

**AUSCRIPT PTY LTD**

ABN 76 082 664 220  
(Administrator Appointed)

Suite 25, Trafalgar Centre 108 Collins St HOBART Tas 7000  
Tel:(03) 6224-8284 Fax:(03) 6224-8293



## **TRANSCRIPT OF PROCEEDINGS**

---

O/N 0729

### **TASMANIAN INDUSTRIAL COMMISSION**

**COMMISSIONER T.J. ABEY**

**T No 11513 of 2004**

**T No 11540 of 2004**

### **HENTY GOLD MINE ENTERPRISE AWARD**

**Application pursuant to the provisions of  
section 23(2)(b) of the Industrial Relations Act 1984  
by the Construction, Forestry, Mining and Energy  
Union, Tasmanian Branch to make the above award**

### **HENTY GOLD LIMITED ENTERPRISE AGREEMENT 2004**

**Application pursuant to the provisions of  
section 55(3) of the Industrial Relations Act 1984  
by the Australian Workers Union, Tasmania Branch  
and Henty Gold Limited for approval of the  
above agreement**

### **ULVERSTONE**

**10.15 AM, WEDNESDAY, 21 JULY 2004**

**Continued from 20.7.04**

**This transcript was prepared from tapes recorded  
by the Tasmanian Industrial Commission**

## **HEARING COMMENCED**

[10.15am]

PN1566

MR BUKARICA: I think we were in the course of cross-examining Mr Hinds, if the Commission pleases.

PN1567

THE COMMISSIONER: Yes. Mr FitzGerald; Mr Hinds.

PN1568

MR FITZGERALD: Yes.

## **<CHRISTOPHER GREGORY HINDS, ON FORMER OATH [9.00am]**

### **<CROSS-EXAMINATION BY MR FITZGERALD**

PN1569

THE COMMISSIONER: Mr Hinds, you are still under oath obviously?

PN1570

MR FITZGERALD: Thank you. Thanks.

PN1571

Mr Hinds, just recapping on some of your evidence yesterday; you said to me that you didn't use your position at Beaconsfield as a security officer to recruit those members of the CFMEU, who were currently members of the CFMEU; is that still your evidence?---Yes.

PN1572

You did say, however, that they were friends of yours?---Correct.

PN1573

Were they friends of yours before you went out to Beaconsfield or did they become friends when you were there as a guard, a security guard at Beaconsfield?---Well, just as a point of history for you, Mr FitzGerald, I was born and bred in Beaconsfield so they were most of Beaconsfield people, so I've known them most of my life.

PN1574

Right. So none of them were newly-acquired friends, if I can call them that, through your association?---Oh, some were.

PN1575

Some were?---Yes.

PN1576

Okay, and they - and you didn't use your position as a security guard coupled with your position as a CFMEU mining division secretary to recruit them into the union?---No.

PN1577

All right. What did you say to them? What services could you offer to them by joining the CFMEU?---As we normally do, is, they were non-union. The point that they were dissatisfied with what they've heard from the AWU when they met in car-parks, etcetera, that they felt that they didn't want to belong to the AWU and they'd prefer to join the mining and energy division. And I went through, as I do with anything, the position of the mining and energy, as in an autonomous union, fully democratic and exactly what the union could offer them.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1578

Yes, so you didn't point out to them the issues of the section 118A order against - precluding you joining members of the Beaconsfield site?---There's a question-mark with the 118A as I said that we had legal advice and the point that I like to make out is that out of the five mines, in the 118A that has stated, not sites, mines, or the company owners, the position was that we were questionable whether Beaconsfield Gold Pty Limited were the owners of Beaconsfield Mine.

PN1579

Did you point this out to - - -?---I did point that out to them.

PN1580

Right, and that didn't deter them from joining at all?---No.

PN1581

So your recent advice from your legal advisers is, just confirm it, is that you should leave the Beaconsfield Gold Mine alone; is that right?---No.

PN1582

Well, what was your evidence yesterday then in that regard?---The point, and I relooked at my notes on the issue, and it was quite clear that there still is a question-mark with the 118A because it states clearly the names of the company.

PN1583

Yes?---It doesn't name specific sites.

PN1584

Well, your evidence yesterday, from my recall, and the record will show it, was that your advice was "to leave the mine alone", or words to that effect; is that right, or is that wrong?---I can't recall. I probably - - -

PN1585

Well, we will examine the record when we get to it in the submissions?---Yes.

PN1586

So given that you are not party to a Beaconsfield Award - is that the case? The CFMEU are not party to the Beaconsfield Award?---That's correct.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1587

What did you intend to do with the members there?---Well, there's such a thing as freedom of association. At the end of the day, if a person comes to me and doesn't want to belong to a particular association and wants to belong to us

because he believes at the end of the day as a union we better represent them than others, I will sign them up, and I will not - - -

PN1588

Not - - -?---I will not respond to questions that, well, I'll rephrase this: I believe I'm a hardworking person; I've worked on the floor all my life. I believe in looking after the people, and that is why I work so hard in what I do.

PN1589

There is no question of your commitment, Mr Hinds, if we can just keep to the questions which I am putting to you. So you said there is freedom of association but, I mean, in terms of the negotiations that were happening in there were you offering a representative role for them?---We was offering advice, as we always do.

PN1590

Did you approach the company, and have you been involved - did you approach the company to negotiate on their behalf?---We have.

PN1591

Right, and what has been the result of that?---The particular instance that - I've had two meetings and I'd have to look at my diary for the precise dates - - -

PN1592

Well - - -

PN1593

MR BUKARICA: Well, let him finish?---Well, I mean, the precise dates, and I spoke to Tony Griffiths on this occasion and I said that we would seek legal advice on whether we were able to represent those membership.

PN1594

MR FITZGERALD: Yes, but as I said, my recall from the evidence was that your legal advice was to leave the site alone; you are saying that is not the case now?---No, it's not.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1595

Right, so you are still saying there is doubt so you can still legitimately cover those people at Beaconsfield Gold?---We believe under freedom of association, yes.

PN1596

Right. We will have to check the evidence on that from yesterday, Mr Hinds. So just, and I don't want to dwell too much on this, but - - -?---Well, you seem to be.

PN1597

Well, it is for me to ask the questions, Mr Hinds, and for you to answer them, so - and it is my right to do so?---That's right, yes, yes.

PN1598

Have you - are you aware that there has been some collective negotiations with the AWU and the two other unions, the AMWU and the CEPU at the Beaconsfield site?---Yes.

PN1599

All right. Has your union, if you represent these employees, sought to involve themselves in those negotiations?---We have spoken to the other unions concerned, except for the AWU, and we have actually said to the other unions, if they could keep us informed on what was happening at Beaconsfield it would be appreciated.

PN1600

So you haven't actually involved yourself in the discussions with the company?---No.

PN1601

Right. Why is that?---Because the company won't accept us under the conditions of the 118A.

PN1602

So you are just prepared just to leave that in limbo? You have a different view to the 118A, the company has another view, so you are just prepared to leave that in limbo; is that the case?---Not - not correct.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1603

Well, what is this - what is the case then?---We are still looking at what position we're going to take with Beaconsfield.

PN1604

Right, but - - -?---We haven't come to a decision as what line we're going to take.

PN1605

But it is true that the three other unions have progressed discussions with the company and the CFMEU have involved themselves in those discussions?---That's correct.

PN1606

That is all I need to know; thank you. Just coming back to Henty now, finally, you say that members - you have had members there since May 2002; can you just recall the number, how many actually signed on on that date?---Can I correct, if I may, Mr Commissioner, I went through my records last night and it was the ninth month, 1002 [sic] so - and we had nine members at the time.

PN1607

So September 2002?---September 2002.

PN1608

All right. Mr Hinds, are there any other aspects of your evidence you want to correct at this point in time?---No.

PN1609

So you had nine members at May 2002; how did they come to become members of the CFMEU at that point?---I've answered it, but I'll re-state what I said yesterday, was that we received a phone call. The district secretary received a phone call, referred the phone call, or the person's number to me. I rang the person. He wanted to belong to a union. I then asked them if they are members

of a union and they stated to me, no. They stated very clearly they didn't want to be members of the AWU. They - I then sent them membership forms and they came back to me.

PN1610

Okay, all right. So has your membership remained since September 2002, has your membership remained static?---No.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1611

So what number is - - -?---It's increased by dribs and drabs by three.

PN1612

So it is up to 12 now, is it?---Yes.

PN1613

And you seem to be - yesterday, you seemed to think that you needed to have, you know, a sophisticated computer program to keep track of your 12 members. Are you certain about the numbers and dates because you have already changed one date?---I'm just trying to give proper evidence and if you believe that I've been misleading you in any way then I apologise but, to keep track of every member in this State that I look after is - I haven't got the ability to do that in my mind.

PN1614

But, Mr Hinds - - -?---So stop questioning on my mental ability because I can't do it.

PN1615

I am entitled to ask you questions. If it is out of line the Commissioner will rule, so - - -?---Right, okay.

PN1616

MR BUKARICA: Well, if the Commission pleases, there is a question here of ambiguity in the questioning. As I understood the evidence yesterday to which Mr Fitzgerald refers, it related to monthly payroll, or monthly union due collection as opposed to the issue I think Mr Hinds is alluding to which is the actual membership joining date. Now, the two things are separate issues, with respect.

PN1617

MR FITZGERALD: I think the questions have been separately put that way too?

PN1618

THE COMMISSIONER: Well, as I recall yesterday, the evidence was that there were 12 members, one of whom had not paid dues on time but there was a month's leeway, and by inference that hadn't expired. There was a date mentioned about when the first nine joined which Mr Hinds has clarified this morning as being September '02, I believe, and has subsequently increased to 12 on his evidence. Is there anything else that is unclear, Mr Fitzgerald?

PN1619

MR FITZGERALD: No. No, that is fine, but I don't think there is any ambiguity in the questions?

PN1620

Mr Hinds, in your evidence at point 11, you said that you had a general meeting with members in July 2003 so, effectively, when they first became members now in September 2002, it took you about nine months to have some discussion with your members?---As in a proper constituted general meeting?

PN1621

Yes?---Yes.

PN1622

So there weren't any immediate issues. If there were immediate issues which the members were telling you they wanted dealt with surely they would have been dealt with back in September 2002, not in July 2003?---The situation with the membership is that they were unsure which way they wanted to handle the issues that were being brought to the surface. I then spoke to people on several occasions prior to that. We had meetings with members and it was decided that, along the line that we would wait until such times as we was in a position to have a power base to discuss these issues with the company.

PN1623

So you had nine members in 2002; that is not a power base in your view?---There was - there was a lot of questions that I needed answering before such times as that I was prepared to negotiate - - -

PN1624

Just looking at - sorry?--- - - - or to try to meet with the company.

PN1625

So to interrupt you. So looking at it, they joined in September 2002. You had the first meeting in July 2003?---Yes.

PN1626

What happened at that point?---Without looking at my diary notes we discussed issues on the section 61 agreement. We discussed a strategy on issues where we could gain more membership and - - -

PN1627

Okay?--- - - - and other issues such as normal day-to-day bonus-type arrangements.

PN1628

So then took another year before the CFMEU took any action to bring this application to the Commission; is that right?---That's correct.

PN1629

Right, well, so why such a delay if the issues were so immediate and urgent?---Because we was of the mind that came to when September 19, I

believe, when the section - September 19, when the section 61 ran out, that we was looking at getting a situation where we had an EBA, etcetera, etcetera, to put to the company so that it wasn't a situation of going in there with nothing to offer.

PN1630

Right?---And we'd had several meetings with the members discussing an EBA.

PN1631

Had you - have you consulted with the members in respect of the application which is currently before the Commission?---Yes.

PN1632

To what extent? How did you go about consulting with them?---I actually jumped in the car and went down to Tullah.

PN1633

So that application, would you agree, also affects other employees at the site?---Correct.

PN1634

Have you consulted with them about that?---No.

PN1635

Right; why not?---Because we consult with our membership.

PN1636

So it doesn't matter that your application is going to affect other non-members and other unions - - -?---Our priority is to our membership.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1637

So when did you actually have the consultation with your membership?---17th, 18th and I believe the 19th.

PN1638

Of what month?---Of May - 18th, 19th and 20th.

PN1639

Would you acknowledge that in terms of this application that until the agreement expires this application really has no effect; would you acknowledge that is correct?---As I understand it, yes.

PN1640

Yes, okay. So why did the CFMEU seek to make an application in respect to the mill only?---Well, I believe that that was an error because I believe that we didn't - well, our intent wasn't just for the mill, it was for mining areas as well, but we didn't have a chance to consult with the people about the miners' rates and that's why the miners' rates were not put in the award.

PN1641

So have you have any consultation with the mining employees?---No, we haven't.

PN1642

And why is that?---Because the company and the AWU have signed up the miners - - -

PN1643

Right?---- - - - since the application was made.

PN1644

Well, prior to that did you have any consultation with the mining employees?---Through our lodge officials, they were trying to get in contact with the miners.

PN1645

And what - and they were - you were unsuccessful in that regard?---We was unsuccessful.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1646

Why do you believe you were unsuccessful?---Because the AWU went in.

PN1647

No, this is prior to the AWU going in. Did you have any consultation - - -?---We were - - -

PN1648

This is going back - sorry, just to confirm it, this is going back to when you first joined people up in September 2002 and then when you had members in 2003?---The point that we were - I was at the behest of the lodge and the lodge stated that it was not quite the appropriate time to go and try to sign miners up, so I took their advice on that.

PN1649

Are you aware of anyone who has actually resigned from the CFMEU in Henty and moved across to other unions?---No, I haven't received any notification of resignations.

PN1650

All right, okay. So you have got a pretty good handle on who the members are; you would know them all by name?---Yes.

PN1651

And you would know what their status is, etcetera?---Yes.

PN1652

Is it true that, I mean, you have been involved with the CFMEU since the early '90s?---Yes.

PN1653

Okay, and that has principally been at Temco?---Yes.

PN1654

What position did you have in the early '90s in the CFMEU?---Lodge President at Temco.

PN1655

Right, okay, and so you didn't have any official role with the mining division of the CFMEU at that point?---The FED and FA we were members of.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1656

Okay?---And when the amalgamation went through the mining and energy national officials came and spoke with us.

PN1657

Okay?---And then probably three months after that I became vice-president of the district.

PN1658

So were you aware of activities by the union in the mining sector at that time?---Not to the point that I had to do some investigations to find out where our membership was, yes.

PN1659

So what investigations were they and what were the results of those investigations?---Well, upon amalgamation I wanted to see where our union members were and we then did a tour around the State.

PN1660

And you went to where?---We went to the west coast.

PN1661

Right?---North, east coast. We toured the complete State.

PN1662

But in terms of the mining sector which site did you visit?---We didn't actually visit sites. We sent out notifications of meetings at Queenstown, etcetera, etcetera, at the towns that were central to where we believed the membership were.

PN1663

Okay, so did you know in your capacity there as lodge president, of an order made by Deputy President Moore in the early '90s effectively demarking the CFMEU from the industry, the one we spoke about earlier in the evidence?---I was aware of Deputy President Moore's decision and if I recall correctly, that the people that we were meeting were not involved in the Pacific Mines mentioned in Moore's decision.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1664

So who are you talking about specifically there?---The Renison Bell, Rosebery and Queenstown Mine.

PN1665

So they weren't involved in Deputy President Moore's decision?---No. I said they were the areas that we kept away from.

PN1666

I am sorry, I just misunderstood you there. So which are the ones where you actually targeted then, if you kept away from those other ones?---The other mines that were not - well, other lodges that we believed we had - HEC employees and we targeted the areas that we already had membership in.

PN1667

Now, we are talking about the mining sector here. Can you be specific? Which ones are those mines that you - did you specifically target mines?---We didn't specifically target any mine.

PN1668

So no one at all?---No.

PN1669

So in those days, in the '90s, would you agree that the union complied with Deputy President Moore's decision?---I believe so, yes.

PN1670

What has changed that now in terms of - what are the circumstances which have now changed? You complied with it in the '90s, now you are saying there is some doubt, particularly in respect to Beaconsfield?---Well, we believed that, well, we believed that the order states specific companies.

PN1671

Right?---It doesn't state specific mines, or the sites, it states companies and we believe that the five companies mentioned, we do abide by that order. The others that are not in the order we believe that we can legally sign members up.

PN1672

So your lawyers didn't give you any advice about transmission in that order binding future companies? The didn't give you any advice about that?---No.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1673

But you agreed to - you have abided by it in the '90s but, recently, you have decided just not to abide by it; is that right?---Well, we have not got members in any of the mines mentioned on the 118A.

PN1674

But you thought you had?---Well, we believe that it's questionable.

PN1675

Right?---We believe that it's not Beaconsfield Gold Mines Pty Limited that's mentioned in the order.

PN1676

But the other sites, I mean, can I take you, for example, the Rosebery site now, do you know who runs that site?---It's changed under, when they went into liquidation.

PN1677

Okay, all right, so it is a new company which is now running that site?---Yes.

PN1678

Do you take the same view there that because it is a new company that it is now fair game for the CFMEU to enrol members in?---We will take advice on that.

PN1679

Have you sought to enrol members at - - -?---No.

PN1680

No? All right. And why is that?---Because we have - we're of the belief that we've got enough work to do at the moment without trying to gain more membership in an area that the AWU are in.

PN1681

So would you agree that the AWU have effectively serviced the mining industry in that - since 1990 - since the early '90s?---No.

PN1682

Where do you think the AWU have not effectively serviced the industry?---I believe with the contract situations in the mines at the moment and the loss of unionised workforce, it's questionable. There must be a reason? I haven't investigated why they're leaving the union but I believe that there's, what we can understand and the people we've spoken to, that there's an exodus of membership.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1683

Are you talking about a mass exodus, Mr Hinds, or just a few?---No. I'm not sure of the numbers.

PN1684

Right?---The people that I've spoken to that are non-members and used to be members, and I don't go into asking why, or finding out the dirty linen of other unions because I have enough to do without worrying about what other unions are doing.

PN1685

But could it be that, you know, union membership ebbs and flows?---Of course it does.

PN1686

Sometimes you get some more and sometimes they drop off?---I agree.

PN1687

Could that be what is - - -?---That could be the point.

PN1688

Okay, so why do you make this point that there has been an exodus of members, there is an non-unionisation, some of your colleagues have mentioned about sham contract arrangements. On what basis do you make those points?---I didn't make any point on sham contracting arrangements.

PN1689

Okay, well, do you think there are sham contract arrangements in the industry?---Oh, I'd prefer not to comment.

PN1690

Well, if you could comment, Mr - - -?---Look, I can't comment because I don't know enough about it to give a proper judgment on the issue.

PN1691

Well, could I put it to you, Mr Hinds, that you don't know enough about the industry to make any - to give any sort of evidence about whether the industry is unionised or there are contractors who are in place, or whatever? You don't - just simply don't know enough about the industry to make those comments?---Oh, that's your opinion. It's not mine.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1692

Well, can I - I am putting it to you: do you agree with me?---It's not my opinion, no.

PN1693

Right. On what basis do you make these - this evidence?---Because everywhere we have lodges I get to know the lodge people, I get to know everything that's involved with the specific industry that we have membership, and I don't have enough time to go in and specifically target other areas that we don't have membership in.

PN1694

Is it true - - -?---But I believe that I - - -

PN1695

Sorry?---- - - I have the knowledge of what is happening at Henty Gold.

PN1696

Is it true that the only lodge you have in the mining industry is, in fact, at Henty?---I suppose, yes, that's correct.

PN1697

Okay, well, on what basis are you getting - you said there are other lodges in the industry; where are the other lodges then? There are no - - -?---At Temco, Cornwall, etcetera, etcetera.

PN1698

Okay, we are talking about the metalliferous mining sector here, the West Coast Mines particularly, and Beaconsfield. Is it true that it is only - the only lodge you have is at Henty?---Correct.

PN1699

Right. How then, if there are no other lodges at any other sites, do you get this information you said you are receiving through the lodges?---By hearsay.

PN1700

But there are no lodges in place so how can you get the information?---By hearsay.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1701

So you take that as fact then, do you?---When - I don't take everything I hear as fact but if there's enough people on hearsay that say the same story, of course I believe it.

PN1702

So have you consulted with the AWU to, for instance, to establish the extent of unionisation in the industry?---No.

PN1703

So your opinion could be inaccurate?---It could be.

PN1704

But you are prepared to give evidence to that effect?---I suppose.

PN1705

Yes, so, Mr Hinds, could it be that we haven't - we can't place much faith in that evidence because you said it could be inaccurate?---Well, you put as much faith in it as you like.

PN1706

The Commission will ultimately determine that.

