



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER LEE

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2014/251)
Aged Care Award 2010**

Sydney

2.08 PM, FRIDAY, 16 DECEMBER 2016

PN1

THE COMMISSIONER: Okay. Item 1 is agreed subject to consistency. Is that right?

PN2

MS SVENDSEN: Yes.

PN3

THE COMMISSIONER: Yes, consistency there.

PN4

MS SVENDSEN: I think it's consistency with other awards as well.

PN5

THE COMMISSIONER: Yes. Okay. I will just record that as agreed, subject to consistency - know what that means. Item 2 is agreed, and what is agreed is the HSU proposal that (indistinct) leaving that aside (indistinct) in clause 4. So is it agreed to both parts of that? That is - okay. I just don't - It just seems inconsistent. So general - - -

PN6

MS SVENDSEN: It is.

PN7

MS BHATT: Well, it's inconsistent with what we just decided in SCHADS.

PN8

THE COMMISSIONER: Yes.

PN9

MS SVENDSEN: Well, consistent with what we agreed in SCHADS - - -

PN10

MS BHATT: It would all say in clause 2 and not in - - -

PN11

THE COMMISSIONER: (Indistinct) in 2 - - -

PN12

MS BHATT: - - - located elsewhere.

PN13

THE COMMISSIONER: - - - take it out of 4.

PN14

MS BHATT: Take it out of 4.

PN15

THE COMMISSIONER: It's agreed (indistinct) 4? And put in 4 too. Item 3.

PN16

MR LIGGINS: This is the same issue as 34 in some regards, and it's about all-purpose allowance. And we put the position, which wasn't necessarily supported by too many, that since the only all-purpose allowance in the award was leading hand, that it didn't need to be anywhere other than there because there is nowhere else that it is, so it made it simpler for us so that people weren't looking around for some other all-purpose allowance that wasn't there. But in the end we will go with what the majority wants. That's not a die in a ditch issue. I think the next most supported was to leave it in 18.2, wasn't it, at the beginning of the allowances?

PN17

MS BHATT: I think that's right. Our concern with - I think there might be two issues in item 3. One issue is where the definition appears. For our part we think the definition should be retained in clause 2, if for no other reason than the fact that the term "all purpose" is used in multiple parts of the award. For example, the term appears in the definition "award hourly rate" which appears in the definitions clause.

PN18

THE COMMISSIONER: Yes, so it's not - it's not that - "all purpose" is used more often than just "all-purpose allowance", which is only used once.

PN19

MS SVENDSEN: Yes.

PN20

MS BHATT: You will correct me if I'm mistaken, but I think that there's also then an issue which arises later in the summary table as well in relation to clause 18.2 of the exposure draft specifically.

PN21

THE COMMISSIONER: Yes, that's the one I was referring to.

PN22

MS BHATT: There's a separate sub-clause, 18.2(a), which effectively again tells us what the definition of all purposes is, and then tells us that the only all-purpose allowance in this award is the leading hand allowance. That's then followed by the leading hand allowance. And so I think there was a proposal put by at least one of the parties that those provisions can somehow be amalgamated or dealt with together, that they need not be set out separately.

PN23

MS SVENDSEN: It doesn't say it's the only one, it just says it is paid for all purposes under this award. Does it say it's the only one somewhere else?

PN24

MS BHATT: No.

PN25

MS SVENDSEN: It is, though.

PN26

THE COMMISSIONER: Yes.

PN27

UNIDENTIFIED SPEAKER: We're not (indistinct) discussion, are we?

PN28

MS SVENDSEN: We're not disputing it, no. No, I'm not, I'm just saying it just says that, "The leading hand allowance is paid for all purposes under this award."

PN29

MS PATTON: And then that language is also repeated nearly at 3, in 18.2(b)(iii):

PN30

This allowance will be part of salary for all purposes of this award.

PN31

MS SVENDSEN: That's a repetition of what's in the current award. I don't think we need all of those, any way, shape or form.

PN32

MS PATTON: That many times.

PN33

MS SVENDSEN: No.

PN34

MS PATTON: If there was to be a separate all purpose - like, if 18.2(a) was to continue to be included at Allowances it should be part of 18.1, really, shouldn't it? Shouldn't that be (a) and (b) instead of a part of - I mean, if you were going to - because 18.1 is an explanation; an all-purposes allowance at 18.2(a) is an explanation, so that would be the only part that you would repeat it in. But I tend to think that maybe it just should be in definitions. I'm not sure. I mean, you know, leading hand allowance has got:

PN35

This allowance will be part of salary for all purposes of this award -

PN36

already in it.

PN37

MS SVENDSEN: In some ways, then, you would think about deleting 18.2(a), keeping the definition in 2, and leaving that clause as it is from that point on, because then it's defined not twice - - -

PN38

MS PATTON: Yes, no re-numbering everything.

PN39

MS SVENDSEN: It's just that there's no other place for "all purposes" other than leading hand.

PN40

THE COMMISSIONER: Consensus?

PN41

MS PATTON: Did you say delete 18.2(a) and keep it in the definition?

PN42

THE COMMISSIONER: Delete 18.2(a) completely?

PN43

MS SVENDSEN: Yes.

PN44

MS PATTON: And leaving it only in definitions.

PN45

THE COMMISSIONER: And what's in the definitions is okay? No (indistinct).

PN46

MR ROBSON: Don't think so.

PN47

THE COMMISSIONER: I don't see the point of renumbering clause 18.

PN48

MR ROBSON: Yes.

PN49

MR LIGGINS: And that deals with issue 34.

PN50

THE COMMISSIONER: Pardon?

PN51

MR LIGGINS: That deals with our reference at 34 - point 34 of this document as well.

PN52

THE COMMISSIONER: Item 34?

PN53

MR LIGGINS: Yes. It's the same issue.

PN54

THE COMMISSIONER: Is it?

PN55

MR LIGGINS: Yes.

PN56

THE COMMISSIONER: Okay (indistinct).

PN57

MR LIGGINS: So we can withdraw that if you like.

PN58

THE COMMISSIONER: Yes, all right, I will just - it has been dealt with and it's agreed - dealt with under item 3. What about item 4?

PN59

MS BHATT: Item 44 [sic], there's agreement between the parties, but the definition of "casual ordinary hourly rate" in clause 2 should be deleted; that's because that term isn't used anywhere in the instrument.

PN60

THE COMMISSIONER: I will try and speak up. I'm not getting picked up by the tape. It's agreed that the definition of "casual ordinary hourly rate" will be deleted from the ED. Item 5, unresolved. Query was such a definition into there.

PN61

MS SVENDSEN: This goes to exactly the same issue that we discussed in SCHADS.

PN62

THE COMMISSIONER: Yes.

PN63

MS SVENDSEN: That is the rate of pay for the - the change from "their" to "the" or from "the employees" to "the".

PN64

MS BHATT: Can I just say, though, I think it might be easier to solve in this - - -

PN65

MS SVENDSEN: In this award because we don't have the issue around ERO.

PN66

MS BHATT: Yes. Can I propose a definition which is based on the terms of the definition in the exposure draft ordinary hourly rate. So the definition is as follows:

PN67

Minimum hourly rate means the hourly rate for the employee's classification specified in clause 17.

PN68

So it's the award-derived rate for your classification. And in this award, unlike the SCHADS award, there aren't specific pay points within each classification.

PN69

THE COMMISSIONER: (Indistinct) okay. So there would be a new insertion into the definition of minimum hourly rate and it would read, "Agreed to insert definition of minimum rate."

PN70

MR LIGGINS: Might have to pick up the trainees as well. We've got trainees in this one at schedule F.

PN71

THE COMMISSIONER: Are they referred to in 17?

PN72

MS PATTON: I think so.

PN73

MS BHATT: Apprentices are.

PN74

THE COMMISSIONER: Good. So (indistinct) apprentices, adult apprentices (indistinct)

PN75

MS SVENDSEN: All of the minimum rates are in 17.

PN76

MR LIGGINS: The trainees?

PN77

MS SVENDSEN: Yes, because they're referred to at - sorry, sorry, sorry - 17.10, and that's in training wage, skill-based apprentices, supported wage system is all down there.

PN78

MR LIGGINS: Where - okay.

PN79

MS SVENDSEN: It cross-references to those schedules, but I think that - - -

PN80

MR LIGGINS: The reference to 17 calls up F, so that's good enough.

PN81

MS SVENDSEN: Yes. 17 calls up F, so I think a reference to clause 17 would still call up the correct thing and would not need to be in any way adjusted.

PN82

MR LIGGINS: That's fine. Okay.

PN83

THE COMMISSIONER: So Minimum Hourly Rate means the ordinary hourly rate.

PN84

MS BHATT: It means the hourly rate - - -

PN85

THE COMMISSIONER: Means the hourly rate, yes.

PN86

MS BHATT: " - - - for the employee's classification as specified in clause 17.

PN87

THE COMMISSIONER: Item 6, similar issue to what we have earlier.

PN88

MS BHATT: Similar issue, but having reviewed the definition of "ordinary hourly rate" in the exposure draft, it already refers to the employee's classification.

PN89

MR LIGGINS: No, it doesn't matter if it refers to - no, it doesn't matter if it refers to - - -

PN90

MS SVENDSEN: Yes, I think the both - because AWU thought it was missing entirely, and I was damn sure it wasn't missing entirely.

PN91

THE COMMISSIONER: It's there.

PN92

MS SVENDSEN: It's there, and it does a lot.

PN93

MR ROBSON: I'm not sure we have an objection - have any issue to be pressed there.

PN94

MS SVENDSEN: No.

PN95

THE COMMISSIONER: Item 6 is a non-issue?

PN96

MR ROBSON: Yes.

PN97

MS SVENDSEN: Yes, it is. There's a note there about item 6, what's that? There's an inconsistency with schedule 3-1. We just should adopt schedule 2, the clause 2 definitions, as you proposed. Might as well check that off while we're here, shall we?

