



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**DEPUTY PRESIDENT GOSTENCNIK**

**AM2014/252 AM2014/253**

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

**Four yearly review of modern awards  
(AM2014/252)  
Air Pilots Award 2010**

**Four yearly review of modern awards  
(AM2014/253)  
Aircraft Cabin Crew Award 2010**

**Sydney**

**9.31 AM, THURSDAY, 9 FEBRUARY 2017**

PN1

THE DEPUTY PRESIDENT: Good morning. The proceedings this morning are being transcribed for the purposes of maintaining a record of the outcome of the two conferences. Given that, I might just ask each of the representatives to announce their appearance and their interest in relation to one or other or both of the awards the subject of conferences this morning. I might begin with the parties in Melbourne. I don't suppose anybody heard me then.

PN2

MR P LARKINS: Thank you, your Honour, Larkins, initial P, appearing for the AFAP in relation to the Air Pilots Award.

PN3

THE DEPUTY PRESIDENT: Thank you, Mr Larkins.

PN4

MS C LARKINS: Your Honour, I am Larkins, initial C, appearing for the AFAP in regards to the award.

PN5

THE DEPUTY PRESIDENT: Thank you, Ms Larkins.

PN6

MR J MATTNER: Your Honour, if it pleases the Commission, Mattner, initial J, appearing for the AFAP in regards to the Air Pilots Award.

PN7

THE DEPUTY PRESIDENT: Thank you, Mr Mattner.

PN8

MR S MILLER: Your Honour, my name is Miller, S, I am also appearing for the AFAP in relation to the Air Pilots Award.

PN9

THE DEPUTY PRESIDENT: Yes, thank you, Mr Miller. In Sydney?

PN10

MR P HURST: Hurst, P, for the Aerial Application Association for the Air Pilots Award 2010.

PN11

THE DEPUTY PRESIDENT: Yes, thank you.

PN12

MS R BHATT: If it pleases the Commission, Bhatt, initial R, appearing on behalf of the Australian Industry Group in relation to both awards.

PN13

THE DEPUTY PRESIDENT: Thank you, Ms Bhatt.

PN14

MS K SRDANOVIC: If it please the Commission, Srdanovic, initial K, of Ashursts appearing for the entities within the Qantas Group in relation to both awards, and with me is Edward Haggarty, Manager Industrial Relations with Qantas

PN15

THE DEPUTY PRESIDENT: Thank you, Ms Srdanovic. We will begin with the Air Pilots Award. I assume the parties have had an opportunity to review the revised summary of submissions or positions in relation to the technical and drafting issues concerning the Air Pilots Award which was published on 5 January 2015. Since that time, my Chambers have received some correspondence from Mr Hurst concerning the possibility that some of the matters identified in that document as matters being pursued by his organisation might be withdrawn. Mr Hurst, I might turn to you then to indicate which of the matters might be withdrawn or perhaps, more precisely, are withdrawn - for my benefit.

PN16

MR HURST: Certainly, your Honour. If it so pleases the Commission, AAAA wishes to confirm that we are not pursuing any of the items raised in our name. Our submission is that no items in our name were intended to be substantive items and we were somewhat surprised that they were treated as substantive items or raised as substantive items. The issues in our submission were raised either for information of the Commission, especially relating to CASA changes and consistency between the Civil Aviation Safety Regulations and the award, or as drafting clarifications or suggestions to improve clarity of the award, or in direct response to Commission questions.

PN17

As we have both pilot and business owner members, AAAA can report it has no issues with the operation of the award over the last six years and consequently our submission is to not pursue any items we have raised as substantive items and we are comfortable withdrawing the issues standing in our name in terms of immediate consideration by the Commission, if it so pleases the Commission.

PN18

THE DEPUTY PRESIDENT: Yes, all right, thank you. Working sequentially through the items, does that mean that item 1 is no longer being pursued by any party? Yes?

PN19

MR HURST: Yes.

PN20

THE DEPUTY PRESIDENT: The same with item 2?

PN21

MR HURST: Yes.

PN22

THE DEPUTY PRESIDENT: All right. Item 3, Ms Bhatt?

PN23

MS BHATT: Item 3 is an error in cross-referencing that arises. It is my understanding that the change we proposed is agreed between the parties.

PN24

THE DEPUTY PRESIDENT: Is that the case?

PN25

MR LARKINS: That's correct from the AFAP.

PN26

THE DEPUTY PRESIDENT: Item 4 is no longer being pursued?

PN27

MR HURST: Correct.

