauses.

PN496

THE COMMISSIONER: We were just talking about - so as I said I'm leaning towards preferences that there be - - -

PN497

MS VAN GORP: Thank you.

PN498

THE COMMISSIONER: - - - there be an exclusion in each of the three clauses; 24 hour, excursions and sleepover and we're agreed that it would exclude - there will be an express wording that would exclude 13.2 and I thought we were in - and then also 13.1(b). But Ms Patton is saying it should be 13.1(a) as well - - -

PN499

MR ROBSON: So that's the whole of 13.

PN500

THE COMMISSIONER: That's the whole of 13.

PN501

MS PATTON: It would make to sense to put 13.1(a) as well because it refers to five days and eight hours, whereas if you were to do excursions of 10 hours then you won't be necessarily meeting that criteria of 13.1.

PN502

THE COMMISSIONER: Yes. So going back to what I thought was a consensus position was that that - probably the question I'd put to you, Ms Svendsen is given what you've said about the way it operated before, you don't disagree do you that clause 13 and 13.2 in the exposure draft have any work to do for employees who are engaged on sleepover excursion or 24 hour?

PN503

MS SVENDSEN: No, I do think - well, certainly they have something to do with sleepovers without any doubt whatsoever.

PN504

THE COMMISSIONER: Yes, what?

PN505

MS SVENDSEN: In terms of their ordinary hours because it's part of their ordinary hours. It absolutely does - I mean if I'm engaged in sleepovers, a sleepover would be part of my roster but the ordinary hours of work apply in relation to that, in the sense of not exceeding the defined periods and numbers of hours in a week and the four hour - sorry, the issues around shifts being rostered and that sort of stuff. It absolutely requires it.

PN506

MR LIGGINS: But that's not the sleepover itself is it.

PN507

MS SVENDSEN: Pardon?

PN508

MR LIGGINS: The payment for sleepover work is at OT. You're talking about issues that are attached to a sleepover which is different to the actual sleepover.

PN509

MS SVENDSEN: But it's in the sleepover clause so if I include the sleepover clause from ordinary hours, I exclude those hours as well and that therefore doesn't work.

PN510

MR LIGGINS: How does it not work because all that's saying is that you have to have attached shift on the front or the back - - -

PN511

MS SVENDSEN: If you go to sleepover, if you actually go to the sleepover - the wording in the sleepover clause - because that's - you can't look at it separately in the sense, Geoff, of saying - I agree if you're doing work during the sleepover itself it's overtime, I don't have a difficulty with that concept. But the sleepover refers to the fact that you're rostered either side of it, either/or, or and/or I should say, either side of that sleepover. If you actually exclude it then by definition you may well be excluding the hours that are rostered either side of it.

PN512

MS BHATT: But by calling it either side of a sleepover, aren't we then defining the period that's for sleepover.

PN513

MR LIGGINS: Yes.

PN514

MS SVENDSEN: No.

PN515

MS BHATT: Because it's - - -

PN516

MS SVENDSEN: When people say they're rostered - given that you can't be rostered for a sleepover on its own, doesn't that actually have complications when you actually then exclude the work that has to be done with the sleepover, and then say that ordinary hours don't apply to a sleepover when you can't do a sleepover except when you've got ordinary hours - I mean it just - it starts to, you know, it's a substantive change, no. I can't - I just think it creates a whole list of things that are potential problems, that are not currently there and are not seen by people in the industry. If you start to - in my experience people talk about a sleepover as the shifts they're working as well as the - part of that shift that they are there to sleep and not - - -

PN517

MR LIGGINS: I would say, yes.

PN518

MS SVENDSEN: Yes, they actually refer to a sleepover as the whole lot.

PN519

THE COMMISSIONER: We might take a break for 15 minutes and reflect. This is the last item, everything else is square away. We don't have to - it won't be a measure of failure if we don't get agreement on every single point but it would be good if we could. We'll come back at - if we come back at 20 past 11 and just wrap up at that point, but we'll see if we can - what I want to do is either resolve this issue today or if not, reflect back to the Bench the scope of the problem. Well, the scope of what people consider to be the problem and where the various parties are at. So over the next 20 minutes just have a think about that.

PN520

MS SVENDSEN: Thank you.

PN521

THE COMMISSIONER: See you at 20 past 11.

**SHORT ADJOURNMENT**

**[11.03 AM]**

**RESUMED**

**[11.21 AM]**

PN522

THE COMMISSIONER: Just one last shot at this. A query might be in terms of your issue, Ms Zadel, is it really about, in terms of all of 13.1 that that's really an issue in respect of excursions, not the other clauses. Not in relation to sleepover and 24 hours.

PN523

MS ZADEL: That is how we came to the point of bringing up this concern. I'm just worried about introducing clarifications now into the award for some provisions and not others, and whether it's better resolved by returning all of the clauses into one clause; rostering and ordinary hours. If everyone's of the view, a similar view of how everything operates - - -

PN524

THE COMMISSIONER: Then leave it the way it was.

