



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**VICE PRESIDENT WATSON  
DEPUTY PRESIDENT GOOLEY  
COMMISSIONER SPENCER**

**AM2015/1**

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

**Four yearly review of modern awards  
(AM2015/1)  
Family and domestic violence clause**

**Melbourne**

**10.12 AM, FRIDAY, 18 NOVEMBER 2016**

**Continued from 17/11/2016**

PN2229

VICE PRESIDENT WATSON: Mr Ferguson? Ms Burke? Who is calling the next witness?

PN2230

MS BURKE: I am.

PN2231

VICE PRESIDENT WATSON: Ms Burke.

PN2232

MS BURKE: The next witness and the last witness to be cross-examined being called by the ACTU is Ms Catherine Ludo McFerran. I call Ms McFerran.

PN2233

THE ASSOCIATE: Please state your full name and address.

PN2234

MS MCFERRAN: Catherine Ludo McFerran (address supplied).

**<CATHERINE LUDO MCFERRAN, AFFIRMED [10.13 AM]**

**EXAMINATION-IN-CHIEF BY MS BURKE [10.13 AM]**

PN2235

VICE PRESIDENT WATSON: Thank you. Please be seated?---Thank you.

PN2236

MS BURKE: Ms McFerran, could you please repeat your full name for the Commission?---Catherine Ludo McFerran.

PN2237

And your address?---(Address supplied)

PN2238

And your occupation?---I am an affiliate at the Women & Work Research Group, University of Sydney Business School.

PN2239

Thank you. And have you prepared a report for the purposes of this proceeding?---Yes.

PN2240

Can I ask you to look at the folder in front of you? There is a tab with your name on it?---Yes.

\*\*\* CATHERINE LUDO MCFERRAN

XN MS BURKE

PN2241

If you can just turn the first page. Is that document in front of you a document headed Statement of Ms Ludo McFerran and it's dated 31 May 2016, and it's nine paragraphs?---Yes.

PN2242

And in that statement at paragraph 5 there's a reference to LM1, which is your resume?---Yes.

PN2243

At paragraph 6 there's a reference to LM2 which is a copy of a letter of instructions from the Australian Council Trade Union?---Yes.

PN2244

And at paragraph 7 I'll just ask you to make some adjustments. There should be a pen with you there in the witness box?---Yes.

PN2245

Currently there's a reference to two reports. As explained to the Commission yesterday the ACTU now only relies on one of those reports. So, Ms McFerran, if you could please cross out the word "two", fourth word in there?---Mm.

PN2246

Amend that report to be singular?---Mm.

PN2247

And then following on, "A copy of", the text should read "that report is attached to this statement"?---So, sorry, can I just clarify?

PN2248

Yes?---"I subsequently prepared one report".

PN2249

Yes?---That's fine, yes.

PN2250

And if you could just turn the page there and confirm that those annexures 1, 2 and 3 are in the folder behind that yellow dividing paper? And there I think you have your report?---Yes.

PN2251

That's expert report of Ludo McFerran, Family and Domestic Violence in the Workplace?---Yes.

PN2252

Yes. And I understand you wish to make some corrections to that report?---Yes.

PN2253

Can I take you first to paragraph 5.8 which is on page 7?---Yes.

\*\*\* CATHERINE LUDO MCFERRAN

XN MS BURKE

PN2254

The second dot point there where you say the majority of workers who had experienced domestic violence, 59 per cent, is that statistic and that finding, is that taken from a different report to the 2011 report referred to in the bulk of 5.8?---It is. It is, it's taken from the 2013 survey we conducted.

PN2255

And so should the correct citation be, and I'll just read this for the benefit of the transcript, the authors are McFerran, Cortis, C-o-r-t-i-s and Trijbetz, T-r-i-j-b-e-t-z. The title of the paper is Domestic and Family Violence Causes in your Workplace Implementation and Good Practice, and it has been published by the University of New South Wales, and the page reference for that citation is page 7. And just for my friends, who are informed about this correction, that paper is referred to in our submissions, and copies are available online and have been provided, and I'll ensure that a copy is provided to Members of the Full Bench as well. And could I ask you please now to turn to paragraph 7.11 on page 10?---Yes.

PN2256

Do you wish to delete that paragraph?---I do.

PN2257

Thank you. If that could be marked struck through?---Sorry, just to clarify, should I strike it through?

PN2258

Yes?---Yes.

PN2259

And so with those corrections, does this nine paragraph statement and the three annexures together accurately set out your opinions formed by you on the basis of your expertise?---They do.

PN2260

Thank you. I tender the statement and the annexures.

PN2261

VICE PRESIDENT WATSON: Exhibit B16.

**EXHIBIT #B16 WITNESS STATEMENT OF CATHERINE LUDO  
McFERRAN DATED 31/05/2016**

PN2262

MS BURKE: Thank you. Ms McFerran, please wait there. There'll be some questions?---Thank you.

PN2263

VICE PRESIDENT WATSON: Mr Ward?

**CROSS-EXAMINATION BY MR WARD**

**[10.18 AM]**

\*\*\* CATHERINE LUDO MCFERRAN

XXN MR WARD

PN2264

MR WARD: Thank you. Doctor, good morning. My name is Nigel Ward. I appear in these proceedings for the Australian Chamber of Commerce and Industry which, I think as you are aware, is an employer organisation?---Yes.

PN2265

Can you hear me okay?---Sorry?

PN2266

Can you hear me satisfactorily?---I'm struggling a little bit, sorry.

PN2267

I'll talk up. I apologise, I'll talk up?---Yes, thank you.

PN2268

Can I just start with a little bit about you if I could? Your job title is domestic violence at work research affiliate. I'm not familiar with what an affiliate is. Could you help me understand what that is?---Well, to the best of my knowledge, it's an associate; it's an unpaid – you're not a permanent employee as such, but you are attached to the University and, in effect, what it means is that I conduct a number of projects in my current job, but I have to raise the money for those projects to happen.

PN2269

So if I can just make sure I understand that, you're not actually employed by Sydney University?---Well, I have a contract with Sydney University, but I don't have a regular income as such.

PN2270

So you make applications for grants to do projects and that's what funds you?---That's right. I'm part of the great sort of precarious workforce that – yes.

PN2271

And your research is squarely related to domestic violence?---At work.

PN2272

At work?---Yes.

PN2273

Okay. And when you're not doing research do you do other work associated with domestic violence?---Yes, absolutely. And, in fact, really the bulk of the work that I do with Women & Work Research Group is for instance training, developing training for employers and organisations. That's usually about identifying their skills and their existing policies and helping them to hone those up.

PN2274

Yes?---And improve their skills specifically to deal with domestic violence.

\*\*\* CATHERINE LUDO MCFERRAN

XXN MR WARD

PN2275

And is that a form of consulting work to business?---Yes.