PN28

THE DEPUTY PRESIDENT: Likewise with items 5 and 6?

PN29

MR LARKINS: Yes, your Honour.

PN30

THE DEPUTY PRESIDENT: Item 7, which concerns the definition of duty time is responsive to a question posed in the draft. There appears to be a difference between the AFAP and Qantas, so perhaps AFAP?

PN31

MR LARKINS: Yes, your Honour, we believe, in response to the question, we should reinstate the definition of duty time from the pre-reform award. We agree with the question that it would be of benefit to have that defined.

PN32

THE DEPUTY PRESIDENT: Sorry, you just dropped off.

PN33

MR LARKINS: Apologies. Yes, we agree with the question raised by the Commission that the definition of duty time should be as per the pre-reform award and it would be of benefit, in our view, to have that defined in the award.

PN34

THE DEPUTY PRESIDENT: Yes, all right. Qantas?

PN35

MS SRDANOVIC: Your Honour, we respectfully disagree with that. As your Honour pointed out - - -

PN36

THE DEPUTY PRESIDENT: You can just disagree, you don't have to be respectful about it.

PN37

MS SRDANOVIC: It was raised in response to a question asked by the Fair Work Commission and there is no definition of duty time in the award. We rely on our written submissions and I think it is relevant to note that the current award was the subject of extensive presentation between stakeholders, including the Qantas Group and AFAP, when the award was first made.

PN38

In our submission, the definition from the pre-reform award does not reflect the way in which modern airlines operate and it would not be appropriate for inclusion in a modern award.

PN39

Relevantly, when it comes to duty time, it can mean different things for different purposes and we would rely on the hours of work clause, days off and rest periods, which deal with how those things are to be dealt with by reference to a range of factors, including the CASA Regulations and any applicable fatigue risk management systems. We think to introduce a definition of duty time into the award would be introducing a concept which would be complicated and it would complicate the interpretation of the award given that "duty" can mean different things in different contexts. Relevant to note, for example, also that at an enterprise level, the Qantas Airways Limited Enterprise Agreement does not include a definition of duty time either for that type of reason.

PN40

To the extent that, in response to the question raised by the Commission, AFAP is now proposing that a definition of duty time be included along the lines of what was in the pre-reform award, we would see that as a substantive variation to the award and would propose that it be dealt with accordingly.

PN41

THE DEPUTY PRESIDENT: All right. I take it AiG supports the position of Qantas?

PN42

MS BHATT: We do.

PN43

THE DEPUTY PRESIDENT: Does the AFAP press the issue?

PN44

MR LARKINS: Yes, we do, your Honour, so it may be that it's appropriate to deal with it in a substantive hearing.

PN45

THE DEPUTY PRESIDENT: Yes, I will note that and have that issue carved out. There appears to be agreement on item 8; is that right?

PN46

MR LARKINS: Yes, your Honour.

PN47

THE DEPUTY PRESIDENT: Likewise with item 9?

PN48

MR LARKINS: Yes, your Honour.

PN49

THE DEPUTY PRESIDENT: Item 10, Ms Bhatt?

PN50

MS BHATT: Does the Commission have a copy of the exposure draft?

PN51

THE DEPUTY PRESIDENT: I do.

PN52

MS BHATT: If I can just speak to this issue because I understand that the AFAP does not agree with the submission we have put. Clause 4.1 of the exposure draft, which is the coverage clause, is not in the same terms as the current clause 4.1. It differs in two material ways. Firstly, this is, of course, an occupational award. Clause 4.1 of the exposure draft refers to the "Air Pilots Industry". The "Air Pilots Industry", that term is not defined in the exposure draft, so it's not clear to us what is meant by that and, in any event, it appears to disturb the manner in which the coverage of this instrument would operate.

PN53

Secondly, towards the end of clause 4.1, we see the words "to the exclusion of any other modern award". This is directly inconsistent with clause 4.2(a), which states that, in fact, an employee covered by an industry award that contains pilot classifications would not be covered by this award. That provision appears also in the current clause 4.2. We say that the redrafting of clause 4.1 potentially has the effect of substantively altering the coverage of the award and so the words that currently appear at clause 4.1 should simply be restored.

PN54

MR LARKINS: Your Honour, from the AFAP's point of view, I think an earlier version of the summary table may have stated that we disagreed with the AiG. We actually disagreed with the clause being amended. We actually agree with the submission made that the reference to "Air Pilots Industry" creates uncertainty and it's unclear, so we actually agree with the AiG submission.