PN525

MR LIGGINS: Michael or Leigh, did you have a chance to think about that?

PN526

MS SVENDSEN: You mean in terms of having it in one clause?

PN527

MR LIGGINS: Yes, just the way it used to be so we don't have any issues - - -

PN528

MS SVENDSEN: We didn't have a problem either way.

PN529

MR LIGGINS: So if we just put them into one clause would that be a problem do you think, Commissioner?

PN530

THE COMMISSIONER: It might be depending on what the Commission's wanting to do with the general structure and consistency.

PN531

MR LIGGINS: General structure. But obviously I'll report back on the consensus view but is that - is the consensus view - when we say go back to the future, what exactly are we talking about doing in the context of the exposure draft?

PN532

MS ZADEL: Place the 24 hour sleepover and excursion clauses along with the ordinary hours clauses to make a wider rostering and ordinary hours clause.

PN533

THE COMMISSIONER: That's what it appears to be.

PN534

MS ZADEL: So it's very clear that you would read them all together.

PN535

THE COMMISSIONER: Together. I'm struggling to see, isn't that what we've got now? Clause 13 ordinary hours of work, clause 14 rostering arrangements, then we go onto broken shifts, sleepovers, 24 hour care and excursions. So what would I be - how much closer together do you want them to be?

PN536

MS ZADEL: Just under the same clause.

PN537

MR ROBSON: If 13 and 14 were altogether all of those issues would be under clause - - -

PN538

THE COMMISSIONER: So it is literally the proposal is if everything was numbered clause 13, so rostering arrangements become - be exactly the same order as it is in the exposure draft but rostering arrangements would become clause - well effectively clause 13.3, all of the numbering would subsequently change throughout. Broken shifts would become part of clause 13, as would the sleepovers and so on. It's all one big clause 13. It's as simple as that.

PN539

MS ZADEL: I don't think that provides 100 per cent clarity. There still appears to be an issue with the clauses and how it interacts; the excursions and the scan of hours but it doesn't appear that we'd be reaching any sort of consensus view on setting out specific exceptions under each of the clauses and that could cause more of an issue, because we'd need to be looking at each of those clauses and how they interact with the entirety of the rest of the award.

PN540

THE COMMISSIONER: The proposal is that all - to resolve this issue and to be clear I'm not saying the Commission will agree with this but the parties would be amenable to a proposal that all of the clauses in the ED currently clause 13 and 14, are renumbered so that they all part of clause 14 - clause 13. Would you be satisfied with that?

PN541

MS ZADEL: Yes.

PN542

THE COMMISSIONER: Presumably it's a bit hard to argue against it. I mean I'm not sure if it makes - yes, I'm struggling with the difficulty that while there's confusion there I don't see that that will change anything, but I'm happy to take that back. Well, that was easy, potentially subject to the views of my colleagues.

PN543

Now have we got clarity that you are (indistinct) those items.

PN544

MS ZADEL: That's right.

PN545

THE COMMISSIONER: I think that actually concludes our session. Anything more from anyone else? We'll follow the same process. I'll write up a draft note which will reflect the discussions today. I will do that once I've heard back from the AWU, I'm not proposing to give the AWU very long to reply, so I'd hope to get something around - by next week. Again an opportunity for anyone to comment and say no, you've got it wrong, that's not what we were agreeing to but I'm sure that there shouldn't be too much need for that. Then - is this matter listed for further hearing that anyone can recall?

PN546

MS SVENDSEN: A mention tomorrow.

PN547

MS BHATT: That's right, a substantive.

PN548

THE COMMISSIONER: Yes.

PN549

MS SVENDSEN: It is but not ED.

PN550

THE COMMISSIONER: Not ED, no. So at some stage the Bench will reconvene. I will include in the note, the draft that goes back - well actually no I won't, so obviously you'll wait to hear once the Bench deliberates about - I mean obviously the same proviso goes, just for the record. All of these provisions of course regard will be had to the views of the parties but that doesn't mean that the Commission won't do what it wants to do in the course of fulfilling its various statutory obligations to make modern awards (indistinct) people to understand all those things. To the extent that anything has been agreed to here does not sit comfortably with that, then you'll obviously be told that that's the view. That concludes the session. I'll see most of you for the aged care run through at two. Now there are some different parties for aged care.

PN551

THE ASSOCIATE: Just Adelaide.

PN552

THE COMMISSIONER: Someone else - - -

PN553

MS SVENDSEN: Melbourne, I suspect there might be somebody, I don't know (indistinct).

PN554

THE COMMISSIONER: No, we'll leave it at two. I was just wondering whether or not we'd be able to press on but (indistinct) participants. We will leave it at two to be safe. See you at two.

**ADJOURNED INDEFINITELY**

**[11.31 AM]**