PN1707

So you are aware of the 118A order. Are you aware of the CFMEU, and then that is at the time, we are talking about, you have said that, are you aware of the CFMEU having an involvement at the Rosebery site in the early '90s?---Oh, I can recall back, yes.

PN1708

Okay. Are you aware that your union, when the FEDFA and CFMEU amalgamated, initially requested an interest in the Pasminco Rosebery Award and then some three or four months later withdrew it?---Correct.

PN1709

So you are aware of that. Mr Cordwell, who was the joint secretary at the time?---Correct.

\*\*\*\*

CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1710

So you were aware that that was going on at the time?---I was, yes.

PN1711

Okay, so as a union representative you would have consulted with Mr Cordwell?---No.

PN1712

All right, well, but you were still aware that it was happening?---Correct.

PN1713

Right. Would you agree that by the CFMEU withdrawing their interest in the Pasminco Rosebery Award that, effectively, that means they couldn't represent employees at that site?---As - I mean, that's in '92. I was a lodge president at Temco.

PN1714

You said you were aware of it though?---I was aware of it, yes.

PN1715

Yes, okay, but would you agree that that was - that is what was the effect of the withdrawal?---I didn't agree with it at the time.

PN1716

So you put an opinion to Mr Cordwell, did you?---No, I didn't. I didn't have the wherewithal to be able to do that.

PN1717

Well - - -?---I didn't have a position to be able to talk to the board of management.

PN1718

All right, well, you had - - -?---On that issue.

PN1719

You said - you must have had an opinion because you said you didn't agree with it?---Correct.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1720

So you must have had some wherewithal to form that opinion, why didn't you agree with what Mr Cordwell was doing that time?---A myriad of issues that arose from Rosebery with the large amount of strikes that they had there at the time. I believed that membership is near and dear to my soul and you don't agree to give membership away because things are at the time, hard, confused and technical. I believed that they should have, at least thought about the decision that they were making in a lot more depth than what they did.

PN1721

Mr Hinds, you have said before that the CFMEU ceased to have involvement in those mines because the 118A was complied with and that was about the same time; is that the reason why the CFMEU withdrew their interest in the Pasminco Rosebery Award?---I can't answer that because I don't know.

PN1722

It just seems odd that on one hand you concede the 118A order which means that you couldn't enrol members at Pasminco Rosebery?---Mm.

PN1723

But now you are saying, membership is dear to your heart so they should be represented? So, which is it?---The latter.

PN1724

So the earlier evidence you gave, we discount that, do we, or do we reject that?---No, you're talking about something that I had no involvement in.

PN1725

Well, you - - -?---I was a lodge president at Temco.

PN1726

Well, you ---?---I had no involvement, or no authority as a board of management, or a branch officer to be able to sway anybody's opinion. It was back in '92.

PN1727

But you had - - -

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1728

MR BUKARICA: Mr Commissioner, if I could just intervene? The witness statement of Mr Hinds, unlike, say, of Mr Best, and to some extent Mr McLean, doesn't go into the history, the early '90s historical position. He is saying that he hasn't got any direct knowledge of it, or limited knowledge. It is not his evidence that he has. I don't know why the line of cross-examination is being conducted?

PN1729

MR FITZGERALD: Well, Mr Commissioner, Mr Hinds did say that he had an opinion and an involvement. He said he didn't agree with it, and I think I am entitled to cross-examine him on this issue?---I didn't say I had an involvement?

PN1730

THE COMMISSIONER: No, he said - he did say he didn't agree with the decision but he wasn't in a position to influence it.

PN1731

MR FITZGERALD: Right, okay, but he knew what was going on and I think that is - I am entitled to ask, and I am entitled to ask questions which - coming out of the other evidence as well.

PN1732

THE COMMISSIONER: Well, I will allow you to proceed, but I do want to progress this, Mr FitzGerald.

PN1733

MR FITZGERALD: Okay. All right. I will move on to another issue if that is the case, Commissioner.

PN1734

Mr Hinds, just to clarify; you have been effectively branch Secretary of the mining division since when?---Incorrect, I've been District president, mining division.

PN1735

Okay, well, it is a title; I made the error in the title, did I? Okay.

PN1736

So how long have you been - - -

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1737

MR BUKARICA: This question - Mr Commissioner, I think we are being fairly liberal in terms of interjections. There is a great deal of repetition to the questions being asked.

PN1738

MR FITZGERALD: Well, I am just - I just leading to other questions - - -

PN1739

MR BUKARICA: I can specifically remember this question being answered yesterday. Now, I am starting to get the suspicion that there is a bit of filibustering happening here today with the intention that this matter does not proceed in any sort of efficient manner and Mr - the record will show that Mr Hinds answered this question yesterday and did so correctly.

PN1740

MR FITZGERALD: Look, I was only using it as a lead-up question to another question in respect to recent ones and - - -

PN1741

THE COMMISSIONER: Well, I - - -

PN1742

MR FITZGERALD: - - - there is no filibustering going on. I have got Mr Knott and Mr Daily waiting, you know, and we are trying to proceed with this as quickly as we can, Commissioner.

PN1743

THE COMMISSIONER: Well, I would have some regard to that because, I agree, there has been some repetition.

PN1744

MR FITZGERALD: Well, I will attempt to, and I suppose that is the difficulty, I suppose, in breaking up the witnesses sometimes, but I will, given that we had the evidence yesterday as well, but I will attempt not to repeat. That is not my intention.

PN1745

Mr Hinds, are you aware that your union withdrew interest from the Mining and Metalliferous Award in 1999?--By whom?

\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1746

By Mr Benson?--He had not the authority to do that.

PN1747

Right, but it is - did you consult with him?--No, I didn't know until it was mentioned yesterday, I believe.

PN1748

So how did you know that it was mentioned yesterday?--I heard that there was - I'm just trying to recall that - trying to recall the conversation but - - -

PN1749

Well, can I - - -?-- I heard that, it was yesterday or the day prior to it, that Tony had withdrawn from - I'm not sure whether it was with Alex on the Monday afternoon, or Monday morning with Scotty McLean?

PN1750

Can I suggest that you learnt from - the reason - how you have learnt about this was you had some discussions with the earlier witnesses?---No, that's incorrect.

PN1751

Well, how else would you have learnt about this withdrawal?---I heard that when we was going through the emails, etcetera, on Monday - on Monday or early Tuesday morning.

PN1752

Well, this has only just come out in these proceedings yesterday, Mr Hinds?---And we've dug deep into our archives since then as well on these issues, I mean, ---

PN1753

You are under oath, Mr Hinds?---I am under oath and I understand what you are saying ---

PN1754

Well ---?--- --- but, will you allow me to answer the question instead of interrupting me all the time? The point that I am making is that I can't recall whether it was early Monday morning, or early yesterday morning when we left the office and we was reading emails that there was some question that Tony had withdrawn something along the lines of something in the metalliferous area and I was yet to determine whether that was correct, or not ---

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1755

So just ---?--- --- and I still don't know whether it's correct, or not?

PN1756

So just repeat you did - this was mentioned to the two witnesses yesterday?---Well ---

PN1757

Right, and you had no discussion with them about that?---No, I didn't.

PN1758

It is, I think, the first time it has come out in proceedings, so how would it come up just out of the blue from Mr Benson withdrawing from the award?---The whole point, and I've got a heap of material in my bag, that there was something about the Metalliferous Award, etcetera, etcetera, and that we were trying to chase down exactly where that was at the time and there was some mention, or there was some email, etcetera, or a letter, a memo from Tony Benson.

PN1759

So, leaving that aside - I am not happy with that response, but leaving that aside, what was your view of Mr Benson withdrawing the CFMEUs interest in the Mining and Metalliferous Processing Award?

PN1760

THE COMMISSIONER: He hasn't got the authority to do that.

PN1761

MR FITZGERALD: What is your view of it? Forgetting whether he has the authority, or not, what is your view of that? Are you unhappy with that? What - - - ?---I am - I'm extremely unhappy with that.

PN1762

So I think we mentioned yesterday with Mr McLean, is there a case of the CFMEU, the left hand not knowing what the right hand was doing, or is it just a communication break-down?---I would have to talk to Tony before I comment on that.

PN1763

Mr Benson is the secretary, is he not, of the construction and general division; is that - - - ?---Correct.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1764

Right. Yet he was - appeared before the Commission, Commissioner Imlach, to withdraw, in respect to the mining award - would he have not consulted with you given it was a mining matter, about that action?---I can't recall him consulting with me, no.

PN1765

Would you think it strange if you are the main mining man, that a colleague in Hobart who deals with another division, actually withdraws interest in a significant award which your union would have an interest in?---From time to time Tony's represented our division because a lot of times we have such short notice that we can't get people down there. The same as the forestry have dealt with issues for us.

PN1766

So - - - ?---It's not out of the norm that they do that.

PN1767

Yes. So how long have you been aware that Mr Benson took this action on behalf of the CFMEU?---Either Monday, or early Tuesday.

PN1768

And are you able to show some proof about emails? Are you able to produce those emails to show that that's when you became aware of it?---It was - we was in the office preparing this case.

PN1769

Yes?---We went through a myriad of information and information that we had on, firstly, the orders, etcetera, etcetera, and the issues that we're dealing with in this - in this Commission.

PN1770

Okay. You acknowledge the AWUs role in the industry and in a whole range of matters in particular things like the "hours of work" campaign?---Yes.

PN1771

Do you believe that was effective, that campaign?---I believe it was very effective and I give - I give the AWU a pat on the back for doing such a good job.

PN1772

Yes. Would you acknowledge that the AWU have a representation at other sites within the Tasmanian mining community?---That's correct.

PN1773

Would you acknowledge that the AWU have, almost exclusively, the representation of metalliferous mines throughout Australia?---I can't comment on that because I don't have the knowledge.

PN1774

Well, Mr Hinds, you are the State divisional - - -

PN1775

THE COMMISSIONER: But he said he doesn't have the knowledge, Mr FitzGerald.

PN1776

MR FITZGERALD: Okay, I won't - I am saying that he should have the knowledge. I am just asking him some questions about that, if I could, Commissioner?

PN1777

Do you have consultation with your counterparts in other States in the mining division?---Yes.

PN1778

In those consultations you must discuss what sites the CFMEU had representation particularly in the metalliferous sector?---In the central council we only discuss hot spots.

PN1779

So do you have any awareness of where the CFMEU have representation in other metalliferous mines throughout Australia?---A limited knowledge.

PN1780

All right, and what is that knowledge then?---I think I answered this yesterday.

PN1781

Well, what is the knowledge?---Broken Hill - I believe we've got the members there; and in black coal, etcetera, etcetera.

PN1782

Okay, so it is a black coal sector; right, okay. You did remind me, I apologise for repetition here, but it is just my memory loss at the end of the long day yesterday, Commissioner. And I apologise if I had asked that question. Given the approach by the employees at Henty, given the representation by the AWU in the industry, do you think the more appropriate course would it not, to be to refer those members to the AWU?---Incorrect.

PN1783

Right, and why do you say that?---The point that I make on this is that they came to us. They wanted us to represent them, not the AWU. I believe that since then there has been a blitz-type campaign in Henty Gold to keep us out.

PN1784

I will let Mr Flanagan handle that aspect.

PN1785

Do you believe that the CFMEU can enrol members in the mining division at Henty?---Yes.

PN1786

And what rule gives you that justification to do so?---Under our eligibility rule.

PN1787

Right. Have you members enrolled in the mine at Henty?---I've answered this; no.

PN1788

No? Okay. And the reason why - and why not?---I've answered that as well.

PN1789

Well, just remind me, please?---The point that we were doing is, we were getting a power base, we were strategising to what course of action we would take to start at recruitment campaign in the mine. In the meantime, the situation with common law contracts arose.

PN1790

So just again - there has been no action taken by the CFMEU apart from this application at Henty?---No action?

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1791

No action taken against the employer apart from this application?---Well, if - through you, Mr Commissioner, we did try to enter the mine site and interview our membership with right of entry though the company refused to allow us to go on the mine, so I suppose that was one contact in March prior to that, that we did try to interview our membership.

PN1792

At point 23, you say that you were aware that the section 61 agreement is seven to \$8000 per annum below. Would you concede, Mr Hinds, that the application before the Commission is simply a claim, it is not an agreed position, it is just a claim only?

PN1793

MR BUKARICA: Which? Ours, or your - - -

PN1794

MR FITZGERALD: No, the CFMEU application?---Can you - - -

PN1795

Well, you say that the section 61 rates - - -

PN1796

MR BUKARICA: Section 55.

PN1797

MR FITZGERALD: I am sorry, I have misread this, I think?

PN1798

If you could explain - you contend that the rates are seven to \$8000 per annum less than the existing rates; can you just explain that aspect?---The members rang me and have contacted me and they believe that what they understand from the section 55 agreement to the section 61, that the wage rates are seven to \$8000 different.

PN1799

Are you aware that on site the request of employees was to reflect the base rates. This is - in fact the rates were a total remuneration cost and the request from employees to - came to reflect the base rates only; are you aware of that?---I - not 100 per cent, no.

\*\*\*\*

CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1800

Mr Hinds, can you say, from a practical point of view, assuming the AWU Agreement is approved, how do you see, in practice, the award which you are seeking applying to a limited number of mill employees only?---We would like the AWU to come along and join us in our application with the enterprise award.

PN1801

So you say - - -?---We have got no problems with the AWU whatsoever.

PN1802

So - - -?---We can work the AWU as well as any other union.

PN1803

All right, so would you agree that you are actually competing for membership, if that were to be the case?---No, weren't not.

PN1804

Well, you said you want to pursue the mine employees and you have got the mill employees, as have the AWU got some mill employees, isn't there a direct open competition for members there?---Not at the moment, no. The point that I'd make, and I make it very clear, is that we're not in the habit of poaching membership. If they're already members of other unions, and we make it very clear when people want to join us, are they a member of another union. If they are so, we will not join them until such times as they are non-members. I mean, I've made it very clear to everybody I've spoken to that we will not sign up other member, or other people that are members of another association.

PN1805

Forgetting whether you sign up, or not, you have still got - you have got some employees in the same area as some already covered by the AWU and some covered by the CFMEU?---That's correct.

PN1806

Right, so there is, if you like, a competing membership aspect there already?---I don't believe there is.

PN1807

Right?---And if there was then we would have made every attempt to go down and sign members up after we knew that the AWU were down there recruiting

- - -

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1808

So - - -?---But we have not. We have stayed away from the site in good faith - in good faith, and we're not in the position of going into a fight with another union that have already got - that have signed membership up.

PN1809

So - - -?---I make that very clear on that.

PN1810

So what about those employees who may not be members and who are deciding either to go with the CFMEU or AWU? What do you say about those?---We'd dearly welcome them with open hands.

PN1811

All right, okay, so there is a competition aspect there, then?---Well, I suppose if that's a competition, yes.

PN1812

Yes, okay, so would you concede - would you agree with me that by proceedings with the agreement, plus the CFMEU Award, it provides a health ground for competition?---No.

PN1813

Well - - -?---No, I - you've got to understand how we work and it is obvious you don't, that we're not in the habit of signing other people up. If they already belong to another union then they - we work well with other unions. We believe competition in that respect is null and void because it doesn't - doesn't occur.

PN1814

So you have got a co-operative relationship with the AWU?---I believe that we've got a cordial relationship.

PN1815

Yes?---I won't say co-operative.

PN1816

Is that at the State and national level?---Oh, I can't for the national body.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1817

So you have no knowledge at all what has happened in the CFMEU nationally?---I've got some knowledge of incidences that have occurred in other States.

PN1818

Are you aware of a major application taken by the CFMEU to amend the rules in the civil area to encroach on some areas previously, or currently being serviced by the AWU?---I make it very clear to you again, our union is looking at areas where there's non-union. It is not - - -

PN1819

Sorry, can you just answer the question? Are you aware of that case?---I'm aware of a case, yes.

PN1820

Are you aware that that went to the High Court?---I'm not 100 per cent sure on that?

PN1821

So you don't have any communication from your Federal mining division about that?---I do, but I have a lot on my plate. I can't get everything in that goes over my desk, and understand it 100 per cent because I've got to prioritise because I'm a one-man show.

PN1822

Could I put it to you that this is a major issue for the CFMEU and it would have been something which you would have been briefed on as part of your role as a CFMEU mining secretary?---I've had a myriad of faxes go over my desk the last month and - - -

PN1823

So you can't recall - - -?--- my workload has been horrendous and I can't recall. I know that there's something that's gone over the desk but I leave that, in good faith, to my national body.

PN1824

But are you aware that the AWU and our own organisation strongly defended that rules change application?---I understand that, yes.

\*\*\*\*

CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1825

Yes, okay, and surely the relationship by the AWU strongly defending it also, is not a cordial one that you described?---Well, I, look, as, once again, I look after my State. What happens in the national level is the national body's problem not

- - -

PN1826

Well, with respect, Mr Hinds, it is going to have an impact on your State and you would have been aware of that. Are you saying you didn't - you weren't aware of it?---I'm not 100 per cent aware of it.

PN1827

I won't pursue it. So just to finally close on the matter of competition, if, in fact, there is a dispute about, you know, a non-member wanting to join either the AWU, or CFMEU, how would you, with your co-operative relationship with the

AWU, sort that out?---If the particular person wanted to go to AWU, or the CFMEU, that's his choice.

PN1828

So you wouldn't convince him to - that the CFMEU is the better option than the AWU?---I would give him the information of how our lodge is, etcetera, etcetera, is set up, and how our union runs, and then let the person make their decision.

PN1829

But they could be faced with a competing choice; would you agree with that?---They could be, yes.

PN1830

Okay, and that is effectively the potential for competition; that is what it amounts to?---Well, at the end of the day I'd give him the information, or him or her, and they would choose.

PN1831

There were a number of questions I asked Mr Mclean yesterday and he states that employers in Tasmania, and he is - sorry, are you aware of Mr McLean's evidence?---No.

PN1832

So when you got together on Monday, or whenever it was, you didn't compare notes in terms of putting in statements to the Commission?---We compared statements.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1833

Okay, so you must be aware of Mr McLean's evidence then?---I know some of what's in his statement, yes.

PN1834

Yes, and the same with Mr Best?---Not 100 per cent on Mr Best, no.

PN1835

Yes, but you did compare notes with him?---Compare notes?

PN1836

Yes?---We discussed our statements.

PN1837

Okay. Just see what you say about this because this is something Mr McLean asked me to refer to you. He says in his statement that:

PN1838

*There are aggressive anti-union strategies by employers in Tasmania in the west coast mining industry.*

PN1839

I know you don't report to Mr McLean, that is the case isn't it?---That's right.

PN1840

Yes, but would you agree with that statement?---Could you just read the statement out again, please?

PN1841

The statement is:

PN1842

*...aggressive anti-union strategies by employers in Tasmania, the west coast*

-

PN1843

that:

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1844

*...the west coast mining industry has become largely non-union.*

PN1845

?---Yes, I do agree.

PN1846

Right, and on what basis do you say that that is true?---Well, as the reports that we've gained through discussions with people that - that there is a progressive push to de-unionise the west coast.

PN1847

And that is just through your feedback, hearsay feedback?---Yes.

PN1848

Through a handful of employees?---Yes.

PN1849

No more than that; okay. And can you - Mr McLean couldn't cite the examples. You are the man on the spot. Can you cite some examples of where employers have - the actual employers who have instituted anti - aggressive anti-union strategies?---I believe Barminco is one company that stands head and shoulders above the rest.

PN1850

So how did you gain the knowledge of Barminco?---Because of people that are friends of mine that actually work for them.

PN1851

Do you know what the current situation is with Barminco?---Not 100 per cent, no.

PN1852

Right, okay, so you really can't say with any authority about - - -?---No, I can't.

PN1853

- - - whether they are anti-union, or not?---No.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1854

Could a lot of that be - - -?---Well, as I believe, from the people that work there, they are anti-union by some - - -

PN1855

Would it surprise - sorry, keep going?---No, you're okay.

PN1856

Would it surprise you that the AWU have a very strong presence at Barminco?---No, it wouldn't surprise me.

PN1857

Okay, so how then did you say they - - -?---I'd be disappointed if they didn't.

PN1858

How then do you say they are anti-union if the AWU have a strong union presence there?---I probably can't.

PN1859

Okay, so we discount that part of your evidence?---You can discount it.

PN1860

No, it is the Commission who will determine that ultimately?---Yes.

PN1861

Are there any other examples of where - and given that you have agreed with Mr McLean's statement, where there are employers who have implemented anti-aggressive anti-union strategies?---Anti-union, or anti -anti or against a particular union?

PN1862

The wording is "anti-union"?---Not personally to me, no.

PN1863

Okay, so did you liaise with Mr McLean about this?---No.