PN55

THE DEPUTY PRESIDENT: The reference in the Summary of Issues to the AFAP not agreeing with the clause being amended is a reference to not amending the current version in the modern award?

PN56

MR LARKINS: That's right, your Honour.

PN57

THE DEPUTY PRESIDENT: So the parties agree that the current coverage clause should remain?

PN58

MS SRDANOVIC: Yes, your Honour, that is also the position of the Qantas Group.

PN59

THE DEPUTY PRESIDENT: Thank you for that. Do I take it that item 11 appears to be agreed?

PN60

MR LARKINS: Yes, your Honour, I think we're all in agreement on that.

PN61

THE DEPUTY PRESIDENT: When AiG says it does not oppose, is that the same as agreed?

PN62

MS BHATT: Yes.

PN63

THE DEPUTY PRESIDENT: Thank you for that.

PN64

MR LARKINS: Yes, your Honour, and there's two parts to that: 19.1(c) is added to the list and "An individual or" is removed from the items at 3.4 to 3.8.

PN65

THE DEPUTY PRESIDENT: Yes, I see that, thank you. Item 12 deals with an issue raised in the exposure draft.

PN66

MR LARKINS: Yes, your Honour, the AFAP support retaining the probationary period. We understand that, as a matter of law, it may not have a significant effect, but it is important that an award contains conditions that are clear for individuals and the pilots, and retaining what a probationary period is clearly defined, from our perspective, from an employee pilot picking that up, it is beneficial and, for that reason, we believe it should remain.

PN67

THE DEPUTY PRESIDENT: Qantas?

PN68

MS SRDANOVIC: Your Honour, we were comfortable with the deletion of the clause, but do accept that, as a matter of law, the Fair Work Act will obviously deal with minimum qualifying periods of employment.

PN69

THE DEPUTY PRESIDENT: Will the retention of the provision have any effect on the operation of the award?

PN70

MR LARKINS: I don't believe so.

PN71

THE DEPUTY PRESIDENT: It is ultimately a matter for the parties, but having a provision in an award which has no operative effect doesn't seem to me to make a lot of sense.

PN72

MS SRDANOVIC: It was for that reason that we were comfortable with the deletion of the clause.

PN73

MR LARKINS: The issue, your Honour, is that it may be understood to have no effect to people who understand the Fair Work Act and the operation of the qualifying periods, but people who are employed under the terms of this award may regularly be put under a probationary period of a longer period, and that's something that they wouldn't be aware necessarily is inconsistent with their rights under the Fair Work Act.

PN74

THE DEPUTY PRESIDENT: Is the provision intended to operate so as to prevent an employer who employs persons under the award from setting out in a contract of employment a longer period? Is that its intention?

PN75

MR LARKINS: That's right. So the contract would be unenforceable, but it is to prevent, yes, setting a longer period, a period greater than six months' probation period.

PN76

THE DEPUTY PRESIDENT: I suppose the question is whether or not a longer period constitutes a breach of the award might be a moot point and the contractual term, in and of itself, won't deprive an employee of any remedy they might have under the Fair Work Act in relation to a dismissal.

PN77

MR LARKINS: That's right, your Honour, but that is only if they are aware of that and if they may believe that it does. I mean, we've got instances of even regional airlines having probationary periods, for instance, that are only ended at the time you are notified by a chief pilot, for example, so it's effectively, in fact, an ill-defined period, there's no defined period, and unless that individual is aware that that's inconsistent with the Fair Work Act, if they are terminated under that probationary period, they may accept that, they may accept that that's lawful.

PN78

THE DEPUTY PRESIDENT: All right. Is Qantas going to die in a ditch if it remains?

PN79

MS SRDANOVIC: No, your Honour.

PN80



THE DEPUTY PRESIDENT: All right. Whilst the preferred position of Qantas is to remove it, it seems there is no opposition to it being retained. Item 13 is also responsive to issues raised in the draft. AFAP?

PN81

MR LARKINS: Yes, your Honour, our position, as set out, is we don't believe it's necessary to define "flying hour". However, we propose that a flight time definition, as per the pre-reform award, be included. As I understand it, I believe Qantas agree with this. I will obviously let them speak to that, but I understand their point in relation to having consistency between the Cabin Crew Award, but, from our perspective, including a definition of "flight time" would be beneficial.

PN82

THE DEPUTY PRESIDENT: Qantas propose that it be the same as in the Aircraft Cabin Crew Award?

