

COPYRIGHT RESERVED

(N.B.) Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Minister for Administrative Services proceedings for infringement will be taken.

INDUSTRIAL RELATIONS COMMISSION OF SOUTH AUSTRALIA

COMMISSIONER McMAHON

No 7613/09

**SOUTH AUSTRALIAN GOVERNMENT WAGES PARITY
(SALARIED) ENTERPRISE AGREEMENT 2009**

ADELAIDE

10.45 AM, THURSDAY, 14 JANUARY 2010

MS J. SUMMERTON, with MR E. BROOKS, appeared on behalf of Public Sector Workforce Relations

MR J. NAVAS appeared on behalf of Health Services Union

MS S. FENWICK appeared on behalf of the Association of Professional Engineers, Scientists and Managers, Australia

MR P. MOLONEY, with MS J. McMAHON and MR P. CHRISTOPHER, appeared on behalf of the Public Service Association and the Community and Public Sector Union

COMMISSIONER: Good morning. Can I take appearances, please.

5 MS SUMMERTON: May it please the commission, my name is Jan Summerton and I appear with Mr Elbert Brooks on behalf of the employer party.

COMMISSIONER: Thank you.

10 MR NAVAS: If the commission pleases, Jorge Navas from the Health Services Union.

COMMISSIONER: Mr Navas.

15 MS FENWICK: If the commission pleases, Sue Fenwick from APESMA, Association of Professional Engineers, Scientists and Managers of Australia.

COMMISSIONER: Thank you.

20 MR MOLONEY: May it please the commission, my name is Moloney. I appear for the Public Service Association and the CPSU. I do so with Jan McMahon, the general secretary of the PSA, and Peter Christopher, the chief industrial officer of the PSA.

25 COMMISSIONER: Thank you, Mr Moloney.

MR MOLONEY: I have a suggestion, if it pleases the commission, as to a convenient way in which this matter may proceed.

30 COMMISSIONER: Okay. Just before you do, I will indicate that Ms Ivanica has also notified the commission that she's going to - she won't be in attendance today but she will support the position of the PSA.

35 MR MOLONEY: She has further indicated, I think, sir, that she authorises the PSA to represent her in this matter, which amounts to the same thing as the commission just indicated.

COMMISSIONER: Yes. Thank you.

40 MR MOLONEY: Thank you, sir. You may recall hearing from me for the PSA in relation to two appearances before the commission in chambers. Both matters related to this agreement and both were initiated in a sense by Mr Navas for the HSU. I gave notice then that the PSA would be objecting to the presence of unregistered associations today, because the industrial act, the Fair Work Act of 1994, provides that only registered associations can be

parties to an agreement. In relation to that, I referred the commission, and remind the commission, that the relevant provision is section 75 subsection (2) of the act, which provides, in short, for registered associations to be parties to an enterprise agreement.

5

Sir, the act also provides in section 76 subsection (2) that agents are entitled to take part in negotiations for a registered agreement, and so the position, in my respectful submission, as previously indicated, is clear enough. The position is that unregistered associations have no recognition in the commission. That much is plain. The orderly conduct of industrial affairs in this commission is predicated by associations seeking to represent the interests of employees being registered. Upon registration, rights and privileges attach to the association, and the two sections of the Fair Work Act to which I've made reference illustrate the position of registered associations compared to the position of unregistered associations.

10

15

In relation to that, I say this: whilst the commission was obliged, pursuant to the terms of the Fair Work Act, to accept that employees may be represented by an agent, who may be an unregistered association, it does not follow from that that unregistered associations are entitled to any of the privileges which attach to registered associations. So my first point, therefore, is that the commission should not hear from the HSU and the APESMA. There's already been an acknowledgment previously from Mr Navas that the HSU is not registered. The commission's records speak for themselves in any event.

20

25

In relation to APESMA, there have been proceedings before this commission before and APESMA has acknowledged its lack of registered status, to wit there is an application for registration by APESMA before the commission in relation to the South Australia branch of the organisation, APESMA, which is registered in the federal commission. If the commission, for reasons of difference with what I'm advancing or convenience, or any other reason, is inclined to hear from Mr Navas and Ms Fenwick, I would then say that the ordinary practice of the commission should be applied, as was applied, as I reminded the commission, when I appeared before the commission in the two chambers matters to which I have earlier referred; that it would be necessary for an unregistered association to produce written authorities from the persons who it purports to represent.

30

35

That is what the commission required of Mr Whitehead, who appeared for a group of employees in a PSA arbitration case, and whilst, in my submission, the commission should not hear them in any event, with or without authorities, if the commission is disinclined to accept my submission on that point, then the fall-back position which I make is that, before the commission proceeds to hear from Ms Fenwick or Mr Navas, they should be required to produce written

40

authorities, because they are not recognised in the sense that the HSU and APESMA can only in this commission ever, at best, be an agent. If they're an agent, the commission and my client and the employer are entitled to know for whom they are agents.

5

The point which I make in this regard is, may it please the commission, illustrated by the terms of section 75 subsection (2) and subsection (3) of the Fair Work Act. That provides that, in the case of a registered association, authority is presumed, and so there is no need for a registered association to provide any written evidence of its agency because - for the good reason, I might say, that a registered association has status of its own right flowing from its registration, to be contrasted with the position of an unregistered association who is essentially in the same position as Mr Whitehead was in the PSA arbitration case.