PN98

THE COMMISSIONER: Yes (indistinct) okay, yes. So the outcome is that the record is agreed that the existing ordinary hourly rate definition in the ED stay. And this also resolves 160.

PN99

MS BHATT: I'm sorry, Commissioner, I don't think that automatically resolves item 60.

PN100

THE COMMISSIONER: Yes.

PN101

MS BHATT: Item 60 requires, if there's agreement, that the definition of ordinary hourly rate that appears in the schedule is replaced with the definition that appears in clause 2. The terms are different.

PN102

THE COMMISSIONER: Right. Yes, okay. Okay. Yes, it's correctly described there in the summary under your - under AiG. Okay.

PN103

MS SVENDSEN: HSU withdraws its pressing again for item 7.

PN104

THE COMMISSIONER: Item 7.

PN105

MS SVENDSEN: No change. We withdraw again. No.

PN106

THE COMMISSIONER: Item 8; I've got agreed, but some dispute?

PN107

MS BHATT: I think that's right. The HSU has proposed the insertion of a reference to various clauses. Ai Group agrees that a reference to clause 16.2 and 22.3 should be inserted, but there's a dispute regarding the other clauses, which I can speak to.

PN108

MS SVENDSEN: Yes. I don't understand what the difference is about why - well, why those ones, but why any of the clauses that refer to agreements would not be included, if any of them are being included.

PN109

MS BHATT: The way we understand facilitative provisions to work - and I think this is consistent with what clause 7.1 says - is that where the award stipulates that something has to be done a certain way and there's an award provision that allows you to deviate from that by agreement - - -

PN110

THE COMMISSIONER: (indistinct).

PN111

MS BHATT: - - - then that is a facilitative provision; but if a provision simply provides for something to be done by agreement that is not otherwise regulated by the award, that's not necessarily a facilitative provision. In fact, we say that that's not a facilitative provision. So I think 14.3 - - -

PN112

THE COMMISSIONER: That's something that you're agreeing to do, it's not regulated.

PN113

MS BHATT: Yes.

PN114

THE COMMISSIONER: It's an empty space.

PN115

MS BHATT: Yes. You're not departing from something that's otherwise regulated in the award.

PN116

THE COMMISSIONER: You don't need anything in the award to facilitate that happening, you just do it, yes.

PN117

MS BHATT: Precisely. So clause 14.3, I assume you're referring specifically to 14.3(d):

PN118

The taking of an employee's ADO will be determined by mutual agreement between the employee and the employer.

PN119

We're not deviating from anything in the award that says otherwise. I'm probably not articulating this very well, I'm sorry.

PN120

THE COMMISSIONER: No, I understand what you're saying.

PN121

MS SVENDSEN: I sort of understand what you're saying. I think I don't agree with the premise that all of these clauses don't actually provide for that, so maybe that's more the position.

PN122

MS BHATT: If the award said, "ADOs must be taken on a specific day but you could do otherwise by agreement," that's facilitative - - -

PN123

MS SVENDSEN: I understand that provision.

PN124

THE COMMISSIONER: Yes.

PN125

MS SVENDSEN: But - yes. Look, I don't know that - I don't know that - I'm certainly not wedded to pressing it in the sense that I think it has to be there. I'm happy for it not to be there, but yes.

PN126

MS BHATT: And the other two, clauses 14.6 and 16.1, fall into the same category. So 16.1, for example, says that:

PN127

The meal break is to be taken at a mutually agreed time after commencing work.

PN128

THE COMMISSIONER: Yes.

PN129

MS BHATT: But the award doesn't in any way purport to regulate when that break would otherwise be. So our reasoning, or the logic that we've tried to adopt is the same in each of those three instances.

PN130

MS SVENDSEN: I'm not fussed either way. If you only want to have 16.2 and 22.3 in there, that's fine; although I think TOIL is a bit different, actually.

PN131

MS BHATT: Different in the sense that it's - - -

PN132

MS SVENDSEN: There's more than one position around TOIL. It's not just taking time off, it's also when time is taken off, and it's instead of overtime. So the whole clause itself is kind of facilitative in the sense that it provides for an option against overtime. I mean, it's facilitative against overtime, not internally facilitative, using your logic.

PN133

MS BHATT: But I think that for the reason you've articulated it is still a facilitative provision. The entire provision is facilitative because you're agreeing that overtime rates will not be paid for that time worked, so I think it is - we consider that a facilitative provision.

PN134

THE COMMISSIONER: Any further interjections on that one? So the outcome is agreement with AiG position, and that 16.2 and 22.3 will be added to the facilitative provision. Item 9.

PN135

MS BHATT: This is the same matter of - - -

PN136

THE COMMISSIONER: As this morning?

PN137

MS BHATT: - - - as this morning. I think it's a substantive issue.

PN138

MS SVENDSEN: And it can be dealt with in the same way.

PN139

MS BHATT: Yes.

PN140

MS SVENDSEN: If they want to press it as a substantive issue, then that's what needs to happen with it.

PN141

THE COMMISSIONER: "They" being the AWU?

PN142

MS SVENDSEN: AWU.

PN143

THE COMMISSIONER: Yes, so - - -

PN144

MS SVENDSEN: I don't disagree with the concerns, I just don't think it's the ED.

PN145

THE COMMISSIONER: So similar to this morning, general agreement is that there is no need to change the ED; AWU will advise if they seek to press. Yes. Item 10.

PN146

MS BHATT: I understand there to be agreement that the words "as such" be inserted after the word "engaged" in clause 11.1.

PN147

THE COMMISSIONER: Yes. Item 11, what's going on here?

PN148

MS BHATT: There was a question in the exposure draft as to whether the term "fixed-term employee" as it appears in clause 11.1 should be defined.

PN149

MS SVENDSEN: It's the same issue as the "relieving staff" matter - - -

PN150

MS BHATT: Similar issue.

PN151

THE COMMISSIONER: Yes.

PN152

MS SVENDSEN: Not referenced anywhere else in the award.

PN153

THE COMMISSIONER: So it's the only place that "fixed-term employee" pops up, yes, in 11.1.

PN154

MR ROBSON: We proposed a definition, but we don't press that.

PN155

THE COMMISSIONER: So we agree on terms of the parallel matter this morning that we just let the sleeping dog lie, as it were?

PN156

MS BHATT: Yes.

PN157

THE COMMISSIONER: Is that what we want to do with this?

PN158

MS BHATT: Yes.

PN159

MS SVENDSEN: That would be our position.

PN160

MR ROBSON: That's our position.

PN161

THE COMMISSIONER: Ms Svendsen?

PN162

MS SVENDSEN: It was - I'm fine whether it's deleted or it stays, really.

PN163

THE COMMISSIONER: And the answer is no - - -

PN164

MS BHATT: No change.

PN165

THE COMMISSIONER: There is no need for definition. No change needed to ED. Item 12.

PN166

MS BHATT: The AWU is proposing a change to the definition of casual employment in the exposure draft. This is not a matter that arises from the redrafting. These words that they're seeking to have removed appear in the current award. We've expressed some concern about there being an inconsistency with the minimum engagement period which we don't believe exists.

PN167

THE COMMISSIONER: I don't think it makes any sense, to be honest, because you've got this specific provision that deals with a minimum period of engagement.

PN168

MS BHATT: Yes.

PN169

THE COMMISSIONER: It's a misreading of what "employed on an hourly basis" means. You have to read it in context. I don't think it's an issue, but I just note for the purposes of today parties agree no need for change to ED. AWU to advise if press the claim. Item 13, AWU again, casual employment: casual loading is payable for all purposes.

PN170

MS BHATT: We would see that as a very substantive change to the award which, if its pressed, should not be dealt with through this process.

PN171

THE COMMISSIONER: HSU, United Voice; views?

PN172

MS SVENDSEN: I don't think it's an ED matter, anyway.

PN173

MR ROBSON: 20.3, I think settles this

PN174

Casuals will be paid in accordance 20.1. The rate prescribed in 20.1 will be in substitution for and not cumulative upon the casual loading prescribed in clause 11.2.

PN175

I don't think you can say "all purpose".

PN176

MS SVENDSEN: Yes.

PN177

THE COMMISSIONER: Agreed that AWU proposal not supported. Again, AWU to advise if they press. Item 14.

PN178

UNIDENTIFIED SPEAKER: I think there's agreement there.

PN179

THE COMMISSIONER: Agreement to include "and part-time between (indistinct) as per ABI (indistinct).

PN180

MS SVENDSEN: There's actually a change. The current clause says:

PN181

In addition, a loading of 25 per cent of that rate will be paid instead of the paid leave entitlements accrued by full-time employees.

PN182

MR ROBSON: Where's the change?

PN183

MS SVENDSEN: Including "accrued by full time and part-time employees" is what has been proposed.

PN184

MR ROBSON: Okay.

PN185

MS SVENDSEN: You could just do "paid leave entitlements".

PN186

MR ROBSON: Yes, "paid leave entitlements", I think - - -

PN187

MS SVENDSEN: Full stop.

PN188

MR ROBSON: Yes.

PN189

MS SVENDSEN: Delete "accrued by anybody".

PN190

MS BHATT: Or it can simply be left as it is.

PN191

MS SVENDSEN: Or it can simply be left as it is, but, I mean, I understand why you might put it in, but maybe just "accrued" is enough.

PN192

MR ROBSON: Yes. I mean, permanent employees are the only people who accrue.

PN193

THE COMMISSIONER: Permanent employees?

PN194

MR ROBSON: Yes.

PN195

THE COMMISSIONER: Is there a definition of permanent?

PN196

MS SVENDSEN: No, you wouldn't put permanent.

PN197

MR ROBSON: No. But I wouldn't put that in there, but I think, you know, that's the distinction, you would be saying they don't accrue leave.