PN83

MS SRDANOVIC: Yes, that's right, your Honour. We think it would be appropriate to have it included the same way for consistency purposes. I think the definitions aren't materially different and so, for that reason, it would be more appropriate to have a definition which does line up with the Aircraft Cabin Crew Award.

PN84

THE DEPUTY PRESIDENT: Is that a satisfactory proposal to the AFAP?

PN85

MR LARKINS: Apologies, we just want to see the Cabin Crew Award definition.

PN86

MS SRDANOVIC: If I can assist, the Cabin Crew Award - I am looking at the exposure draft, but I understand it is the same as the current award - defines block hour or flight hour as the time from engine start-up to engine shut-down.

PN87

MR LARKINS: From our perspective, we would prefer the definition as we proposed from the pre-reform award. There is a potential difference to do with the time at which an engine may or may not be turned on. What's relevant is that, in some instances, there's ground power units are used that may mean that the engines aren't actually started but they run on the auxiliary power, so that can vary. The reason, in my understanding from the pilots' industry, it is commonly understood that chocks on to chocks off is the relevant point at which you calculate flight time, so the introduction of engines on and engines off could create a dispute because it will depend on the nature of the operation as to when engines may be on or off; it is not as clearly defined. So, we would prefer that the pre-reform definition from the Pilots Award be included.

PN88

MS SRDANOVIC: Might we be able to take this particular issue off line and give consideration to what has just been raised by the AFAP and if we agree with

the definition being as per the pre-reform award, we can then advise the Commission accordingly?

PN89

THE DEPUTY PRESIDENT: Yes, and you might also give consideration to whether the corresponding definition in the other award be altered if you find that the AFAP proposal is an acceptable one to achieve the consistency that you seek.

PN90

MS SRDANOVIC: Yes, your Honour.

PN91

THE DEPUTY PRESIDENT: How long do you want?

PN92

MS SRDANOVIC: Your Honour, we are in the hands of the Commission with respect to any particular timetabling, but in the order of a couple of weeks, I think, should be sufficient time for us to be able to confer with the AFAP about this. Could we say three weeks, if that's a suitable timeframe?

PN93

THE DEPUTY PRESIDENT: A couple of weeks is two; three weeks is three.

PN94

MS SRDANOVIC: I was just conscious of that. If three weeks would be suitable, that would just allow us to have those discussions.

PN95

THE DEPUTY PRESIDENT: That's fine. If the parties confer and advise my Chambers as to the position on the proposed definition by close of business 3 March.

PN96

MS SRDANOVIC: Thank you, your Honour.

PN97

MR LARKINS: Thank you, your Honour. The next matter, your Honour, it's just a cross-referencing issue.

PN98

THE DEPUTY PRESIDENT: That appears to be agreed.

PN99

MS BHATT: Yes.

PN100

THE DEPUTY PRESIDENT: Yes, thank you. That's item 14. Item 15 is not being pursued?

PN101

MR HURST: Correct, your Honour.

PN102

THE DEPUTY PRESIDENT: Likewise with items 16 and 17.

PN103

MR HURST: Yes, your Honour.

PN104

THE DEPUTY PRESIDENT: And likewise items 18 through 20?

PN105

MR HURST: Yes, your Honour.

PN106

THE DEPUTY PRESIDENT: All right. Item 21 appears to be agreed?

PN107

MR LARKINS: That's right, your Honour.

PN108

THE DEPUTY PRESIDENT: Likewise with items 22 and 23?

PN109

MR LARKINS: Yes, your Honour.

PN110

THE DEPUTY PRESIDENT: Item 24?

PN111

MS SRDANOVIC: We understand that to also be agreed.

PN112

MR LARKINS: That's right, your Honour, we agree with what the AiG propose.

PN113

THE DEPUTY PRESIDENT: Yes. Item 25 likewise?

PN114

MS SRDANOVIC: Yes, your Honour.

PN115

MS BHATT: Yes.

PN116

THE DEPUTY PRESIDENT: Item 26 also?

PN117

MS BHATT: Yes.

PN118

MR LARKINS: Your Honour, we just wish to note - the AFAP just wishes to note - we agree with the changes. We found some additional references to the

incorrect spelling of "Beechcraft", which it's probably simplest, I suppose, if we put those to the Commission. It's the same issue but it's just simply a typo.

PN119

THE DEPUTY PRESIDENT: This is in schedule B also?

PN120

MR LARKINS: I think it's the table on - actually in schedule E we found a further reference, an incorrect spelling of Beechcraft.