15

In relation to all that, I understand that in any event Mr Navas from the HSU and Ms Fenwick from APESMA both support the application which has been made by the employer and, that being the case, there is no reason, no proper reason, in my respectful submission, for the commission to waste time in hearing from them in any event because, if they're supporting the application and they have no right of appearance, why would the commission be inclined to hear them in any event? So my suggestion to the commission is that - the commission having heard what I've had to say, obviously give Ms Fenwick and Mr Navas the opportunity to respond and to produce the authorities, if they have them.

20

25

COMMISSIONER: So if they don't have them here, what do you recommend we do? Do we defer this - - -

30

MR MOLONEY: No, we don't defer this matter. This matter is set down for today. It should be heard and determined today. So whatever the commission does in relation to the submissions I make, we do not want this matter put off. Mr Navas in particular has had more than adequate notice of the objection which I'll make now on behalf of the PSA. I've given him notice on both of the occasions before the commission and so the commission knows that it has knowledge itself of the notice, which I gave well before Christmas. So he's had more than adequate time to consider his position.

35

40

So far as APESMA is concerned, the PSA has consistently objected to any appearances by APESMA before this commission, and there are a myriad of cases, including those which have been to the Full Court of the Supreme Court, and the PSA has a consistent history of objecting to any appearance by APESMA in the commission upon the basis that it is not registered, and the commission records speak for themselves in that regard. So there is no lack of

notice to anybody. If anybody hasn't got authorities, well, (a) they haven't read the act, (b) they've had notice and it's their own fault if they haven't bothered to gather any authorities up.

5 So this application is far too important to far too many employees for it to be
delayed for approval purposes beyond today. So my suggestion is that the
commission receive confirmation from the HSU and APESMA of the fact, as I
understand there to be, that they support the application which is made before
the commission, so the commission knows at the outset where they stand, and
10 then they can respond to the submissions which I've made and then the
commission can make such ruling as it sees fit on that objection, which I make
for the PSA, and then, that having been dealt with, I would suggest to the
commission that the commission then proceed to hear Ms Summerton, who
will speak to the application.

15 I don't propose to speak to the application at any length because, having seen
Ms Summerton before, I am sure that she will more than adequately address
the matters which the commission needs to be appraised of for the purposes of
the application. But I say again in conclusion that the PSA supports the
20 application. The PSA urges the commission to deal with the application as
expeditiously as possible today. We've been given notice also that there will
be a supplementary application made to rescind the current enterprise
agreement. That is the normal thing to do.

25 That is the way these matters are usually dealt with. I simply point out to the
commission that the terms of section 83 subsection (4) of the act provide that
an enterprise agreement will continue to have effect, notwithstanding that its
nominal period has expired, until the agreement is either superseded or
rescinded.

30 COMMISSIONER: But that will happen today.

MR MOLONEY: Yes. You will simply make an order that the current
agreement be rescinded. That order would be made by you, sir, in the
35 commission concurrent with the order approving the application made today
for the new agreement, which in any event supersedes what will then be the old
agreement.

40 COMMISSIONER: Yes, but by putting the new agreement in place today, it
would automatically rescind the previous agreement.

MR MOLONEY: The commission is one step ahead of me as usual. I was
just about to say that the application which is going to be made for rescission is
unnecessary, for the very reason which the commission identifies - - -

COMMISSIONER: Yes.

5 MR MOLONEY: - - - namely, that section 83(4) says in its own terms that the agreement continues in force "until superseded or rescinded". It is obviously rescinded with the approval of the new agreement.

COMMISSIONER: New agreement, yes.

10 MR MOLONEY: However, we're not bothered in the sense that if the employer wants an order that the current agreement be rescinded, well, in my respectful view, it's unnecessary because the current agreement will have been rescinded automatically when you, sir, without being presumptuous, approve the application which is before you.

15

COMMISSIONER: Yes.

MR MOLONEY: Having said that, there is no harm done by making an application for rescission, although I would agree with you, sir, that it's actually not necessary because it happens automatically.

20

COMMISSIONER: Okay. Thank you. Mr Moloney, just on these matters as well, the whole enterprise agreement process, both APESMA and the HSU have been actively involved at the bargaining - - -

25

MR MOLONEY: They have. They've been involved to the extent that they've had a part. My client, with the greatest of respect to them, would say not much of a part, but nevertheless they had a part in the negotiation process.

30

COMMISSIONER: Yes.

MR MOLONEY: And that's acknowledged, and I don't say that's wrong. What I say is that, whether my client likes it or not - and it doesn't - the provision of the act to which I've referred the commission does contain provision for agents. It doesn't specify that the agents may be unregistered associations, but for today's purposes we wouldn't argue the toss about that. We would say that an agent may be an unregistered association provided that it has authorities. In point of fact, my understanding is that neither the HSU nor APESMA has ever produced any authorities, but I'm not too bothered about that for today's purposes, because that's already past, and it's of academic significance that they didn't produce authorities.

35

40

But putting that to one side, the act does provide that agents can participate in the negotiation process. I'll just take you again, if you like, sir, to section 76

subsection (2), and I'll just read that:

5 *The employer must, before beginning negotiations on the terms of
an enterprise agreement, inform the employees of their right to
representation in the negotiation and in proceedings for the
approval of the agreement and, in particular, that an employee may
be represented by the employee ombudsman or an agent of the
employee's choice or a registered association of employees.*

10 So I can't really argue the toss about that, but if you go to section - - -

COMMISSIONER: But on that point, they're both employee agents. That's all they are as signatories on the documents.