PN1864

Right, so how - I mean, you have - you work in the same office as Mr McLean?---Yes.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1865

And you would, on a daily basis, you would update him on events in the mining industry, etcetera?---No.

PN1866

Right, so how would he, do you think, would gain some sort of understanding of these things in the mining industry?---He travels probably in a wider circle than what I do. He talks to people, other unions probably more than what I do so he can - he is probably more travelled and been in the industry a lot longer than I have. So that's how he gathers his information.

PN1867

He also says there is a growth in individual contracts. Would you agree with that?---As I understand - - -

PN1868

Yes, well - - -?--- - - and my experience, yes.

PN1869

Okay, your experience tells you, on what sites is there a growth in individual contracts?---As in - what sites?

PN1870

Yes, what sites?---Well, you've got Comalco, etcetera.

PN1871

We are talking about the mining - the metalliferous mining sector on the west coast here, what sites is there a growth in individual contracts?---I couldn't answer that.

PN1872

Could that statement by Mr McLean be, in fact, wrong?---I can't answer that.

PN1873

Do you believe it is a correct statement of the position?---I can't answer that.

PN1874

Okay. Sham contractors, he refers to sham contractors. Do you believe there are sham contractors in the mining industry?---Look, I don't know enough to comment, to be honest - to be fair.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1875

And he also talks about safety standards in the industry and, again, that was a matter he asked me to refer to you. Do you know anything about safety standards in the industry?---We've been trying on, for several years, to get something done about the safety standards, in particular, coal. We've been unsuccessful to this point in time.

PN1876

Well - - -?---By lobbying the Government, etcetera, to change the Act, to make the owners more responsible for OH and S on the sites.

PN1877

Can we come back to the metalliferous sector, because that is what we are talking about; that is what Henty is?---Yes.

PN1878

Okay. Do you know anything about the OH and S performance of the industry?---No.

PN1879

And I take it that - - -?---And the reason why is that I haven't had enough time to talk to them, given the particular issues that they've had there, so we have to prioritise.

PN1880

So do you think there is a link between the so-called non-union strategies and the safety performances of companies?---Oh, there's a definite issue with OH and S in the mining industry. It's a well-known fact that I believe that where there's - and this is my personal opinion, is that where there's AWAs or private - or personal common law contracts there seems to be a lowering of standards, safety standards in the industry.

PN1881

Have you any proof of that, or is it just your speculation, Mr Hinds?---It's hearsay once again - - -

PN1882

It is hearsay again?--- - - - talking to people that are AWA. You must understand, Mr FitzGerald, that we deal with people that belong to an award, or an EBA. We don't get the opportunity to talk to a lot of people that are on AWAs. When we do we take heed of what they say.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1883

Right?---And you've got to understand too, that the whole priority of this union is to sign non - non-members.

PN1884

Right, okay?---And you're asking me questions that I believe that I can't answer  
- - -

PN1885

All right?--- - - - because I just haven't had the time to be able to delve into it.

PN1886

Well, you do say that you agree with these things of Mr McLean; his evidence is right?---I do believe in, that there is a problem in OH and S and it seems to be, or in the safety act, and shortcuts in safety, and it seems to be prolific where there's AWAs in place.

PN1887

Well, let's take you to an AWA site. Now, Beaconsfield have AWAs in place; is that right?---Correct.

PN1888

Do you know anything about their performance, OH and S performance?---In some areas it needs a lot of work to bring it up to scratch.

PN1889

But do you have precise details of whether there is to be an improvement on measures?---No, I don't have precise details.

PN1890

LTRs and those sorts of measures?---No, I don't.

PN1891

Okay, so, again, can I put it to you that it is at best, speculation on your part?---If there was an issue and I had to deal with it, and it was a problematic issue on a particular site I would get the information I required to make a comment on it.

PN1892

Well, can I just put the question to you again, because you haven't answered it: it is at best, speculation on your part?---I suppose so.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1893

Yes, thank you. Again, this is something which Mr McLean invited me to talk to you about: you said you joined - the employees of the Henty site joined in September of 2002. Were you aware of any other employees, members of other unions at that time?---The question was asked of the people, were they of - of any understanding, was there any other union on the site?

PN1894

And what was the response?---And the response I got was "no".

PN1895

Right. Were you aware - - -?---But if I may add - - -

PN1896

Sorry, please do?---The statement that was given to me by a particular person said there was a presence of the AWU but after the unfair dismissal case they've not seen them on plant for quite some time.

PN1897

So you were aware that when you signed on the CFMEU - signed them into the CFMEU that the AWU had a presence on the site?---No. As I was of the understanding that they had one member at the most.

PN1898

So how did you gain that understanding?---By the people that I talked to.

PN1899

So it could - - -?---By the employees of Henty Gold.

PN1900

Yes, so it could be that, because you didn't investigate the matter fully, that there were, in fact, other employees members of the AWU at the time?---I discussed the issue with every person that became a member.

PN1901

Right, but there were others who could have - - - ?---And - - -

PN1902

Sorry?---And they stated to me quite clearly that they didn't believe that there was another union on site.

\*\*\*\* CHRISTOPHER GREGORY HINDS

XXN MR FITZGERALD

PN1903

Were you aware of the Legislative Council Select Committee Report into Industrial Relations in the year 2000?---No.

PN1904

Right, so did your union - you were involved with the union at that time?---I was.

PN1905

You can't recall whether your union put a submission into that inquiry?---I can't, no.

PN1906

You can't recall that, and it wasn't certainly impressed, from my recall of it, that the AWU were - raised the issue of right of entry - - -?---I can't recall.

PN1907

- - - specifically in respect to Henty?---I can't recall.

PN1908

No, okay, good. I have no further questions, thanks, Mr Hinds.

PN1909

THE COMMISSIONER: Mr Flanagan?

## <CROSS-EXAMINATION BY MR FLANAGAN

[]

PN1910

MR FLANAGAN: Mr Hinds, at point 2 of your statement, you talk about becoming a delegate of the FEDFA at Temco. Can you tell us when you actually first started to work at Temco?---In 1976.

PN1911

What was your occupation at Temco?---Tapper - tapper and caster.

PN1912

Tapper and caster, so as a tapper and caster were you a member of the FEDFA?---No, I was a member of the FIA.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN1913

So the furnace work, the labouring, if you like, was FIA work?---Correct, at the time.

PN1914

At the time?---Yes.

PN1915

So at some stage you moved on from that occupation to an occupation represented by the FEDFA?---Correct.

PN1916

Can you tell us what that occupation was?---Was a greaser.

PN1917

A greaser. So can you tell us, at that time, what the occupation works were which were represented by the FEDFA?---All mobile equipment operators and greasers.

PN1918

And can you tell us roughly the numbers of employees who would have been in that occupational grouping?---I'd be guessing, but I think it was around about the 40 mark.

PN1919

Okay. Can you tell us what - - -?---But, sorry, Robert, it might even have been the 50 mark, I'm not sure.

PN1920

Sure, I am only asking roughly?---Yes.

PN1921

Can you tell us what the occupation groupings were that were represented by the FIA at that time?---Tappers, casters, control room operators, drumming-type people, loading, off-loading.

PN1922

So could it be loosely described as production employees other than mobile equipment operators and greasers?---Yes.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN1923

And can you tell us roughly what the numbers would have been?---No idea, and I've got to be honest, I mean, there was two lots of major retrenchments that went through so I, look, I couldn't tell you what FIA was.

PN1924

All right. And the AMWU, would they have had a presence on the site at that time?---AMWU, yes.

PN1925

Can you tell us the occupational groupings that they had at that point in time?---Well, mostly tradesmen, except for the electricians.

PN1926

Yes, okay. Any idea of their numbers?---No, sorry.

PN1927

All right. So - and the electricians, traditionally, and they have got 12, I presume that is the case at Temco?---I think it's about that, yes.

PN1928

Okay. Now, you said that there have been two major redundancies since the time that you were on the floor and the present day. Can you tell us when the first major retrenchments took place?---It's either - either early '77 or late - early '78 or late '77, I believe.

PN1929

Can you tell us, roughly, how many jobs would have been lost at that time?---Well, there was 70-odd, I think?

PN1930

Seventy. And then there was another retrenchment?---About seven years later.

PN1931

Seven years later?---The seven-year cycle.

PN1932

And have you any idea of the numbers that were lost then?---30 to 40, if I can recall correctly.

\*\*\*\*

CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN1933

So through those two phases of retrenchment there has probably been about a hundred jobs lost from the Temco operation?---That's right.

PN1934

Do you think that, or from your observation, is that a trend which has occurred in smelters generally, and heavy industry?---I believe so, yes.

PN1935

What is your understanding of whether, or not that process has occurred in the mines in Tasmania?---I would believe it would most likely be the same sort of trend because it's most technical change that has created it.

PN1936

So, in fact, the employment numbers in the mine and in the smelters since 1976 have dropped?---Have reduced.

PN1937

And you accept that that reduction is not insignificant in terms of numbers?---Yes, I accept that.

PN1938

Yes, okay. So can you tell me back then there would have been 40, maybe 50 people involved in the operation - I am sorry, when I said "back then", back in 1978, there would have been 40, or 50 people involved in greasing and the operation of mechanical plant which were represented by the FEDFA, during the retrenchment process, and rather than talking about each one, what was the cumulative effect of that retrenchment process on the number of mechanical operators and greasers employed by Temco?---I'm not sure what the figures was. All-up it, like, to divide a figure between each union, but I seem to recall that I think we lost - I'm just trying to think of the positions that left - that, well, we lost the winder driver - I think we lost about seven, or eight. It could've been even more.

PN1939

So that would have brought the numbers of the FEDFA down to what, will we say, 1995 - - -?---I think that was around about 30-odd after that.

PN1940

So in 1995 there were about 30 FEDFA people?---Roughly.

PN1941

Do you recall a Mr John Glisson?---I can, yes.

PN1942

Can you tell us what his role was in relation to the Temco site?---He was the Secretary of the FIA as I understand it.

PN1943

Do you recall that Mr Glisson was involved in an internal election of the AWU in approximately 1996?---Yes, I believe so.

PN1944

And can you recall after that election whether Mr Glisson won that election, or not?---1996; is that when he was beaten?

PN1945

Roughly, I believe?---Yes.

PN1946

It could have been 1995?---Yes, was that - look, I can't recall - - -

PN1947

Do you recall the fact that he was an official for the amalgamated union, the FIA?---Yes.

PN1948

Having amalgamated with the ASE and then the AWU?---Yes.

PN1949

That, up until the point in time when that election occurred, the AWU continued to hold the representation of the traditional FIA workforce?---Correct.

PN1950

Now, after that election there was a change in the status, wasn't there?---I believe so, yes.

\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN1951

You were on site then, weren't you, Mr Hinds?---I was.

PN1952

Yes, you would have a fairly reasonable recollection, wouldn't you?---Oh, yes, I have got the recollection of the precise instance you're talking about?

PN1953

Yes?---Yes.

PN1954

So there were a number of employees, as I understand it, that were dissatisfied with the outcome of that union election, is that - at Temco - I will rephrase the

question just to make it clear for you: following that election there were a number of, by then, AWU members employed in the traditional areas who were dissatisfied with the outcome of that election in terms of who won it and who lost it; do you recall that?---Well, I can understand - I think I know where you're going but I think it was prior to the election that there was people - Mr Glisson had upset quite a few members at Temco.

PN1955

Right?---And it was prior to the election because he made the comment to me and you know what he made the comment to me about.

PN1956

No, I can't actually recall, but - - -?---He made the statement - if you want me to go down this line - he made the statement to us that we would not be in existence in the next month because he was going to take all our membership.

PN1957

Okay, so Mr Glisson threatened to enrol your members?---Exactly.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN1958

At the time there as an internal - or, were there negotiations for a multi-skilling, or cross-skilling workforce?---That's correct.

PN1959

There were? So the FEDFA would have been fairly apprehensive about being threatened by the major union that they were going to come after you and take your members, wouldn't you?---Of course we were.

PN1960

So how did you respond?---In a myriad of ways. We told - we explained what Mr Glisson had said to everybody and it went around the plant like wildfire and, understanding Temco climate, there was a lot of people dissatisfied with that sort of an attitude towards us and they decided then that they didn't want to belong to a union that provoked other unions such as that.

PN1961

So what did they do?---They resigned from the AWU and they wanted to join us.

PN1962

And did you sign them up?---Me, personally?

PN1963

No, the FEDFA?---The FEDFA did, yes.

PN1964

Right?---And the reason being is that some of them, well, most of them made the statement that they were going non-union.

PN1965

But, in fact, you have spoken about that. You said that it was the policy of your union that you will not sign up employees until they are non-members?---Exactly.

PN1966

So does that mean you advised them that they should resign from the other union before you enrol them?---No.

PN1967

So you are aware that they are a member of another union; if they say to you that they will resign from the union that they are currently in then you will enrol them?---The point that I make to them, it's their decision. If they decide to withdraw from another union and then come back to me and sign up as being a non-union, yes.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN1968

In fact, that has occurred at Beaconsfield, hasn't it?---Pardon?

PN1969

That has occurred at Beaconsfield?---Not to my knowledge.

PN1970

You are not aware of employees at Beaconsfield in the mill that are members, or were members of the AWU that chose to resign from the AWU and join the CFMEU?---I stated to them very clearly that we would not sign them if they were members of the AWU.

PN1971

Okay. So in terms of the people you represent at Temco now, it is fair to say that you have - you have expanded beyond your traditional coverage - - -?---Correct.

PN1972

- - - into areas formally represented by the AWU and its predecessor the FIA; that is correct?---That's correct. And, Robert, if I may add, there was a meeting - we tried to hold a meeting on several occasions to get some normality back into Temco and people at the time wouldn't turn up. And we had two meetings at the fire brigade and the AWU didn't turn up to those meetings. Now, is that correct?

PN1973

I don't know, but I think I meant to ask the questions?---Oh, sorry. Sorry, but  
- - -

PN1974

Okay. Now, you said in your statement that - this is at point 4, that the FEDFA, now the CFMEU, have a broad range of occupations and you go on to identify them. And you have also given evidence in relation to this order that was given in 1990 by, I think, Deputy President Moore was his name, can you just - I just want to clarify something very clearly in terms of the evidence that you have given: is it the position of the CFMEU that you work in the metalliferous mining industry and you are employed by an employer other than an employer named in that order, that the CFMEU is entitled to enrol that person and seek to represent their industrial interests?---That's correct.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN1975

And, in fact, those persons that you could seek to represent and enrol would be persons engaged in mechanical plant functions predominantly underground but some on the surface; is that correct?---That's correct.

PN1976

And in terms of new operations, if those persons are engaged in the generation and utilisation of power, in those circumstances where they are engaged by an employer other than one named in that particular order in 1994, you are entitled to enrol and seek to represent their interests; is that correct?---Correct.

PN1977

Yes. Now, you have said that the focus of the union is looking at areas that are non-union?---Correct.

PN1978

Correct? If we have a look at the mining industry, the metalliferous mining industry in Tasmania and go down to Queenstown, would you describe the Queenstown mine as a non-union mine?---Well, I believe you've got coverage there so I would say that that's a union mine.

PN1979

Okay. If we go up the road to Pasminco, would you see that as a union mine?---I believe you have got membership there so I believe it's a union mine. If we go further up the road to Savage River Mines, would you regard that as a union mine?---Correct.

PN1980

If we go over to Beaconsfield would you regard that as a union mine?---Correct.

PN1981

Okay, but how can you say that you are targeting non-union mines when you have enrolled members at Savage River and Beaconsfield?---I should say non-union members, or non-union people, not non-union mines. People that are non-members.

PN1982

So if there is a union site - - -?---Correct.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN1983

- - - we will call it Queenstown, and if in that workforce there is a total employment figure of 150 and 148 of them belong to the AWU and there was a person that was a non-union member who did not want to join the AWU, then the CFMEU would hold itself out as being entitled to enrol that person and represent their industrial interests?---Not in the - - -

PN1984

If they are not engaged by someone in that - - -?---Not in the Queenstown mine, no.

PN1985

All right, but at Beaconsfield it is okay?---Well, we believe there is a question mark and, as I said at the time, they were non-union at the mill, they wanted representation, we give them that option.

PN1986

Okay, so how do you distinguish between the fact that you are prepared to sign up a person at Beaconsfield that is not in a union, even though it is a union mine, but you won't sign someone up at Queenstown?---Because of the orders.

PN1987

The orders aren't applicable to Barminto, are they?---Well, as I understand it's to the - well, you are quite right; you're right. I never thought of it.

PN1988

Unless Mr Fitzgerald's argument about transmission is right, but I don't have any legal advice on that. Okay.

PN1989

THE COMMISSIONER: The order actually refers to Mount Lyell Mining and Railway Company.

PN1990

MR FLANAGAN: Yes.

PN1991

MR FITZGERALD: That is right.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN1992

MR FLANAGAN: Now, in terms of the mining members that you represent, I understand that you have a site called Cornwall Coal?---Correct.

PN1993

Can you tell us, is that brown coal, or black coal?---It's - - -

PN1994

THE COMMISSIONER: Darkish.

PN1995

MR FLANAGAN: Yes?---Yes, because it's not quite what we call black coal.

PN1996

So it is brown coal?---Well, it's not what we call - - -

PN1997

Coke, or coal?---It can be - - -

PN1998

It is not - there is a form of coal, isn't there?---They're actually trying to test it now and they believe that that can coke it, so - - -

PN1999

Well, let us have a look at it. In Queensland and in New South Wales, this is the larger States of the mining members - - -?---We call it "black coal" but it's - - -

PN2000

It is touched?---Yes.

PN2001

Okay. In fact - okay. What about, now, you will have to help me here, there is a little mine just north of New Norfolk which I drive past quite frequently on trips to the west coast, I can't recall its name but it is a coal mine, do you know - ---?---It's the Hamilton.

PN2002

Hamilton Coal Mine?---Yes, it's the old Ken Bolton coal.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2003

Okay, so is that a brown coal, or a black coal mine?---That's a black.

PN2004

That is a black coal mine?---Yes.

PN2005

And are they members of the CFMEU?---They are.

PN2006

They are? Do they have an agreement?---No.

PN2007

No?---No, they're - we're in the throes of negotiating, or talking with the company at the moment, putting agreement in place.

PN2008

So what regulates their employment at the moment?---Close contact with the contractor, with us.

PN2009

Is there an award?---Not that we - they - no, no, as such they're not under the black coal, no.

PN2010

Is there an enterprise agreement?---No, we are negotiating one, well, to be fair we're in the - it keeps shutting down. It shuts down for three weeks and they don't know whether it's going to start up, so it's a really rare mine because it closed down for two years, started up again for six months and then it's just closed down for another three weeks. They're unsure whether its - the viability of it's going to keep going so it's a really funny situation to be in.

PN2011

So at the moment when those employees are at work those people would be working under a common law contract?---We've had consultation with the company. We are understanding of the knowledge of what the conditions are.

PN2012

Yes, but it is still a common law contract, isn't it?---More or less.

PN2013

So if the AWU took it in its mind to go in there and organise the site and negotiate an enterprise agreement, or file an application for an award because on our view of it, our rules entitle us to - our rules do talk about coal mining, what would the view of the CFMEU be?---You've done the hard yards.

PN2014

So you wouldn't have a problem with that?---We'd - personally I'd have a problem because I've let myself down in allowing you to get in there.

PN2015

So if we had a member from Cornwall Coal who rang us up and said, "Well, I'm in the CFMEU but I'm not happy with their service, I want to join the AWU and, by the way, I resigned from the CFMEU last week" - - -?---Yes?

PN2016

- - - would you expect the AWU to sign that person up?---I would.

PN2017

You would?---Mm.

PN2018

And you wouldn't have a problem with that as an organisation?---Of course I'd have a problem with that as an organisation.

PN2019

So can you understand then - or when you say you would get upset with that as an organisation because, in fact, as a matter of fact your organisation has targeted coalmining in Tasmania?---It was traditionally covered by us, yes.

PN2020

Yes?---Yes.

PN2021

And it is the UNWU and the FEDFA?---Yes.

PN2022

Presumably both had parts of the cabbage patch at one stage; would that be a fair description?---That's correct.

PN2023

So you have been in there; how long has Cornwall been going for?---Hundred - close on a hundred years, I think.

PN2024

Okay, so - and your union has looked after the industrial interests of those people for the majority of that time; correct?---Yes.

PN2025

So you see it as your cabbage patch?---Yes.

PN2026

Your turf?---Yes.