PN121

THE DEPUTY PRESIDENT: Mr Miller, if you wouldn't mind just sending through a note.

PN122

MR MILLER: Yes.

PN123

THE DEPUTY PRESIDENT: Copied to the other parties, and we can rectify that.

PN124

MR MILLER: Yes, your Honour, no problem.

PN125

THE DEPUTY PRESIDENT: Thank you. Items 28 and 29. Sorry, item 28 is not being pursued. Item 29 is not being pursued. Likewise items 30 through 32. Item 3?

PN126

MR MILLER: Yes, your Honour, just in relation to item 33, it appears as though the comments that we made previously in relation to the exposure draft, the calculations may have been made prior to the publication of rates taking effect from 1 July 2016, I believe the rates now appear to have been amended.

PN127

THE DEPUTY PRESIDENT: All right. The issue identified has been rectified?

PN128

MR MILLER: As I understand, that is correct, your Honour.

PN129

THE DEPUTY PRESIDENT: Does any party have a different view?

PN130

MS BHATT: No, your Honour.

PN131

MS SRDANOVIC: No.

PN132

THE DEPUTY PRESIDENT: Thank you. Item 34?

PN133

MR MILLER: Yes, your Honour, just in relation to this particular item, our original submission, which we made on 30 June, included a reference in relation to including the amounts reflecting the wage-related allowances set out in schedule F for casual pilots. We believe that including those additions in schedule F as a separate line item, if you like, in the wages schedule would provide both clarity and assistance to both employers and employees in relation to casual rates and, overall, what a casual employee or casual pilot, who has an entitlement to particular additional allowances, is entitled to.

PN134

MS SRDANOVIC: Your Honour, from our perspective, we didn't consider it necessary to include, more so because the schedules are already quite long and detailed with respect to the various allowances and that it could make it quite unwieldy. That is our primary reason for not including the amounts. We consider it would be well understood from the face of the document itself and would just unnecessarily lengthen an already very lengthy award.

PN135

MS BHATT: That is also Ai Group's position.

PN136

THE DEPUTY PRESIDENT: All right. Does the AFAP press that issue?

PN137

MR MILLER: Yes, we do, your Honour. We often also, too, in the course of our dealings with employees, also have employers contacting us uncertain in relation to their obligations often regarding casual employees. We think that this would also provide clarity for them. We think in terms of, as I mentioned, ease of reference, and also just having a singular point of reference for all casual employees and the rates to which they are entitled and when they receive allowances would be beneficial to all parties.

PN138

THE DEPUTY PRESIDENT: Mr Miller, can I make this suggestion: given that the primary reason for the objection is necessity and the unwieldy nature of the final instrument, perhaps you might prepare an amended schedule containing the rates - the additional rates that you seek be set out there and circulate it to the parties and perhaps that might assist in a reconsideration by the employer parties.

PN139

MR MILLER: Yes, your Honour, I am happy to do that.

PN140

THE DEPUTY PRESIDENT: All right. Perhaps if I allow you the same period - until 3 March.

PN141

MR MILLER: Yes, your Honour, thank you.

PN142

THE DEPUTY PRESIDENT: Thank you.

PN143

MR LARKINS: Your Honour, item 35 was again just a typo. I don't believe there would be any objection to that, it was just a reference - - -

PN144

THE DEPUTY PRESIDENT: Yes, it's not controversial, is it?

PN145

MS SRDANOVIC: No, your Honour.

PN146

THE DEPUTY PRESIDENT: Item 36 is agreed?

PN147

MS SRDANOVIC: Yes, your Honour.

PN148

THE DEPUTY PRESIDENT: Item 37?

PN149

MR LARKINS: Yes, we agree, in response to the question raised by the Commission, that the applicable consumer price index figure would be included in the table.

PN150

THE DEPUTY PRESIDENT: Do other parties have a view?

PN151

MS SRDANOVIC: Your Honour, I understand that this concerns the aerial agricultural application and that's an area the Qantas Group does not have a relevant interest in, so we don't have a particular comment to make on that.

PN152

THE DEPUTY PRESIDENT: AiG?

PN153

MS BHATT: I don't have a submission to advance, Deputy President. It might be something that we give some further consideration to.

PN154

THE DEPUTY PRESIDENT: All right. Perhaps if AiG consult and advise my Chambers by 3 March as to its position on that issue.

PN155

MS BHATT: If it pleases.