15 MR MOLONEY: Yes.

COMMISSIONER: They're employee agents. They're not purporting to be registered associations.

20 MR MOLONEY: They're not purporting to be registered. That's quite right.

COMMISSIONER: I mean, APESMA are going to keep their powder dry. They're going to deal with that matter at another time and another place.

25 MR MOLONEY: Yes.

COMMISSIONER: And they've indicated that they don't want to prejudice themselves by including themselves as an employee agent, but they have for the sake of this document.

30

MR MOLONEY: Yes, I understand that.

COMMISSIONER: The only objective today is really about getting this document up and getting it approved, provided it meets all the standards of the act.

35

MR MOLONEY: Yes, but it's a question of who's got the right of appearance before the commission, and only registered associations have the right of appearance before the commission.

40

COMMISSIONER: But I don't read it like that. It does say "an agent of the employee's choice", and that's part - for approval of the agreement.

MR MOLONEY: Yes. If we're talking about an agent of the employee's

choice, well, where's the proof of agency? That's the point. If you go back to section 75(2), it provides that a registered association may enter into - and only a registered association - an enterprise agreement, and it provides in subsection (3) that, in the case of such an association, authorisation is presumed so long as the persons in question are and remain members of the association. So it is plain, in my respectful submission, and has in any event been the practice of the commission in the cases to which I referred for agents to be required to produce authorities.

5
10 If they say they are agent for somebody, well, the other parties are entitled to know who they're agents for, and it's not good enough to say, "Well, we're agents for our members," because that doesn't mean anything in the case of an unregistered association, because an unregistered association - it doesn't have the benefit of the presumption attaching to a registered association. That much is illustrated by subsection (3) of section 75 to which I've just referred. So the commission may determine to hear but, if it does, it should only be upon the basis that evidence of agency is produce, because my client challenges that they have any authority. My client challenges, if I can put it plainly enough, the agency which it has asserted.

20

COMMISSIONER: Okay.

MR MOLONEY: Just before I sit down, sir, I should just add one other thing. It's slightly premature but, on one reading of the agreement, the unregistered associations, albeit as agents, are listed as parties to the agreement. It is plain that, pursuant to the provisions of Part II of the act, in particular section 75(2) to which I've referred, that they are not entitled to be parties to this agreement. The PSA's position is that the PSA doesn't hold up the certification, the approval, should I say, of the agreement today, but I just put on the record that the PSA says that, to the extent that those organisations are referred to as parties, they are not in fact parties and they cannot at law be parties to the agreement.

25

30

COMMISSIONER: Okay. My view is that they can be employee agencies in terms of what that means, and what does a party mean, but they're not registered associations. They're not claiming to be that, but I still think historically they've been a party to these agreements. This whole enterprise process has encompassed them in these agreements. I don't think there is any doubt that they have some membership, and I'm not sure - I'll ask both those parties what their position is in terms of providing any evidence of that, but I'm not so concerned about that, in the sense that I understand - you know, the objective today is to get this agreement up.

35

40

MR MOLONEY: That's right, sir.

COMMISSIONER: But these people have actually been - these agencies have been part and parcel of this process from day one.

5 MR MOLONEY: Yes. We acknowledge that, sir.

COMMISSIONER: And I don't feel inclined to strike them out and not allow them to speak. I think it would be improper of me to do that, but I'll hear from both of them as well. But I understand what you're saying in terms of parties,
10 but I think there's a difference between parties and registered associations. They're not purporting to be that, and I understand it's sensitive. Definitely there is a turf situation happening. I accept that, but I really think the appropriate time - - -

15 MR MOLONEY: I just need to correct one thing the commissioner has just said, and that is that historically the position is not as indicated by the commission, to the extent that, when the previous enterprise agreement was certified, I made the same objection.

20 COMMISSIONER: Yes, I know. I've read that, yes.

MR MOLONEY: That was dealt with by way of APESMA giving an undertaking to the commission that it would - because at that time on that day of the week they were claiming to be registered contrary to the previous day of
25 the previous week, and subsequently they've abandoned any claim to be registered and they've put an application in the commission to be registered, but they've asked the commission not to proceed with that application; just to leave it dormant for the time being. The historical position is that there has been the same objection made previously, and the commission has dealt with
30 that not by accepting them as a party, because last time they were actually listed as a party in their own right, and so that was a bit of a different objection.

COMMISSIONER: That was as an association, wasn't it?

35 MR MOLONEY: That's right.

COMMISSIONER: Yes, okay. Well, that's not here today.

MR MOLONEY: That's right. So the position today, happily to this extent, is
40 better from the PSA's perspective than it was then, to the extent that they are not listed as a party in their own right, but they nevertheless - wrongly, with the greatest of respect - are still listed as a party. I don't think we need to trouble ourselves with that distinction greatly for the moment, but I'm making that distinction simply to correct what the commission indicated to the effect that

historically they've been permitted to have a status.

COMMISSIONER: Yes, that's right.

5 MR MOLONEY: So it's not - with the greatest of respect, it's not quite right.

COMMISSIONER: Yes, I understand.