PN2027

Can you understand that the AWU sees metalliferous in the same light?---I can understand that, and you must understand too that we did have coverage years ago, in particular Savage River, and it was part of the agreement of the 118A that Savage River was still to belong to us, or we had coverage there but, unfortunately, that wasn't agreed to, or abided by, so ---

PN2028

I understand there is an issue about Savage River. Are you aware that in the discussions which occurred between the AWU and the then FEDFA, that the AWU agreed to leave Savage River Mines with the FEDFA because its operations were coming to an end; are you aware of that?---No.

PN2029

If we can move on to Beaconsfield, can you tell me, you have got members and I am not going to ask you to name them, but you have got members who are engaged at Beaconsfield and you have got in excess of five of those people. Can you tell us who the employer is of those employees?---All State, as I understand it.

PN2030

And can you tell us who All State are?---Well, is it Macquarie Bank? It's unsure. The waters are very muddy at the moment.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2031

But you would say that All State is a different legal entity to Beaconsfield Gold Pty Limited?---Correct.

PN2032

Now, you have said in relation to Henty that you understand that "The company and the AWU have signed up the miners", and I think you have said recently - roughly those were your words; do you recall that evidence?---Yes.

PN2033

Can you tell us what you mean by that?---Well, we believe that from all the people that I've spoken to that since we made application that there has been a blitz by the AWU to sign the members in rapid succession because of our application.

PN2034

Can you tell me how that blitz worked?---Well, as I understand it - as I understand it from what I've been told, is that two of your officials have been down on many, many occasions into - on site signing up AWU - signing up to the AWU.

PN2035

So why do you say the company signed them up?---Pardon?

PN2036

I think you said "The company and the AWU have signed up the - - -"---Well, but prior - prior to that and we were not allowed to enter the site. It was stated to us that "You can meet your members in the car-park the same as all the other unions on site."

PN2037

Yes, well, not in the car-park, Mr Hinds?---Now, you - - -

PN2038

But why the company? What role did the company have in signing - - -?---Well, isn't it - isn't it a little bit strange that now you are on site? That you're allowed to have right of entry and that the word that we got during the week is that supervisors were trying to convince our members to sit down and meet with your officials? Is that not company pushing your membership?

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2039

Well, let us talk about that: what did the company do to sign up people into the AWU?---Well, we believe that the company are pressurising our members at the moment to meet with your officials.

PN2040

No, that is a different issue. That is a different issue. You have got your members - correct me if I am wrong?---Right, okay.

PN2041

Nine of them are in the mill; is that right?---12.

PN2042

You say 12?---In the mill.

PN2043

I know nine of them but I don't know 12. I do know one of your members is underground part; is it possible that you have got nine members in the mill and three underground?---It is, unless they have transferred, and I'm not aware of that, no.

PN2044

Is that right? Okay. So going back to the question, what has the company done to enrol people in the AWU? The miners I am talking about here?---Well, what I believe the company has done has allowed you right of entry where before you weren't allowed to have right of entry.

PN2045

Now, can you tell me, what is your understanding of the right of entry by the AWU to the site?---My understanding?

PN2046

Not now, well, yes, now; what is your understanding of the - well, you have given evidence in here that when he spoke - I will get it - - -

PN2047

MR BUKARICA: Paragraph 16?

PN2048

MR FLANAGAN: 16? You spoke with Julie Hartman about that. Yes, paragraph 16: you spoke to the company and they said:

PN2049

*I'll tell you the same and I've told every other union that has attempted to come on site and that is you can meet with them in the car-park off-site between shifts.*

PN2050

So is that the only thing - only knowledge you have of right of entry of the AWU?---That - I've asked our members; they've said that as far as they can recall there's been no other unions on site and I've taken them at their word.

PN2051

And you believe all of your members are in the mill?---I believe - I could be wrong; could be wrong.

PN2052

Okay, but as far as you are aware all of your members - - -?---The people that I've met personally, and talked to, they're what they call "mill rats", yes.

PN2053

So the president of the lodge and the secretary of the lodge are in the mill?---As I understand it.

PN2054

Yes, and they would be your principal contact point, would they not?---Correct.

PN2055

Okay. Can you tell us what time the shift employees start and finish work, the mill employees?---Six to six.

PN2056

So in terms of right of entry of the AWU, you have been advised by your members that they haven't seen an AWU official until recently?---Yes.

PN2057

And that you - and you had this advice from the company that - the same as the rest of the unions, "You can meet in the car-park." And that is your understanding of the right of entry of the AWU?---That's my understanding, yes.

PN2058

Now, you received a phone call from an employee presumably working in the mill, at the Henty Gold Mine in September 2002. You asked them if they were in a union. You were told "no". Why is it that given, and I think given the history of the AWU in representing employees in metalliferous mining, that the CFMEU didn't refer that employee to the AWU?---We believed we had right of coverage.

PN2059

So the - - -?---And under the freedom of association that we believed we could legally sign them, and we still believe that as fact.

PN2060

Okay. Did you think about talking to the AWU about Henty?---No.

PN2061

You didn't think it would be appropriate to ask the AWU what the situation was in terms of its right of entry and how it applies in terms of - - -?---No.

PN2062

You didn't think to ask the AWU if they have presence underground?---I take people on their word and when they said that as far as they knew there was no members. I took that as factual.

PN2063

Are you aware that CFMEU material has been circulated underground for some time?---I would imagine so, yes.

PN2064

So the CFMEU would see it as legitimately having the right to cover underground employees at Henty?---I believe so, yes.

PN2065

Now, in the evidence that you gave yesterday you said in relation to metalliferous mining that you believe that the number of employees in the industry have not reduced but only union membership density in the industry has reduced; do you recall that evidence?---No.

PN2066

You don't recall that?---I can recall words to that - to that effect - - -

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2067

Well, the proposition - - -?--- but the exact wording, no.

PN2068

Forgetting the words because they are not the exact words, but the proposition was: employment levels are about the same but union membership density has dropped. That was the proposition. Do you recall that?---I recall words to that effect, yes.

PN2069

Can you tell me what you base that proposition on?---On, as I say, hearsay from people that I talk to in my travels.

PN2070

So if I said to you that in terms of union density, union membership density in metalliferous mining is at its highest point in the last 10 years as a consequence of a concerted recruitment campaign by the AWU for over five years, what would your view be of that comment?---My view? My personal view?

PN2071

MR BUKARICA: For clarification, sorry to interrupt, but for clarification, is that nationally, or in the State?

PN2072

MR FLANAGAN: In Tasmania.

PN2073

MR BUKARICA: In Tasmania?---I'd say a job well done.

PN2074

MR FLANAGAN: Okay. Well, if you agree the union, which has then embarked on a system that a campaign of re-unionising the industry, that has worked hard for the interests of those employees, don't you think it would be appropriate, given that that union is also - it has a principal status from the ACTU, if you are contacted by an employee in that industry despite the fact that you have rules which arguably can apply, don't you think the correct thing for the CFMEU would have been to refer those employees to the AWU?---No.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2075

Even though you don't - - -?---Freedom of association.

PN2076

So the concept of - - -?---Democracy rules.

PN2077

The concept of freedom of association overrides any other consideration?---No, of course it doesn't but you know and I know that there's different circumstances. Each case has different merits, and I will judge that on its merits and I think we've proven that we've not gone into mines, etcetera, etcetera, such as Renison, etcetera, etcetera.

PN2078

Renison is probably not a good example, Mr Hinds?---Well, prior to that. Prior to its closure.

PN2079

Okay?---And there's a reason because of the 118s and it was an area that we understand that you had most - full coverage, so - - -

PN2080

So in the context of Henty and the award application which is before you - - -?---Mm.

PN2081

If the Commission grants the application and grants interest to the CFMEU, then that gives you status, doesn't it? It recognises your right to represent these employees; is that correct?---That's correct.

PN2082

You have said in the evidence yesterday that at the moment the sort of representation that you can give your members - I think this was in relation to Beaconsfield but presumably applies to your members at Henty and Savage River

as well, is in relation to compensation, workers' compensation, and also in relation to long service leave; do you recall that?---Yes.

PN2083

In terms of long service leave what were you referring to?---If there's an issue with pro rate long service leave, if the person leaves, etcetera, etcetera. With general - general servicing of the membership.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2084

Yes, so let us have a look at the long service leave, though, because that is one you will general .... specifically. If there was an issue where one of your members believed that they were entitled to long service leave for whatever reason the employer wasn't paying it, how does your union deal with that? What do you do?---Well, we would - we would do the appropriate procedure as we would with any dispute with an employer.

PN2085

And what is that appropriate procedure in your view?---We would first try to contact them. If they refused to discuss anything then we would go to the Commission.

PN2086

So the CFMEU would file an application to the Tasmanian Industrial Commission to get this thing sorted out; is that - - -?---Correct.

PN2087

Do you know how long a union has been in the position to pursue those matters before the Tasmanian Industrial Commission?---Pardon?

PN2088

Do you know how long a union has been able to lodge proceedings in the Tasmanian Industrial Commission in relation to long service leave?---No, I don't.

PN2089

You don't know?---I don't.

PN2090

THE COMMISSIONER: Mr Flanagan, is your cross-examination going to go for some time?

PN2091

MR FLANAGAN: It has got further to go, yes.

PN2092

THE COMMISSIONER: Yes, well, we will have a - is it a convenient opportunity for a short break?

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2093

MR FLANAGAN: I think so, yes, if that is convenient.

PN2094

THE COMMISSIONER: Yes, we will resume at 11.

PN2095

MR FLANAGAN: Thank you.

**SHORT ADJOURNMENT**

[10.50am]

**RESUMED**

[11.05am]

PN2096

THE COMMISSIONER: Yes, Mr Flanagan?

PN2097

MR FLANAGAN: Thank you, Commissioner.

PN2098

Mr Hinds, the evidence in the proceedings today is that the mining and energy division of the CFMEU has approximately 350 members; is that correct?---I believe it's more.

PN2099

How many do you believe it is?---Around the 500 mark.

PN2100

About 500; in Tasmania? And of that 500 how many would be from Cornwall Coal?---Roughly 43, 44.

PN2101

So we will call it 50 for round numbers. How many from time to time, if there is a number, would be at the Hamilton Coal Mine?---Five.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2102

Five? You have got about eight members at Savage River?---Correct.

PN2103

Approximately the same number at Beaconsfield?---A little bit less.

PN2104

Okay, and about 12 at Henty?---Yes, exactly 12 at Henty.

PN2105

So in terms of the bulk of your membership in Tasmania, most of it would be concerned with energy rather than the mining side; is that correct?---No.

PN2106

No? Okay, we have been through the metalliferous mines. We have talked about the coal mines. Are you including as mining, Temco?---Yes.

PN2107

Are you including as mining, Brambles?---Yes.

PN2108

And Lloyd North?---Yes.

PN2109

So Temco, you have got approximately 50 members?---Correct.

PN2110

Brambles, approximately 20?---Correct.

PN2111

Lloyd North? I am not familiar with that operation; how many would you have there?---About 14, or 12 to 14, I'm not sure.

PN2112

Do you include within that 500 the Pasminco Hobart Smelter?---Yes.

PN2113

You do?---Yes.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2114

But those employees are serviced by the construction and general division?---Yes.

PN2115

And there is approximately 300 of them?---Approximately, yes, as I understand it.

PN2116

You have given evidence that, and I am not sure, can you tell me your understanding of the CFMEU presence at Broken Hill?---With my limited knowledge, I'm not sure of the numbers, but I believe that it's - my knowledge that we've had membership there for - since the mine opening.

PN2117

Are you aware that your membership of employees at Broken Hill is by virtue of the State registered union?---No, I'm not.

PN2118

Now, you have said that you have enrolled employees at Beaconsfield approximately 18 months ago?---I would have to look at their membership forms, but probably less - less than 18 months.

PN2119

Are you aware that prior to that period of time the AWU had been involved in a campaign to encourage the employer to move away from using AWAs ---?---Correct.

PN2120

- - - as the principal means of employment, to having a collective agreement with two unions, that being the AWU and the AMWU?---Correct.

PN2121

You are aware of that?---Yes.

PN2122

Were you aware of that before you enrolled the employees at Beaconsfield?---As I understood, yes, it was in the throes of getting to the point of getting right of entry, but as I understood it you never had right of entry at the time.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2123

Are you aware of proceedings before the Australian Industrial Relations Commission?---No, I'm not.

PN2124

Now, the title of your organisation is the Construction, Forestry, Mining and Energy Union. If you were an employee working in the mining industry in a non-union mine and you had not previously worked in the mining industry and you were looking for a union and you went into the phone book and you found the Construction, Forestry, Mining and Energy Union, do you think that employee would presume that that is the correct union to join?---I can't answer that. I don't know what his line of thinking is?

PN2125

You don't think the title of the organisation might confuse any employees who have not previously been in the industry?---It's a question that I suppose by the name you would take that that would be the appropriate union.

PN2126

You have a lodge secretary; has that person previously been in the metalliferous mining industry in Tasmania prior to working at Henty?---Look, I can't answer that. I haven't gone into that depth.

PN2127

You don't know?---I don't know.

PN2128

Or your lodge president; was that person previously in the metalliferous mining industry before working at Henty?---I don't know.

PN2129

You have had several meetings with these employees though, haven't you?---Yes.

PN2130

You haven't got to fully develop an understanding of their ---?---I understand their personal lives and they've become very good friends, as I class as friends, but I don't delve into their history. The meetings take long enough without trying to find out every piece of information of their life.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2131

Okay, if you don't know, you don't know. Have you had discussions with Mr McLean about the level of union membership density in metalliferous mining on the west coast of Tasmania?---Passing comments, I suppose, but never anything in depth.

PN2132

You have never ---?---To the point, I mean, in words passing that I was dissatisfied with the 118 but, however, I wasn't in a position of power.

PN2133

Have you ever expressed in any detail to Mr McLean that the metalliferous mining industry in Tasmania is predominantly non-union?---Could you re-state

---

PN2134

Have you ever said to Mr McLean that the metalliferous mining industry in Tasmania is predominantly non-union?---I can't recall stating words to that effect, but I've stated that I believed that some of the mines were becoming non-unionised.

PN2135

Some of them - was that a recent conversation?---Oh, I can't recall, I mean - - -

PN2136

Six months ago, 12 months ago; maybe three years ago?---12 months ago. Recently - - -

PN2137

With your view - well, firstly, do you claim to have a good understanding of union activity in metalliferous mining in Tasmania at the moment?---I don't have the complete understanding, no.

PN2138

Okay, so if there had been a significant increase in union membership and, indeed, a move away from industrial arrangements directed at the employees in preference to industrial arrangements negotiated with the unions, you would not be aware of that?---I hear things from time to time.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2139

Okay, but you wouldn't actually - if the situation was that rather than the trend being a trend to have non-union arrangements but, in fact, the trend was to have union arrangements, you wouldn't be aware of that?---I believe that it's increasing, as I understand it.

PN2140

Right?---But, once again, as I said to Mr Fitzgerald, that I have enough on my plate. I don't have time to utilise time to see what's happening in other areas that I don't have membership because I have enough on my plate to look after the people that I - - -

PN2141

But you do understand - - -?---I do understand it is increasing.

PN2142

You have said that in June of 2002, this is your point 8, you:

PN2143

*...held a meeting of Henty Gold employees at the Devonport pub to explain the operations of union structure and to get to know the new members.*

PN2144

Can you tell me how many people attended that meeting?---Unfortunately, there was supposed to be five, but one turned up.

PN2145

One? Was that person previously a member of the FEDFA?---Not my knowledge.

PN2146

And in the - was that the first time you met that person?---Correct.

PN2147

Do you know if that person previously worked in the metalliferous mining in Tasmania?---No.

PN2148

You have said in the second sentence:

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2149

*In about September 2002 a further meeting was held with the members at Devonport.*

PN2150

Can you tell us how many attended that meeting?---I believe there was four - five.

PN2151

And then you said:

PN2152

*On 30 July 2003 that most members attended a meeting at the Tullah Chalet.*

PN2153

How many at that stage was it?---I think there was about eight to nine.

PN2154

So at no stage during the process of these meetings did you contact the AWU?---No.

PN2155

Now, you said in point 17 that on 24 May 2004 you:

PN2156

*...telephoned Mr Wakefield to explain the CFMEUs application and to invite the AWU to become part of the proposed award and to support the application.*

PN2157

Then you have gone on to say in point 18 that, Mr Wakefield advised you that:

PN2158

*The CFMEU does not have the rights of coverage in metalliferous mining in Tasmania, or nationally. The national policy of the AWU is to keep the CFMEU out of metalliferous mining.*

PN2159

Are you certain that the words were "The national policy of the AWU is to keep the CFMEU out of metalliferous mining"?---As I can recall at the time, it might not be the precise words but - - -

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2160

All right, so - - -?--- - - - I think he might have said "nationally", actually, or to words to that effect.

PN2161

Could it have been words to the effect that "The AWU represents metalliferous miner not the CFMEU"?---No, not that I can recall, no.

PN2162

But you can't - you are not absolutely certain?---I'm not absolutely certain. I didn't take the conversation down but as I can recall that - and it was a 10 minute conversation - - -

PN2163

Sure?--- - - - and I've got a small bite of it.

PN2164

Right. And then in your point 20 you talk about being contacted by myself a couple of days following that conversation and on the 21st, in point 21, you talk about the AWU visiting the site. Can I put it to you that, in fact, rather than a couple of days after the discussion with Mr Wakefield, it was probably a couple of weeks after the discussion with Mr Wakefield, and a couple of days after I visited the site, rather than days it would be weeks, in point 20?---I mean, the precise timing, I mean, the words that I got off our members that it was to that effect; they could be wrong probably.

PN2165

Yes. The point is that contact for myself was after I had visited the site, not prior to it?---That's fine. I'll have to take your word on it.

PN2166

Yes, okay?---I didn't ask that question.

PN2167

All right. Now you said in point 22 that:

PN2168

*Employees have been put under pressure by company supervisors and Ian Wakefield, to join the AWU.*

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2169

If you can just break that down? Can you tell us which employees you are referring to there?---No.

PN2170

You can't?---Our members?

PN2171

Yes?---But I'm not - I'm not going to name names.

PN2172

Oh, no, I don't mean that individual. Is it fair to say the employees that you are talking about is employees in the mill?---Yes.

PN2173

Right, so can you tell us what pressure Mr Ian Wakefield put on those employees to join the AWU?---The conversation I had with the members stating that Ian had spoken to our members and tried to persuade them to join the AWU. They'd already been told - they told Ian, as I understand it, that they were members of a union, were already members of the union, not the AWU but ours - - -

PN2174

Right?--- - - - and that they weren't interested in discussing the matter of AWU membership, that they was already members, and the supervisor stated that, to words that, "You should talk to them."

PN2175

Who is the supervisor?---I don't know. I didn't go into that depth.

PN2176

Okay. So was it a case of the AWU pressuring employees to join the AWU, or a case of the AWU approaching employees to join the AWU?---Well, I believe that once a statement was - the statement from our members that they weren't interested, then it should have been left alone.

PN2177

Are you aware that, in fact, after the AWU was informed that they were members of the CFMEU, that those employees asked the AWU, namely myself, to contact you to discuss that?---They did.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2178

And do you recall me referring to the discussion that we had?---Yes.

PN2179

Following that discussion, are you aware of the position the AWU has put to the employees of your union at Henty?---No.

PN2180

Okay; you are not?---No.

PN2181

Well, in fact, I put it to you that the AWU has said to those employees that we respect the right for them to be in a union; that we believe that we are the

appropriate union but we will not harass them regarding that issue and we will see what the outcome is when the proceedings are before the Commission; are you aware of any of that?---No, I haven't been - that information has not been forwarded to me.

PN2182

Okay. So the proposition that they have been pressured may not, in fact, be correct?---It may not, but I - I have kept away from the site and away, because of these proceedings, and you would understand that I have been very, very busy over the last few weeks and I haven't had a lot of time to talk with them. They have been sending me emails and I thank you for stating that to them.

PN2183

If I can take you to point 25 in your evidence, I would just like to provide you with a copy of a document which you have seen before. It forms part of the attachment to your statement actually, and I would seek to tender this as a separate exhibit.

PN2184

THE COMMISSIONER: You seek to tender that, did you say?

PN2185

MR FLANAGAN: Yes, I do.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2186

THE COMMISSIONER: Yes, we will mark that AWU1.

**EXHIBIT #AWU1 COPY OF DOCUMENT, FORMS PART OF ATTACHMENT TO STATEMENT OF C.G. HINDS**

PN2187

MR FLANAGAN: Now, you have said that your members have not been consulted about the proposed section 55. I put it to you that AWU1 is a document compiled after consultation with employees underground, all mill employees and the emergency service officers; are you aware of that?---I've seen this document, yes, I'm - - -

PN2188

Are you aware that that was the basis of it being formulated?---Well, I'm aware that it's been forwarded to employees, yes.