PN156

THE DEPUTY PRESIDENT: That seems to conclude that award. One item is to be referred elsewhere. There are three matters, I think, that the parties will do some further work on and advise my Chambers by 3 March. I will have the table

revised and published on the website as soon as practicable. That concludes the conference so far as it concerns the Air Pilots Award and I thank the parties for their contributions.

PN157

MR LARKINS: Sorry, your Honour, there is just one further matter just in relation to the model annual leave clause. We understood there was - - -

PN158

THE DEPUTY PRESIDENT: Which clause number?

PN159

MR LARKINS: It was a submission, I believe, put in by the AiG opposing the inclusion of the model clause. We just wanted to understand whether that objection to the model clause is still pressed by the AiG. It is in regards to excessive annual leave and when you direct a party to take annual leave.

PN160

MS BHATT: Yes, I thank the union for raising that. We made a request to his Honour the President on 8 December that this matter be referred for discussion at the conference today. Deputy President, as you would be aware, there is a decision of a Full Bench of this Commission by virtue of which a model excessive leave provision has been implemented virtually across the entire modern awards system. When that decision was raised, Ai Group raised a concern regarding both of the awards that are before you today regarding the practical application of those clauses in the relevant industries or occupations given some of the operational requirements that arise.

PN161

We have had some discussions with our friends today who are appearing on behalf of Qantas and we have a proposed course of action which I might let Ms Srdanovic speak to.

PN162

THE DEPUTY PRESIDENT: Yes.

PN163

MS BHATT: But the short version is, yes, the concern we raised continues to be a concern.

PN164

THE DEPUTY PRESIDENT: All right.

PN165

MR LARKINS: Apologies. That part, just the last statement just dropped off.

PN166

MS BHATT: I'm so sorry. I only said that the concern that we have previously raised remains a concern, is the short version to your question.

PN167

MR LARKINS: I think the relevant - - -

PN168

THE DEPUTY PRESIDENT: I think Qantas was going to just outline the concerns.

PN169

MS SRDANOVIC: Yes, your Honour, I would be happy to outline our proposed response in respect of the excessive annual leave issue. That is this, that as a general proposition, accepting of the various Full Bench decisions with regards to including terms in a modern award which deal with excessive leave accruals. There are, however, some unique circumstances pertaining to both cabin crew and pilots under the respective modern awards which we think need to be dealt with. To that end, we would propose a way forward whereby the Qantas Group can formulate a draft clause which has regard to various factors for consideration by other stakeholders.

PN170

Those other factors, if I can list a few of them just to foreshadow where we will be coming from. Under both awards, the accruals are expressed to be 42 days, inclusive of Saturdays, Sundays and public holidays, so not your standard four weeks. There are also provisions at an enterprise level which will provide for bidding and rostering of annual leave in many situations and, to that end, we would want to give consideration to what is the appropriate safety net in respect of the amount of notice which is required to be given.

PN171

There are also provisions in both awards which deal with when annual leave can be taken. I refer here to the provisions which talk about normally annual leave being taken within 12 months from the date on which it falls due or within 15 months from the preceding period of leave, which appear in both awards at the moment.

PN172

The Aircraft Cabin Crew Award also deals with a shutdown term. The Qantas Group is conscious of the fact that many of these factors have already been the subject of detailed consideration by the Full Bench in the context of other modern awards such as the Black Coal Mining Industry Award, and that's why we would respectfully request a way forward whereby we can propose a clause which has regard to these factors and we can consult with other stakeholders, including Ai Group and AFAP, with a view to achieving an outcome which has regard to those factors.

PN173

THE DEPUTY PRESIDENT: Mr Miller?

PN174

MR MATTNER: Your Honour, Mr Mattner, if it please you.

PN175

THE DEPUTY PRESIDENT: Sorry, Mr Mattner.

PN176



MR MATTNER: That's fine. We would be prepared to consider a draft clause from the Qantas Group, obviously, but I just note in the submissions made to you that there was a reference to them seeking guidance from other parties and I am just wondering what timeframe that might entail.

PN177

MS SRDANOVIC: Your Honour, we would propose three or four weeks, subject to the Commission. Four weeks would allow us to be able to - - -

PN178

THE DEPUTY PRESIDENT: Does that mean five?

PN179

MS SRDANOVIC: No, it doesn't. I am conscious that this is an issue that has been going on for a long time before the Commission, so we can fit in with whatever course or timetable the Commission will see fit for this, but it is a complicated issue with respect to cabin crew and pilots and we would envisage a course whereby we can confer with Ai Group about the clause which we put forward and put on some submissions in support of that.