10 MR MOLONEY: So the PSA records its objection in relation to what I might call the quasi listing as a party, because if you look at the clause which governs the listing it says - sorry, the parties are listed - in the parties bound clause 4, it refers to the employer and it refers to the PSA and it refers to the MEAA. They're registered organisations. Then it refers to as a party an employee agent that is a signatory, and when you go to the signing clause, you'll see that the
15 unregistered associations are listed as employee agents. So it's a bit of hybrid situation, and obviously my client doesn't want to be - wants to record the fact that - - -

20 COMMISSIONER: You want to have your objections registered. I understand that.

MR MOLONEY: That's right, for future purposes.

25 COMMISSIONER: Okay.

MR MOLONEY: Otherwise, my client's quietness might be taken as acquiescence, and that would be wrong.

30 COMMISSIONER: And I understand that.

MR MOLONEY: Thank you, sir.

COMMISSIONER: Okay.

35 MS FENWICK: Thank you, sir. In a similar vein, given our support of the application, APESMA finds it curious that the PSA raises these contentions now. We have not acknowledged our lack of registration. This is a matter of contention still before the registrar, and this is not the forum to run those debates. It is quite a complex matter, as referred to by my friend. It was my
40 understanding that it is actually the PSA's turn to raise the issue with the registrar, not our instruction to make a matter lie dormant, which I don't think is in our power in any case, but this is not the forum, as I say, to run those arguments and to have that debate.

5 What we're here for is to proceed with this application, which has some good results for our members in it, as it has been hardily fought and hardily negotiated with the government. APESMA agreed to be characterised, as set out in the signatory block, without prejudice to all of those arguments. It's not to be seen as an admission that we are not registered. We do support the application and its expedient resolution but we have no intention of arguing these other issues in the commission today and support the application before you.

10 COMMISSIONER: Thanks, Ms Fenwick. In terms of the confirmation of the membership you have - - -

MS FENWICK: I don't think it's required.

15 COMMISSIONER: Thank you. Mr Navas.

20 MR NAVAS: Commissioner, the HSU also supports the registration of the agreement. We believe we have been traditionally part of this process. For the last two enterprise agreements we have been representing our members. Yes, I acknowledge the issue of our authority to represent our members has been raised a couple of times. Just in case this was going to happen again - which I felt was going to be unnecessary - I got our members to sign authorities. I have them and I have not copied all of them because, in the interests of the environment, I think that they only need a sample of them, but I'm quite happy to provide to the commission about 400 signatures that I got from our members.

30 This is during a period of time where we had Christmas and new year and basically it's impossible to contact everybody. I have also 1000 signatures on petitions as well. If they want to find out who is representing who in terms of allied health professionals, I am more than happy to do that. I can give you the stacks of authorities which I have here; some of them multiple, some of them individual. That's two copies of that. They are the originals.

35 As I said, I made samples that I am happy to provide to the parties. Just to know, those samples represent in this case about 200; in this case about 100, only because I didn't want to keep burning trees, because I think that the important part of this is to register the agreement, move on and start dealing with the real issues in the workplace and our own members to start having the benefits of the enterprise agreement, instead of spending the time here trying to justify what has already been justified, which is a negotiating process that has come to a culmination. Like it or not, we are not happy. The HSU is not absolutely happy with - - -

COMMISSIONER: I don't want to hear about the actual - because you'll have the chance to put that in submission - - -

MR NAVAS: Yes.

5

COMMISSIONER: - - - but simply about this matter.

MR NAVAS: Okay. I have copies that I can give to the PSA - copies that I gave to the employer. As I said, they are not there to copy the whole lot. If the employers require the whole lot, I am happy to take these back and make the rest of the copies for them. There is about 500 signatures, 400 signatures in there.

10

COMMISSIONER: I don't need it, Mr Navas. I've got no doubt - - -

15

MR NAVAS: Okay. If you don't need it, then can I have them back, please?

MR MOLONEY: No, don't - - -

20

COMMISSIONER: It's probably - - -

MR NAVAS: What do you mean "don't"?

COMMISSIONER: Hang on, sorry. I accept that they represent the parties.

25

MR NAVAS: Yes. So can I have them back, please?

COMMISSIONER: I don't need to have them. I think it's probably fair to give the documents back. I accept that they have members. I accept that - I don't need to accept it at this stage, but I do accept your objections to hearing from the parties, but I do intend to hear from them to the extent that they're employee agents. That's all. Not as associations. Thank you.

30

MR MOLONEY: Sir, just two minor matters which ought to be corrected, I think. I accept your ruling, but I point out to the commission two things: firstly, the fact that APESMA doesn't admit it's not registered comes as something of a surprise, because they've got an application for registration before the commission. So yet again APESMA is trying to walk both sides of the same fence. That's not atypical conduct on the part of APESMA, unfortunately, but it's blatantly inconsistent with the fact that it has an application before the commission for registration.

35

40

So perhaps that application ought to be struck out, but that's not for me to do today. So far as that application is concerned, Ms Fenwick incorrectly stated a

moment ago that that application is dormant, pursuant to a request made by the PSA. Well, that's just untrue - - -

MS FENWICK: That's not what I said.

5

MR MOLONEY: I have a letter from the solicitors acting for APESMA to the registrar of this commission. It's dated 18 November 2009 and the effect of that letter is to, in effect, request the commission not to proceed with this application for the time being. So it's not the PSA which is preventing or making that application dormant, but enough said about that. In relation to Mr Navas, the brief look I had at the authorities indicates - the ones I saw at least - that bundle - they're all dated late December. So - - -

COMMISSIONER: I think, arising out of the conference that was held previously, you indicated that you would require they be tendered, to appear here for today's proceedings. So I presume as a result of that he went and did that.