PN2276

Right?---Generally, yes. And the other major piece of work I'm doing at the moment is forming a group to discuss how best small business can respond to the issue of domestic violence, so that's involved discussions with, for instance, the Small Business Ombudsman, Kate Carnell, Rosie Batty, the CEO of National Retail Association and hopefully members of your organisation as well.

PN2277

I can't comment on that, I'm afraid?---No.

PN2278

I can't?---No, no, I'm just hoping.

PN2279

Yes, I'll pass that on?---Good, thanks. Yes.

PN2280

Can I take you to paragraph 12.10 of, I think it's now, report 2 but it now becomes your report?---That starts with "My goal"?

PN2281

Yes?---Yes.

PN2282

As I read this you - - -

PN2283

DEPUTY PRESIDENT GOOLEY: Sorry, what paragraph is that?

PN2284

MR WARD: Sorry, your Honour, it's 12.10. It's actually the last paragraph. As I read this you've articulated two personal goals. In my words one is to reduce the impact of domestic violence on victims?---Yes.

PN2285

And the second goal appears to be to specifically advocate for and secure domestic violence clauses?---Yes. I mean, they're connected obviously.

PN2286

I understand?---Mm.

PN2287

I take it those goals drive your thinking?---Yes. Yes, can I explain a bit more?

\*\*\* CATHERINE LUDO MCFERRAN

XXN MR WARD

PN2288

I'm happy for you to do that?---Right. Well, I mean, as I think I spelt out I've worked in this area for something like 38 years and over that time we haven't seen a reduction in the incidents of domestic violence, but I've become progressively

convinced that while we might not see a reduction in the incidents because it's really a symptom of a much broader issue, you can't isolate domestic violence from the much broader issue of what's happening in this society. What I do think we can do is reduce the impacts. So in the nineties when I was chairing the national peak body on domestic violence I advocated very strongly for a new approach to responding to domestic violence, and that was not in the first instance to remove, particularly women and children from their homes and put them into a refuge consequently making them homeless, and if they were employed, unemployed, but to do whatever possible to support them to stay safely in their homes, in their communities, kids in their schools. And when we started doing that, so we've now jumped perhaps ahead a few years, one of the things that really struck us was the majority of women who were coming forward wanting to stay in their homes were working women. Now, one of the myths around domestic violence that I think is still common is that it doesn't happen to nice middle-class working women. It particularly affects women in lower socio-economic groups and certain cultural groups. But, in fact, we know from the national data collected by the ABS that the majority of women who experience domestic violence are in paid employment and certainly there's a large body of research now to show that it's really critical for those women to stay economically independent and in their jobs. Now, those, as I think as I say, when I was working I piloted the first New South Wales Stay Safety at Home program, and I was very struck by the number of women who said that the support of their work was absolutely critical to making quite difficult decisions at this crisis period to stay in their own homes. It's a brave decision to make, but you need the support of everybody around you to help you get through this period. And they talked about the critical support of their workplace. But many – I often heard the phrase, "I was lucky to have a good boss, a good employer". And I just thought, you know, we're a sophisticated, wealthy country, we've been working at this for 30-35-odd years, we should – I was convinced that anybody affected by domestic violence should know that they would get support from their work and know what that support was.

PN2289

Okay. Thank you?---Sorry, if I - - -

PN2290

No, that's fine. I've read your bio at Sydney University, and it says this on the website under who you are, it says:

PN2291

*Ludo McFerran has been an activist in the Australian domestic violence sector since 1978.*

\*\*\* CATHERINE LUDO MCFERRAN

XXN MR WARD

PN2292

Just for my benefit what is meant by an activist?---Well, I prefer the word "advocate". I didn't write that bio. But I think that the purpose of our work is not simply to aid and support the people experiencing domestic violence. It's actually to try and do whatever we can to reduce the impacts of that violence. So my goal has always been to support as many victims, if you like, and that's a problematic word, but anyway let's use it, as many victims to stay safely in their homes and in

their communities, and then it became also to stay safely in their jobs. So I think the advocacy has been to take this issue up with, in the latest space of that, with the Australian workplace, and say, "What can we do to make sure that any employee affected by this knows that they'll get support from work and if possible stays in that job and stays economically independent"?

PN2293

You're quite comfortable being described as an advocate?---An advocate, yes.

PN2294

Yes. Can I deal with something which, from your report, I was just struggling with a little bit? You seem to have a reasonable knowledge of the operation of personal carer's leave as part of the National Employment Standards?---Mm.

PN2295

Because you talk about personal carer's leave in your statement. I'd like to put a scenario to you and then ask you a question if I can?---Mm.

PN2296

Could you just assume for the present purposes that somebody in paid work is a victim of domestic physical assault and they receive an injury, and because of that they take paid personal leave because of the injury, would you agree with me that that's a proper use of paid personal leave?---Well, I certainly would not agree that I am an expert in these matters. I'm a domestic violence advocate and I rely very heavily on the support of my colleagues at the Women & Work Research Group for industrial knowledge.

PN2297

So you don't feel comfortable answering that question?---No, I don't.

PN2298

Well, then I won't press you any further?---Thank you. Sorry, could I just make a little extra point on that?

PN2299

I'll ask the questions, Doctor, with respect, so if I ask you a question, you answer them?---Okay. Yes.

PN2300

There's a general theme that's come through this week and can I just see if you agree with this theme that seems to have emerged?---Mm.

\*\*\* CATHERINE LUDO MCFERRAN

XXN MR WARD

PN2301

Women who are, and I appreciate there's some debate using the term "victim", but women who are victims of domestic violence who are in employment, preferably ongoing employment, full-time/part-time employment, who have control over their financial resources and potentially control over their assets, those women are likely to be more resilient to coping with the issue of domestic violence than the opposite, that is, women who are unemployed, have no control over their finances and no control over their assets. Is that a view you hold?---Well, I would refer to



the research done by Zufferey – I'm sorry – Chung and others recently in Australia that looked at a group of women, many of whom were in middle-class professions, so perhaps presumably had more access to economic assets than others, and the results of their research is that those women post-domestic violence were dropping out of full-time work and so I think it has a – I think the evidence is quite strong now that it can have quite a devastating effect on the financial and economic security of individuals. And so, no, I'm not sure I would agree with you.

PN2302

Well, let me ask this, are women who are unemployed, have no control over their financial assets and no control over finances, are they likely to be the most vulnerable?---No, I wouldn't have said so. I mean, the data doesn't – the evidence doesn't tell us that this is particularly – the instances is particularly higher or greater in lower socio-economic classes.

PN2303

Okay. Yes. Thank you for that. Can I take you to the report. Can I ask you to go firstly to paragraph 5.2? And I just wanted to ask you a few questions by way of clarification, that's all, if I can?---Yes.

PN2304

In 5.2 you talk there about two American studies, one by Crown and one by Adams. And then in paragraph 5.3 you say both American studies sample the low income or at risk women?---Yes.

PN2305

Am I right in saying that both American studies are those two studies?---Yes.

PN2306

And am I also right in saying that in an American context low income refers to women who are moving in and out of the American welfare system and most likely into minimum wage labour?---I can't say yes or no to that, but I – it sounds fair enough.