PN198

THE COMMISSIONER: It's employees who aren't casual. No, but we don't want to do that either.

PN199

MR ROBSON: No.

PN200

THE COMMISSIONER: Look, you could do either. You could say full-time or part-time, or you could just - casual loading is paid (indistinct) paid leave entitlements, full stop.

PN201

MS BHATT: It was a proposal from one of the other employer associations. Our organisation's view is that there's no need to change the clause as it is.

PN202

THE COMMISSIONER: I don't know, because part-timers accrue - - -

PN203

MS SVENDSEN: Yes, but it's not a rate - it's not an issue about - - -

PN204

THE COMMISSIONER: Yes, but is it part-time for casual.

PN205

MS SVENDSEN: It's not an issue about who accrues what.

PN206

THE COMMISSIONER: By way of percentages.

PN207

MS SVENDSEN: If you're being paid casual rates - you're a part-timer and you're doing additional shifts and you're being paid casual rates, you don't accrue leave on those hours.

PN208

THE COMMISSIONER: I think you just put a full stop after "pay all entitlements", wouldn't you? Yes?

PN209

MS SVENDSEN: Yes.

PN210

MR LIGGINS: No difficulty with that.

PN211

THE COMMISSIONER: All right. So withdraw what I said earlier, it's agreed, and then (indistinct) ED to delete the words after "entitlements" - delete all words after the word (indistinct). Item 15.

PN212

MS SVENDSEN: There sort of seems to be agreement about - but not the - I don't have any problems with AiG's proposal to vary those words "in terms of any subsequent changes to the employee's classification" instead of "during their employment". I'm happy for that.

PN213

MS PATTON: Was your change just to separate (a) and (b) out from 12.2 as it's currently drafted?

PN214

MS SVENDSEN: I think so.

PN215

MS PATTON: Just for ease of reading, just to make sure I haven't missed anything.

PN216

MS SVENDSEN: I think so. Amendment to the clause is - yes:

PN217

Must provide written advice to employees of (a) their classification on commencement; and (b) any subsequent changes to the employee's classification.

PN218

Is what it would read.

PN219

MS PATTON: Yes.

PN220

UNIDENTIFIED SPEAKER: We agree.

PN221

MS SVENDSEN: Instead of the one - instead of the way 12.2 is written at the moment.

PN222

THE COMMISSIONER: So it's agreed to HSU proposal, but including - - -

PN223

MS SVENDSEN: The AiG words for 12.2(b).

PN224

THE COMMISSIONER: - - - AiG - yes. Is that accurate?

PN225

MS BHATT: Yes, Commissioner.

PN226

THE COMMISSIONER: Item 16.

PN227

MR ROBSON: I think this one is another substantive claim from the AWU.

PN228

MS BHATT: It relates to item 9. It seems to be very similar, if not the same issue, about the way hours of work are triggered in the award.

PN229

THE COMMISSIONER: Yes. Yes, I tended to agree with the AiG points on this. Is there a general view there's no need for the change, AWU to see if they want to - - -

PN230

MS SVENDSEN: Well, I think it's a general view that it's a substantive change if they want to pursue it anyway, and I do agree that I'm not sure that I fully understand what they're saying, so that would have to be fleshed out if they wanted to persist with it.

PN231

THE COMMISSIONER: Generally there's a lack of clarify, isn't there? Lack of clarity as to the need for change proposed by AWU. AWU to advise if they seek to press that claim. Item 17.

PN232

MS SVENDSEN: This isn't really significant, and I'm not sure whether either argument is really accurate, when I think about it. I think that - I mean, I think that you've got a good case to run either argument, but I'm not sure that it's really significant. It is located in the span of hours clause in other health and community-based awards, that's the only - that's probably the reason I even noticed it; and because the span of hours usually defines what a shift worker is as different from a day worker.

PN233

MS BHATT: I think the issue arises in the exposure draft because the shift work provisions - so the provisions that specify the shift worker rates - no longer appear with other provisions dealing with ordinary hours generally; it has been moved to another part of the instrument. I agree, really it's not the biggest issue.

PN234

MS SVENDSEN: Yes, but it's true of all the awards. I think the rate is at a different spot.

PN235

MS BHATT: Yes.

PN236

MS SVENDSEN: And I don't think it's that big an issue, so I'm really not that fussed about it. So if people are concerned about it moving, I don't think we should move it, it's just that that's where it is for the other awards, so I kind of saw it and said, "Oh, maybe it should be back there," but I'm not - I'm happy to withdraw it.

PN237

THE COMMISSIONER: HSU does not press for change.

PN238

MR ROBSON: 18, we don't press our claim.

PN239

THE COMMISSIONER: (Indistinct) does not press. Item 19 (indistinct) agreed, which is?

PN240

MS SVENDSEN: That is the issue around the roster consultation provisions for the concept of how a roster works generally that we talked about this morning with SCHADS as well; so that clause 30 concerns major structural change to rosters, not the change that happens between the employer and the employee this week.

PN241

THE COMMISSIONER: Yes. So the change agreed is for the exposure draft to be amended in 14.4 at clause (c) to delete the words "subject to clause 30".

PN242

MS SVENDSEN: Yes.

PN243

THE COMMISSIONER: (Indistinct) agreed to SACS I think, wasn't it?

PN244

MS SVENDSEN: And it's actually 14 - didn't you say 14.4(c)?

PN245

THE COMMISSIONER: Yes.

PN246

MS SVENDSEN: I think you might have.

PN247

THE COMMISSIONER: And item 20.

PN248

MS BHATT: Item 20, I think is agreed.

PN249

THE COMMISSIONER: Agreed, yes. Again, just to be clear, what is agreed, clause text - AiG position, clause text (indistinct) everyone agree on that?

PN250

MR ROBSON: Yes.

PN251

MS SVENDSEN: Yes. Agreed or not opposed. It goes to 61 minutes.

PN252

THE COMMISSIONER: I don't think it goes to any minutes.

PN253

MS SVENDSEN: No, I don't think it does either, but I think it's more important that - continuous with the shifts missing again.

PN254

THE COMMISSIONER: Item 21.

PN255

MS BHATT: If I can just speak to the substantive AiG issue. There was a submission we filed at the end of August at the President's direction regarding an issue that we've been raising across the board about the manner in which penalties, loadings and allowances have been expressed in the exposure drafts. When I say allowances, I don't mean allowances that compensate for specific disabilities, I mean shift work allowances.

PN256

THE COMMISSIONER: Yes.

PN257

MS BHATT: I understand from the President's remarks at the commencement of the hearing last week that they are anticipating a decision shortly regarding all group 3 awards and that this issue, being a general issue, may be dealt with in that decision. I wonder if there's merit in setting this matter to one side for now.

PN258

THE COMMISSIONER: Yes.

PN259

MS SVENDSEN: We don't agree with AiG's interpretation about what has been changed, so it's a good idea.

PN260

THE COMMISSIONER: HSU don't agree with AiG's interpretation on this matter. It's agreed to reconsider after group 3 Full Bench determination to consider that provides guidance on issue. Is that okay?

PN261

MS BHATT: Yes, Commissioner (indistinct).

PN262

THE COMMISSIONER: Item 22, not agreed. So sleepover must be rostered, 15.5 (indistinct) clause 22.8 (indistinct) that one.

PN263

MS BHATT: I think it's simply proposed that the word "or" that appears at the end of 15.5(a) - - -

PN264

MS SVENDSEN: Should be and/or.

PN265

MS BHATT: - - - be replaced with "and/or".

PN266

MS SVENDSEN: Yes.

PN267

THE COMMISSIONER: Right. That's clearly recorded there, yes. So there's agreement to the HSU proposal. Item 23, also got agreed, "must" be replaced with "may" (indistinct) in either of the two ways prescribed.

PN268

MS SVENDSEN: That one's not - - -

PN269

THE COMMISSIONER: Not agreed?

PN270

MS SVENDSEN: No.

PN271

THE COMMISSIONER: (Indistinct) opposes.

PN272

MS SVENDSEN: The clause currently reads (indistinct).

PN273

THE COMMISSIONER: (Indistinct) not (h) indistinct 2.57.07)

PN274

MS SVENDSEN: The problem is that the clause says "may be rostered" and then it says "and not otherwise" at the end.

PN275

MR ROBSON: The use of the word "may" loses the mandatory nature of "not otherwise".

PN276

MS BHATT: Can that be remedied by reinserting the words "and not otherwise"? I understand the effect that those words have; those words mean that if you're going to implement a sleepover - I'm sorry - if you're going to roster a sleepover it can only be done in one of those two ways.

PN277

MR ROBSON: Why can't we have "must"?

PN278

MS SVENDSEN: It can only be done in one of those two ways. Well, it's actually technically one of those - - -

PN279

MR ROBSON: Or both.

PN280

MS SVENDSEN: - - - three ways because it's - - -

PN281

MR ROBSON: Yes, and/or.

PN282

MS SVENDSEN: - - - before, after, and/or before and after. So it could be before or after or before and after, so it's - but it can't be rostered any other way.

PN283

MS BHATT: And we're not contending - - -

PN284

THE COMMISSIONER: You're not contesting that.

PN285

MS SVENDSEN: You're not contesting that.

PN286

MS BHATT: Can I just explain what our concern is? The word "literally" - clause 15.5 in the exposure draft creates an obligation for an employer to roster a sleepover. "A sleepover must be rostered".

PN287

THE COMMISSIONER: Okay. Well - - -

PN288

MS BHATT: And it must - - -

PN289

MS SVENDSEN: Do you really think - - -

PN290

THE COMMISSIONER: Yes, that's what it says, that's the controversy.

PN291

MS BHATT: That's what it says.

PN292

MS SVENDSEN: No, but - - -

PN293

MS BHATT: They're the words.