MR MOLONEY: Well, that may well be so. That seems to illustrate that he didn't have any signed authorities throughout the negotiation process but, anyway, enough said about that.

COMMISSIONER: Yes.

MR MOLONEY: The only other point I'd like to make, sir, is that Mr Navas asserted to you in chambers that his organisation represented the majority of employees in health. There are 10,000-odd employees in health. He's only purporting to, in fact, represent 400 of them, which is a fair bit less than the majority. My client represents health workers and the majority of them. Thank you, sir.

COMMISSIONER: Okay, Mr Moloney, but I'm not making any presumptions on the numbers that either the PSA or HSU represent, but I do accept they do represent a reasonable number of people; that it would be fair for me to hear from them today.

MR MOLONEY: I accept that, sir.

MR NAVAS: If the commission pleases, the HSU have never claimed to be representing 10,000 people. We know that there is only about two and a half thousand allied health professionals. We have always said that, in terms of the HSU having a stand in this commission, you probably would find through the records of this commission that there are a number of awards and enterprise agreements that the HSU have made in this commission in the state

jurisdiction. So all of this is just, from my point of view at the moment, a waste of time, instead of dealing with the real issue, which is to register the agreement and moving on.

5 COMMISSIONER: On that point, Mr Navas, that's exactly what I intend to do.

MR NAVAS: Thank you.

10 COMMISSIONER: Ms Summerton. Thanks.

MS SUMMERTON: If it pleases the commission, the application before you today seeks the approval by the commission of the proposed South Australian Government Wages Parity (Salaried) Enterprise Agreement 2010. I will, of course, address the matters required under the Fair Work Act in relation to the application but, before I do that, can I just mention two matters. Firstly, I'd like to refer to the agreement that was attached in two parts to the application filed on 24 December 2009.

20 As indicated in the application, that was how the proposed agreement was put during the ballot process. That was done as a matter of convenience and was meant to facilitate electronic access and took into account that not all parts of the agreement were of interest to all employees. More importantly, on Tuesday, 12 January I arranged to be filed with the commission a signed original which is the proposed enterprise agreement, the subject of this application. That document will in due course need the addition of some dates, subject to whether and when the commission grants the application.

30 A signed copy of the proposed agreement filed on Tuesday, 12 January included the following: alterations notified as errata during the ballot process, and that's referred to at tab 6 of the book that was filed. You'll see there that talks about making the amendments to the rates of pay for the CFS operations staff and also interpreters and translators. On the next couple of pages it talks about some amendments proposed for the work levy definitions for medical scientists. In addition, there were corrections or alterations that have come to the attention of the employer signatory.

40 These are in addition to those that were identified at annexure A of the application. These included the operative date for the managerial allowance for professional officers to commence from the first full pay period on or after 1 October 2009. That's in lieu of the date of approval as shown on the ballot document. The reference in the ballot document, just for the record, was at page 45. That document is contained at tab 5 of the book that was filed with the application. Schedule 1.21A, translation arrangements for allied health

professionals, now includes a reference to appendix 5 in lieu of the "X" that was marked on the ballot document at page 47.

5 The inclusion of the word "the" at medical scientist level 6B, operational outcomes, and that was the first paragraph on page 27 of the ballot document. Other changes, those which are sought to be effected prior to the approval - the one in particular is that the work definitions for grant-funded scientists acknowledge an experience for level 5, which is detailed at page 38 of the ballot document at tab 5, had two introductory paragraphs which had "and it may include a combination of", and the second paragraph had "and it may include any of the following". The latter paragraph has been deleted.

15 As you've already heard submissions about the alteration to the signature block - I took the book to APESMA because I was the agent, and the operative dates have been inserted in relation to paid maternity and adoption leave. Commissioner, you will also see that the title of the proposed agreement now refers to 2010 rather than 2009. This is simply to reflect the year in which approval is granted, if that is the decision of the commission. Secondly, each of the named signatories have signed the proposed enterprise agreement, and it's my understanding that there is no opposition to the application now before the commission. In fact, the parties who are present here today have said that they support the application.

25 The application sets out some basic information in relation to the proposed agreement. It will apply to about 33,730 employees and, in terms of its ambit, it is probably the largest agreement of its type filed in the state commission and covers various public sector departments and instrumentalities in relation to a variety of employees and occupations across the state. This agreement will be replacing the South Australian Government Wages Parity (Salaried) Enterprise Agreement 2006, which nominally expired on 21 December 2009. It had been my intention to make a submission to you that, in the event that you do approve the new agreement, we would be applying for the 2006 agreement to be formally rescinded as at the date and time at which the new agreement comes into effect, on the basis that this new agreement will be superseding the 2006 agreement.

40 When the 2006 agreement was approved, Steel C did actually make an order to the effect that the former award would actually be rescinded in lieu of an enterprise agreement. So it was just being very clear, particularly for all government departments and agencies, that this agreement is superseded and is rescinded. So that's really the purpose of it. As you can appreciate, sir - I mean, this agreement goes across the state public sector and it's important, particularly from our point of view, to ensure that people are made aware - don't use the 2006 agreement any more.