PN2307

Okay. That's fine. And is the reference in the American studies to at risk women, is that at physical risk or economic risk?---I think that it was at risk economically from memory.

PN2308

All right. You then go on and talk about a study in paragraph 5.3 from Franzway?---Franzway, yes.

PN2309

Have I pronounced that correct?---Yes, that's right. Franzway, yes.

\*\*\* CATHERINE LUDO MCFERRAN

XXN MR WARD

PN2310

Thank you. And it's a sample of 658 Australian women. I struggled finding this, perhaps you can help me, do you know how the 658 women were selected?---I do not.

PN2311

No, okay. Fine. I couldn't find it either?---No.

PN2312

That's fine. And then could I take you to 5.5. You then talk about another American study which was an online study of three mid-sized American businesses. I was unable to find out which businesses they were. Do you know which businesses they were?---No. And, in fact – no.

PN2313

No, okay. And can I then just take you to 5.8? This is I think the study you're more familiar with. This is the 2011 Australian Domestic Violence at Work survey. You talk in paragraph 5.8 that a third of the 3600 online survey respondents were members of the National Tertiary Education Union, Nurses' Association, the Victorian Branch of the Australian Services Union, go on to talk about that. Am I right in saying that all of the participants of that survey were trade union members?---Yes.

PN2314

And is there any basis upon which those 3611 people were actually selected other than being trade union members?---No.

PN2315

No. And did the three unions sponsor the survey?---No.

PN2316

Why were the unions chosen?---Well, the survey was done under the funding that was provided by the Commonwealth Government to us. It was a Safe at Home, Safe at Work program. So we had funding for eventually three years. And part of that was to conduct a national survey. We didn't have a lot of money so the most cost effective way of doing the survey was to ask unions if they would distribute it to members.

PN2317

I see?---And they were able to - these three were able to do so.

PN2318

And obviously there was some negotiation with those three unions and they volunteered or they were selected?---No. No, I just asked generally if – I think I asked a range of unions and these three were able to do it.

PN2319

Put their hands up?---Yes.

PN2320

Okay. No further questions. Thank you, Doctor?---Thank you.

\*\*\* CATHERINE LUDO MCFERRAN

XXN MR WARD

PN2321

VICE PRESIDENT WATSON: Ms Burke?

**RE-EXAMINATION BY MS BURKE**

**[10.35 AM]**

PN2322

MS BURKE: Just one question in re-examination. Ms McFerran, you referred in your answer to a question to research done by Chung and others?---Mm.

PN2323

Can I just ask you to look at paragraph 5.4 of your statement?---Yes.

PN2324

And if you look at the end of 5.4 there's a footnote there 16 and that is a reference to a paper by Franzway, Wendt, Moulding, Zufferey, Chung and Elder?---Yes.

PN2325

Would that be the study you're referring to?---In 5 - - -

PN2326

I'm sorry, in your earlier answer to the question from Mr Ward?---Yes.

PN2327

Yes?---That is it, yes.

PN2328

That was the Chung study that you were referring to?---Yes.

PN2329

Okay. Thank you?---Thank you.

PN2330

No further questions for this witness. If she could be excused, please?---Thank you.

PN2331

VICE PRESIDENT WATSON: Thank you for your evidence, Ms McFerran. You can step down?---Thank you.

**<THE WITNESS WITHDREW**

**[10.36 AM]**

PN2332

MS BURKE: That concludes the evidence to be called, to be cross-examined, by the ACTU. There are a number of witnesses who are not required for cross-examination and I propose to tender their statements now from the Bar table.

PN2333

VICE PRESIDENT WATSON: Yes.

\*\*\* CATHERINE LUDO MCFERRAN

RXN MS BURKE

PN2334

MS BURKE: The first of those is a statement of Jocelyn Bignold. And that has one annexure to it marked JB1.

PN2335

VICE PRESIDENT WATSON: Exhibit B17.

**EXHIBIT #B17 WITNESS STATEMENT OF JOCELYN BIGNOLD**

PN2336

MS BURKE: Next is the statement of Sandra Dann. And that has attached to it exhibit SD1.

PN2337

VICE PRESIDENT WATSON: Exhibit B18.

**EXHIBIT #B18 WITNESS STATEMENT OF SANDRA DANN**

PN2338

MS BURKE: Next is the statement of Fiona McCormack.

PN2339

VICE PRESIDENT WATSON: Exhibit B19.

**EXHIBIT #B19 WITNESS STATEMENT OF FIONA McCORMACK**

PN2340

MS BURKE: Next is the statement of Samantha Parker.

PN2341

VICE PRESIDENT WATSON: Exhibit B20.

**EXHIBIT #B20 WITNESS STATEMENT OF SAMANTHA PARKER**

PN2342

MS BURKE: A witness statement of Jessica Stott. And I note there are some paragraphs in the statement that are redacted for confidentiality. Just for the purposes of publication on the website if the redacted version could be published.

PN2343

VICE PRESIDENT WATSON: B21.

**EXHIBIT #B21 WITNESS STATEMENT OF JESSICA STOTT**

PN2344

MS BURKE: And the witness statement of Karen Willis which similarly has confidentiality – parts of it are confidential.

PN2345

VICE PRESIDENT WATSON: Exhibit B22.

**EXHIBIT #B22 WITNESS STATEMENT OF KAREN WILLIS**

PN2346

MS BURKE: The next and final three statements are the statements of the confidential witnesses, so I won't read their names aloud. If I can just refer to them as marked ACTU confidential witness 1.

PN2347

VICE PRESIDENT WATSON: Exhibit B23.

**EXHIBIT #B23 WITNESS STATEMENT OF ACTU  
CONFIDENTIAL WITNESS 1**

PN2348

MS BURKE: The next is marked ACTU confidential witness 3. There is no confidential witness 2.

PN2349

VICE PRESIDENT WATSON: Exhibit B24.

**EXHIBIT #B24 WITNESS STATEMENT OF ACTU  
CONFIDENTIAL WITNESS 3**

PN2350

MS BURKE: And the last is the witness statement marked ACTU confidential witness 4.

PN2351

VICE PRESIDENT WATSON: Exhibit B25.

**EXHIBIT #B25 WITNESS STATEMENT OF ACTU  
CONFIDENTIAL WITNESS 4**

PN2352

MS BURKE: Thank you. If it pleases the Commission, that is the evidence of the ACTU in this matter.

PN2353

VICE PRESIDENT WATSON: Thank you, Ms Burke. Mr Ferguson?

PN2354

MR FERGUSON: Thank you, your Honour. Can I call Jenni Mandel.

PN2355

THE ASSOCIATE: Please state your full name and address.

PN2356

MS MANDEL: Full name is Jenni Sharona Mandel (address supplied).