PN294

MR ROBSON: But that's what it says, "At the -

PN295

a sleepover may be rostered to commence immediately at the conclusion of the employee's shift and continuous with that shift and/or immediately prior to the employee's shift and continuous with that shift - - -

PN296

MS SVENDSEN: No, no, the point that Ruchi is making is that you have to have sleepovers, regardless.

PN297

THE COMMISSIONER: You would be happy with that (indistinct) wouldn't you?

PN298

MS SVENDSEN: That's conceptually what she's suggesting - - -

PN299

MR ROBSON: - - - sleepovers everywhere. Yes, come on over.

PN300

THE COMMISSIONER: I don't - - -

PN301

MS SVENDSEN: I don't think - I don't - I don't know that - I think that's kind of going - - -

PN302

MR ROBSON: That is what it says. It's correct - - -

PN303

MS SVENDSEN: No, I understand, but you can't read it without the rest of the award.

PN304

MR ROBSON: Yes, I think that's stretching black letter interpretation beyond anything that has ever been practiced in the industrial system.

PN305

(everyone talking)

PN306

MS SVENDSEN: So the beginning of 15 says - the beginning of 15 says:

PN307

Employees may, in addition to normal rostered shifts, be required to sleep over.

PN308

Now, I don't know that part-way through the shift - part-way through that clause, saying - I understand what you're saying, but I think I can - I don't think - I mean, that would imply that every time you use the word "must", that it's something you're required to do, regardless of anything else.

PN309

THE COMMISSIONER: Fascinating discussion, but I just want to (indistinct) really what you're sort of talking about is, you know, where a decision has been made to roster a sleepover, you must roster it in this way.

PN310

MS SVENDSEN: Yes.

PN311

THE COMMISSIONER: Happy with that?

PN312

MS SVENDSEN: Yes.

PN313

THE COMMISSIONER: I'm not saying that's the way you write it, but that's the effect of what you are contending for.

PN314

MS SVENDSEN: Yes.

PN315

THE COMMISSIONER: We all agree that that's what's meant.

PN316

MS SVENDSEN: Yes.

PN317

THE COMMISSIONER: So can anyone think of anything better than what I just said there, where - - -

PN318

MR ROBSON: Where a sleepover is rostered - - -

PN319

MS SVENDSEN: I think that's probably the answer. I think that reinserting the "and not otherwise" would make the clause really clunky. "Where a sleepover is rostered, it must be" - would be better.

PN320

MS PATTON: Unless, could you start - could you start (indistinct) "where a sleepover is rostered"?

PN321

THE COMMISSIONER: Yes.

PN322

MS PATTON: Sorry, did I just (indistinct) over here - - -

PN323

THE COMMISSIONER: There's an echo.

PN324

MR ROBSON: No, it's a brilliant idea.

PN325

MS PATTON: (Indistinct) missing still one - catch that bit about five.

PN326

THE COMMISSIONER: "Where a sleepover is rostered", we might - yes, the mod team will undoubtedly want to think of something else, but something close to that, but that's the idea. "Where a sleepover is rostered" replace "a sleepover must" - to replace "a sleepover must be rostered" in 15.5. Agreed?

PN327

MR LIGGINS: So what did you end up with, Commissioner? Sorry. "Where a sleepover is rostered"?

PN328

THE COMMISSIONER: So the words "a sleepover must be rostered" will be deleted.

PN329

MR LIGGINS: Yes.

PN330

THE COMMISSIONER: And instead we will have "where a sleepover is rostered - - -"

PN331

MS SVENDSEN: Must be - - -

PN332

THE COMMISSIONER: (indistinct).

PN333

MR LIGGINS: No, I think you need more - "it must be rostered" has to be there.

PN334

MS SVENDSEN: It must be rostered.

PN335

MR LIGGINS: Yes.

PN336

THE COMMISSIONER: "It must", so it makes - - -

PN337

MR LIGGINS: Comma?

PN338

MS SVENDSEN: Yes.

PN339

MR LIGGINS: It must be rostered - blah, blah, blah.

PN340

THE COMMISSIONER: Full colon. Yes, thanks. Item 24, agreed. Agreed to what? Breaks between shifts (indistinct) so the HSU position that everyone agrees with is that we should revert to the existing wording - - -

PN341

MS SVENDSEN: Can it be broken up, but the existing wording is different to the wording in the current - in the draft because it doesn't talk about after completion of the work or after a sleepover, and that's - - -

PN342

THE COMMISSIONER: They're the protective - - -

PN343

MS SVENDSEN: - - - when the break starts to apply from, not - - -

PN344

THE COMMISSIONER: Okay. We're all in agreement, so let's not spend too much time on it. So the - it is an unwieldy looking thing, the existing provision.

PN345

MS SVENDSEN: Yes, it is, and it does, and I don't have a difficulty with - that's what I say, I don't have a difficulty with it being - - -

PN346

THE COMMISSIONER: Restructuring it a bit.

PN347

MS SVENDSEN: - - - restructuring it, but the language needs to be - the words actually need to reflect the same - - -

PN348

THE COMMISSIONER: Agreed that words from "existing" 22.9(j) - - -

PN349

MS SVENDSEN: I'm not really that sure of that.

PN350

THE COMMISSIONER: - - - be retained.

PN351

MS SVENDSEN: Yes.

PN352

MS BHATT: Sorry, can I - I think that can be achieved by a very simple change to address this particular issue, but I know that there are some other issues about this clause that are dealt with separately.

PN353

MS SVENDSEN: Yes.

PN354

MS BHATT: 15.7(a)(i), if it were to read as follows - - -

PN355

MS SVENDSEN: Sorry, with - - -

PN356

MS BHATT: Sorry.

PN357

MS SVENDSEN: Which one?

PN358

MS BHATT: 15.7(a) - - -

PN359

THE COMMISSIONER: 15.7(a)(i).

PN360

MS BHATT: - - - of the exposure draft - - -

PN361

THE COMMISSIONER: Which starts with, "Release the employee."

PN362

MS BHATT: (Reads)

PN363

Release the employee after the completion of such work until the employee has had at least eight consecutive hours off duty.

PN364

I think the difficulty is the use of the word "sleepover" in that clause.

PN365

THE COMMISSIONER: And delete the word "sleepover".

PN366

MS BHATT: Yes.

PN367

THE COMMISSIONER: And then continue, "Until the employee has had at least eight consecutive hours off duty."

PN368

MS BHATT: That remains as is, yes.

PN369

MS SVENDSEN: Yes.

PN370

MR LIGGINS: Am I reading 15.7(a) correctly, that it says, "Do not received?"

PN371

MS SVENDSEN: Yes, typo - - -

PN372

THE COMMISSIONER: Item 25. Right, good - - -

PN373

MS SVENDSEN: While we're on it, in the following line, Commissioner - sorry.

PN374

THE COMMISSIONER: - - - and "received" to "receive" - - -

PN375

MS BHATT: "Of" to "off".

PN376

MS SVENDSEN: "Of duty" instead of "off duty".

PN377

THE COMMISSIONER: Okay. So where are you at on that, Ms Svendsen - - -

PN378

MS SVENDSEN: No, I agree with - I think that - - -

PN379

THE COMMISSIONER: - - - at all, at least on a without prejudice basis from your point of view?

PN380

MS SVENDSEN: Yes.

PN381

THE COMMISSIONER: All right. So ignore the "agree that words from existing 22.9(j) be retained", and instead agree to add "completion of such work" in substitution for the word "sleepover" in 15.7(a)(i). All done (indistinct) on that. Item 25.

PN382

MS BHATT: Those are the two typographical errors that you just identified earlier, Commissioner.

PN383

THE COMMISSIONER: Yes, so agreed to AiG proposal to correct typos. Item 26.

PN384

MS SVENDSEN: 26, we agree with AiG.

PN385

THE COMMISSIONER: It's also agreed, yes. Item 26 (indistinct) agreed on this. AiG are happy with wording change - another one of these ones. Nothing from HSU or UV on this? You're all okay with - - -

PN386

MS SVENDSEN: Yes, we actually agree that AiG is correct.

PN387

THE COMMISSIONER: Propose to revert the wording back to original form. So can I just be absolutely clear about what we're doing here. 16.9 - - -

PN388

MS BHATT: So the proposal, Commissioner, is to replace the words "between 30 and 60 minutes" - - -

PN389

MS SVENDSEN: - - - with "not less than 30 and not more than 60".

PN390

THE COMMISSIONER: With - - -

PN391

MS SVENDSEN: "Not less than 30 minutes and not more than 60 minutes."

PN392

THE COMMISSIONER: Item 28, my notes are "can probably agree to (indistinct).

PN393

MS BHATT: I think the HSU are seeking the insertion of that before the preamble, similar to what we saw in the SACS award this morning, which Ai Group doesn't have any difficulty with if we can take a similar approach, and that is to insert the words "full-time employee" in brackets under the weekly rate.

PN394

THE COMMISSIONER: In the heading, yes.

PN395

UNIDENTIFIED SPEAKER: We don't have a problem with that.

PN396

THE COMMISSIONER: Presumably okay with, yes. So agreement to HSU proposal, including addition to heading in (indistinct) full-time employee, wasn't it, in brackets.

PN397

MS BHATT: Yes, Commissioner.

PN398

THE COMMISSIONER: And in 17 point - yes. Item 29.

PN399

MS BHATT: I can just speak to item 29 briefly. Clause 17.4(d) of the exposure draft relates to adult apprentices, but we say to not all adult apprentices, and that's quite clear in the way the provision has been drafted in the current award. This issue arises because the provision in the current award has been disaggregated into two clauses. It's no longer clear that (d) only relates to the circumstances described in (c). I think this could be remedied by inserting the following words at the start of sub-clause (d) - - -

PN400

THE COMMISSIONER: Which starts with, "For the purpose only of," yes.