PN2189

After consultation with the employees, it was developed; are you aware of that?---I believe that - the word that I've been told by our lodge officials that they weren't involved in this.

PN2190

Can I take you to the last page? The document is actually - there was a difficulty in the sense of it being photocopied - yours is right?---Mm.

PN2191

Thank you. Okay, if I can take you to point 23, can you just read that? Have your members not mentioned that concern to you?---They have.

PN2192

They have; so on the face of it would you accept that that is an issue that has arisen as a consequence of consultation with the mill employees?---Correct.

PN2193

I take you back to the beginning and to point 1; if you just have a read of that? Are you familiar with that issue?---Yes.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2194

Does that accurately describe the concern, or the concern being the one which is highlighted, the one under that being the response to the company, but does the actual highlighted issue reflect the concern of your members in the mill?---Yes. Yes.

PN2195

If we can go down to point 4, if you can read the bolded part and, indeed, the response if you like?---Yes.

PN2196

Does that reflect the concern of your members in the mill? Is that a "yes"?---Yes.

PN2197

If we go to point 7; does that reflect an issue your members have raised?---Correct.

PN2198

So would you accept that on the face of the facts, the issues raised by the AWU with the company were raised after consulting employees?---Correct.

PN2199

And that some of those employees were your members?---I can't - can't answer that.

PN2200

You can't?---I wasn't present.

PN2201

So how do you make the assertion in point 25 that none of your members have been consulted about the proposed section 55 plan?---Well, that's what - the statements they're making to me.

PN2202

Did they tell you that there was an agreement circulated that following the agreement that there was this document, and following this document a further agreement was circulated?---Well, as I understand it, that it was circulated to your membership and not ours.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2203

I put it to you, I was president when the second document, or the document after this, and this document was circulated to your members?---Could have been; that's not the word that I'm getting back.

PN2204

Right. Are you familiar with an AWU official by the name of Mr Ian Jones?---Yes.

PN2205

Can you tell me what your understanding is of the sites that he services on the west coast?---No.

PN2206

Can you tell me if you are aware that he has visited Henty?---No.

PN2207

You are not aware?---No.

PN2208

Are you aware that, in fact, Mr Jones had a car accident approximately two weeks ago after consulting your members about the enterprise agreement?---No, I'm not. Oh, I'm aware he had a car accident yesterday - - -

PN2209

Yes?--- - - but, no, I wasn't.

PN2210

You weren't aware that that was on his way back from consulting with your members?---No.

PN2211

All right. No further questioning.

PN2212

THE COMMISSIONER: Yes. So before you sit down, Mr Flanagan, I am just intrigued by AWU1, and this is a company response, is it?

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2213

MR FLANAGAN: If I can explain?

PN2214

THE COMMISSIONER: Yes.

PN2215

MR FLANAGAN: The union wrote to the company, well, the union visited the employees. I will take you back a step, Commissioner: the AWU met with the management of the company, having approached them to negotiate an agreement. Arising from that, a position in-principle was reached but that principle was subject to endorsement by the employees. The document was circulated amongst the entire workforce and the union then met with the employees in order to identify their response. Their response is contained within this document, together with some other supplementary issues later raised by emergency services

officers. The union wrote to the company and identified the issues raised by the employees and the company came back to the union with their response. This document was actually prepared and circulated to the employees so that they are aware of where the negotiations were at.

PN2216

THE COMMISSIONER: Right.

PN2217

MR FLANAGAN: Subsequent discussions regarding representatives from underground, the mill and the emergency services officers were held, with a position being reached, an agreement being in-principle. A document was then subsequently circulated to the employees for their endorsement. So this was a part of a communication and the point which is bolded was the issue raised by us, and the part which is not bolded was the company's initial response.

PN2218

THE COMMISSIONER: But the actual document was prepared by the union?

PN2219

MR FLANAGAN: That is correct, yes.

PN2220

THE COMMISSIONER: Yes, I was just a little bit intrigued that - - -

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2221

MR FLANAGAN: Okay.

PN2222

THE COMMISSIONER: - - - the company was, on its face, using an AWU stationery to make a response.

PN2223

MR FLANAGAN: Oh, no.

PN2224

THE COMMISSIONER: But I understand - - -

PN2225

MR FLANAGAN: No, no, that was their comment to our issues.

PN2226

THE COMMISSIONER: Yes, I understand. It is a document that the union has prepared?

PN2227

MR FLANAGAN: Yes.

PN2228

THE COMMISSIONER: It is not a company document?

PN2229

MR FLANAGAN: No, no, we haven't reached that level of co-operation, Commissioner. We do encourage it though.

PN2230

MR FITZGERALD: Commissioner, just while we are on the issue of clarifying the nature of - the why's and whereabouts of this document, could I ask through you, whether this document is - pre-dates, or is after the document that was lodged with the Commission, that section 55 agreement?

PN2231

MR FLANAGAN: I am happy to answer that?

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2232

THE COMMISSIONER: Yes. Yes.

PN2233

MR FLANAGAN: As I indicated, the company - AWU have negotiations with the company about a collective agreement. That is the agreement which initially was distributed to the work force and has now been modified following that consultation.

PN2234

MR FITZGERALD: Well, that is a matter we can raise in cross-examination of the company witnesses - - -

PN2235

THE COMMISSIONER: Yes.

PN2236

MR FITZGERALD: - - - and AWU witnesses.

PN2237

THE COMMISSIONER: Yes, Mr Bukarica - - -

PN2238

MR FLANAGAN: If that is not clear I am happy to add - - -

PN2239

MR FITZGERALD: Oh, no, it is just the issue going to whether, in fact, there is jurisdiction to make the application, the section 55 industrial agreement, I mean, that is an issue often flagged now. Clearly, there is either an agreement, or there is not an agreement.

PN2240

MR FLANAGAN: Okay.

PN2241

MR FITZGERALD: It appears to me, on the face of this document that there is not an agreement, or there is an agreement - there isn't an agreement before the Commission?

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR FLANAGAN

PN2242

MR FLANAGAN: Well, perhaps what I can do, Commissioner, in order to overcome that jurisdictional issue, is tender a document and seek leave that the application under section 55 be amended to reflect that document?

PN2243

THE COMMISSIONER: Right. Now, bearing in mind that we are not hearing these matters jointly - - -

PN2244

MR FLANAGAN: We are not?

PN2245

THE COMMISSIONER: Well - - -

PN2246

MR FLANAGAN: Oh, well, I will grab them back and tender them in the next proceedings.

PN2247

THE COMMISSIONER: Yes, I think it will - we will have a separate transcript, you see, so I think it would be better.

PN2248

MR FLANAGAN: I understand. Obviously, it is clear from those comments though, that we do intend to tender an amended document.

PN2249

THE COMMISSIONER: Yes, thank you. Yes, Mr Bukarica?

## <RE-EXAMINATION BY MR BUKARICA

[]

PN2250

MR BUKARICA: If the Commissioner pleases, Mr Hinds, just in relation to document AWU1, what is your understanding of when this document was circulated on site?---My understanding was a week or so ago.

PN2251

And what do you base that understanding upon? What is the basis for your belief?---My basis on the belief is that it was - the agreement, etcetera, etcetera, was done after we made application for an enterprise award.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR BUKARICA

PN2252

Maybe I can be clearer: you say this was circulated a week or so ago; why do you say - what is the basis for that understanding?---How do you know this document was circulated a week or so ago?---Because it was sent to me by fax.

PN2253

Yes. Is that the only inquiry you made about how - when the document was circulated or when it first appeared?---I spoke to the lodge president on this issue and as we can understand that it was - I'm not sure - - -

PN2254

Who told you that this had been circulated a week or so ago on site?---The - our members at Henty.

PN2255

Now, a number of these - in relation to AWU1 again - a number of these - you said in response to cross-examination by Mr Flanagan that a number of these issues - which are particularly highlighted in bold - were matters that were either of concern to CFMEU members or issues that they had raised. Do you recall - - -?---That's correct.

PN2256

That is your understanding?---Yes.

PN2257

Can I ask you, Mr Hinds, are you familiar with the proposed CFMEU award application?---I am.

PN2258

Does that application address any or all of these issues?---It addressed most of the concerns that have been raised.

PN2259

And in relation to the proposed CFMEU award, what steps did you take to ensure that employees were consulted about the terms and nature of that document?---We had two nights of meetings with all people - all of our members that could make it. We also had meetings in other areas to catch up with the lodge officials to make sure that they were of full understanding of what the award was based on.

\*\*\*\* CHRISTOPHER GREGORY HINDS

RXN MR BUKARICA

PN2260

And when did that occur?---17th - 18th, 19th, and 20th of May and a week or so after that.

PN2261

To the best of your recollection do those - does that consultation pre-date the application to the CFMEU in these proceedings?---Yes.

PN2262

Now, prior to the lodgment of the CFMEU application, did you make any efforts to consult with the AWU concerning that application?---I - is that the - can you

- - -

PN2263

Prior to the application being lodged in the Commission - the CFMEU application - did you attempt to talk to the AWU about the application?---No.

PN2264

That is all the re-examination. If the Commission pleases.

PN2265

THE COMMISSIONER: Yes. Yes, you are excused, Mr Hinds, thank you?---Thank you.

**<THE WITNESS WITHDREW**

[]

PN2266

THE COMMISSIONER: Does that conclude your evidence Mr Bukarica?

PN2267

MR BUKARICA: That is our evidence. If the Commission pleases.

PN2268

THE COMMISSIONER: Yes. Mr FitzGerald, what is your position?

PN2269

MR FITZGERALD: Yes, Commissioner, Mr Knott is available to give evidence and we provided a statement both to the Commission and to Mr Bukarica and if we could call Mr Knott to give that evidence, please?

PN2270

THE COMMISSIONER: Yes.

PN2271

MR FITZGERALD: And then follow that with Mr Daily.

PN2272

MR BUKARICA: Do you have another one?

PN2273

MR FITZGERALD: No. Didn't I give you one?

PN2274

MR BUKARICA: So we are starting with Mr Knott?

PN2275

MR FITZGERALD: Knott, yes.

**<STEPHEN PHILLIP KNOTT, SWORN**

[]

**<EXAMINATION-IN-CHIEF BY MR FITZGERALD**

PN2276

THE COMMISSIONER: Yes, Mr FitzGerald?

PN2277

MR FITZGERALD: Thanks.

PN2278

Mr Knott, you have got a copy of the statement, which has been prepared and a copy given to the Commission. Have you got that in front of you or have you seen a copy?---I've seen a copy, I haven't got one in front of me.

PN2279

That is all right. I don't know whether the Commission can just show Mr Knott that statement. Thank you. Just points 1 to 35. Is that your statement? And you prepared that statement?---That is correct.

PN2280

Okay. I wonder if I could ask you just to comment on a couple of additional matters, which were raised in evidence yesterday and that is the distinction nationally between the coal and metalliferous mining sector. I wonder if you could just give the Commission a brief summary of that at a national level please?---Sure. The position there, Mr Commissioner, is that the coal industry is predominantly dominated by the CFMEU and has been for quite some considerable period of time and there's been a clear distinction between the coal industry and the hard-rock mining industry where the principal union in the hard-rock mining industry pretty much - the overwhelming majority - has been the AWU and that goes back to the CEPU union days when they actually had this principal union status that you might recall, so it was done along those lines. The CFMEU and the coal industry and the AWU and the metalliferous mining industry.

PN2281

Okay. And then in Tasmania, you are aware of the distinction there?---The one exception in Tasmania was when I was down here back in the mid 90s was Savage River Mines where in their metalliferous mining sector there, the CFMEU and the TWU were involved at that operation, but apart from that the principal arrangement in place with the - from a union coverage - AWU was the principal hard-rock mining union and the two metal trades unions were involved in the sites and that was the predominant position in Tasmania.

\*\*\*\* STEPHEN PHILLIP KNOTT

XN MR FITZGERALD

PN2282

You don't know why that anomaly occurred?---I don't know. It occurred back when the operation started back in the 60s and that was the way that it was set up at that particular time. And if you look at it in an Australian context, there was Savage River Mines and there was one other operation that had the CFMEU - or FEDFA as it was then - involved and that was at Broken Hill. But apart from that, throughout Australia it was very much the AWU and the two metal trades union.

PN2283

Yes. Do you know what the circumstances now are - representation at Broken Hill are?---The mine has - the ownership arrangements have changed there and the CFMEU are still involved. There's particular provisions under the New South Wales industrial legislation that recognises the CFMEU involvement at that site.

PN2284

So that would probably be the - would you agree that that is the exception in terms of the metalliferous mining sector?---Yes, correct.

PN2285

Okay. All right. There was some evidence given in respect to Renison and the CFMEU membership. I think that was during your time as Tasmanian manager. Can you just give a brief summary of what occurred then?---Sure. There was - to put it in the context of the 80s - back in the days when there were several unions involved on that site - there was a - eventually there was the usual union rationalisation process for a number of reasons that were stated by the ACTU and also business and administrative reasons from a company perspective and the AWU was the predominant union of the two metal trades unions and a number of the other unions that were involved - the smaller unions - tended to disappear through that process. Now, there was a lot of activity there when the commercial circumstances at the Renison Mine site changed dramatically. Back in the 80s and early 90s that site was making good money and the employees were very well paid and the commercial circumstances of that mine changed dramatically when the tin price dropped and they had to look at restructuring the operations. And it went through a phase which concluded in the mine actually being closed for some period of time and it had to re-open. And when it re-opened the arrangements were considerably different. The employees were getting about 60 per cent of the remuneration they were previously and the key drivers in the negotiations with the government at the time, which was the ALP Green Accord that was in place

\*\*\*\*

STEPHEN PHILLIP KNOTT

XN MR FITZGERALD

at that time, was the AWU and the two metal trades unions. There was a bit of activity and there was a bit of local skulduggery, I think, on behalf of one of the former AWU delegates there to see if he could get some interest from the troops there to be involved in the CFMEU. That there was a lot of theatre and antics but it didn't really amount to a great deal.

PN2286

Okay. Thank you. And just a couple of more questions and I will just ask you to confirm the other statements. There has been some evidence given in respect to the metal processing plant, Temco and Pasminco, Hobart. Can you give your view about how they compare to a metalliferous mine?---Well, they're two completely different operations. You know, if you go to a mine, you either go underground or down to the bottom of a big pit and then the mineral processing operations are fundamentally different.

PN2287

Right. Okay. All right. And finally there is a statement that I think you have made in respect to CFMEU rule change proceedings. Again, could you just give a summary of those and which Court ultimately decided that?---Yes, that's at item 32 of the statement, Mr Commissioner. There's reference there to CFMEU attempts to expand their rules in the Federal system to cover civil and mechanical engineering employees. It says in there - at point 32 - it happened over a five year period. Actually it needs correction. It was over a seven year - it happened over a seven-year period and the High Court remitted the matter to the Federal Court and there were a whole range of proceedings involving a single Commissioner,

Full Bench of the Industrial Relations Commission. The Federal Court were involved. The High Court remitted the matter back to the Federal Court and it was a long drawn out saga. And under section 204 of the Federal Act there's a provision in there in relation to more conveniently belong and more effectively represent and that was the moot point that was the subject of those proceedings over a seven-year period. And it was established there in that particular matter - which when it was ultimately determined by the Federal Court on 23 August - Wilcox, Marshall and Merkel - that the Commission was within its power to not grant the extension of the rule change that the CFMEU were seeking in that matter and the Federal Commission at that time didn't see that it was in the public interest to have union turf wars covering over - occurring over membership when there was established union coverage in that particular sector, so that was a long drawn out proceedings over a seven-year period that really tested that conveniently belong effect/effectively represent aspect of the Federal legislation and what was deemed to be in the public interest.

\*\*\*\* STEPHEN PHILLIP KNOTT

XN MR FITZGERALD

PN2288

Right. You seem to have an intricate knowledge of those proceedings. What was AMMA's and AWU's role in those proceedings?---Well, we both opposed it for different reasons and the intricate knowledge stems from the fact that we spent probably - as an organisation - a million dollars in legal fees in that particular matter, so we saw that it was quite important both from an organisational and a membership perspective and the AWU saw that it was critical for their business perspective as well, because that was their core business in terms of metalliferous mining coverage. It was historically their turf and they - in this case, the civil and mechanical engineering area - in the case that you refer to there - it was their turf there as well and they didn't want to lose that.

PN2289

Okay. Just in respect to the remainder of the statements. Statements 1 to 34, do you confirm and swear the correctness of those statements?---Yes, I do.

PN2290

Yes. All right. Well, that is my evidence for Mr Knott, thank you, Commissioner.

PN2291

THE COMMISSIONER: Yes, we will mark this statement R3.

#### **EXHIBIT #R3 STATEMENT IN RESPECT TO CFMEU RULE CHANGE PROCEEDINGS**

PN2292

THE COMMISSIONER: Mr Bukarica?

<CROSS-EXAMINATION BY MR BUKARICA

[]

PN2293

MR BUKARICA: May it please the Commission.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2294

Mr Knott, if I understand your evidence in response to some additional questions by Mr FitzGerald, the position is that as far as you were aware, there is only one metalliferous mining site in Australia where CFMEU has rights of coverage. Is that correct?---The right of coverage is a moot point. In some of the metalliferous mining operations they may have a handful of members here, there and everywhere and there would be winder drivers in some States that would be covered by the CFMEU, so it would be more than one site.

PN2295

Mr Knott, are you familiar with the Weipa bauxite mine in North Queensland?---Yes, I am.

PN2296

Would you agree with me that it is one of the world's largest bauxite mining operations?---Yes.

PN2297

And are you aware that in 2001 the Australian Industrial Relations Commission granted the CFMEU rights of coverage over all production employees at the Weipa mine?---I'm aware of the decision, yes.

PN2298

Yes. Now, you would class that as a metalliferous mine, would you not?---Yes, I would.

PN2299

Yes. So your statement - at least in that respect - is incorrect?---In that respect, it is incorrect.

PN2300

Yes. And are you also aware of - in broad terms - of the operations of the BHP Billiton company in the Pilbara in Western Australia?---Yes.

PN2301

And are you aware of the existence there of an organisation known as the Pilbara miners' union?---Yes.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2302

And are you aware that the Pilbara miners' union is an organisation comprising of members of the CFMEU, AWU, AMWU, and TWU?---I'm aware that there are those five unions involved in that organisation.

PN2303

Yes. And are you aware as late as today - I beg your pardon yesterday - that the Pilbara miners' union successfully made an application in the Western Australian Industrial Relations Commission to increase rates for what they term to be award workers employed by BHP Billiton in the order of 12 per cent?---I am aware in

relation to both Weipa and the BHP operation that you refer to that the overwhelming majority of employees are on Australian workplace agreements. In relation to the award change - - -

PN2304

Well, can I just stop you there just for a moment?---Sure.

PN2305

Are you sure that is the position at Weipa?---At Weipa, it would be a - I'd need to check on this - but it is either - it could be a 170LK agreement.

PN2306

If I suggested to you that at Weipa the predominant arrangement is staff uniform arrangements but not AWAs, would you accept that?---I'd need to check. I just can't recall whether they are on 170LK underpinning their staff employment contracts or whether they're AWAs. I'd need to check that.

PN2307

Yes, sorry, I interrupted you?---Yes. In relation to the State - Commission proceedings in Western Australia yesterday, I'm not across - what transcribed yesterday.

PN2308

But you accept, do you not, that the CFMEU is a major player in relation to the Pilbara miners' union?---I'd have to take your word for that. The Pilbara miners' union from a legal entity point of view and its impact in terms of the resources sector in WA is like a pin prick in an orange. It got a lot of commentary in the press but from a practical point of view, it's a non-event for the industry.

\*\*\*\*

STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2309

I see. So half the employees of BHP Billiton is a non-entity in the industry. Is that your position?---Well, I'd like to see the evidence that half the people in that are actually members of the Pilbara miners' union. We would dispute that unless we saw evidence to the contrary.

PN2310

I see, I see. Now - so in relation to your evidence about the presence of the CFMEU in metalliferous mining across Australia, you now accept that there is presence in Weipa - Weipa bauxite mine?---There are varying reports that there may be up to 10 or a dozen people that are members of a union, but the company doesn't have any details on that.

PN2311

Can you - have you got any basis for that belief?---That they may have 10 or a dozen?

PN2312

Yes?---It's just really speculation in terms of the numbers.

PN2313

Speculation. So there is no basis for that belief?---Correct.

PN2314

Have you got any idea of the membership of the CFMEU in Broken Hill?---I would say that it would be quite substantive, but the numbers I wouldn't know.

PN2315

I see. Have you got any idea as to the membership of the CFMEU that forms part of the Pilbara miners' union?---I have no factual evidence that has been presented to highlight who are members of that union. I haven't seen anything to that effect.