**<JENNI SHARONA MANDEL, AFFIRMED** [10.40 AM]

**EXAMINATION-IN-CHIEF BY MR FERGUSON** [10.40 AM]

\*\*\* JENNI SHARONA MANDEL

XN MR FERGUSON

PN2357

VICE PRESIDENT WATSON: Thank you, Ms Mandel. Please be seated. Mr Ferguson?

PN2358

MR FERGUSON: Good morning, Ms Mandel. Could you please state your full name again for the Commission?---Jenni Sharona Mandel.

PN2359

Ms Mandel, have you prepared a statement for the purpose of these proceedings?---Yes, I have.

PN2360

Have you got a copy of that statement with you?---I do have a copy of the statement.

PN2361

And is that statement some 25 pages in length plus two attachments?---That's correct.

PN2362

Is the second attachment a spreadsheet?---Yes.

PN2363

And is that statement dated 19 September 2016?---Yes, it is.

PN2364

Is that statement true and correct to the best of your knowledge?---Yes, it is.

PN2365

I tender that statement.

PN2366

VICE PRESIDENT WATSON: Exhibit F4.

**EXHIBIT #F4 WITNESS STATEMENT OF JENNI SHARONA  
MANDEL DATED 19/09/2016**

PN2367

MR FERGUSON: Thank you, your Honour. The witness is available for cross-examination.

PN2368

VICE PRESIDENT WATSON: Ms Burke?

**CROSS-EXAMINATION BY MS BURKE**

**[10.41 AM]**

PN2369

MS BURKE: Good morning, Ms Mandel. My name is Ms Burke, counsel for the ACTU. I just have some questions for you about your report?---Sure.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2370

Now, you conducted an analysis of enterprise agreements provided to you by the workplace agreements database, haven't you?---That's correct.

PN2371

And that database is managed by the Commonwealth Department of Employment?---I believe so.

PN2372

The request for the data that you analysed was made by Mr Smith of your work, and the request is at attachment A of your statement?---That is correct.

PN2373

And you've got a copy of attachment A there?---Yes.

PN2374

Good. Okay. So it's convenient. Can I ask you to turn to the first page there? There's a form that was sent to the department, and if you can just have a look at the second page of the request which looks like this?---Yes.

PN2375

Did you draft any part of that request?---No, I did not.

PN2376

Did Mr Smith consult with you – sorry, I'm assuming Mr Smith drafted it. Is that a correct assumption?---Yes. Yes, I believe so.

PN2377

Okay. And did he consult with you about the contents of the request?---Not specifically.

PN2378

All right. So the request sought, and I'll just summarise, I won't read it, in paragraph 1, details about domestic violence provisions in all current agreements as at 30 June of this year. In paragraph 2, detail about domestic violence clauses in agreements approved in the first six months of this year, and in paragraph 3 the text of any of those provisions. And in response to your request the department provided you with an email and the Excel spreadsheet attached to it and I'll come to that. But if we can just turn first to the email which is at page 5 of your attachment?---Sorry, the email from?

PN2379

I beg your pardon. I'm looking at an email from Philip Swinton of the Department of Employment to Steven Smith of the Ai Group. It's dated 7 September. You've got that there?---Yes.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2380

Okay. And if you just look half-way down the page you can see in response to item 1 of the request, it doesn't say that, I'll show you exactly what I'm referring

to. The department has described to you how it captures an agreement with a domestic violence clause. That can be in air quotes. That's the quote that starts:

PN2381

*The agreement provides a domestic violence clause or deals in some other way with domestic violence –*

PN2382

And then they provide some more text. I don't need to read it out loud there. So this is how the department knows it has a workplace agreement with a domestic violence clause in it, by reference to this definition. Have I got that right?---As far as I'm aware from the email, yes.

PN2383

Yes. Okay. Now, at item 2 of your request, you don't need to go back to it, you sought a separate data set of agreements with domestic violence provisions in agreements that were approved between 1 January this year and 30 June this year?---Sorry, where does it say that?

PN2384

I'm sorry, item 2 of your request it starts:

PN2385

*We understand that domestic violence leave entitlements have only been broken down into paid and unpaid leave for agreements approved since 1 January 2016 therefore we would appreciate a separate report being provided on agreements with domestic violence provisions approved since 1 January 2016 with the following information -*

PN2386

Et cetera. So am I right that the reason this request was made was because since 1 January the agreements database has coded more detailed information about the content of domestic violence clauses in its database?---You mean the second request?

PN2387

Yes. Yes?---Yes, I believe so.

PN2388

And can I just have a document handed to you. It's called Introduction to the Workplace Agreements Database Data Set. You'll be pleased to know I don't mean to take you through all of it, but this document is available on the workplace agreements database website and it just sets out really how they code agreements when they're doing their data entry and if you can turn – most of the document is taken up by a table. There's no page numbers on it but if you can turn to entry 92 in the table about half-way through the document. Have you got that there?---Yes.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2389



Sorry, I should have asked, have you seen this document before?---No, I've never seen this.

PN2390

Okay. Well, it's the case, isn't it, that since 1 January the agreements database will record whether a domestic violence clause provides paid leave including the number of days paid leave. And if you look at condition 93 that's set out there?---Yes.

PN2391

And if you have that document next to the email from Mr Swinton, I'm looking about three-quarters of the way down that page now. It says:

PN2392

*The Definitions for the 2016 DV codes are as follows.*

PN2393

And the first is paid leave?---Yes.

PN2394

And so really what Mr Swinton is doing in his email, which I was trying to shortcut but it's a bit ineffective if you haven't read it, which is understandable, was just explain the amount of detail in the first six months of 2016 data set that you were provided with. And if I can just take you through them. The information includes whether or not there was paid leave and the number of days. I'll just get you to turn the page of the email. Whether there was access granted to other or existing forms of leave. And that aligns with condition 94 of the framework document; whether the agreement provides for unpaid leave. Sorry, I'm just going to have to ask you to say yes or no for the transcript?---Sorry, yes. Yes.

PN2395

Whether the agreement provides the forms of support that are not leave, so, for example, taking safety precautions?---I'm not sure if it's exactly the same from what's written in here.

PN2396

I'm looking at item 96, and the reference in the email is - - -?---Okay. Yes.

PN2397

Yes, I para-phrased which I shouldn't have done?---Yes, I haven't read this. So just looking at a quick glance it looks similar.

PN2398

Okay. Good. Well, the other two categories of information included on the database are the right to request flexible working arrangements and provisions for carers and supporters of victims of domestic violence?---Yes.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2399

All right. And so the post 1 January 2016 agreement will give you a much more accurate picture of what's actually in these agreements; in agreements that have been approved after that date; that's the case?---Yes. That's correct.

PN2400

All right. And for agreements that were approved before 1 January the WAD simply records whether an agreement has a domestic violence clause as per that earlier definition?---Yes.

PN2401

It doesn't tell you anything about the content of the clause?---I don't believe so. I think in some cases it might provide a copy of the clause but - - -

PN2402

Yes. Well, you've skipped ahead to my next point which is good. Just to clarify that, to understand what is in the content of the clauses of agreements approved before 1 January, you actually have to go and look at the text and read it and do a very analogue analysis?---I guess so.