PN401

MS BHATT: Yes. If it instead started with, "Where clause 17.4(c) applies" - comma - - -

PN402

THE COMMISSIONER: "Where clause 17.4(c) applies."

PN403

MS BHATT: And then the rest remains as is.

PN404

THE COMMISSIONER: Seems straightforward. Thank you. Agree to insert the words "where clause 17.4(c) applies" to the start of clause 17.4(d). Nothing further? Item 30.

PN405

MS BHATT: Item 30 is about the insertion of a new heading at clause 17.5(f). The issue is only this: the heading says, "Attendance at block-release training," so clauses (1) and (2) relate to training but are not confined to block-release training, and sub-clause (3) doesn't relate to training at all, so we simply say: heading is not necessary, delete it, and renumber (i) (ii) and (iii) as (f), (g), (h), which is how they appear in the current award.

PN406

THE COMMISSIONER: (g), (h), (i) (indistinct) if we get rid of that heading - - -

PN407

MS BHATT: I'm sorry, Commissioner. If we get rid of the heading (i) would become (f) - - -

PN408

THE COMMISSIONER: I see, yes; (g), (h), got it. Thoughts?

PN409

MS SVENDSEN: I'm just trying to pull it up again. This is (indistinct) disappeared on me. Doesn't it create - what about - sorry, let's rephrase this. What about AWU's concern that while the heading is inaccurate it creates some concerns about the rest of it? Do you think your proposal deals with that, Ruchi?

PN410

MR ROBSON: I certainly think there's some value to having that clause structured the way it is, and I agree that the heading is wrong, but I think we could get a correct name of it, and I think that might preserve some of the readability that's put into the clause by that structure.

PN411

MS BHATT: Or an alternate might be to amend the heading there so it says, "Attendance at training," so we delete the words "block release"; (i) and (ii)

remain as is, (iii) is renumbered (g) because it has nothing to do with attendance at training.

PN412

MS SVENDSEN: It doesn't. Yes, maybe that's better.

PN413

THE COMMISSIONER: So delete the words "block release" from heading as (indistinct) 17.5(f) renumber - (i) and (ii) stay as is, yes.

PN414

MS SVENDSEN: Yes.

PN415

THE COMMISSIONER: Stay as is; renumber 17.5(f)(iii) as 17.5(g).

PN416

MS BHATT: Yes.

PN417

THE COMMISSIONER: All done on that?

PN418

MS BHATT: Item 31 is agreed, it's just an error in cross-referencing.

PN419

THE COMMISSIONER: Yes, so HSU position is agreed. Item 32.

PN420

MS BHATT: I think is also agreed.

PN421

THE COMMISSIONER: (Indistinct) HSU proposal. Item 73 I've got possibly agree. So HSU say (indistinct).

PN422

MS SVENDSEN: I'm happy with retaining, rather than changing the wording.

PN423

MS BHATT: So if 17.7 were replaced with the current clause 27.

PN424

THE COMMISSIONER: So all of 17.7(a) and (b) will be replaced with 27.1 in the existing award.

PN425

MS BHATT: Yes.

PN426

THE COMMISSIONER: Item 34.

PN427

MS BHATT: Item 34, we've dealt with (indistinct).

PN428

THE COMMISSIONER: Yes, the web site. Item 35, disagreed. AiG living allowance (indistinct) includes "denote".

PN429

MS SVENDSEN: I just think "denote" is a bad unused word, but - - -

PN430

THE COMMISSIONER: What does it mean, denote?

PN431

MS SVENDSEN: Spells it out, I suppose.

PN432

MS BHATT: "Is indicative of or suggests." I appreciate that there may be some discomfort with retaining that word from the Commission's perspective. What if we were to replace the word "include" as it is in the exposure draft with "contemplate"?

PN433

MR ROBSON: I think that's almost worse than "denote".

PN434

MS BHATT: I don't think "denote" and "inferred" mean the same thing. I'm concerned that they don't.

PN435

THE COMMISSIONER: Where's the existing clause that (indistinct) from?

PN436

MS BHATT: (indistinct).

PN437

THE COMMISSIONER: Sorry?

PN438

MS PATTON: (Indistinct) 15.3(a).

PN439

THE COMMISSIONER: "Denotes" (indistinct) a good word (indistinct) the dictionary's definition, denotes is:

PN440

To be a mark or a sign of; indicate; be a name or a designation for; to represent by symbol; or stand as a symbol for.

PN441

Certainly I'm not sure any classification does that.

PN442

MS SVENDSEN: Hold on.

PN443

THE COMMISSIONER: I quite like the exposure draft clause.

PN444

MS SVENDSEN: So do I. I think it makes it - makes more sense, is the thing - is really, at the end of the day, the issue that I (indistinct).

PN445

MS BHATT: But we're concerned that it amounts to a substantive change, and may result in the payment of the allowance where it's not otherwise payable. So, I mean, I'm still trying to think through this, but if we were to look at the classification structure in the award, a level 6 employee, for example:

PN446

An employee at this level is responsible for work performed with a substantial level of accountability and responsibility.

PN447

THE COMMISSIONER: Yes.

PN448

MS BHATT: It's not clear to me that that reference to "work" is confined to the work of that employee. I think that applies to work performed by others too. I think it's arguable that that classification denotes supervisory responsibility, but perhaps doesn't expressly include supervisory responsibility.

PN449

THE COMMISSIONER: Okay, but maybe it's about the reference to classification. We all know - we're all - again, it's one of those ones we all have the common view that if you are a supervisor, then you don't get this. This is for someone who doesn't supervise - - -

PN450

MS SVENDSEN: And who is placed in charge.

PN451

THE COMMISSIONER: - - - and then gets to - then has to do it, yes.

PN452

MS SVENDSEN: That's right.

PN453

THE COMMISSIONER: For a person who is genuinely stepping up in the ordinary language.

PN454

MR ROBSON: Would you say that in - sorry, this is just a question - would you say an aged care employee level 5 would receive leading hand allowance?

PN455

MS BHATT: I'm not sure. I did think about that, but I don't know.

PN456

MR ROBSON: I suppose what I'm - I suppose what I don't know is where exactly we have classifications where people would - you know, the supervisory duties would fall into that classification starts.

PN457

MR LIGGINS: Well, 5 specifically says "supervise others", "assists with the supervision", so it clearly does.

PN458

MR ROBSON: Yes.

PN459

MR LIGGINS: The classification above it doesn't clearly - - -

PN460

MR ROBSON: Doesn't say anything about supervision.

PN461

MR LIGGINS: No, but clearly it's above a 5, and it's likely to be the - sort of second in charge in the whole place.

PN462

THE COMMISSIONER: The issue is actually with the word "classification" as opposed to what they're actually - so you're worried about - I can see where you're going, so the literal - you know, you could then run an argument saying, "Well, there's nothing in the classification about supervisory responsibility, despite the fact it's perfectly obvious that they are supervising people.

PN463

MS BHATT: Yes.

PN464

THE COMMISSIONER: Okay. There must be a way around that.

PN465

MR ROBSON: I suppose even at level 7 there are people on that list who may not have supervisory duties. The interpreter "qualified" may not necessarily be a specialist type - - -

PN466

MS SVENDSEN: And it's the same at level 2. They're not going to get many leading hand (indistinct) tradesperson advanced.

PN467

THE COMMISSIONER: Look, I think let's park that, and let me record what - you know, the problem we're trying to resolve (indistinct) change from "denote" will expand the - will have the effect of expanding the entitlement to leading hand allowance where the classification does not expressly refer to supervisory responsibilities. Is that a fair summary?

PN468

UNIDENTIFIED SPEAKER: Yes (general consent).

PN469

THE COMMISSIONER: Parties agree that it's not intended; agree that that's - agree that it is not intended to do so, but more work required on drafting to resolve concern. That will do on that for now. Is that okay?

PN470

UNIDENTIFIED SPEAKER: Yes (general consent).

PN471

THE COMMISSIONER: All right. 36.

PN472

MS BHATT: It's withdrawn. The submission is withdrawn.

PN473

THE COMMISSIONER: Right. AiG withdraws proposal on item 36. Item 37.

PN474

MS BHATT: Can I just deal with it firstly. The submission will be withdrawn, but I just want to explain the basis for that because this is an issue that will likely arise for us in other awards, and the answer there might be different. Our organisation holds a view that at least in some circumstances where an allowance is expressed as payable per hour or part thereof, that the words "part thereof" imply a pro rata-ing of sorts.

PN475

Now, that becomes very important when that allowance is of a large quantum, which it may be in some awards. We've had another look since our submission was drafted at the nature of the allowances where that arises in this award and the quantum, and we no longer hold the view that the redrafting amounts to a substantive change, and so on that basis we don't press our submission here.

PN476

THE COMMISSIONER: AiG withdraws the proposal, now has view that redrafting is not a substantive change within the context of this particular award. Is that okay?

PN477

MS BHATT: Yes, thank you, Commissioner.

PN478

THE COMMISSIONER: Item 38.

PN479

MS BHATT: I think it's agreed, at least between Ai Group and the AWU, that the clause be varied as they've proposed.

PN480

MS SVENDSEN: We don't object.

PN481

THE COMMISSIONER: Where it says in the notes, "To be replaced by the final sentence of 15.5(a)," is that from the original award?

PN482

MS SVENDSEN: Yes.

PN483

THE COMMISSIONER: That thing.

PN484

MS BHATT: I think - - -

PN485

THE COMMISSIONER: The 0.05 per cent.

PN486

MS BHATT: No, Commissioner. Can I - I think the issue can be resolved in this way: 18.2(c)(ii), after \$2.25, so at the very end, we simply insert the words, "For work performed in any week."

PN487

MR ROBSON: I think we could agree to that.

PN488

THE COMMISSIONER: Agreed?