PN180

MR MATTNER: Your Honour, if I may, just directing a comment to the Qantas Group. Effectively, if I can characterise the model clause as two provisions: one, the right of the employer to direct employees to take leave; the second part relates to when an employee is in a situation of having excess leave, as defined within the model clause, and then can give notice to the employer after six months of being in that excess mode to take leave. Is it the second part of the clause that is giving concern to the Qantas Group or the first?

PN181

MS SRDANOVIC: It will be both and, in particular, just the way in which what is an excessive leave accrual given the way in which the quantum of leave is different to the standard four-week entitlement. It is both parts which we would be seeking to address.

PN182

MR MATTNER: If I may follow up, the quantum of leave, I appreciate it is expressed in a way that is different to most awards, but it's still effectively an annual entitlement. Four weeks is the norm in most awards, except for shift workers, which is five. All we are doing, effectively, is replacing the figure of four or five weeks with effectively 42 days. I'm not sure that I understand how that additional or more generous leave provision alters the way the clause should operate.

PN183

MS SRDANOVIC: I don't think they are insurmountable issues, it's just going to be a question of how it's represented in the clause, for example, rather than being expressed as a weekly accrual, whether we need to express it in days to reflect two years' worth of entitlements as opposed to one year's worth, but these are issues which we can give consideration to and formulate a draft clause and outline some submissions in support of that for consideration by AFAP and others.

PN184

MR LARKINS: I think the best course is that we set a timeframe for that, your Honour, and we can obviously review what the Qantas Group put forward.

PN185

THE DEPUTY PRESIDENT: If Qantas circulates a draft to the other parties as soon as practicable and then arranges for the parties to consult and confer about the issue. If an agreement can be reached, the parties can simply advise the Commission about the agreed position. If an agreement can't be reached, I propose to list this matter for a further conference on 10 March at 9.30. That gives you a four-week period.

PN186

MS SRDANOVIC: Thank you, your Honour.

PN187

MR MATTNER: Your Honour, Mr Mattner again. If I may just - one final matter?

PN188

THE DEPUTY PRESIDENT: Yes.

PN189

MR MATTNER: I draw your attention to the submissions of the Ai Group dated 7 December 2015, some time ago, but clause 75, the last clause of that particular submission, there was reference to the Ai Group taking the opportunity to make further relevant enquiries in order to assess whether the insertion of the model excessive leave provision in the above awards would, in fact, be problematic. I am just wondering whether the Ai Group has any further submissions to that point or whether they are, like us now, waiting potentially for a draft from the Qantas Group?

PN190

MS BHATT: We have undertaken some relevant consultation. We will continue to do so to the extent that it's relevant to the formulation of the draft clause with Qantas and our other members.

PN191

MR MATTNER: Sorry, you've just faded away a fraction.

PN192

MS BHATT: I'm sorry, I'll repeat that. Yes, we have undertaken some relevant consultation with Qantas and with other membership that is covered by these awards and that consultation has led us to the view that this is an issue that we are continuing to pursue.

PN193

MR MATTNER: Thank you.

PN194

MR LARKINS: Your Honour, the only final matter, I'll just confirm that there are  
- - -

PN195

THE DEPUTY PRESIDENT: This is the third final matter.

PN196

MR LARKINS: I apologise. My colleagues just wanted me to confirm that the two items in our submissions of 15 February, the parties are aware and the Commission is aware are listed for the substantive hearing? That is in relation to the schedule B.1.2, the classifications of minimum entitlements and the classifications of minimum salaries, so just confirming that they will be subject to the substantive hearing.

PN197

MS BHATT: Certainly we consider them to be substantive issues. To our knowledge, the matters are not yet the subject of any directions and haven't been set down for a hearing.

PN198

THE DEPUTY PRESIDENT: They are in the table of proposed substantive variations?

PN199

MS BHATT: They are, yes.

PN200

THE DEPUTY PRESIDENT: All right, there being no more final matters - - -

PN201

MR LARKINS: That's all, your Honour, thank you for your time.

PN202

THE DEPUTY PRESIDENT: The conference is adjourned and, if necessary, we will reconvene on 10 March. Thank you all. Those who have an interest in the next matter should remain. I am assuming the AFAP have no interest in the next matter.

PN203

MR LARKINS: Thank you, your Honour.

PN204

MS BHATT: Your Honour, may I raise one matter at the outset?

PN205

THE DEPUTY PRESIDENT: Yes?