PN2316

I see. Now, you also mentioned that there is - and correct me if I am wrong - there are pockets of membership throughout the industry as well - winder drivers and the like? Is that your belief?---We did a review of the - what we saw was the - where CFMEU had coverage in - fairly recently in the last couple of weeks and there were a couple of spots in Western Australia where there were a handful of people that were in the occupation of winder driver that would legitimately be covered by the CFMEU within their rules.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2317

That is an assessment that you have made as to legitimate coverage?---Winder drivers under the State legislation in Western Australia, they certainly had coverage there for winder drivers.

PN2318

I see. Are there other persons that you say exist in metalliferous mining that in your belief the CFMEU does not have coverage of?---Well, the issue of hard-rock miners, for example, has been before the Industrial Appeal Court in WA before where the CFMEU have claimed that they had a right to cover those people. The Industrial Appeal Court in Western Australia saw differently. So those debates have gone on, off and on over many decades now. But the position generally that has been reached is that the - with some exceptions down here in Tasmania - that the mine and mill workers and metalliferous miners have been in the AWU.

PN2319

I see. Notwithstanding your observation that there are some winder drivers around the place that are CFMEU?---Correct.

PN2320

Now, in addition to what you have mentioned in relation to Tasmania, you say that there was an anomalous situation that Savage River was a CFMEU site in the mid 90s. Is that your evidence?---That's correct. The mine workers were - the shovel operators were in the CFMEU and the truck drivers were in the TWU and on similar operations throughout Australia, they would have been members of the AWU.

PN2321

Now - and the result of the position at Savage River, is it not, was that the mine closed down for a period in about '96 or '97?---Correct.

PN2322

And re-opened with a Greenfield site agreement under the - I think it is section 170LL of the Federal Act. Exclusively being the AWU having coverage?---Correct.

PN2323

And is it your understanding that such an agreement was in breach of the existing demarcation arrangement that existed in the metalliferous mine in Tasmania?---Are you referring to the VP Moore decision that was - - -

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2324

No, I am referring to the agreement between the parties that underpinned the VP Moore decision?---Look, I'm going from memory here, but my understanding at the time was that the Savage River Mine situation was put out to one side as a separate entity in its own right and they weren't covered by the VP Moore decision. So what happened in terms of agreements between the unions and so forth, I wouldn't know. But what I am aware of is that in the CFMEU civil and mechanical engineering rule change cases, there was a litany of evidence that was put forward which highlighted the breach of various agreements between the AWU and the CFMEU nationally and that is meant to be a quite common feature that was presented in those proceedings.

PN2325

Mr Knott, I - like you - have some background in the .... the civil mechanical rule change. I would just ask you to confirm this fact that that rule change application and all those proceedings did not apply to metalliferous mining, did they?---No, that is incorrect, and that was one of the reasons why the Full Bench of the Commission denied the CFMEU's claim to extend their rules. They referred to the construction industry in their application to extend their rules and the construction industry itself - the Commissioner - the Full Bench had some difficulty in putting a fence around that. And when you look at it, it actually did impact on mine sites and oil and gas refineries, roadways, and so forth. So that was a key part of those - that particular decision, that the construction industry in itself was quite broad and it could in fact take into account mining operations and refineries and so forth. So that's why we had such a concerted input into that process.

PN2326

But you are not suggesting that that is the true effect of the proposed rule changes the CFMEU put forward, are you?---The definition of construction industry and it had work that was - it went on to say work that was incidental or connected to construction activities, so you could have somebody that was involved in periphery work that could have also been caught up by the rule change. So we certainly saw that it had the potential to cover mining employees in the metalliferous mining sector and also the oil and gas sector.

PN2327

I put to you, on a peripheral basis at best?---Well, the fact that it would give them the opportunity to enrol people where they currently didn't have the right to enrol people was a moot point.

PN2328

I see. I will leave that there. Mr Knott, in your statement you make reference to the section 118A order issued by Vice President Moore in 1992. Are you familiar with - generally with that document?---I am familiar that the decision was made in '92 and at that time, I was working for mines and metals in our Tasmanian branch.

PN2329

Yes. Could I - can the witness be shown a copy of the 118A order?---I haven't seen it for 13 years.

PN2330

Yes, well, I think it is a bit dusty. Could you please take a moment and read the last - the actual order, the operative part of the order and how it is framed, please?---Is this the without limiting the generality of sub - do you just want the second paragraph?

PN2331

Just read the whole section please?---Okay:

PN2332

*Without limiting the generality of -*

PN2333

no, no, sorry, to yourself. To yourself, sorry?---Okay.

PN2334

MR FITZGERALD: I wonder if I can inquire about the document which is being tendered? I am not quite sure, there seems to have been several different

- - -

PN2335

MR FLANAGAN: This is the 1994 - - -

PN2336

THE COMMISSIONER: '94 decision.

PN2337

MR FITZGERALD: Yes. There was a '92 decision as well.

PN2338

MR BUKARICA: Yes, if I just impose. The 1992 decision was the in - if you like - the in principle decision. The 1994 decision, which I have given Mr Knott actually defined the particular form of the order and that is where I am taking Mr Knott to?---Yes, I have read that, and Savage River Mines aren't part of it.

PN2339

Savage River Mines aren't part of it. You agree with me that Henty Gold is not part of it?---I don't think Henty was going at the time.

PN2340

Yes, well, that is self-evident then. Do you agree with that?---Correct.

PN2341

Mr Knott, can I just ask you as well? Is there anything in that order that says words to the effect of the AWU shall have the right to represent employees to the exclusion of the CFMEU in the metalliferous mining industry in the State of Tasmania?---At that time, it just dealt with specified sites.

PN2342

I see?---So in terms of futures sites, it did not cover the future sites.

PN2343

I see. Just refer yourself to the order there. Are you aware of any variation to that order to include the whole of the industry in this State?---I'm not.

PN2344

Yes. So - and are you aware of any other order - section 118A order or similar instrument - both - either Federally or State which restricts further the CFMEU's eligibility in respect to the metalliferous mining industry?---No, I'm not.

PN2345

Yes. So on its face - and you are an experienced practitioner - the order says the CFMEU is excluded from metalliferous mining. Are those words appearing there?---No.

PN2346

Can you read the operative part in relation to the particular mine sites?---Where it nominates a range of mine sites?

\*\*\*\*

STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2347

Yes?---Correct?

PN2348

Yes. So - if you like - the CFMEU is - and tell me if my interpretation is incorrect in your view - the CFMEU is excluded from the metalliferous mining operations of those particular named companies. Is that the way the order reads?---That's correct.

PN2349

Okay. Can I have the document back? And you don't dispute do you, Mr Knott, that the CFMEU has historically had coverage via the FED and FA - I am here talking about constitutional coverage - for various classifications found in metalliferous mining?---The winder driver classification is one that readily comes to mind. In relation to normal underground mining activities then we would say no, they don't have coverage.

PN2350

I see. Can I quote some classifications to you, see if you agree with me? Dozer operator. Would that be FEDFA?---Looking at the rules of the CFMEU when I last looked at them, they were dealing with engine drivers and so forth. Power operated machines and so forth, and it was predominantly bent towards the coal industry. In terms of the mining industry - the hard-rock mining industry - I think there's a debate about whether or not - and this has been had before - whether they can cover drilling operators and so forth, and truck drivers.

PN2351

I see. Mr Knott, are you familiar - you just made reference to the rules of the CFMEU and I have referred to the FEDFA coverage. Are you actually familiar with what the rules say?---I've read the Federal rules in recent years but I haven't read the State branch rules in probably a decade or more.

PN2352

Yes?---But it refers to engine drivers. And so what happens on mine sites that's been the winder drivers and in those areas where they've had rail involved, the loco drivers have been covered as well.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2353

Yes. You mentioned, I think, in relation to dozer drivers a debate about whether the CFMEU has the requisite eligibility and you mentioned some sort of limitation in relation to coal mining. Do you recall that answer?---It's been the practice that they've had the coverage in the coal mining. The rules themselves don't specifically differentiate between the coal industry and the non-coal sector.

PN2354

I see. So you are saying now that there isn't any restriction in CFMEU rule as to what industry occupations appear?---Last time I read the rules, I didn't see any specific reference to non-coal or coal. I'm just dealing with the reality in the industry that they go in the coal industry and not the non-coal sector.

PN2355

I see. But you have - there was evidence before, Mr Knott, that the CFMEU had coverage of, say, Savage River Mines. That is your evidence, isn't it?---Yes, they had an award and an agreement made to cover the Savage River Mines operations.

PN2356

And presumably covered persons such as dozer operators?---Yes, it would have done.

PN2357

Winder drivers?---Yes.

PN2358

Fork lift drivers?---Yes.

PN2359

Perhaps depending on the operation, etcetera. A wide range of operator classifications. Do you accept that?---Yes.

PN2360

In relation to Savage River Mines?---Yes.

PN2361

And based on your experience in relation to Tasmania, do you also accept that that position occurred in relation to a wide range of mine sites prior to the 118A order?---No, no. If we're putting it in the Tasmania context, the FEDFA's

coverage was really just the winder drivers around the West Coast of Tasmania and everyone else was in the AWU.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2362

I see. I will leave that issue. Now, Mr Knott, I have noticed that in recent times you have been fairly active in lobbying Federally on behalf of your organisation in respect to proposed changes to the Workplace Relations Act. Is that correct?---Yes and no. It's not correct to say it's just recent, it's been ongoing for some time.

PN2363

Yes, I beg your pardon. And indeed the AMMA organisation is a great proponent of further workplace deregulation. Is that not the case?---We're a great advocate for having a full range of employment regulation options, including union and non-union individual and collective agreements.

PN2364

Yes?---If you look across our membership, the oil and gas industry is predominantly in the collective union mould. The work we do in the coal industry in New South Wales and Queensland is in the same category. In the hard-rock mining sector, there's a mixture of collective union arrangements and direct employment arrangements. So we advocate for the full range of options.

PN2365

And you are great advocates for choice, aren't you, in the workplace?---We - from a lobbying point of view - and something that is probably relevant to these proceedings - the more conveniently belong and more effectively represent provisions that are currently in the Federal legislation we were very active in making sure that that was put in the Federal legislation. The Federal Government at the time were under the Wreidt regime were keen to get rid of that provision and have freedom of choice and competition between unions. And so we advocated and at the last moment the more conveniently belong and more effectively represent principle of section 204 that's there, got put in to deal with the situation of union turf wars that we saw would be destructive for the industry and employees. So there's an example of some lobbying that's sort of relevant to these proceedings.

PN2366

So you are in favour of choice in relation to some things in industrial relations but not others. Is that a fair statement?---The choice was to be represented by a union that could more conveniently belong and effectively represent their interests, so we are in favour of choice.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2367

In favour of choice in what respect?---In relation to what is provided under the legislation and what is provided under the legislation is that at a Federal level employees can belong to a union that can effectively represent and they more conveniently belong to, having regard to the industry and the history of the activities of the respective unions involved. But we certainly don't want a

situation whereby mine sites become an area of union turf wars between competing unions on similar occupational basis.

PN2368

Yes. So is it your position, Mr Knott, and the position of your organisation that if a union has the requisite eligibility to recruit members then the employer respects that?---Yes and no. The situation being if there's a large membership base that has been recruited and historically they can be more conveniently and more effectively represented by another union, then all those things have to be taken into account. So in accordance with the law those things would be tested.

PN2369

Now, you made some particular reference to conveniently belong, etcetera, in section 204 of the Federal Act. It is the case, isn't it, Mr Knott, that those provisions relate to the - either to the alteration of rules of a union or the organisation of new unions. That is correct, isn't it?---Correct.

PN2370

And so you are not suggesting are you, Mr Knott, that the more conveniently belong provisions have precluded overlapping coverage between unions or indeed employer organisations?---They've been a number of cases where that particular provision of the Federal legislation has been looked at. The NTEU and the CS - well, the electrical trades union, there was a major case there that was determined a couple of years ago. The issue there being, if you look at, for example, mill operators at a Federal level, it could well be argued that the CFMEU would need to change their rules to cover mill operators and that particular provision would be dealt with if there was an application made to change their rules.

PN2371

Well, let us just assume for the purpose of this proposition, Mr Knott, that the CFMEU has coverage for mill operators in metalliferous mining. What is the position of AMMA in relation to that?---Well, that's a position I can't answer because it's a - in our view - a hypothetical position, so - - -

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2372

Would you respect the right of employees to join that union?---If the legal framework was such that - and it may involve a discretionary judgment by a member of the Commission - then - and all those things were lined up and ticked off and the legal position was that the coverage was in accordance with the rules, it was in the public interest and so forth, and that determined motion was made then we would respect that, for sure.

PN2373

Yes. And indeed, for example, using the example of Weipa, your organisation appeared in those proceedings strongly opposed to the CFMEU application. However, the CFMEU prevailed. The position is now that you accept the CFMEU's presence at the Weipa operations?---We accept the legal rights that they have as a result of the decision made. And we also accept the - and support - the company strategy to continue on with direct employment arrangements.

PN2374

Well, that is not the question I was asking, Mr Knott. I am simply asking you about the presence - in a representational sense - of the CFMEU?---There's absolutely no question that Australian Mines and Metals Association and myself as their CEO would comply with whatever relevant legislation or decision of the Commission that was on foot was made.

PN2375

Yes. And indeed it would be improper, would it not, if not unlawful, for the - your organisation to advocate that employers did not recognise legitimate union constitutional coverage if it is properly established?---If properly established.

PN2376

Yes. Now, you have stated that AMMA has been a proponent of workplace reform, etcetera. AWA is - have been particularly prevalent in the metalliferous mining sector across Australia. Is that not correct?---Yes, it is.

PN2377

Indeed, on 18 and 19 March this year at the AMMA national conference, you made a presentation, did you not, about the spread of AWAs and the like throughout the industry?---I was one of many people that made presentations on that point.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2378

But you made a presentation to that effect?---I don't think - I'm just trying to think - at the end of the day a publication was released that - under the AMMA banner - I did make a presentation at the national conference and I did highlight as a forerunner to the presentation that was made - going to be made by the Office of Employment Advocate that the statistics - which you may be alluding to - was about 80 per cent of the hard-rock mining industry covered by Federal awards, those people were covered by AWAs.

PN2379

I think you said 82 per cent in Western Australia? 82 per cent in WA?---No, I didn't say that, I didn't cover the West Australian situation at all. But just for the record, Mr Commissioner, prior to the change of the State legislation in Western Australia when the Gallup Government got elected the overwhelming majority of the industry would have been on State workplace agreements and over the last couple of years, they have migrated to the Federal system of Australian Workplace Agreements.

PN2380

Well, some have, haven't they, Mr Knott, not all?---No, most of them have. Some have gone down the collective (L)(K) approach and some have done collective (L)(J) approaches, so collective non-union and collective union agreements.

PN2381

And most notably at BHP Pilbara, a large group of employees there have gone the State Commission collective approach?---I'd - no, it's not a large number of people. The overwhelming majority - and I can speak with some authority, the President of BHP iron ore, he's on my board, and he's also my president - but the

overwhelming majority of the BHP iron ore people are on Australian Workplace Agreements.

PN2382

Getting back to Australian Workplace Agreements, do you have a reasonable understanding of how they operate and the legal provisions surrounding those instruments?---Yes.

PN2383

And you would agree with me, would you not, Mr Knott, that a person negotiating an AWA - that is, an employee - can nominate any union he or she chooses to represent them in those - - -

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2384

MR FITZGERALD: Well, Commissioner, I just have to question the relevance of the line of questioning in this. And the evidence given by Mr Knott doesn't address this issue. It is something quite out of course.

PN2385

THE COMMISSIONER: Well, the witness is at large under cross-examination, I seem to recall you saying it, Mr Fitzgerald?

PN2386

MR FITZGERALD: In terms of these proceedings and the purposes of the CFMEU application, it has no relevance whatsoever.

PN2387

THE COMMISSIONER: Well, I suspect it may well do. The line of questioning from Mr Bukarica as to the consistency of an approach has the range of options on the one hand and the options of union membership on the other. I can see where his line of argument is going on that, so I will allow the question to continue for the moment.

PN2388

MR BUKARICA: Thank you, Commissioner.

PN2389

It is true, is it not, Mr Knott - pardon the pun, no pun intended - that with AWAs an employee can nominate any union to represent them at negotiations with the employer?---That is correct.

PN2390

Yes. And so if there were AWAs at the Henty gold mine, there would be no issue of, say, Mr Hinds from the CFMEU representing employees provided the requisite authorities were given. Is that your understanding?---If the employees put Mr Hinds forward as their bargaining agent, then yes they would have to deal with Mr Hinds unless the employees withdrew that request at some later stage.

PN2391

Yes. And it is also the case, isn't it, Mr Knott, in respect to section 170LK non-union agreements that a similar flexibility arises?---The employees can choose at any stage during that notice period when the agreement is put to the work force to

be represented by a trade union and that trade union at registration can become party to that agreement if they choose to.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2392

And indeed there is no constitutional eligibility limitation in relation to section 170LK agreements, is there not?---Provided that they're underpinned by a relevant instrument, then that's fine.

PN2393

No, I mean in respect to the union that employee may nominate, there's no eligibility issue that arises?---No, apart from the usual test in terms of capacity to hold office.

PN2394

Yes, yes. So in relation to two of your - two of the forms of industrial regulation that you have stated are prevalent in metalliferous mining, both forms allow for - really for complete employee choice as to union representative?--- During the bargaining process, yes.

PN2395

Well, I would suggest afterwards, depending on what the agreement says?---Depending on what the agreement says, correct.

PN2396

Yes. Now, it is a bit hypocritical, isn't it, Mr Knott - and I don't use that term lightly - to hold out freedom and choice in relation to the issues such as the type of instrument that applies but then also to put forward a proposition that a particular union is effectively black banned from metalliferous mining?---Well, I don't agree with that at all. There are statutory provisions at a Federal level and there is also scope here at a State level for the Commission to make a determination as to what's in the best interests or in the Tasmanian system what's in the public interest. And the position that we put forward that it is not in the public interest in the hard-rock mining industry in Tasmania to have industrial turf wars between two fairly robust unions and my understanding - and I stand to be corrected - that is, that the AWU has the majority membership of the site and the complications that can incur from an administrative point of view and industrial relations negotiation process and the whole raft of issues associated with that, we believe is not in the public interest. Hence, our support for the AWU principal union status that was given to the AWU in the hard-rock mining industry by Bill Kelty and the ACTU back in the early 90s.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2397

I might return to that issue about the ACTU's status shortly. But you use the term the AWU is a robust organisation. Is that correct, in your view?---Yes, we deal with them in all parts of the resources sector.

PN2398

And do you believe that that is the case in Tasmania?---My knowledge from a Tasmanian perspective, Mr Commissioner, as you would be aware I haven't been here in an operative sense for some 10 years and I rely on the feedback from my

State manager and I also had some involvement in the pipeline project both at a political level and a senior level within government, the organisation, and also the union movement and the AWU were very robust in those proceedings.

PN2399

And your assessment is in relation to that, that it is a professional organisation?---Very much so.

PN2400

In this State?---Very much so.

PN2401

Honest and open in dealings with you - with your organisation?---Again, I can talk from my experience here that as was the case with all unions that I dealt with, the relationship from an industrial relations point of view was fairly good in Tasmania. The industrial relations climate was fairly good. So from an AWU perspective and indeed the FEDFA when I dealt with them at the Hydro-Electric Commission and also at Savage River Mines generally the industrial relations processes were quite sound.

PN2402

So you wouldn't call the AWU cynical, would you?---I wouldn't, you might.

PN2403

I beg your pardon?---I wouldn't, no.

PN2404

Opportunistic?---No.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2405

In this State? Tasmania? No view?---No.

PN2406

Mr Knott, didn't you in an interview with the Hobart Mercury on 23 May 2003 say, and I quote:

PN2407

*The AWU Tasmanian branch opportunistically and cynically exploiting recent tragic events to shoot home blame to particular causes which have not been established through investigative inquiry processes at this stage.*

PN2408

Do you recall making remarks to that effect?---We put out press releases on a pretty regular basis. I think the story that you are referring to could be in relation to the hours of work review that was done in Tasmania. If that's the one that you're talking about? I can't recall using those exact words, Mr Commissioner, but from a point of view of the robust lobbying that was going on at the time, I may well have used those words and I suspect I did if Mr Bukarica's quote is correct.

PN2409

I see. So those words applied at the time?---It was part of a positioning process. We were unhappy with the way that the working hours review was set up from a

political process, so we were trying to get some influence both at a union level and also a political level on the way the working hour review process is set up, which we thought was most unsatisfactory.