Arising out of proceedings before you on 15 and 21 December you will be familiar with the negotiation of the proposed agreement and the ballot process. During those conferences you were provided with various documents, such as
5 correspondence to the various signatories, documents tabled at a single bargaining centre meeting, and a summary of events document that I have prepared for you. Before I take the commission to section 79 of the act, I'd like to address the requirements in sections 76 and 77. A copy of the notice of
10 intention to negotiate dated 10 September 2009, as required under section 76, is provided at tab 9 of the book filed with the application. That was distributed to all relevant employees by government organisations between 14 to
16 September 2009.

A copy of that notice was also provided to various unions, employee
15 representatives and the employee ombudsman, and copies of those letters are provided at tab 10. The notice, sir, which is provided at tab 9, included advice that employees have the right to be represented in the negotiation of, and in any proceedings for approval of, the enterprise agreement by the employee
20 ombudsman, an employee association registered under the act or another agent of their choice. Further, employees can gain access to current copies of the relevant industrial instruments, ie industrial award or enterprise agreement, which currently regulate their employment by contacting the human resources section.

25 In terms of section 77, as advised in the application, the proposed agreement includes procedures for preventing and settling industrial disputes at clause 26; provides that sick leave is available to use for the sickness of a child, spouse, parent or grandparent at clause 10.4; provides for the renegotiation of the agreement at clause 29. I'd like to take you to section 79, which lists out quite
30 a fairly detailed - some more tests in terms of what you must look at as part of the approval process.

I'd like to take you to the "agreement explained" document at tab 3. That document, sir, explained the effect of the terms of the proposed agreement,
35 identified the differences between the proposed agreement and the current agreement and relevant award provisions; identified the procedures for preventing and settling disputes; indicated whether any term of the proposed agreement would exclude any terms of any industrial instruments that currently apply to employee; informed employees of their rights to be represented in
40 relation to proceedings for approval of the proposed agreement, and informed employees that, if a majority of salaried employees who vote supported the proposed agreement, an application would be made to the Industrial Relations Commission for it to be approved.

As advised in the application, the proposed agreement provides for consultation between the employer and the employees bound about changes to the organisation and performance of work at clause 26. Sir, I now wish to talk about the ballot. I have prepared for the assistance of the commission a
5 booklet, which contains documents relating to the ballot process undertaken.

EXHIBIT #DPC1 - BOOKLET

MS SUMMERTON: Sir, this booklet contains copies of, at tab 1, a letter to
10 the unions and employee representatives dated 14 December 2009 but not all the enclosures that were with that letter. Sir, you may recall that a copy of that letter and all the enclosures were provided to you at a conference separately.

COMMISSIONER: Yes.
15

MS SUMMERTON: The agency ballot instructions, which are provided at tab 2, and those instructions were enclosed with the letter dated 14 December. At tab 3 is the ballot paper, an electronic ballot. At tab 4 is the suggested agency chief executive letter to employees and at tab 5 is a PowerPoint
20 presentation for the agencies to use at information sessions.

The Public Sector Workforce Relations issued valid instructions to human resource representatives and government agencies on 13 December 2009 confirming that the ballot process will commence no later than Tuesday,
25 15 December 2009 and conclude by not later than noon on 23 December 2009. Attached to that email advice was a ballot pack for agencies, which contained standard content and material for use by agencies in conducting agency based ballot processes.

30 That ballot pack, sir, contained the ballot instructions, which are contained at tab 2 of the book marked DPC1; it included the paper ballot and the electronic ballot, which are contained at tab 3; a suggested agency letter for the chief executive to send to employees at tab 4, and you'll see, sir, that there was provision there on that letter for amendments to be made as to - if they were
35 dropped in a paper ballot or an electronic ballot. The ballot pack also included the "agreement explained" document. That's contained in the book attached with the application at tab 3. Frequently asked questions - now, that's provided with the application in the book at tab 8. A sample PowerPoint presentation for agency information sessions, which agencies could modify and use their
40 own background or agency logo, and that's provided to you at tab 4.

In addition, an employee enterprise bargaining update, which they were asked to distribute on 14 December 2009, and a copy of which is provided with the application book at tab 7. Finally an Excel document for agencies to use as

their ballot return report. Can I just take you to the ballot instructions at tab 2, sir?

COMMISSIONER: Yes.

5

MS SUMMERTON: What it provides there is the employees to be included. It sets out, you'll see down the bottom of the first page, agencies and list A are included in relation to relevant employees, and relevant employees to be included on the agency ballot roll are in list B. List A and B are contained over
10 the next page. The agency ballot roll will include only public sector salaried employees directly employed as a public sector employee at the close of the roll on 14 December 2009 - include casual salaried employees who have worked since the issuing of the notice of intention to bargain on 10 September 2009 up to and including the date of ballot roll closure, include salaried
15 employees on long service leave, annual leave, maternity leave and leave with or without pay and ensure that the agency to which an employee is temporarily assigned is the agency that will include the employee in its roll.

Those instructions went on to identify the persons or employees to be
20 excluded, and they are identified in list C, and the classifications that are excluded were also listed for ease of reference. So if you go over to the next page, it actually provides quite a comprehensive list. Sir, the other thing to note is that, if you look at list A, B and C, they actually do match up with the proposed agreement as it's presently before you. Obviously to be excluded, the
25 agency ballot roll also had to exclude weekly-paid employees and labour-hire personnel.