PN2403

All right. So as I mentioned earlier the department provided Mr Smith with the spreadsheet that was attached to that email and if I could have that spreadsheet brought up, please. And is everyone able to see that on their screen?

PN2404

VICE PRESIDENT WATSON: We've got the summary page.

PN2405

MS BURKE: Yes. There are three tabs. I'm sorry, you've got that there? Good?---Yes.

PN2406

There are three tabs: there's the summary; there's the agreements current as at 30 June with DVs and then there are the 2016 DV agreements?---Yes.

PN2407

Now, at paragraph 6 of your statement you have described how Mr Smith asked you to undertake the task that you then set out in your statement?---Yes.

PN2408

I think I asked you if you had worked with the agreement database before?---I've never worked with the agreements database before.

PN2409

Did you receive any training on how to use the data?---How to use this data?

PN2410

Yes?---No.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2411

If you could have a look at paragraph 10 of your statement, please. And you say there that according to WAD data there were 1149 enterprise agreements current as at 30 June 2016 with some type of provision dealing with domestic violence, not necessarily leave?---Yes.

PN2412

And can I ask that the second tab of that spreadsheet be shown to you, please? And that's the tab titled Agreements Current at 30 June 2016. And if, Mr Associate, you could please scroll down to the bottom of that screen? And just to check that that is the list of 1149 agreements that was provided to you by the department. Does that look right to you, Ms Mandel?---I can't see the numbers on this one.

PN2413

You can't see the numbers on the left?---Yes, the numbers of the column, but - - -

PN2414

I'm happy to hand you my laptop but my friends may have some legitimate concerns about what else - - -?---If you just scroll it across. Still can't see it, but - - -

PN2415

We do have a hard copy which could be - - -?---I have a hard copy here, so I can just check the bottom.

PN2416

Just to confirm whether that is the 1149, thank you.

PN2417

VICE PRESIDENT WATSON: The last one seems to have a zero at the end of it. I can't see the full number on my screen anyway?---I believe it's the – yes.

PN2418

MS BURKE: I think the smaller screens are cutting off - - -

PN2419

VICE PRESIDENT WATSON: Yes.

PN2420

WITNESS: It's cutting off the column with the numbers.

PN2421

MS BURKE: Yes?---Now, I can see it.

PN2422

All right. So it's 1150 but the first row is taken up with headers so it's 1149?---Yes.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2423

All right. And so it was this list that formed the basis of the analysis that you performed with current agreements that is set out in paragraphs 10 to 25 of your witness statement?---And the first tab which is the summary of that information.

PN2424

Yes. All right. Ms Mandel, as part of your role in your current job or in any of your previous jobs have you been involved in enterprise bargaining?---No, I have not.

PN2425

And have you had to work much with enterprise agreements?---No, I have not.

PN2426

So you know, and please tell me if you don't know, that an enterprise agreement will have a commencement and an expiry date?---Yes, I'm aware of that.

PN2427

And the expiry date is more properly described as a nominal expiry date?---Yes. That's correct.

PN2428

And an enterprise agreement can be operational after the nominal expiry date, can't it?---Yes, it can.

PN2429

So this means, of course, that it's possible for an enterprise agreement – no, sorry, I'll withdraw that. It's quite common, to your knowledge, for enterprise agreements to be past their nominal expiry date but still be operational, isn't it?---To my understanding I believe so.

PN2430

All right. And your request to the Department of Employment sought current enterprise agreements to 30 June with the domestic violence provisions?---I don't think our request was to 30 June specifically.

PN2431

I beg your pardon?---It was from 1 January.

PN2432

You're correct, I'm sorry. Your request sought information of domestic violence provisions in all current enterprise agreements?---That's correct.

PN2433

Sorry about that. All right. And by current, and tell me if you don't know, you meant operational, didn't you?---I didn't make the request so I'm not sure specifically what Steven Smith meant, but – so I can't really comment on that.

PN2434

All right. Can I ask you to look at the spreadsheet, please, at tab 2, so we're still in the second tab, in column E, row 1?---Yes.

PN2435

Thank you. And if I could just ask the Associate, please, to click on the drop-down sort menu there and sort that data in an ascending order? And hopefully what you can see there is a list of the expiry dates of all the agreements in the complete data set that was provided to you?---Yes.

PN2436

And the first of those dates is 30 June 2016?---Yes.

PN2437

And if you scroll down it appears that they are all properly sorted in ascending order. So would you agree with me that it appears that the workplace agreements database did not provide you with any agreements that had a nominal expiry of before 30 June 2016?---Yes.

PN2438

And do you accept that it's likely there could be a number of enterprise agreements that are operational that may have domestic violence clauses but expired, say, the day before or months before or perhaps even years before?

PN2439

MR FERGUSON: I object to that. She's asking the witness's opinion about something that she doesn't necessarily have any proper basis for answering it in her experience.

PN2440

MS BURKE: The witness has responded to a question about whether it was common for enterprise agreements to be past their nominal expiry date and still operational. The basis for the question has been established.

PN2441

VICE PRESIDENT WATSON: I'll allow the question.

PN2442

MS BURKE: Ms Mandel, do you accept that it's likely there could be a number of enterprise agreements that are operational but past their nominal expiry date that might have domestic violence clauses, and I appreciate I'm asking you a hypothetical?---I'm not sure, but I guess it's possible.

PN2443

It's possible. And equally it's possible that there may not be any of those still operational but technically expired agreements with domestic violence clauses?---It's - - -

PN2444

You just don't know?---I don't know, yes.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2445

In your report at paragraph 10 you say that the 1149 agreements provided to you by the department represents 7.9 per cent of all current agreements. And can I just

confirm you didn't calculate that 7.9 per cent yourself, did you?---No, that was from the summary.

PN2446

Yes. So if we can just have a look at the summary tab, please, and looking at that first table there that we can see, the fourth column, and if you scroll down you can see there's a list of different ANZSIC categories and then grand total and that's been selected. Now, that's the 7.9 per cent?---Yes.

PN2447

So that was the source of that. And I certainly don't intend to take everybody on an Excel tutorial but if you are interested you can look up at the formula bar there and see that that is an entry of a number. It's not a formula. So the raw data wasn't calculated by that spreadsheet. The department just gave it you?---Yes. I'm not sure but - - -

PN2448

All right. I'm not going to ask you to do any mathematics, but can you take it from me that 1149 is 7.9 per cent of approximately 14,500?---I don't know. Yes.

PN2449

I appreciate that. I would be struck with horror if that question was put to me in the witness box. But if anybody wishes to test my mathematics please do so. All right.

PN2450

VICE PRESIDENT WATSON: That's an assumption you're asking the witness to accept that if the figure of 1149, representing 7.9 per cent, is translated to a 100 per cent figure the resultant figure would be 14,000 or something according to your mathematics?

PN2451

MS BURKE: Fourteen thousand five hundred forty-four.