PN2410

Now, referring back to this speech you made at the Fremantle conference on 18 and 19 March this year. Do you recall making remarks critical of Mr Greg Combet from the ACTU?---I think where we're at here, Mr Commissioner, and that's why there is some difference here is that I suspect Mr Bukanica is reading from a paper that was distributed and I certainly didn't read the paper. I had a series of overheads and I can't recall making any reference to Greg Combet, but it may well be in the paper.

PN2411

But you acknowledge you prepared a paper for the conference?---Yes, I did.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2412

Under your name?---Yes, I did.

PN2413

And widely distributed?---It was distributed to the delegates at the conference on a CD rom, so it wasn't widely distributed. But obviously it's on the web site and people have accessed it. Like yourself.

PN2414

Now, do you deny that you made quite severe criticism of what you called union monopoly rights in bargaining?---I made a comment in relation to - I was progressing the industrial relations reform process in Australia and was acknowledging the work that was done by the Keating Government when they introduced the enterprise flexibility provisions back in 1993. And the comment that I made there it was actually a Labor Government that broke the union monopoly rights at that time because up until that stage there was no capacity for collective non-union agreements in the Federal system. The union had to be involved in the process, so it was in that context I made reference to union monopoly rights were broken and they were broken by the Keating Government.

PN2415

So you are against union monopoly rights?---In relation to having a monopoly on the bargaining process - which is what that comment was in relation to - we are saying that the employee should be free to bargain with the employer in their own right if they choose to do so. So in that context, yes, we are against union monopoly bargaining rights.

PN2416

But you are not against, for example, in this matter a union monopoly right accruing to, say, the AWU versus the CFMEU, are you?---We're not against the AWU and we're supporting their position to advance before the Commission that it's in the public interest that they have principal union status for the sites concerned. If that means that they would have a monopoly bargaining right in the area that the CFMEU then that would be the case, we would support that monopoly situation if that was what was deemed to be in the public interest.

PN2417

You can't see a logical inconsistency in that, can you, Mr Knott?---It's a position that is available under the legislative framework.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2418

I am not asking that. I am asking you as a matter of logic and principle even, is there an inconsistency in that proposition you just put?---No, there's not. One is to do with union bargaining and the capacity for non-union members to bargain directly with the employer and the other is in relation to union coverage.

PN2419

But, Mr Knott, you just acknowledged five minutes ago to me that in relation to non-union bargaining or the right of an employee to choose the method of instrument they take, that - for say in relation to AWA - it is no issue about which union is in it. Is that - that's correct?---They - again under the legislation - have a right to choose a bargaining agent and so that is recognised.

PN2420

And (L)(K) agreements? Ditto?---The same.

PN2421

But in relation to an agreement where - if you like - a collective union agreement, do you support a union monopoly position?---Support a union being given the right to cover the particular employees at the enterprise by a union that they can be represented by and - - -

PN2422

To the exclusion of other unions?---Yes.

PN2423

Yes. Now, there has been fairly dramatic changes to industrial relations legislation. You have just made a reference to the Keating Government 1993 changes. Fairly dramatic changes Federally and in most States since the early 1990s. That is correct, isn't it?---Yes.

PN2424

Yes. And cast your mind back to 1992, that is, prior to the Keating Government introducing what I think was called the Industrial Relations Reform Act 1993, section 118A applications were quite common, were they not?---That is correct.

PN2425

And would you agree with me that as a matter of legal framework that the position which applied in relation - in 1992 in respect to organisational coverage is vastly different to what occurs now under the Workplace Relations Act Federally?---I wouldn't say it was vastly different.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2426

I see. Is it the case - if you don't know, please say so. Is it the case that section 118A exists any more under the Federal Act?---I don't know, to be honest with you. I don't think it does, no.

PN2427

And is it the case that under the Industrial Relations Act 1998 - and I think including 1993 - that a principal object of the Act was the rationalisation of union coverage. Do you recall that?---I do, yes.

PN2428

Is that the position now under the Workplace Relations Act?---I think, it's silent on that issue.

PN2429

I think it doesn't exist any more, that is the case, isn't it, that provision was taken out?---That's why it's silent on the issue, I suppose.

PN2430

Yes. And in respect to the principal objects of the Act they include things such as encouraging bargaining at a workplace level, freedom of association, etcetera. That is your understanding of the Federal Act?---Yes. And of course the - that we alluded to before, which was section 204.

PN2431

Yes. Which is in respect to extending organisational rules?---Rule change cover.

PN2432

Or the registration of new organisations? Now, in addition to the changes that I have just mentioned, there have also been changes in relation to, say, the ability of unions to de-amalgamate. Do you accept that is now a feature of the Federal Act?---The amalgamation and - which you refer to the de-amalgamation provisions are not something that I'm up to speed on, but I'm aware that there have been changes made there.

PN2433

There has also been a reduction in the threshold of membership for registration of new unions. That is correct?---Yes, that's correct.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2434

So really the trend Federally, Mr Knott, has been towards encouraging competition amongst employer organisations, at least since the 1996 Act. Do you agree with that?---Within the confines of it being in the public interest for that to occur.

PN2435

Yes. I understand you put some particular importance on in relation to section 204 applications, but let us just put that aside and look at the structure of the Act. Do you agree with the proposition I have put that the Act - the Workplace Relations Act - has specifically sought to elevate or encourage union competition?---We're talking about the Federal legislation here? You're talking about the Federal Workplace Relations Act?

PN2436

Yes, Workplace Relations Act?---Yes. The Federal Workplace Relations Act in terms of competition between unions, it doesn't expressly say anything about

competition between unions but certainly there have been changes that you have referred to.

PN2437

Yes. Well, the removal of section 118A orders is an indication that perhaps the rationalisation of union coverage is no longer a priority. Would you agree with that?---Well, the section 118A orders that were made by VP Moore were referenced in the civil and mechanical rule change case in terms of whether or not it was not in the public interest to do that and the reason why that order was made in terms of the industrial harmony it sought at the time, so whilst it doesn't exist in the Act the previous decisions that have been made under that section of the Act do have some relevance.

PN2438

Yes. Now, going back to the 1992 VP Moore order - and please tell me if you disagree, Mr Knott - the position was that those orders - those section 118A orders - were heavily influenced by the attitude of the ACTU?---They were influenced by the ACTU in terms of their principal union status.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2439

Yes. And indeed in this matter there was a ruling by the ACTU which accorded the AWU principal union status and the CFMEU significant union status. Is that your recollection?---Yes, my recollection was that was a requirement in terms of determining section 118A matters that the Commission had to take into account the position of the ACTU on such matters. I think it was a requirement under their legislation at that time to do that.

PN2440

Yes. Now, in relation to significant union status, Mr Knott. Is it your understanding that significant union status took away the right of unions to retain their existing membership? Is that what the policy meant?---No, it didn't.

PN2441

Indeed, the notion of significant union status, I put to you, whilst recognising that a union may have a lesser membership presence than the principal still allows for the continuing existence of that union and the servicing of its membership as a policy intention?---Yes, yes.

PN2442

Yes. And so an outcome in relation to Tasmania, which saw effectively the CFMEU pushed out of the metalliferous mining sector would be inconsistent with that sort of policy outcome, would it not?---I don't understand the question.

PN2443

Okay. Would it be consistent with the ACTU's - you have expressed a view of the operation of significant union status and you have made mention several times of the AWU's principal status. I am just asking you based on what you have said about the - your understanding of the meaning of significant, whether in relation to Tasmania the locking out of the CFMEU from metalliferous mining is consistent with that definition?---Okay. Well, I can talk from a practical sense in terms of what transpired as a result of that.

PN2444

I am just asking about your understanding of significant union status not - - -?---There's nothing in that that meant that the - those nominated significant unions were to vacate the scene. There was nothing in that significant status that said that they had to leave the park, so to speak.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2445

Yes. And you have also I think acknowledged in reading the order of Vice President Moore that the order on its face does not appear to impinge upon Henty Gold?---The order was made and there were subsequent - and I think they were more in the conciliation area in relation to other sites - as to whether or not it should apply to them or not. And it was deemed that a separate application would have to be made for it to apply to other sites that came on stream. And generally the way that it happened at a local level was the AWU and the CFMEU had staked out their turf and it just was a non-event, so that application was never - needed to be made. So as we saw at the Henty site - as we do today - that the AWU - that was their area for recruitment and it had probably taken them some time to get to the position they are today, to have significant union members there.

PN2446

I see. So it is their area. Mr Knott - - -?---But legislatively there was nothing in the decision that precluded a site that hadn't commenced at that stage.

PN2447

I see. From the CFMEU entering?---Or any union for that matter.

PN2448

No, I am - the question is specifically towards the effect of the section 118A order?---It didn't preclude the CFMEU because the site was not covered in the order.

PN2449

Yes. And so in relation to - remember I asked you a question about what AMMA's attitude would be to a union who has constitutional rights seeking to represent its eligible membership? Are you saying that in relation to Henty Gold the position is you recognise the CFMEU's role?---The constitutional rights that the CFMEU have, they can seek to enrol members and seek to get an award made and the employer can seek to oppose that award being made with that particular union if that is the course they wish to take.

PN2450

But are you accepting that we have got constitutional eligibility to be in Henty Gold?---No, I'm not accepting that.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2451

Well, can you demonstrate here - - -?---I'm saying that you haven't been excluded from that particular order, but in relation to your rules, whether or not - and I haven't seen the Tasmanian branch rules - whether or not you could

constitutionally cover the people there at a local level here, I don't know. So I'm not prepared to concede that because I'm not in a - - -

PN2452

I see. Could I quote you part of the eligibility rule, Mr Knott? And you tell me whether any or all of the - firstly, I should ask you a question. Are you familiar with the general classifications contained at the - present at the Henty gold mine?---Yes, I am.

PN2453

Particularly in the mill area?---I'm not familiar with the agreement other than that the - I'm familiar with the original collective non-union agreement in '95 because I put it through. But the mill - you're just talking about the mill operators?

PN2454

Well, in general, in general, but in particular in relation to the mill?---Yes, I don't know what they classify them as now but I don't know what they call them at all.

PN2455

I see. Mr Knott, the - you tell me if anyone falls within this category - rule E - 2E of the CFMEU eligibility rule - what we call the FEDFA rule - reads:

PN2456

*Without limiting the generality of the foregoing and without being limited thereby, the union shall consist of (a) an unlimited number of all classes of engine drivers, firemen, crane drivers, mobile crane drivers, fork lift drivers, tow motor drivers, excavator drivers, pump attendants, pile drivers, motor drivers, who are attendants, greasers, cleaners, trimmers, and any other workers assisting in and about the work incidental to any engine, boiler, or machinery connected with the production and utilisation of power on land or harbour or river, etcetera.*

PN2457

I won't go any further. Now, are you saying to this Commission that there isn't a single member at the Henty gold mine that would fall within that categorisation?---Again, I'd need to take some advice on that. I'm not in the position to concede that those rules would cover the Henty site, so my answer to that is I don't know.

\*\*\*\*

STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2458

But you are familiar with classifications. Are there no dozer drivers at Henty? Fork lift drivers?---Yes, there are, yes.

PN2459

Excavator drivers?---Yes, there are.

PN2460

Well, how can you say there is no - you can't concede that there is some eligibility at the site?---Again, in terms of providing a definitive answer on that, I'd need to sit down and study the full rules and read it all in its context. And so if you're asking me to make a judgment on the spot here yes or no, my answer is I don't know.

PN2461

Isn't the real position this, Mr Knott, that you know the CFMEU has got eligibility at Henty gold mine but the real position is that AMMA does not like the CFMEU and does not want it on its - on any of its members' sites. That is the real position, isn't it?---I would dispute that on the basis that we on a weekly basis regularly do business with the CFMEU in the coal industry. The CFMEU are increasingly becoming more involved in the oil and gas industry and we deal with all unions. We do not have a philosophical bent that the CFMEU should be in or out at particular areas. We look at the circumstances and the history, the service arrangements, the coverage and so forth, consult with a member and make a judgment on it, so there's no blanket policy position that we would rather do business with X, Y, or Z union.

PN2462

But it is AMMA's national position, is it not, that the CFMEU has no place in metalliferous mining? That is your position, isn't it?---Our position reflects the historical coverage of the AWU going back over 100 years in the metalliferous mining sector that the - - -

PN2463

So the answer to the question is that is your position?---We recognise the AWU's role in metalliferous mining throughout Australia. That it has been quite strong for 100 years.

\*\*\*\*

STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2464

Is it not - the question was quite specific - do you - is it AMMA's policy that the CFMEU should not be in metalliferous mining?---It is our policy that the - if a union is involved then it should be the appropriate union.

PN2465

Mr Knott, are you really saying that AMMA should decide which unions people are members of in the metalliferous mining industry. Is that the nature of your policy?---No, the position is that the issue in terms of union membership coverage will be predominantly something that is determined by the employees at the sites concerned and the respective organisations that they join are at large to make an application before the State and Federal Commission to have an industrial instrument cover their particular area of membership. And the employers in those situations are at liberty to support that approach or to oppose it if they can make for good public interest reasons why they should.

PN2466

I see. And accordingly you are here today opposing the application on public interest grounds?---On the basis that the metalliferous mining sector in Tasmania would go well without having industrial turf wars between two unions over the same occupational base.

PN2467

Yes. Mr Knott, we are here in relation to Henty gold mine. Are you aware of any threat by the CFMEU in relation to industrial action at that mine site?---No, I'm not.

PN2468

Are you aware of any proposed turf war or poaching exercise by the CFMEU in respect to AWU membership?---To save answering any more questions on that, my understanding is that there's a small number of people in the mill that have joined up with the CFMEU and there's a larger number of people that are in the Australian Workers Union. So from that, we deduce there's the potential with the due passing of time to be conflict over union membership coverage and the attendant administrative and industrial relations representative costs associated with that.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2469

I see. In relation to your understanding of the position at Henty Gold, you are relying on others - you haven't got first hand understanding of the position there, have you?---The advice that I've received - the verbal advice I've received - again it is without actually seeing financial union membership forms before you is - my information source there is the manager there, Matt Daily, and also my Tasmanian manager, Bill FitzGerald and the feedback that they have got back from the respective sources they tap into at a local level.

PN2470

And so it is Bill FitzGerald and Mr Daily who have said to you that there is just a small number of members in the mill? That is correct?---That's correct.

PN2471

And would Henty Gold - to the best of your knowledge - have access to the CFMEU's membership records?---They have access to their employees and that is the basis upon which they form an opinion.

PN2472

Yes. Does Henty Gold provide payroll deduction facilities?---I don't know. When the site was originally set up in '95 the answer to that question was no. Whether that's changed, I don't know.

PN2473

I put it to you, Mr Knott, that even if there is payroll deduction facilities at the site, it would be a very recent innovation, perhaps in the last three or four weeks?---Well, all I can say is what I know and that is in '95 there were none and if there are today, well, there are today. I don't know when it happened, if it's happened, or why.

PN2474

But what is your understanding of the level of AWU union membership at the Henty gold mine site prior to May of this year?---Again, I have no factual record of what the AWU membership was.

PN2475

What has Mr FitzGerald or Mr Daily told you about that?---It's only an issue that earlier this week - last week - I was asked to come down for these proceedings and the advice that I got was that the AWU membership levels were significant at the site.

PN2476

Now?---As of today, yes. When the numbers got to where they were, I couldn't comment on that, I have no knowledge of that.

PN2477

So Mr FitzGerald or Mr Daily didn't say to you look, prior to this CFMEU application, it was basically a non-union site, words to that effect?---No, not at all.

PN2478

I see. And if I put to you that the dramatic increase in AWU membership on site is a very recent phenomena, which coincides with this application, would you be in a position to disagree with me?---I wouldn't be in a position to agree or disagree with you in terms of the - I know from what I've been told from the general manager there and my Tasmanian manager that the numbers today are significant and how they've built up and when they built up, I have no knowledge of.

PN2479

I see. Are you aware that prior to these proceedings that Henty Gold generally had a policy of not allowing right of entry of union officials on its site?---That may well have been the case.

PN2480

You are not disputing that?---I'm not disputing it, no.

PN2481

And - - -?---Unless they had a legal right to enter the site then I suspect they operated within the legislation at the time if they denied somebody access to site.

PN2482

And that would have included the AWU?---Look, I don't know, so I'd only be speculating. All I know is they had a collective non-union agreement put in place under the State legislation and I think it was Part IVA agreements, Mr Commissioner, I understand that that was rolled over again a second time and that I also understand that the company and the AWU have reached an agreement in terms of both coverage and terms and conditions for an industrial instrument to be registered going forward, so that's the extent of my knowledge.

PN2483

I see. What is the agreement about coverage, Mr Knott?---Again, I had to defer to my Tasmanian manager, but I understand that an agreement has been reached and I read an email late last - well, the last few days - that an agreement has been reached with the AWU in terms of coverage - in terms of an agreement for the site.

PN2484

Is the agreement to - - -?---I haven't seen the agreement, so I can't - - -

PN2485

To have a single union on site, which will be the AWU and no CFMEU. Is that the agreement you are referring to?---Again, I haven't seen the agreement but I understand there is no intention to involve the CFMEU in the agreement.

PN2486

Yes. Notwithstanding that there may be - or there is at least some CFMEU eligibility for membership on site?---Notwithstanding your view that the CFMEU may have eligibility on site.

PN2487

I see. Mr Knott, were you involved in planning the AMMA response to the CFMEU's application in these proceedings?---No, my involvement in these proceedings was the witness statement that was prepared last week and submitted to the Commission, and getting down here today.

PN2488

So it was prepared last week that witness statement?---Yes, it was.

PN2489

I see. I have nothing further. If the Commission pleases.

PN2490

THE COMMISSIONER: Thank you. Mr Flanagan? Yes, will you be some time under cross-examination?

PN2491

MR FLANAGAN: Well, I wouldn't like to presume that it would be less than 10 minutes.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR BUKARICA

PN2492

THE COMMISSIONER: No. Well, it may be opportune that we adjourn now and resume at 1.30.

PN2493

MR FLANAGAN: Thank you.

**LUNCHEON ADJOURNMENT**

[12.50pm]

**RESUMED**

[1.30pm]

PN2494

THE COMMISSIONER: Mr Flanagan?

**<CROSS-EXAMINATION BY MR FLANAGAN**

[1.31pm]

PN2495

MR FLANAGAN: Thank you, Commissioner.

PN2496

Mr Knott, in your evidence you indicated that the CFMEU had been granted coverage at a bauxite mine called Weipa. Could you just tell us what they have been granted?---Well, I understand that it was the decision of the Federal Commission. It was a long-running battle as to whether or not they had any representational rights there or not. I personally wasn't involved in the proceedings at all other than to be aware of the fact that there had been some long-running proceedings there.

PN2497

Well, when you say the long running, do you have any idea how long running?---There was disputes about whether or not they should be gaining representational rights there or not and it was years, it wasn't months.

PN2498

Well, are we talking a couple of years? Five years?---I honestly don't know. I think it got running around about - not long after the civil and mechanical engineer rule change case, which kicked off in about '97. It wouldn't have been long after that.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2499

And when was that finally resolved?---I think it was - again I don't know, I don't have the details of it, but in the last 12 months.

PN2500

And has the - so probably about six years? Roughly '97 through to 2003?---I'm really only guessing, but it went on for several years.

PN2501

Okay. So did the AWU - was it involved in the bauxite mine at Weipa?---Yes, they were.

PN2502

So in terms of - I understood that it was suggested by Mr Bukarica that the effect of the Weipa decision was to grant the CFMEU representational rights of production workers; is that your understanding?---My recollection was - the transcript will probably - may clarify it - but he was just talking about representational rights, the actual arrangements of who they were representing and everything, I don't have the detail of that either.

PN2503

Okay. So would it be fair to say this was an expansion of the now CFMEU into a field where it hasn't traditionally covered employees?---I can't answer that, I don't know the answer to that.

PN2504

What about BHP Billiton? Mr Bukarica referred you to the Pilbara miners' union and he identified the CFMEU as being one of the unions involved in that body together with the AWU and some maintenance unions. Are you familiar with the history of representation of metalliferous miners in Western Australia?---Yes, I am.

PN2505

Well, can you tell me what was the role of the FEDFA in metalliferous mining in Western Australia?---Going back to - right back to the 60s and 70s, it's all been non-existent, just about. Except for a handful of members here, there and everywhere.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2506

When you talk about a handful of members, I presume winders - whether it - was it winders?---Correct.

PN2507

Did they have - and I will have to go to their rules, if you would bear with me for a moment? Was it traditional in Western Australia for engine drivers in the metalliferous mining sector to be members of the FEDFA?---No, the two categories that they covered in Western Australia in the metalliferous mining industry were winder drivers and loco drivers where there was rail, port type arrangements.