Agencies conducted electronic and/or paper ballots, all of which closed not later than noon on 23 December. A number of agencies also conducted
30 information sessions. These included the Auditor-General's Department, the Department of Correctional Services, Department of Treasury and Finance, Primary Industries, Department of Premier and Cabinet and the Department of Health. The Department of Families and Communities also organised a blog on their intranet for one hour on Thursday, 17 December where employees
35 could ask questions and have them responded to immediately or make comments on the proposed agreement.

I am also in receipt of an email from your associate, received on Monday, 11 January 2010 which forwarded an email from Ms Simpson-Gore dated
40 30 December 2009. That email also advised that you would be raising the issue of the ballot system at the hearing and would be seeking an explanation of the process. I trust that I have sufficiently addressed the ballot process and outcome and note that you've already marked that note DPC1, but I would also like the booklet that was attached to the application also to be marked as an

exhibit too.

COMMISSIONER: Okay.

5 **EXHIBIT #DPC2 - BOOKLET ATTACHED TO APPLICATION**

MS SUMMERTON: Thank you.

10 COMMISSIONER: Just for the sake of the other parties, there was a letter sent to the commission where a person complained that they hadn't received a vote. So I forwarded that on to Ms Summerton just so we can get a bit of an explanation. So that was fairly isolated. Are you saying it was an isolated incident?

15 MS SUMMERTON: Sir, the information I have also received was that that particular employee emailed the - I have copies here which I am more than happy to provide.

20 COMMISSIONER: That would be worthwhile, I think, in terms of it.

MS SUMMERTON: This is actually an email that Ms Simpson-Gore provided to - - -

25 COMMISSIONER: Is it Catherine? Yes, that's right, sorry - yes, okay, Simpson-Gore.

MS SUMMERTON: Yes, Catherine is her first name. Simpson-Gore is her last name. You can mark that.

30 **EXHIBIT #DPC3 - EMAIL FROM MS SIMPSON-GORE**

MS SUMMERTON: This particular employee, sir, is in the Southern Area Health Service, is the advice that I have received from the Department of Health. The ballot officer for the Southern Area Health Service, Mandy Palumbo, is actually presently on leave at the moment. So I've not been able to have a direct discussion with Mandy, but they have forwarded this email, which clearly is dated 17 December, where the individual employee was expressing concerns about the management-organised EB information sessions by emailing HR and that they were not happy with the PSA suggestion to accept the EB and believe HSU understands the issues of Allied Health much more and "this is my way of attempting to vocalise my concern".

The email that was forwarded on to me talked about - I understood her concern to be about the opportunity for people to participate in the ballot, and clearly

Ms Simpson-Gore was aware of the ballot as an individual, because this email is dated 17 December, which is after the ballot has started. It's in the ballot process. My view is that - and a reasonable view to have - if Ms Simpson-Gore believed that she had not received a ballot paper, she certainly knew how to bring - brought her concerns to Deborah Hampton, who I'm advised works in human resources, and a ballot paper could have been provided to her.

So my view is, the opportunity was available for her to participate in the ballot. She clearly knew there was a ballot on, as this email suggests, and so in terms of what agencies were required to do, the information that was sent out to all employees, including the information that was available on the Public Sector Workforce Relations web site, which we've provided you with - have downloaded a printed copy of those screens.

The Department of Health, which this lady works in, also has its own intranet site where information is available. It knew that there was a ballot on, and Ms Simpson-Gore had an opportunity to participate in the ballot, and that's the test that the act sets out; that people have an opportunity to participate in the ballot.

COMMISSIONER: Yes, and I accept that there's nearly 34,000 people that this agreement is going to cover, so there may well be circumstances, but I was more concerned about the number - if it's an isolated incident, because the email we received from her, I think, on the 30th - - -

MS SUMMERTON: Yes.

COMMISSIONER: - - - was to say that she hadn't received either the ballot via postage or email, and I accept this is not going to change the outcome, but it would be worth having an investigation, if that did occur, to make sure that that doesn't occur in the future.

MS SUMMERTON: Yes.

COMMISSIONER: If there was a situation where she didn't receive - if there was anybody who didn't receive a vote, it's worth having an investigation just to continue to finetune it so that you have a better - - -

MS SUMMERTON: Yes, sir. I mean, that's the way it should be too. I mean, as I made the submission earlier, this is an extremely large agreement and covers quite a high proportion of numbers of employees across the state.

COMMISSIONER: Yes.

MS SUMMERTON: So clearly, if people have some issues, it's about providing them with the opportunity to have them addressed.

5 COMMISSIONER: Thank you.

MS SUMMERTON: Do you want to have that email correspondence marked as an exhibit, sir?

10 COMMISSIONER: I think I already did that.

MS SUMMERTON: You'd done that, had you?

COMMISSIONER: Yes.

15

MS SUMMERTON: C3. Okay. In terms of the operative date of the agreement, the employer submits that the operative date be on and from today's date. The agreement provides for a number of provisions to be operative on and from the first full pay period the date of approval is used. Such provisions include the new allied health professional structure, the increased correctional officer allowance and the new secure training centre allowance. This is dealt with by clause 6.5 in the wages clause, which provides that a reference in appendix 1 - "parity salaries and wages to date of approval" - will be taken to mean the first pay period to commence on or after the date on which the commission approves this enterprise agreement. Other entitlements, such as the new night shift allowance and overtime provisions, will be operative from the date of approval.