PN2452

VICE PRESIDENT WATSON: So that mathematical assumption is what you're asking the witness to assume?

PN2453

MS BURKE: I am. I am.

PN2454

VICE PRESIDENT WATSON: For the purpose of the next question.

PN2455

MS BURKE: Yes. And if anybody is interested the sum, as I understand it, is 1149 divided by .079. Ms Mandel, do you know how many enterprise agreements are currently operational in Australia?---I have no idea.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2456

Can I show you a document, please? And this is a printout from the workplace agreements database website. This is a document headed Accessing the WAD data set, and in the second paragraph can you see there, in the second sentence, it says:

PN2457

*Data set contains –*

PN2458

Et cetera, et cetera, et cetera –

PN2459

*over 140,000 enterprise agreements made since 1991.*

PN2460

?---Sorry, where does it say that?

PN2461

I'm sorry, I understand you might have been handed the wrong document?---Yes.

PN2462

I'll just ask for that to be taken back and swapped over. Two documents with the same title all come together. I'll blame the Commonwealth Government for that.

PN2463

VICE PRESIDENT WATSON: Do we hold on to that one for later?

PN2464

MS BURKE: No. Thanks. I'm sorry, do you have the correct document, now?---I think so, yes.

PN2465

All right. And can you look there at the second paragraph on the second line. It describes the data set containing over 140,000 enterprise agreements made since 1991?---Yes.

PN2466

Okay. So it could be that the WAD data set holds more than 140,000 operational agreements in its data set?

PN2467

MR FERGUSON: Well, I object to that. She's asking the witness to speculate about what could be the case. It's not information that the witness has or knowledge that the witness has. It's her opinion.

PN2468

MS BURKE: For clarification I am asking the witness to speculate and I'll put the counter-proposal to her as well. I'm not asking the witness to give evidence that will be later relied on as a fact.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2469

VICE PRESIDENT WATSON: I'll allow the question.

PN2470

MS BURKE: Thank you. It's possible, isn't it, in the realm of possibilities, that of the 140,000 enterprise agreements made since 1991 on that data set that some or most of them are still operational?---I'm not sure.

PN2471

And equally it's possible that the WAD may keep agreements that have been terminated and therefore no longer operational?---I don't know this information about the database.

PN2472

I wasn't able to find it out myself either?---Okay.

PN2473

I just wanted to establish that you weren't able to help me with that. All right. And finally if we can just – you can put those documents away now. And if you can look again at the request made by Mr Smith to the Department of Employment, at paragraph 3 of that request, Mr Smith sought the text of any of the above domestic violence provisions if available?---Yes.

PN2474

And you were provided with that data, weren't you?---I believe so, yes.

PN2475

All right. If I could ask the Associate, please, to go back to that middle tab, Agreements current as at 30 June 2016, and go to column (o) which is headed Condition Text, and I'll ask the Associate to please click on the drop down menu and do the sorting exercise in ascending order again, please.

PN2476

VICE PRESIDENT WATSON: Sort A to Z, is that what you're after?

PN2477

MS BURKE: Yes, sorry, it's the difference between Mac and PC. All right. So you can see the first two cells there just contain numbers and are very unhelpful, don't tell us anything but after that if you could just click on one of those cells so we can see any one, the full text. It appears that that contains the full text of the relevant clause. Can you see that on your screen?---Yes.

PN2478

And if I could ask the Associate, please, to scroll down to row 961. That's where the text ends. So the others, say, sort of 50 or so, you didn't get the text for those but you got the text for the 959, domestic violence?---It appears so.

PN2479

All right. And you didn't analyse the content of those clauses, did you?---I did not.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE



PN2480

Were you asked to do that?---No, I was not.

PN2481

And your report doesn't look at the content of those agreements?---No.

PN2482

All right. Now, in the second-half of your report you analyse the 323 agreements that were approved in the first six months of this year?---Yes.

PN2483

And we discussed earlier in that data set you were provided with much more detailed information from the department about the content of those clauses?---Yes. That's correct.

PN2484

And you did some analysis on those provisions?---I did.

PN2485

All right. Now, you're not able to say, are you, if those 323 agreements are representative of the universal operational enterprise agreements, are you?---I'm not sure I understand the question.

PN2486

So are they an accurate representative sample of the total number of enterprise agreements operational out there?---I'm not sure.

PN2487

So they could be representative?---I'm not sure.

PN2488

And equally they could be outliers, we just don't know?---Yes, I'm not sure.

PN2489

Thank you. I don't have any more questions. Thank you, Ms Mandel.

PN2490

VICE PRESIDENT WATSON: Ms Mandel, can I ask you some questions in relation to paragraph 12 of your statement?---Yes.

PN2491

Paragraph 12 you look at the WAD spreadsheet and you reflect in the first column the number of agreements said to be current as at 30 June with some type of domestic violence provisions?---Yes.

PN2492

And it's broken down by industry?---Yes.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2493

So we have eight for agriculture, et cetera, one for mining, 67 for manufacturing?---Yes.

PN2494

And in paragraph 14 it's the same data by reference to the number of employees covered by those agreements?---That's correct.

PN2495

So the single mining agreement was said to cover 93 employees and the eight agriculture agreements were said to cover 1404 employees?---Yes.

PN2496

Now, the percentages in the third column are described as percentages of agreements current as at 30 June with some type of domestic violence provision, and those percentages are set out there. So does that mean that eight agriculture forestry and fishing agreements represent 0.7 per cent of enterprise agreements applying in that sector, or does it reflect something else?---What those percentages are were a proportion of the enterprise agreements current as at 30 June with some type of domestic violence leave provisions. So there were 1149 agreements at 30 June have some provision dealing with domestic violence, so what it's referring to is that, for example, agriculture that there were eight out of those 1149 agreements.

PN2497

So it's a percentage of eight compared to 1149?---That's correct.

PN2498

And if we added up all the industries, which also includes other services, that probably is going to add up to 100 per cent?---It should. And if you added up all of those numbers in the – the number of agreements in their industries it would add up to 1149.

PN2499

And indeed if we looked at the spreadsheet, the summary document, we would see the first table sets out those agreements by reference, and I'm looking at the hard copy, but it's also on the screen?---Yes.

PN2500

It sets out those industries?---That's right.

PN2501

And the number of employees which is reflected in paragraph 14?---That's right.

PN2502

And the totals are actually there, 1149 and 890, 19,805 employees covered by such agreements containing such a clause?---That's right.

PN2503

On the summary spreadsheet then there is a percentage that says:

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2504

*As a percentage of all agreements current as at 30/6/2016 in ANZSIC –*

PN2505

That's a different comparison compared to what you've got in paragraph 12 and 14?---I believe, to my understanding, that those percentages there are a percentage of all agreements current, not all agreements with a domestic violence leave provision.