PN489

MR ROBSON: Yes.

PN490

THE COMMISSIONER: Agreed to add the words, "For work performed in any week," at 18.2(c)(ii) (indistinct)

PN491

MS BHATT: So I think if the United Voice proposal were adopted, that resolves the matter that we raised as well.

PN492

THE COMMISSIONER: Yes, so you support the United Voice position. All okay with that?

PN493

UNIDENTIFIED SPEAKER: Yes (general consent).

PN494

THE COMMISSIONER: 40.

PN495

MS BHATT: I think 40 is agreed, but simply that the words that are contained that are in italics should be deleted. It seems to repeat what's in the previous clause.

PN496

THE COMMISSIONER: Okay. Item 41.

PN497

MS BHATT: Item 41 is withdrawn on the same basis as item 37, that issue about the words "part thereof".

PN498

THE COMMISSIONER: Yes. They are to be withdrawn same basis as item 37. Item 42.

PN499

MS BHATT: There are two issues here. Can I deal with the second issue first.

PN500

THE COMMISSIONER: Yes.

PN501

MS BHATT: It's that same issue about part thereof; we will withdraw that again on the same basis. The first issue, though, the laundry allowance at sub-clause 4 is now expressed to apply in all circumstances, it would appear. That's not true in the current award. We say that the laundry allowance is only payable where an employer chooses not to provide the uniform to the employee.

PN502

So if I can take two steps back. 18.3(a)(i) and (ii) require that the employer must provide - must supply the uniform; and then must launder and maintain. The employer is not granted any discretion to not launder the uniform in those circumstances, and if they didn't they would be in breach of the award.

PN503

THE COMMISSIONER: Yes.

PN504

MS BHATT: The sub-clause (iii) says: well, you can choose not to provide it, and if you do that you have to pay an allowance; and if we were to go to the current award it would be clear that it's only in those circumstances that you have to pay the laundry allowance.

PN505

THE COMMISSIONER: Sure.

PN506

MS BHATT: Laundry allowance can't be payable where the employer - - -

PN507

THE COMMISSIONER: Has given you a uniform.

PN508

MS BHATT: The circumstances would not arise. So it's for that reason - this issue arises because the provisions have been disaggregated in the exposure draft.

PN509

THE COMMISSIONER: Yes.

PN510

MS BHATT: I think what was proposed is that at the start of the laundry allowance clause, if we were to insert the words - - -

PN511

THE COMMISSIONER: In (iv).

PN512

MS BHATT: Yes. If we were to insert the words:

PN513

Where clause 18.3(a)(iii) applies, and where such employees' uniforms are not laundered by or at the expense of the employer -

PN514

and then the remainder of the provision will remain as is.

PN515

MS SVENDSEN: I actually think there's a problem with that, not in the technical - I read what you're saying, but I actually think there's a problem with that in terms of what the actions are in the sector. People provide uniforms and don't launder them, they provide a laundry allowance. And I think historically that's actually what it said quite clearly, that if you - that you had to provide and maintain them or you paid a uniform allowance; and if you didn't launder, you paid a laundry allowance.

PN516

So the alternative was both - to the provision and laundering; the alternative was a uniform allowance and/or a laundry allowance. So you could not provide them and launder them and not pay the laundry allowance, or you could not provide them and not launder them and pay both. And I think that if you actually did that, it would create enormous problems because there are people who provide uniforms and don't launder them. In fact, that's becoming more the norm than the other way around - - -

PN517

THE COMMISSIONER: (Indistinct) pay the allowance - - -

PN518

MS SVENDSEN: Yes. The sector would actually be in strife if that was - if we enforced that reading of the Aged Care Award on its current - - -

PN519

MR ROBSON: Yes, I think our branch's views would be a bit harder to find an employer who was laundering the uniforms than some who wasn't.

PN520

MS SVENDSEN: Yes.

PN521

MS BHATT: Well, I wonder if we can deal with this matter in this way, that we - Ai Group, along with other employer interests - give consideration to whether it would be appropriate to amend 18.3(a) such that it reflects and ability to pay the laundry allowance; but I say that on a without prejudice basis.

PN522

THE COMMISSIONER: Yes. Share the view of HSU in terms of practical reality - - -

PN523

MR LIGGINS: What's actually going on in the field.

PN524

THE COMMISSIONER: - - - out there in the workplace.

PN525

MR LIGGINS: Yes, you put this out there (indistinct) they won't thank you.

PN526

THE COMMISSIONER: No? Okay. So the first point is that AiG withdraw the "part thereof" issue; however, on the second issue of - we will call it the application of the laundry allowance - AiG and other employers to consider - what words would you like me to (indistinct 3.41.45) will go up on the web site?

PN527

MS BHATT: Well, I think we can say, "Will consider a possible variation to clause 18.3(a)," but we can say nothing further.

PN528

THE COMMISSIONER: Yes. 18.3(a). We will say, "To resolve their concern." Item 43. "Not less than" should be re-inserted into (indistinct) quantum. Everyone agrees with HSU's proposal. Item 44. I've got a note, "Replace with 15.7(b)." I don't know why I've written that.

PN529

MS SVENDSEN: The issue around this is the same issue - I presume it's the same person doing it - that you might not be entitled to the reimbursement at all, rather than the matter that exceeds the amount of agreed reimbursement.

PN530

THE COMMISSIONER: Yes. So AiG, the note is, does not oppose HSU proposal that seeks to substitute provisional current clause 15.7(c). That's still the position?

PN531

MS BHATT: Yes.

PN532

THE COMMISSIONER: Yes. And you're okay with that? Yes. So HSU proposal agreed subject to wholesale agreement with AiG proposal to substitute

ED provision with clause 15.7(c) of current award. Everyone on board with this? United Voice says (indistinct) refer to 20.2 (indistinct).

PN533

MR ROBSON: No, we don't press that.

PN534

MS BHATT: It should refer to clause 20.1 and - - -

PN535

THE COMMISSIONER: - - - 20.2. So (indistinct) clause 20.1 and 20.2.

PN536

MS BHATT: Yes, Commissioner.

PN537

THE COMMISSIONER: And do we need to amend that further in the second sentence?

PN538

MS BHATT: No.

PN539

THE COMMISSIONER: Why not?

PN540

MS BHATT: Because it's simply referring to the rates, and the rates are only contained in clause 20.1.

PN541

THE COMMISSIONER: They're not in 20.2.

PN542

MS BHATT: No.

PN543

THE COMMISSIONER: Got you. Are you all good with that?

PN544

UNIDENTIFIED SPEAKER: Yes.

PN545

THE COMMISSIONER: 46.

PN546

MS BHATT: I think there are a number of issues that have been raised about clause 21 - - -

PN547

MS SVENDSEN: Yes, because it's poorly re-worded. It is just - I mean, to change from "commencing at and before", it - - -

PN548

MR LIGGINS: Yes.

PN549

MS SVENDSEN: "- - - between 10 am and 12.59 pm" is daft.

PN550

MR LIGGINS: Absolutely, yes.

PN551

MS SVENDSEN: And anyway, it's wrong. But it's just unnecessary variation, and I think most of us prefer the current words, don't we?

PN552

MR LIGGINS: I think so, yes.

PN553

MS BHATT: So if 21.2 of the exposure draft were replaced with clause 26.1, does that address the various concerns?

PN554

THE COMMISSIONER: Including (a), (b), (c) and (d) - provision (d)?

PN555

UNIDENTIFIED SPEAKER: Yes.

PN556

THE COMMISSIONER: And you haven't any problems with this provision in the field?

PN557

MS BHATT: It has been here for so long.

PN558

MR LIGGINS: No, not at all.

PN559

MS SVENDSEN: Can you get that expression in the transcript?

PN560

THE COMMISSIONER: On-board with that?

PN561

MS SVENDSEN: Yes.

PN562

THE COMMISSIONER: Okay, so it's agreed to delete - that's all of the 1.2?

PN563

MS BHATT: Yes, sub-clauses (a) and (b).

PN564

THE COMMISSIONER: Yes. (Indistinct) and substitute clause 26.1 - - -

PN565

MS SVENDSEN: 26.1 in its entirety.

PN566

THE COMMISSIONER: - - - (a) and (b), yes.

PN567

MS SVENDSEN: I don't know that there's a - I just have to ask this - the standard way of doing this in the EDs has been replacing "10 per cent" to "110 per cent of the ordinary hourly rate", so "10 per cent allowance" with "110 per cent of the ordinary hourly rate", which is what each of these are expressed as. We don't have a problem with retaining that version of expression instead of the current award version of expression, but I don't know what other people think about it.

PN568

MS BHATT: Well, we might - we probably do, which is what that General submission we filed in August was all about.

PN569

MS SVENDSEN: Okay. I'm happy for it just to go back to 26.1, and if the other things are going to be argued out because it's the way they're going to be done before, then it will apply in this award anyway.

PN570

MS BHATT: Exactly.

PN571

THE COMMISSIONER: Well, that's true, yes. We can spend a lot of time debating those things, but - - -

PN572

MS SVENDSEN: Yes, but it's - - -

PN573

THE COMMISSIONER: - - - other things - - -

PN574

MS SVENDSEN: A decision will be made and we will be subject to it.

PN575

THE COMMISSIONER: You will nod - - -

PN576

MS SVENDSEN: You will nod - - -

PN577

THE COMMISSIONER: - - - difference.

PN578

MS SVENDSEN: Yes.

PN579

THE COMMISSIONER: Okay. Item 46, so 47.

PN580

MS BHATT: Item 47 is that - it's another reference to that general submission we filed in August, so I think that too can be put to one side for now.

PN581

THE COMMISSIONER: Yes. Pending the group 3 Full Bench, is that the same - you think there might be something based on - yes. Item 48, I've got a tick.

PN582

MR BHATT: Agreed

PN583

THE COMMISSIONER: Okay. HSU suggestion agreed to. Item 49.