PN206

MS BHATT: With regards to the excessive annual leave issue, the course of action proposed in respect to the Pilots Award - - -

PN207

THE DEPUTY PRESIDENT: Should be the same, yes.

PN208

MS BHATT: We can do the same with respect to the Cabin Crew Award.

PN209

THE DEPUTY PRESIDENT: Yes, I had assumed that to be the case, but thank you. Qantas propose a cabin crew manager definition?

PN210

MS SRDANOVIC: Yes, your Honour, this was in response to a question raised by the Commission as to whether or not a cabin crew supervisor definition should be inserted. The position is as stated in our written submissions there. I don't understand that to be contentious as between Qantas and Ai Group.

PN211

THE DEPUTY PRESIDENT: All right. The submission contains a proposed definition?

PN212

MS SRDANOVIC: Yes, your Honour.

PN213

THE DEPUTY PRESIDENT: I will note that as agreed, at least as between the parties represented.

PN214

MR MATTNER: Your Honour, Mr Mattner from the AFAP in Melbourne. I do apologise for interrupting the proceedings.

PN215

THE DEPUTY PRESIDENT: That's all right.

PN216

MR MATTNER: I just wanted to - - -

PN217

THE DEPUTY PRESIDENT: Is this a further, further final matter?

PN218

MR MATTNER: No, not at all, your Honour. I was just going to alert you to the fact that we are leaving the room now and there is no one else here, presumably, for this latter or later proceeding, so you may want to terminate the video conferencing facility.

PN219

THE DEPUTY PRESIDENT: Yes, all right, thank you for that.

PN220

MS SRDANOVIC: Apologies, your Honour, if I can just clarify with respect to item 1?

PN221

THE DEPUTY PRESIDENT: Yes.

PN222

MS SRDANOVIC: The question from the Fair Work Commission which arose at clause 2 of the exposure draft was whether a definition of cabin crew supervisor should be inserted.

PN223

THE DEPUTY PRESIDENT: Yes.

PN224

MS SRDANOVIC: It was to that which we in our submission said, no, a definition should not be inserted, and then it came up at clause 14.2 of the exposure draft.

PN225

THE DEPUTY PRESIDENT: Yes.

PN226

MS SRDANOVIC: There, where it says "cabin crew supervisor, narrow bodied aircraft, four or more crew", we proposed that that reference to "cabin crew supervisor" be replaced with "cabin crew manager".

PN227

THE DEPUTY PRESIDENT: Yes.

PN228

MS SRDANOVIC: Thereby using the same terminology with respect to cabin crew manager for wide-bodied aircraft.

PN229

MS BHATT: We agree with that proposal.

PN230

THE DEPUTY PRESIDENT: Yes. The parties agree with the proposal as contained in Qantas's submissions of 30 June 2016. All right. There appears to be agreement in relation to item 2?

PN231

MS SRDANOVIC: Yes.

PN232

MS BHATT: Yes, your Honour.

PN233

THE DEPUTY PRESIDENT: There now appears to be agreement with AiG's proposal in relation to item 3?

PN234

MS BHATT: Yes, your Honour.

PN235

THE DEPUTY PRESIDENT: Item 4?

PN236

MS BHATT: Ai Group's submission is withdrawn.

PN237

THE DEPUTY PRESIDENT: All right. Item 5?

PN238

MS BHATT: I understand that to be agreed.

PN239

THE DEPUTY PRESIDENT: Agreement that the clause should remain in item 6?

PN240

MS BHATT: Yes, your Honour, yes.

PN241

THE DEPUTY PRESIDENT: There is agreement on item 7?

PN242

MS BHATT: Yes.

PN243

MS SRDANOVIC: Yes.

PN244

THE DEPUTY PRESIDENT: And agreement on item 8?

PN245

MS SRDANOVIC: Yes.

PN246

MS BHATT: Yes, your Honour.

PN247

THE DEPUTY PRESIDENT: There are a number of matters which are on the proposed substantive list. There are no additional items to be added to that list. The issue of annual leave will be dealt with in the same manner as for the Air Pilots Award and, to that extent, if necessary, I will reconstitute this conference at 9.30 am on 10 March 2017. All right?

PN248

MS BHATT: Thank you, your Honour.

PN249

THE DEPUTY PRESIDENT: Any other matters?

PN250

MS SRDANOVIC: No.

PN251

MS BHATT: No.

PN252

THE DEPUTY PRESIDENT: Thank you all for your contributions. We will adjourn on that basis.

**ADJOURNED INDEFINITELY**

**[10.20 PM]**