PN2506

So eight agreements in agriculture, forestry and fishing is said to represent 5.3 per cent of all of current agreements in ANZSIC?---That's what I understand, whereas my – what I worked out was the proportion of agreements in agriculture, for example, out of all of the agreements that had a domestic violence leave provision, so - - -

PN2507

So this data in the spreadsheet that's not something you calculated. Is that something you were provided with?---This is exactly what I was provided with from the workplace agreement database.

PN2508

Right. And your understanding of that is that eight agreements represent 5.3 per cent of agreements in that sector?---That's how I read it. That's maybe not what it's intended to do, but my – what I worked out was different to that. I just – I used the column with the eight out of 1149 agreements and worked out, of the agreements with a domestic violence leave provision, how many of those agreements were in the agriculture sector for example. And I don't believe, to my understanding, that that's - - -

PN2509

So this is not your data? This is something you were provided with?---This is not my data. So that's just how I've have read it, to my understanding, that's not what it's saying there.

PN2510

And as a matter of logic if 5.3 per cent of all agreements contain a domestic violence clause and 14 per cent of all employees covered by agreements in that sector are covered by those eight agreements then that suggests that the agreements that contain a clause contain a relatively larger number of employees compared to all agreements in that sector?---I'm not sure I understand the question.

PN2511

Well, let me give you a more graphic example. If you go down to accommodation and food services?---Yes.

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2512

There was said to be 24 agreements and 103,000-odd employees covered by those agreements. That's said to represent 5.6 per cent of agreements in that sector, but

it's said to represent 71 per cent of employees in that sector. That could only be the case if the particular agreements that have the clause apply to a large number of employees?---Yes, that would be right.

PN2513

Compared to the numbers of employees covered by agreements that don't have a clause?---Yes.

PN2514

But it seems like a very large discrepancy in that example at least, but this is not your data, not your calculations?---No, this is not – this is - - -

PN2515

This is simply what you were provided with?---Exactly.

PN2516

Yes. Thank you.

PN2517

MR FERGUSON: Nothing arising, your Honour.

PN2518

VICE PRESIDENT WATSON: Thank you for your evidence, Ms Mandel. You can step down.

**<THE WITNESS WITHDREW**

**[11.13 AM]**

PN2519

MR WARD: Your Honour, can I - - -

PN2520

VICE PRESIDENT WATSON: Just before you do. Ms Burke, did you wish to tender any of the documents you showed the witness?

PN2521

MS BURKE: Thank you, Vice President. Yes, I should .

PN2522

VICE PRESIDENT WATSON: We'll mark the Introduction to the Workplace Agreements Database Data Set document exhibit B26.

**EXHIBIT #B26 INTRODUCTION TO THE WORKPLACE  
AGREEMENTS DATABASE DATA SET**

PN2523

VICE PRESIDENT WATSON: And we'll mark the document headed Accessing the WAD Data Set exhibit B27.

**EXHIBIT #B27 ACCESSING THE WAD DATA SET**

\*\*\* JENNI SHARONA MANDEL

XXN MS BURKE

PN2524

MS BURKE: Thank you.

PN2525

VICE PRESIDENT WATSON: Mr Ward?

PN2526

MR WARD: Just from a housekeeping perspective when we filed our original submissions we also filed on 12 October 2016 a bundle of some seven documents all of which are in the public domain. We've relied on those in our submissions and I'm of the view that it's probably appropriate to ask to have that bundle marked.

PN2527

VICE PRESIDENT WATSON: Well, why don't we mark them now. Perhaps you should need to get on the board.

PN2528

MR WARD: Well, I'm very happy with how I'm on the board already. It might just be simpler, your Honour, if the bundle was filed.

PN2529

VICE PRESIDENT WATSON: Well, this is a bundle attached to a letter dated 12 October, and it contains seven documents.

PN2530

MR WARD: Yes. Yes, I'm content if the bundle and the letter is marked as one exhibit.

PN2531

VICE PRESIDENT WATSON: We'll mark that exhibit W1.

PN2532

MS BURKE: Sorry. I'm sorry, can I just clarify the purposes for which this is being tendered? These documents, some of which I've read and some of which are unfamiliar, through no fault of anyone's but my own, are not documents that were put to any witness. They're not evidence in that sense. They are being marked for the purposes of aiding comprehension of the submissions and to be relied on in submissions; is that correct, Mr Ward?

PN2533

MR WARD: Well, I'm tendering them as evidence. They stand - - -

PN2534

VICE PRESIDENT WATSON: Documentary evidence?

PN2535

MR WARD: Documentary evidence. I don't press them as any higher than that. They are what they are.

PN2536

MS BURKE: In which case I seek leave to provide the Commission with a similar list of the documents referred to in the ACTU's material. I had understood  
- - -

PN2537

VICE PRESIDENT WATSON: Yes.

PN2538

MR WARD: And there's no objection to that, your Honour, at all.

PN2539

MS BURKE: Thank you.

PN2540

VICE PRESIDENT WATSON: We'll mark the bundle provided undercover of the letter of 12 October from Australian Business Lawyers and Advisors exhibit W1.

**EXHIBIT #W1 BUNDLE OF DOCUMENTS AND EMAIL DATED 12 OCTOBER SUBMITTED BY AUSTRALIAN BUSINESS LAWYERS AND ADVISORS**

PN2541

MR WARD: Thank you, your Honour.

PN2542

VICE PRESIDENT WATSON: And do you wish to tender separately any other documents, Ms Burke?

PN2543

MS BURKE: Perhaps if I could take the weekend to confirm that list that will be  
- - -

PN2544

VICE PRESIDENT WATSON: These are documents that have been filed in conjunction with the witness statements but haven't otherwise been admitted into evidence?

PN2545

MS BURKE: I understood the documents that were filed with the witness statements were annexures to those witness statements.

PN2546

VICE PRESIDENT WATSON: So what are you proposing to tender now?

PN2547

MS BURKE: And so, in those circumstances, they were in evidence by reason of being annexed to the witness statement.

PN2548

VICE PRESIDENT WATSON: But there's - - -

PN2549

MS BURKE: I'm sorry, so the additional documents will be, for example, the relevant parts of the Royal Commission report. I don't propose to tender all 2082 pages. And a few other key documents that we say are relevant to the Commission's task.

PN2550

DEPUTY PRESIDENT GOOLEY: Are they the documents that are in your volume 2?

PN2551

MS BURKE: Yes, I think that's got the heading Key Documents Folder. I'd like to make some reductions and some additions to that folder if I may. And I'll attend to that over the weekend.

PN2552

MR WARD: So can I just clarify, these are documents that the ACTU's submissions have already referenced?

PN2553

MS BURKE: Yes, absolutely.

PN2554

MR WARD: Yes. Yes, that's fine.

PN2555

MS BURKE: There are no new documents, no surprises.

PN2556

VICE PRESIDENT WATSON: Yes. Well, perhaps it would be most convenient that they're tendered as a bundle in the same manner. You could then identify which documents you wish to have admitted into evidence, and then they can be marked on the next occasion as a bundle.