20

25

30

Another matter I wish to address is the one-off payment at clause 7. This is a one-off payment of \$600, which will be adjusted on a pro rata basis for part-time employees and for contract employees. The clause establishes the eligibility - and I wish to put on the record the methodology which will be used to calculate those entitlements. It is the intention that the calculation for contract employees be based on the period of the contract, regardless of the commencement and expiration of the contract. I've got some examples to talk through with you, sir. If a full-time employee has an 18-month contract and is employed at 24 December and the date of approval by the Industrial Relations Commission - which means they have to be employed at both dates - the person is entitled to \$600.

35

40

If a full-time employee has a nine-month contract and is employed at 24 December and the date of approval by the Industrial Relations Commission, that person is entitled to nine-twelfths of 600; that is, the proportion of the contract over 12 months. Some variations on that would be if the person is a

contract employee and also does not work full-time; that is, they're part-time. If that employee is engaged for 0.5 of full-time equivalent and has an 18-month contract, providing that they've been employed on 24 December and the date of approval - that is, they've worked through that time - then they are entitled to 0.5 of the \$600.

If that employee is engaged for 0.5 FTE and has a nine-month contract and providing they've met the work employment requirements of 24 December and the date of approval, that person is entitled to nine-twelfths of 600 and the sum of which is then multiplied by 0.5.

COMMISSIONER: Halved or multiplied?

MS SUMMERTON: Well, 0.5 means half anyway.

COMMISSIONER: Yes.

MS SUMMERTON: So that is the proportion of the contract over 12 months, then a pro rata amount is applied reflecting the part-time employment. I think that's important to explain how the methodology applies.

COMMISSIONER: Yes. I think we might have some question marks about that.

MS SUMMERTON: Yes.

COMMISSIONER: Yes, I accept that.

MS SUMMERTON: The other methodology I need to talk through with you, sir, is for part-time employees. There are circumstances where some part-time employees can work hours which exceed their contract part-time hours; that is, the hours can and do vary for some employees. The pro rata calculation for part-time employees will be based on the hours worked in the full pay period ending prior to or on 23 December. So what that will reflect is whatever those hours were in that pay period, which has to end prior to or on the 23rd.

COMMISSIONER: Okay.

MS SUMMERTON: As earlier indicated, the filed, signed proposed agreement will also require the insertion of the applicable date of approval where notated, and I would seek leave of the commission to file a clean copy of the agreement to include the date of approval as marked. I don't wish to make any further submissions, other than to ask for the agreement to be approved, if the commission pleases.

COMMISSIONER: Thanks, Ms Summerton. You're seeking the rescission of the previous agreement purely for a better understanding of your employees - - -

5

MS SUMMERTON: To make it very clear, sir, yes.

COMMISSIONER: All right.

10 MS SUMMERTON: And, as Mr Brooks says to me, out of an abundance of caution too, sir.

COMMISSIONER: Thank you.

15 MR MOLONEY: I don't refer to what Ms Summerton says, other than that the commission could alternatively note in the orders, if the commission was so minded, that the approval of the agreement supersedes the previous agreement. That might satisfy Ms Summerton's need to have something on the record for the purposes of HR managers in various agencies. The PSA supports the application otherwise and the PSA urges the commission to give leave to
20 Ms Summerton, as she has requested, for her to supply the commission with a clean copy of the completed agreement - - -

COMMISSIONER: Yes.

25

MR MOLONEY: - - - assuming that the commission approves it this morning.

COMMISSIONER: Yes. Ms Fenwick.

30

MS FENWICK: I have nothing further to add, other than our acceptance in support of the application.

COMMISSIONER: Thank you.

35

MR NAVAS: We support the application as well, commissioner.

COMMISSIONER: Thank you, Mr Navas. You will be providing the copy electronically?

40

MS SUMMERTON: Yes. We can provide it electronically.

COMMISSIONER: Yes. Thank you very much. Is there anything else? With that, I've taken into account what Ms Summerton has indicated. So

having heard from the parties and examined the documents, the commission is satisfied that the negotiation requirements of the amended agreement have been met. This agreement meets all the requirements and objectives of section 79 of the act. Accordingly, the commission is satisfied and approves the South
5 Australian Government Wages Parity (Salaried) Enterprise Agreement 2009 from today's date. It shall remain in force until 30 June 2012. This agreement shall supersede the South Australian Government Wages Parity (Salaried) Enterprise Agreement 2006.

10 I note the employer agrees to apply some retrospectivity to wage increases and allowances prior to the date of the approval. The registry shall issue a sealed copy of the agreement in due course, and I congratulate the parties on reaching this agreement. Is there anything else?

15 MR MOLONEY: Just one small thing, sir. The agreement has been amended so that it's now 2010.

COMMISSIONER: Of course. Yes, that's correct.

20 MR MOLONEY: Thank you, sir.

COMMISSIONER: Thank you very much. You're correct in citing it's 2010, not 2009. If there is nothing further, I will adjourn the matter.

25 **MATTER ADJOURNED AT 11.52 PM ACCORDINGLY**

WITNESS AND EXHIBIT LIST

EXHIBIT #DPC1 - BOOKLET 17

EXHIBIT #DPC2 - BOOKLET ATTACHED TO APPLICATION 19

EXHIBIT #DPC3 - EMAIL FROM MS SIMPSON-GORE 19