PN584

MS BHATT: Item 49, I think there's agreement between the parties identified in this document (indistinct) I think this concern arose in the award this morning too. The overtime clause no longer makes clear that the rates there prescribed are payable only during overtime. So what we've proposed is this - it's not set out in the summary document - but if clause 22.2(a) started with, "Full-time worked by a" - and then it continued - "part-time or casual employee."

PN585

THE COMMISSIONER: Which was agreed this morning.

PN586

MS BHATT: Yes.

PN587

THE COMMISSIONER: Are you okay with that again?

PN588

(No audible response).

PN589

THE COMMISSIONER: Insert the words, "Full time worked by a part time or casual employee." So it's at the start of 22.2(a).

PN590

MS BHATT: And also sub-clause (b).

PN591

THE COMMISSIONER: And (b).

PN592

MR ROBSON: Do you need to change "who works more" to, say, something like "over 38 hours"? Because I think at that time, "All time worked by a part-time employee who works more than 38 hours per week will be paid at the following rates." I think that would suggest that once - - -

PN593

MS BHATT: Yes. Yes, you're right. What if you were to say this, "All time worked by a part-time or casual employee in excess of 38 hours per week," so you're right, that's the second part of the amendment that needs to be made.

PN594

MR ROBSON: Yes.

PN595

THE COMMISSIONER: Where's in "in excess of"?

PN596

MS BHATT: So if we replace the words "who work more than" with "in excess of".

PN597

THE COMMISSIONER: Okay.

PN598

MR ROBSON: That's right.

PN599

THE COMMISSIONER: And that's only in (a), or is in (b)?

PN600

MS BHATT: And in (b).

PN601

THE COMMISSIONER: Yes. Just "works more than", not who did it - who works more than?

PN602

MS BHATT: Part-time or casual employee - - -

PN603

MS SVENDSEN: " - - - who works in excess of" or "who works in excess of".

PN604

THE COMMISSIONER: Works in excess of.

PN605

MR ROBSON: It's just the words "work - - - "

PN606

MS BHATT: The rate attaches to the time, so if we're looking at (b) I think it should say, "All time worked by a part-time or casual employee which exceeds 10 hours per day."

PN607

MS SVENDSEN: Well, yes, that's another way of doing it.

PN608

MS BHATT: Sorry, I mustn't have heard what you said.

PN609

MS SVENDSEN: Yes. No, we've worked a couple of ways around this. The intent is that anybody who's a part-time or a casual worker gets paid for hours in excess of 38 per week or 76 per fortnight - blah; or who works for the hours in excess of 10 per day get paid blah; that doesn't quite say it, so that's what we're trying to say. There are several ways of saying that.

PN610

THE COMMISSIONER: So it's "all time worked" at the start; delete "who works more than" and replace that with "in excess of"; so, "All time worked by part-time or casual employee in excess of 38 hours per week or 76 hours per fortnight will be paid at the following rates."

PN611

MS BHATT: Will be.

PN612

MS SVENDSEN: Yes.

PN613

THE COMMISSIONER: Yes, that's what you wanted.

PN614

MS BHATT: Yes, that's right.

PN615

THE COMMISSIONER: Yes, okay. Item 50.

PN616

MS SVENDSEN: I'm not sure whether this is agreed. The rest period after overtime clause in the current award refers to the start and end of ordinary hours on any one day or shift.

PN617

MS BHATT: Or shift.

PN618

MS SVENDSEN: The reference to "shift" has now disappeared, and in other awards we've ended up having an argument as to how the clause applies where you have a shift that ends and a new shift starts on the same day.

PN619

THE COMMISSIONER: Yes.

PN620

MS SVENDSEN: So we think that those should just be put back in to make clear that it applies to the start and end of shifts.

PN621

MS BHATT: Rest period after overtime is different to work, so it's actually not the end of the shift, it's the end of the overtime that the rest period starts from, and they have to have had 10 consecutive hours off, regardless of when their next shift starts, whether it's the next day or not. I'm not actually looking at the words to try and figure out whether it says it or not, I'm just saying this is what the clause is. The idea is that if you're working overtime, before you start work again, you have to have had 10 hours off, and if you don't - - -

PN622

THE COMMISSIONER: You have to push back the start time.

PN623

MS BHATT: - - - you either push back the start time so you get 10 hours off and get paid as normal, or you get paid double time until you are released from work for 10 hours.

PN624

THE COMMISSIONER: To get your 10 hours, yes.

PN625

MR ROBSON: I think in 22.4(a) there are two references to "day". The first one, "If a full-time employee works so much overtime between the end of ordinary hours on one day and the start of ordinary hours on the next day" - - -

PN626

MS SVENDSEN: It might be on the same day.

PN627

MR ROBSON: Yes, they could be on the same day, so I think we agree with the AiG.

PN628

MS BHATT: So it should just say "on one day or shift and the start of ordinary hours on the next day or shift".

PN629

MR LIGGINS: Does the actual day have any relevance?

PN630

MS SVENDSEN: I don't think the day does.

PN631

MR LIGGINS: Because it's the 10 hours before the start of the next shift.

PN632

MS SVENDSEN: It's 10 hours before the start of the shift. And because you're dealing with 24-hour, the issue is therefore the shift, as opposed to anything else. So my view is that "day" is superfluous, so that it should - maybe you just replace it with "shift".

PN633

THE COMMISSIONER: I would tend to agree, unless there's something that I haven't considered.

PN634

MS SVENDSEN: Is it just worth looking at the ordinary hours of - - -

PN635

THE COMMISSIONER: That's the practical effect.

PN636

MS SVENDSEN: That's the practical effect. If you could tell me why it might not be - Ruchi, you're looking very concerned about that proposal - I'm more than happy to think about it, but yes - - -

PN637

THE COMMISSIONER: Happy to listen - - -

PN638

MS SVENDSEN: - - - I actually don't think it - I don't think it practically has an impact because the issue is 10 hours off, not whether there's another day involved.

PN639

MR ROBSON: And I think actually a reference to "shift" rather than "day", it achieves what you were trying to do while still preserving the additional simplicity that we've got in this clause.

PN640

THE COMMISSIONER: I don't understand - yes, and I don't understand what the "ordinary hours" is doing in there because we're talking about to - - -

PN641

MS SVENDSEN: We are - - -

PN642

THE COMMISSIONER: - - - which is not ordinary hours.

PN643

MS SVENDSEN: It's not ordinary hours, you're quite right, so it's - - -

PN644

THE COMMISSIONER: So that actually doesn't make any sense.

PN645

MS SVENDSEN: - - - so much - - -

PN646

THE COMMISSIONER: So it doesn't matter that you - you actually don't - you're not counting it from the end of ordinary hours, you're counting it from where you stopped working.

PN647

MS SVENDSEN: Yes. And there are - particularly people who do double shifts and stuff, which they do, backing one on the other, then you're not talking anything approximating ordinary hours. I'm not quite sure how you would read - I think it's probably if a full or part-time employee works so much overtime - - -

PN648

MR ROBSON: The reference to ordinary hours there is it's overtime worked in a gap between two rostered periods of work.

PN649

MS SVENDSEN: Yes, I think it is, but I'm not sure that it says that.

PN650

MR ROBSON: I don't think it says that in the new drafting.

PN651

MS BHATT: I think it does at (i) because it then says that you must release the employee after the end of overtime until the employee has had at least 10 consecutive hours off duty. I think that means that after the overtime finishes they must have 10 hours off.

PN652

THE COMMISSIONER: Yes, and I'm sure that's what - that would surely be the idea of that provision.

PN653

MS BHATT: It is.

PN654

MS SVENDSEN: So (i) achieves that outcome.

PN655

THE COMMISSIONER: But the reference to ordinary hours in (a) is odd.

PN656

MS BHATT: But I think that - I think what Mr Robson has just said is right, that the reference to ordinary hours is there to make it clear that it's overtime worked between two shifts that constitute ordinary hours.

PN657

MR ROBSON: Yes.

PN658

MS SVENDSEN: Yes, but it doesn't have to be, you see.

PN659

MR LIGGINS: You could have a person - - -

PN660

MS SVENDSEN: They actually could be working - - -

PN661

MR LIGGINS: 11th day.

PN662

MS SVENDSEN: - - - two overtime shifts, or even - - -

PN663

MR LIGGINS: If you worked - you could work an 11th day in the fortnight, and that would be OT because you're working on your RDO.

PN664

MS SVENDSEN: Yes.

PN665

MR LIGGINS: But there are no ordinary hours attached to that, so that could be an eight-hour break between the end of that and the other, because we're not talking about an extension of their ordinary hours that they worked on that day, that whole shift on that day is overtime because of where it is, so it does have a distinction in being - these are rostered shifts where you work ordinary time, and because of overtime working beyond that, that's why the extra amount of time is given. But you could work - - -

PN666

MS SVENDSEN: It does reflect - - -

PN667

MR LIGGINS: - - - on a weekend if you were Monday to Friday and it would be an OT shift with no ordinary time attached.

PN668

MS SVENDSEN: It actually - the wording in the current clause is "so much overtime between the termination of the ordinary work", it actually doesn't say ordinary hours - which doesn't have a definition, if we're worried about that - "on any day or shift and the commencement of their ordinary work on the next day or shift." It says "day or shift", that's the first thing, but it also refers to "work", not "hours".

PN669

And that - while it's not defined, it doesn't really matter - but that's actually probably better than using "ordinary hours" because "ordinary hours" actually has a specific meaning under the award.

PN670

MR ROBSON: We could actually - I think we're using the - I think that we've got a concept here where there's an unnecessary concept in this clause, which is:

PN671

Who works so much overtime between the termination of their ordinary work and the commencement of their ordinary work on the next day.