PN2557

MS BURKE: Thank you. I'll attend to that. And just finally, as to administrative matters, I understand there was a discussion, although not a direction, that the parties were to exchange written closing submissions on 28 November. I would ask, if the Commission pleases, if a direction could be made to that effect. And the reason I'm asking is there are a number of interested parties who have filed submissions but who have not participated in the evidentiary hearing, but had indicated they will participate in the closing submissions, and I'm thinking in particular of the Victorian Government and perhaps a few others. I understand the Human Rights Commission are also interested in that. In those circumstances it may be convenient and appropriate for a direction to be made.

PN2558

VICE PRESIDENT WATSON: Those parties have filed a submission.

PN2559

MS BURKE: Yes.

PN2560

VICE PRESIDENT WATSON: And in some cases more than one submission. I think the Human Rights Commission have filed a submission in reply.

PN2561

MS BURKE: They did, yes.

PN2562

VICE PRESIDENT WATSON: And you're saying there should be a direction about filing further submissions?

PN2563

MS BURKE: Arising out of the evidence if they wish to in the same way that the parties who are at the Bar table today will be doing on 28 November. I understand the Human Rights Commission are reading the transcript and so on, but I can't speak to how they intend to address the Commission in closing submissions, and I just thought it might be convenient for them to be aware of that direction.

PN2564

MR WARD: So can I just say I think it's more than convenience. We have a sense that when we return in two weeks' time on the Thursday and Friday it's quite likely there's going to be a lot of people, not just the people who have been in the case today. If anybody wants to make closing submissions, in our view, they should file, at the very least, an outline at the same we, the ACTU and AiG, have to file it. It would be unfair for them to turn up on the Thursday, having not appeared to date, and start to say something new that we've not had the benefit of.

PN2565

VICE PRESIDENT WATSON: Yes. And is that confined to matters raised in the evidence, or is it open-ended?

PN2566

MR WARD: Well, I think it comes to this, if somebody wants to say something in closing on the Thursday or Friday, be it about the evidence or at large, that they haven't already filed, we should receive that on the Monday with the ACTU's and the AiG's.

PN2567

VICE PRESIDENT WATSON: What if someone has filed a written submission but they want to speak to it?

PN2568

MR WARD: I have no issue with that, your Honour, if there's nothing new coming and they've already filed what they want to say, that would be satisfactory. If they want to comment on the evidence then - - -

PN2569

VICE PRESIDENT WATSON: If there's nothing new then they wouldn't need to speak to it. They might want to - - -



PN2570

MR WARD: Well, we then perhaps we might get into the debate you do in these proceedings about what you do with it if they don't turn up. That seems to have been an issue in the four yearly review a lot.

PN2571

VICE PRESIDENT WATSON: There seems to be an assumption that people can file a written submission and that will be considered. I think that's - - -

PN2572

MR WARD: Yes, I think that's right. And certainly if there's any commentary on the evidence and they want to make submission about that they should be filing a written outline of that on the Monday as we're going to be. We shouldn't be taken unawares on the Thursday or Friday, in particular, from an efficiency perspective. It could really upset the timetable.

PN2573

VICE PRESIDENT WATSON: Is there an agreed wording of the direction?

PN2574

MR WARD: I honestly don't – the answer is no. This is happening on the fly today. I think we just all turned our minds to what might happen next week.

PN2575

MS BURKE: Could I perhaps – I agree with my learned friend that parties who wish to speak to the Commission on Thursday and Friday, 1 and 2 December, it's convenient and appropriate that they provide some notice of that, and perhaps an outline of the subjects they wish to address. Perhaps my friends and I can come up with a form of words and send that to your Chambers, Vice President, for consideration. We can do that very shortly.

PN2576

VICE PRESIDENT WATSON: Yes. We're content with that course.

PN2577

MS BURKE: Thank you.

PN2578

VICE PRESIDENT WATSON: Any other housekeeping matters or any other matters that we can deal with today? Very well, we'll adjourn till the next day of sitting which is the Thursday, 1 December, at 10 am. We will now adjourn.

**ADJOURNED UNTIL THURSDAY, 01 DECEMBER 2016 [11.23 AM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

<b>CATHERINE LUDO MCFERRAN, AFFIRMED .....</b>	<b>PN2234</b>
<b>EXAMINATION-IN-CHIEF BY MS BURKE .....</b>	<b>PN2234</b>
<b>EXHIBIT #B16 WITNESS STATEMENT OF CATHERINE LUDO MCFERRAN DATED 31/05/2016 .....</b>	<b>PN2261</b>
<b>CROSS-EXAMINATION BY MR WARD .....</b>	<b>PN2263</b>
<b>RE-EXAMINATION BY MS BURKE .....</b>	<b>PN2321</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN2331</b>
<b>EXHIBIT #B17 WITNESS STATEMENT OF JOCELYN BIGNOLD .....</b>	<b>PN2335</b>
<b>EXHIBIT #B18 WITNESS STATEMENT OF SANDRA DANN .....</b>	<b>PN2337</b>
<b>EXHIBIT #B19 WITNESS STATEMENT OF FIONA MCCORMACK.....</b>	<b>PN2339</b>
<b>EXHIBIT #B20 WITNESS STATEMENT OF SAMANTHA PARKER.....</b>	<b>PN2341</b>
<b>EXHIBIT #B21 WITNESS STATEMENT OF JESSICA STOTT .....</b>	<b>PN2343</b>
<b>EXHIBIT #B22 WITNESS STATEMENT OF KAREN WILLIS.....</b>	<b>PN2345</b>
<b>EXHIBIT #B23 WITNESS STATEMENT OF ACTU CONFIDENTIAL WITNESS 1 .....</b>	<b>PN2347</b>
<b>EXHIBIT #B24 WITNESS STATEMENT OF ACTU CONFIDENTIAL WITNESS 3 .....</b>	<b>PN2349</b>
<b>EXHIBIT #B25 WITNESS STATEMENT OF ACTU CONFIDENTIAL WITNESS 4 .....</b>	<b>PN2351</b>
<b>JENNI SHARONA MANDEL, AFFIRMED .....</b>	<b>PN2356</b>
<b>EXAMINATION-IN-CHIEF BY MR FERGUSON .....</b>	<b>PN2356</b>
<b>EXHIBIT #F4 WITNESS STATEMENT OF JENNI SHARONA MANDEL DATED 19/09/2016 .....</b>	<b>PN2366</b>
<b>CROSS-EXAMINATION BY MS BURKE .....</b>	<b>PN2368</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN2518</b>
<b>EXHIBIT #B26 INTRODUCTION TO THE WORKPLACE AGREEMENTS DATABASE DATA SET .....</b>	<b>PN2522</b>

**EXHIBIT #B27 ACCESSING THE WAD DATA SET .....PN2523**

**EXHIBIT #W1 BUNDLE OF DOCUMENTS AND EMAIL DATED 12  
OCTOBER SUBMITTED BY AUSTRALIAN BUSINESS LAWYERS AND  
ADVISORS.....PN2540**