PN672

I mean, really, the issue here is it's an entitlement to a rest period if we work so much overtime that you do not have a break of at least 10 consecutive hours before you start work the next day.

PN673

THE COMMISSIONER: Yes, but there's also (indistinct) it might be that you've - because you've got averaging of hours, you're rostered a lot of ordinary hours as well as the second scenario.

PN674

MR ROBSON: Yes.

PN675

MR LIGGINS: I think you get the 10 because it's often an unexpected extension beyond your ordinary shift; whereas on a day where you're asked to work an additional day, which would have been your rostered day off, you get paid OT, but you know you're working that amount of time that day, so it's not an unexpected extension. I think the 10 hours' entitlement is because of the necessarily unexpected extension beyond what your normal shift roster would have had you working.

PN676

MS SVENDSEN: Actually, I think it had its genesis in an attempt to stop too much double-shifting, Geoff, but I - - -

PN677

MR LIGGINS: I like my rational better than your - - -

PN678

MS SVENDSEN: I know, but it - go with it.

PN679

THE COMMISSIONER: So do we want "day" or "shift" or just "shift" and leave the rest alone?

PN680

MS SVENDSEN: Well, I actually, having re-looked at it and not necessarily happy with "ordinary hours" because I think that has a different implication in this award. I'm not sure. It says "ordinary work" in the current clause.

PN681

MR ROBSON: Do we want to delete the reference to "hours", say "work" there?

PN682

THE COMMISSIONER: This is too complicated to do on the run, so we just need - basically I think, to take it forward, someone can volunteer or you can all have a go at it, whatever you like, and have some discussions, but I think you need to look at some other proposals.

PN683

MS BHATT: Can we deal with items 50, 51 and 52 on that basis; they all relate to that clause.

PN684

THE COMMISSIONER: Yes. Now, I was going to propose - I've got to go at 4.30, so (indistinct) just go as far as (indistinct) okay?

PN685

UNIDENTIFIED SPEAKER: Yes, Commissioner (general consent).

PN686

THE COMMISSIONER: - - - jump across (indistinct) I know there's a lot of (indistinct) up the back.

PN687

UNIDENTIFIED SPEAKER: Yes, right at the back.

PN688

THE COMMISSIONER: But let's just see how we go. Basically anything that's not easy now, we will just park, because we will just (indistinct) made lots of progress, so. So 50, 51 and 52 are not resolved, and the parties to further consider those issues. 53.

PN689

MS SVENDSEN: I don't know that I understand (indistinct) in the last line.

PN690

MS BHATT: "They are so recalled", is that the words that were missing in (a)?

PN691

UNIDENTIFIED SPEAKER: Yes.

PN692

MS SVENDSEN: Why is "for each time they are recalled" different "for each time they are so recalled"?

PN693

MS BHATT: Because at the start of clause 22.5(a) it prescribes specific circumstances in which an employee might be recalled, and the minimum four-hour payment applies only in those circumstances, not in other circumstances that the employee might be recalled. So if you - - -

PN694

MS SVENDSEN: But this only deals with those circumstances, so - - -

PN695

MR ROBSON: The appropriate - you know, the minimum engagement applies to an employee recalled to work overtime after leaving the employer's premises. You couldn't - I'm not sure anyone could argue - - -

PN696

THE COMMISSIONER: Do you care, though?

PN697

MR ROBSON: Actually - - -

PN698

MS SVENDSEN: No, but it seems to be unnecessary words, and they're the things that we've been trying to get rid of. We keep copping it if we add things back in like that. And I - I mean, principally I just don't understand that it makes any difference, but no, do I care? No.

PN699

THE COMMISSIONER: HSU and UV do not object to the word "so" being re-inserted to 22.5(a). 54.

PN700

MS BHATT: We fear that this is going to fall into - if I can call it this - the too-hard basket.

PN701

UNIDENTIFIED SPEAKER: (indistinct).

PN702

THE COMMISSIONER: Okay. Not resolved. Parties to further consider. Item 55.

PN703

MS BHATT: That's agreed.

PN704

THE COMMISSIONER: (Indistinct) agreed (indistinct).

PN705

MR ROBSON: 56 is also - relates to our discussion about a similar clause this morning in the SCADS award - community service (indistinct).

PN706

MS SVENDSEN: Yes.

PN707

MR ROBSON: Which (indistinct) I think agreed then was too hard.

PN708

THE COMMISSIONER: Yes, THB. We let someone else deal with it.

PN709

MS SVENDSEN: I like THB.

PN710

THE COMMISSIONER: Not resolved; parties to further consider. 56. 57 cross-references (indistinct)

PN711

MS SVENDSEN: It's not significant. If people don't want to do it, it's fine. I think we're just of the view that it's not necessary.

PN712

THE COMMISSIONER: HSU withdraws proposal. Item 58.

PN713

MS BHATT: That's withdrawn.

PN714

THE COMMISSIONER: AiG withdraws proposal. Item 59.

PN715

MS SVENDSEN: I'm not sure, but we're close - - -

PN716

MS BHATT: - - - agrees anyway.

PN717

MS SVENDSEN: Sorry, 59?

PN718

MS BHATT: I don't think that's correct, that we disagree, but that doesn't matter. I've got agree.

PN719

THE COMMISSIONER: You think you do agree with it?

PN720

MS BHATT: Yes.

PN721

THE COMMISSIONER: We will just put that in the "parties to further consider", so can you have a closer look at that.

PN722

MS SVENDSEN: Yes.

PN723

THE COMMISSIONER: To be resolved at this stage. Item 60.

PN724

MS BHATT: 60, we dealt with earlier.

PN725

THE COMMISSIONER: Yes, and agreed as part of item 6. Thank you. Item 61 (indistinct) correction. That's agreed.

PN726

MS SVENDSEN: Yes, that's agreed (indistinct) there's a note that it will be amended.

PN727

THE COMMISSIONER: Item 62 has got a tick.

PN728

MS BHATT: Item 62 is resolved because we've decided to replace the shift work rates clause with the current clause, so the titles in the schedule will now match.

PN729

MS SVENDSEN: And I've got 64 as related. Yes, it is, it's the same.

PN730

MS BHATT: Same.

PN731

MS SVENDSEN: So is that all of those? 63 as well?

PN732

MS BHATT: No, I think 63 is a different issue.

PN733

MS SVENDSEN: No, that's a different rate. No, it's a rate issue. 62 and 64 are the same.

PN734

MS PATTON: 63 matches back with the last one, doesn't it, 61?

PN735

MS SVENDSEN: 63, yes, matches back with 61 as being incorrect, and it has got "draft to be amended".

PN736

THE COMMISSIONER: Item 63 is agreed.

PN737

MS SVENDSEN: Ditto 65.

PN738

THE COMMISSIONER: Item 64 is the same as item 62.

PN739

MS SVENDSEN: Same issue.

PN740

THE COMMISSIONER: In the sense it's resolved on the same basis.

PN741

MS SVENDSEN: Yes, resolved on the same basis.

PN742

THE COMMISSIONER: Can I just get the words right in 62; resolved (indistinct) shift work clause with current clause so (indistinct) the essence of it. Item 64 resolved on same basis as 62.

PN743

UNIDENTIFIED SPEAKER: And 66 too.

PN744

THE COMMISSIONER: Sorry, 65, what's the story there? That's agreed, is it?

PN745

MR ROBSON: Yes. And 66 is agreed as well.

PN746

MS SVENDSEN: It goes back to the shift descriptors.

PN747

THE COMMISSIONER: Yes. 67 is agreed as per AiG submission.

PN748

MS BHATT: Yes. 68 is withdrawn.

PN749

THE COMMISSIONER: 69 is just a comment to the request. The comment simply apply to the question (indistinct) great work, everyone (indistinct).

OFF THE RECORD

[4.16 PM]

ON THE RECORD

[4.16 PM]

PN750

THE COMMISSIONER: - - - outline this morning, which is I will have these notes typed up and circulated. They will be circulated as draft notes and they will be published on the web site, and (indistinct) period of time till - some time in early January will be given for people to simply reply and say whether or not the draft notes accurately reflect the discussion from today; and once that's done, the (indistinct) team will do their thing and we will meet again.

PN751

Now, what I didn't do this morning but largely the parties are all still here, is talk about when we're going to meet again, because we all need to do that.

PN752

MR ROBSON: Might, before we move on to that, with the draft notes, I'm going on leave today and I won't be back until the 18th. We won't have an industrial officer available till 16 January to check anything, so if we could please be able to deal with this - - -

PN753

THE COMMISSIONER: Have until the 17th to reply.

PN754

MR ROBSON: Yes, or perhaps the 19th so that the person who is here can actually check it.

PN755

THE COMMISSIONER: Well, look, you could have until the 20th, but suffice to say that the world will move on (indistinct) will start - they will start working on what's there on the basis that (indistinct) okay. If there are vigorous objections

emerge, well then we will obviously deal with that. But when, realistically, can people get back together? I'm asking myself that question. When are - people are having some holidays. I would say the week of the 23rd (indistinct).

PN756

MS SVENDSEN: I'm already in Sydney on the 23rd for the Pharmacy Award again. Plain language this time.

PN757

THE COMMISSIONER: We're into February for me. I've got a shocking January. I can do 6 February, Monday. Sound good?

PN758

UNIDENTIFIED SPEAKER: Yes, it does.

PN759

THE COMMISSIONER: So we will do the same thing again (indistinct) SACS Award in the morning, Aged Care in the afternoon, 6 February. But we shouldn't have to go as long, I would imagine, given the progress we've made.

PN760

MS SVENDSEN: Do you mean we can start at 10?

PN761

THE COMMISSIONER: We will start at 9.30. All right. We will do it up here again (indistinct) most convenient to the parties. Excellent.

ADJOURNED UNTIL MONDAY, 06 FEBRUARY 2017

[4.20 PM]