PN2508

So greasers, cleaners?---No, no.

PN2509

Motor drivers and attendants, excavator operators, pump attendants, they were all represented by the AWU?---Correct.

PN2510

So the only relevance of the CFMEU in the context of traditional representational rights and their involvement in the Pilbara miners' union would be in relation to winder drivers and loco drivers where there is rail?---Well, their representation was in the union's own right. The Pilbara mine workers union is something that has got a lot of media coverage both in relation to the Rio project some time ago and again just this week in relation to BHP iron ore. But in terms of them being respondent to awards and things of that nature and having any significant representation base, they are not respondent to any awards and there's a debatable point as to how effective that's been and how effective it's going to be.

PN2511

So has the level of CFMEU activity sort of increased compared to the activity of the former FEDFA?---In the metalliferous sector, if you take into account the mineral sand sector in the early 90s in Western Australia, the then FEDFA had a bit of a go in relation to trying to get some exclusive coverage, which was knocked on the head by the State Industrial Commission in favour of the AWU. Then later on there have been issues that have popped up from time to time. I'd say that in the last few years under the CFMEU umbrella, there have been campaigns in the metalliferous mining sector in terms of newspaper articles and things of that nature. The feedback we've got from our membership is the membership situation hasn't changed at all in any material - at any material level.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2512

Are you aware of a fund established by the CFMEU in order to recruit in the metalliferous mining industry?---I have read reports to that effect.

PN2513

Can you tell us what the effect of those reports are?---That in the words of Tony Maher from the CFMEU at a recent New South Wales national conference that we conducted that they're clearly intent in establishing a beach head into the metalliferous mining industry and in terms of membership.

PN2514

Can you tell me are you aware of any public position about what motivated that decision?---The public position that has been stated in forums that I've been at is that the decline in union membership from the AWU was an issue where they saw there was an opportunity to get in and pick up membership that had been vacated from the AWU.

PN2515

I see. So because of a perceived weakness they intend to take the opportunity to move in. Would that be a fair description?---Well, the comment was that - by a senior official from the CFMEU - was that the union membership levels of the AWU in the hard-rock mining industry was fairly low and that they wanted to get in there and organise that sector and increase union membership levels. And that's been on the record by ACTU officials and union officials as well.

PN2516

You also said that the CFMEU was becoming increasingly involved in oil and gas. Do you recall that comment?---Yes.

PN2517

Can you tell me what you meant by that?---Well, major projects going forward in Western Australia in the planning phase, there's been some heavy lobbying by the CFMEU and others in relation to new projects that come up for the CFMEU to be involved in the industry. And there are some major multi-billion dollar projects on the drawing board and the CFMEU, no doubt, will actively seek to get involved in the union representational issues there. Whether that comes to fruition or not, only time will tell.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2518

Wouldn't the work that is involved in those projects traditionally be performed by the AWU?---The traditional arrangements would be similar to the mining in terms of AWU and the metal trades unions and where there is some maritime interface offshore. And as you'd be aware from the Duke Energy Project in Tasmania, the maritime unions are involved as well. Generally, the CFMEU have not been involved.

PN2519

And wouldn't that work be work which is contained in the application to alter their eligibility rules, which they lost?---I'm not sure how they're going to work at going forward. There are a number of options for them to consider and that is to make another application to extend their rules if they need to, or they may seek to get some coverage through the State industrial system.

PN2520

But it is work which is within the purview of the application which was rejected to extend their rules, isn't it?---In terms of those major resource sector projects occurring in Western Australia some of it would be, for sure. The civil and mechanical engineering work that would be done on shore certainly is something that would get captured by that.

PN2521

Pickards

PN2522

And that civil and mechanical work as you referred to it, is in fact traditional AWU work?---Yes, that's correct.

PN2523

So would it be fair to observe that the CFMEU seems to be attempting to empire build in the AWU's backyard?---You could say that.

PN2524

Now, you gave evidence that the ACTU - about an ACTU ruling - which had the effect of granting the AWU principal status and it was given in the context of the Renison Tin Mine. Do you recall that - the evidence?---The evidence in relation to the Renison Tin Mine and those named on that order, those companies that were operating at the time.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2525

That ruling from the ACTU, which granted the AWU principal status, was it restricted to the companies named on that order or did it have general application to the metalliferous mining industry?---The latter. It had general application to the metalliferous mining industry. It was a clear decision made by the ACTU and, no doubt, it could be found on the records. Basically, the AWU had metalliferous mining and the CFMEU had coal mining and that was the distinction. It was clearly understood and generally accepted and applied throughout the industry.

PN2526

Perhaps, if I can tender a copy of the ACTU executive resolutions of December 1991?

PN2527

THE COMMISSIONER: Yes. Mark that AWU2.

#### **EXHIBIT #AWU2 COPY OF ACTU EXECUTIVE RESOLUTIONS OF DECEMBER 1991**

PN2528

MR FLANAGAN: Can I take you to - I am looking for the page, if you can bear with me, Commissioner?---Third page?

PN2529

I think the third page is cement, isn't it? Yes, the third page, thank you, Mr Knott?---I wouldn't want to be seen to be leading the advocate.

PN2530

Thank you. Is that the ruling that you are referring to?---Yes, it is, and it covers off that position that I referenced in answer to Mr Bukarica's question in relation to Broken Hill being a unique arrangement where they were excluded from that principal union status.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2531

Do you know why Broken Hill was treated differently?---It was historical. It went back decades. The industrial relations arrangements in place at Broken Hill were quite unique and it evolved over time. Now, the history behind how it germinated in the very beginning, I don't have the answer to that. All I know in my time in the metalliferous mining sector, which goes back into the early 80s, that's always been the case.

PN2532

Are you aware that the industrial activities - if I can put it that way - at Broken Hill are conducted by an organisation - or were traditionally - which is not registered under the Federal Act?---I think it's called the Barrio Industrial Council, yes.

PN2533

Are you aware that they operate traditionally within the context of the New South Wales industrial legislation?---Yes, I am.

PN2534

So other than Broken Hill then the rest of the metalliferous mining industry was AWU?---With the exception of Savage River Mines. But from a principal union coverage point of view - from an ACTU point of view - the intent was everybody else except Broken Hill, yes.

PN2535

Yes?---And the reason why the AWU were excluded from the Northern Territory was that the AWU didn't have a presence in the Northern Territory at that time.

PN2536

Nor did it assert one, did it?---No, I think the liquor - the Miscellaneous Workers Union - used to look after them - the mining industry in the Northern Territory in those days.

PN2537

Are you aware of why that is?---Again, no.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2538

Now, you were involved with Savage River Mines when you were an industrial - when you were employed with the Tasmanian branch of AMMA, were you?---Yes, but as in my witness statement from '89 to '92, I was what was called a specialist employee relations consultant and the records will reflect there was a

reasonably high level of industrial activity at Savage River Mines, so I was actively involved in that site during that time, and again when I returned.

PN2539

In the demarcation order in 1994 by Deputy President Moore, Savage River Mines - or the employer - was not identified as being bound by that ruling. Are you able to tell us why that is?---It was a pragmatic approach that was taken at the time. The general manager of the mine, a guy called Mike Schmidt, and the Deputy General Manager, Mike Beech-Jones, had been involved in the operation for some 20 years or more, and a number of the management team who had actually come up through the union ranks. The HR manager was a former metal workers' delegate and because the operation had been going on for so long and that established arrangement had been place at that particular time when this 118 order was being talked about and whether Savage River Mines should be joined to it, the decision was made that they weren't going to change their industrial relations regulation arrangements. There was debate about whether the mine would continue. There was discussion about whether the mine would go underground or not and in a commercial sense, it was thought that the mine would close in the not too distant future. So it was not seen as a significant issue for Savage River Mines, given their current operating environment and also the historical reference that I've just outlined.

PN2540

So there was an expectation or at least a very real possibility that the operation of the mine was going to close?---And history reflects. It may have taken a little bit longer than they anticipated at that time, but it eventually did.

PN2541

Was that general knowledge?---Very much so. The people were aware that the - the company owner at the time was Pickards Mather International. It was a combination of both US and Japanese ownership. There had been a lot of dialogue about whether or not the mine would continue.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2542

And in your point 31, you talk about the orderly conduct of industrial relations in Tasmania and the fact that the representation of employees in the metalliferous mining industry has been settled for over a decade. You were removing potentially damaging demarcation disputes. Can you tell us prior to that order in 1994, were there many demarcation disputes that you were aware of between the AWU and the FEDFA?---The only little bit of excitement for a short period of time that I can recall was at Renison at one point in the time and the actual year that that occurred escapes me, but it was in the mid 90s when the mine closed. And, as I said before, when the mine re-opened the CFMEU were not involved in any of the negotiations or the representation arrangements going forward. So between those particular unions, that's the only one that sort of readily springs to mind. There was an attempt at Savage River Mines at one stage where all the mill workers actually resigned from the CFMEU and going to join the AWU, but as one of your witnesses may attest to later today - Bill Lowe - that the AWU didn't proceed with that. And the established arrangements for that site continued on.

PN2543

Prior to that time when Mr Lowe enrolled those persons from the FEDFA, are you aware of the history at Savage River Mines where members of the FEDFA would go on strike if an AWU official went on site?---There were many examples of what would be seen in a 2004 environment of ridiculous industrial relations stoppages and actions. And the specific example that you may be alluding to, I'm not aware of. But I'm aware that there was industrial relation stoppages over overtime, manning arrangements, and membership arrangements at given points of time during the mine's life.

PN2544

In your role as CEO for Australia Mines and Metals, I presume you keep abreast of change in legislative regimes in each of the States?---I have an overview of that. From a personal perspective, I got out of the IR advocacy consulting side of things, so my knowledge of the legislation at a detailed level is not what it was some time ago. But in terms of the generality of what's going on at both a State and a Federal level, I've got a reasonable handle on that and we're also involved often in inputting to the drafting process of such legislation with both Labor and Liberal Governments.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2545

So in terms of the sort of dynamic changes which have happened in the Federal legislation since the early 1990s, from your observation has the Tasmanian jurisdiction gone through similar significant changes?---The significant change from the early 90s to today has been the industry previously had what they called the three-union deal, which was the AWU as the principal union and the two metal trades unions. And some of that goes back before the ACTU determination in the early 90s. And so all the mine sites, like, Hellyer, was a new mine site in the 80s, it was the three-union deal, the AWU and the two metal trades unions. So there's some historical context there that that was the way it went forward into the 90s. As the commercial pressures got quite tight and some of the mines on the West Coast were getting pretty tired and close to the mark, companies involved themselves in a range of restructuring initiatives. We saw union rationalisation occur where there were some odds and sods respondent to awards where we got down to three. Like the Pasminco Rosebery site. They used to have the TWU and the FEDFA and an award was set aside and another award was made, so there was a tidy up of union coverage that occurred. And then the next step from the mid 90s onwards there was more of a push by some companies down the direct employment path. And when Henty started up, they were one that went down that path.

PN2546

It appears from the evidence you gave in relation to the Federal Workplace Relations Act there may be an argument that the focus which was once to discourage competition between unions is no longer a focus of that legislation?---Only in the situations where it's not in the public interest for that to occur.

PN2547

Okay. Have you observed any legislative changes to the Industrial Relations Act 1984 in Tasmania, which supports the proposition that public policy is that competition between unions should be encouraged?---My knowledge of the State legislation, Mr Commissioner, is a bit dated, so in that respect, I'm not in a position to comment on that.

PN2548

Okay. All right. No further questions, thank you.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXN MR FLANAGAN

PN2549

THE COMMISSIONER: Mr FitzGerald?

PN2550

MR FITZGERALD: Just a couple of questions in re-examination.

## <RE-EXAMINATION BY MR FITZGERALD

[]

PN2551

MR FITZGERALD: Mr Knott, you were aware - or are you aware of the circumstances of the re-opening of the Savage River Mines by the current operators?---Yes, AMMA was intricately involved in the setting up of the industrial relations arrangements at the Savage River operation when it re-opened.

PN2552

Right. Can you just describe them in brief for the Commission?---Briefly put, the arrangements were put in place with the AWU who - as referenced by Mr Flanagan in that last exhibit that he handed up - were the principal union in the metalliferous mining industry. So the AWU were involved.

PN2553

Right. And you mention in your statement that with the previous situation when Savage River Mines were operating under Pickards Mather that the CFMEU were involved and it was anomalous. Can you describe why that is the case?---Again, I don't know why it happened. I think the mine originally got going in about the 60s or 70s and when I arrived on the scene they'd been there for a long period of time and were an established part of the territory there, so the pit operators were in the FEDFA, the truck drivers hauling the ore up from the pit were in the TWU. On every other site bar Broken Hill, that situation would have been covered by the AWU.

PN2554

Okay. And do you know who the owner of the mine is now?---Good question, Bill. Australian Bulk Minerals.

\*\*\*\* STEPHEN PHILLIP KNOTT

RXN MR FITZGERALD

PN2555

That is pretty good going. You have got a knowledge of your membership. All right. You have had some questions at cross-examination about the specific

nature of the 118A order by DP Moore. Are you aware of the corporate structures of those companies which were named, particularly Beaconsfield Gold as it was then, in the order 118A, the Mount Lyell Company and we have one other - Rosebery - the Rosebery site. Are you aware the current structure of those companies - corporate structures?---Well, they've all changed and I presume in terms of any application of 118A, which I checked during the break in terms of whether it was in the Act or not, there is a schedule there, I presume in the Federal Act dealing with 118A stuff. The transmission of business principles would probably pick those companies up in their new entities.

PN2556

Right. And when - sorry just going back to the Savage River mine - do you know who the actual employer was when the Savage River mine opened?---Way back in the 60s, whenever it was?

PN2557

No, back in the 90s, '97, I think it was?---Yes, look, I don't Bill, no.

PN2558

No. Okay. Would you agree with me that the intention of the 118A order was effectively to demark the CFMEU from the industry?---Well, that was practically what happened.

PN2559

Right. And are you aware that that has been complied with?---There was an understanding at a local level between the employers and the employer representatives and the various unions that were involved at that time that the hard-rock mining industry was AWU area and the FEDFA, CFMEU involvement was next to none.

PN2560

Right. Are you aware up until these recent proceedings that that has been complied with by the CFMEU?---Yes, that's right.

\*\*\*\* STEPHEN PHILLIP KNOTT

RXN MR FITZGERALD

PN2561

Okay. There were positions such as winder drivers. Are you aware since the 1992 order which union held those particular positions as members?---The winder drivers have generally been covered by the CFMEU and then some operations then changed their arrangements where the winder driver function was done away with. And in other cases, there were different industrial representative arrangements in place. But in terms of what's happening today, Bill, I'm not up to speed with that.

PN2562

You don't know. Okay. All right. And there was some cross-examination by Mr Bukarica about the situation at BHP iron ore. Are you aware of the industrial arrangements currently applying in the context of that question?---The company, Mr Commissioner, went down an AWA path and the CFMEU was quite active in pursuing action in the Federal Commission and Federal Court I think in relation to that approach being a breach of the freedom of association provisions to offer people AWAs. That was quite an involved and lengthy process and at the end of

the day, it was determined that the company was not in breach of any freedom of association provisions. So as I mentioned to Mr BUKARICA, the predominant regulatory arrangement there is the Australian Workplace Agreement between the company and its employees and the stated intent of the company is to continue down that path, and it is underpinned by a State award that Mr BUKARICA referred to.

PN2563

Okay. I have no further questions. Thanks, Mr Knott, for your evidence.

PN2564

THE COMMISSIONER: Thank you, Mr Knott, you are excused.

PN2565

MR BUKARICA: Sorry, Mr Commissioner, just if I - with leave - there are two new matters I just want to briefly touch on if the Commission pleases.

PN2566

THE COMMISSIONER: Yes. If they are new matters.

PN2567

MR FITZGERALD: Could we establish firstly that they are new matters? What are the matters?

\*\*\*\* STEPHEN PHILLIP KNOTT

RXN MR FITZGERALD

PN2568

MR BUKARICA: Well, the gas and oil issue.

PN2569

MR FLANAGAN: Well, that was cross-examination on evidence which was given by Mr Knott.

PN2570

THE COMMISSIONER: Look, to cut this short, what I propose to do is to allow Mr BUKARICA the chance to ask the questions and I will give Mr Flanagan and Mr Fitzgerald another go if you deem that necessary rather than spending a lot of time debating on fine points of law, so we will try it, Mr BUKARICA. I am interested in the facts rather than the niceties of cross-examination more so.

PN2571

MR BUKARICA: Yes, thank you.

## <FURTHER CROSS-EXAMINATION BY MR BUKARICA

[]

PN2572

MR BUKARICA: Mr Knott, you recall the questions from Mr Flanagan in relation to CFMEU interest in gas and oil projects in Western Australia. Do you recall those questions?---Yes, I do.

PN2573

Is it the case that the projects we are talking about are construction projects for those facilities?---Yes, they are.

PN2574

And is it the case ---?---We're talking about offshore construction - you're talking about?

PN2575

Well, both, isn't there?---Okay.

PN2576

There is onshore and offshore facilities?---Yes, correct.

\*\*\*\* STEPHEN PHILLIP KNOTT

FXXN MR BUKARICA

PN2577

And is it your understanding that by agreement with the other unions, including the AWU, that the CFMEU has negotiated a position with the other trade unions of being part of a joint bargaining position?---It's my understanding that the CFMEU have expressed a desire to get involved in the major projects at an extent beyond what they have done previously, and as to whether that's been accepted by the other unions or not, I'd need to get clarification of that.

PN2578

Is the answer you don't know?---I don't know.

PN2579

Yes. And if that were the situation, Mr Knott, that there was agreement with the other unions, is that a difficulty for AMMA?---Difficult for AMMA as an organisation, no.

PN2580

Yes. The other question I want to pose is, you made some comments about I think Tony Maher saying that the reason that the CFMEU was seeking to recruit in metalliferous mining was as a result of low membership - union membership levels. Do you recall that?---Yes, I was present there when he made the statement and he referred to at his best guess - and that's all it was - that he thought that the union membership levels in the metalliferous mining sector was around about 1 per cent, but I expect that if he went back and considered that further he'd find out that it would be somewhat higher than that.

PN2581

How much higher?---The latest ABS statistics refer to a penetration of about 27.8 per cent, which is higher than the industry average of 23 per cent.

PN2582

For all private sector jobs?---Correct.

PN2583

And how does that compare to the position - union membership position in the early 1990s prior to the AWAs?---It is a common feature across all industry sectors that union membership numbers have declined and the resource sector is no different to that.

\*\*\*\* STEPHEN PHILLIP KNOTT

FXXN MR BUKARICA

PN2584

Can I put it to you, Mr Knott, that the level of decline in the metalliferous mining sector is a long way above most other industries in relation to union density?---Without checking the figures if I had to make a call on that I would agree with your position.

PN2585

From almost total density to very low density?---Well, the all industry average was up around 50 per cent back in the mid '80s and it's gone down to 23 per cent. The mining industry generally was fairly heavily unionised in the '80s and early '90s and as members in the Commission and people in this room would know there was some fairly robust disputes in the '80s and early '90s in the Pilbara and union membership levels have declined.

PN2586

So in relation to Mr Maher's remarks and to adopt - put yourself into the shoes of the trade union movement just for the point of this question - - -?---Can I control the finances as well?

PN2587

- - - it is a pretty reasonable proposition is it not, if you see a decline - a growth area, potential growth area, declining union membership that you should have the ambition of recruiting in that area?---Again it's a hypothetical question and there are a range of answers to that. One might be that someone might adopt the approach through the peak body, the ACTU, to try and assist that union re-establish its union membership levels to that that it was 10 years ago. And another might be a full on attack and try and get into areas that were traditionally their areas. So how one would deal with that depends on the circumstances at the time, so I can only give a hypothetical assessment to that.

PN2588

Nothing further, Commissioner.

PN2589

THE COMMISSIONER: Mr Flanagan, do you want to - - -

PN2590

MR FLANAGAN: Yes, I need to re-examine that. There is some new material that came out of that.

\*\*\*\* STEPHEN PHILLIP KNOTT

FXN MR BUKARICA

PN2591

THE COMMISSIONER: Yes.

## <FURTHER CROSS-EXAMINATION BY MR FLANAGAN

PN2592

MR FLANAGAN: Mr Bukarica took you to membership levels and compared to the early 1990s. Now, we know that the early 1990s non-union arrangements became available to industry. Now, what year did you say you were working in

Tasmania at Australian Mines and Metals?---I was there '89 to '92 and got recycled again in the mid '90s for a year, but in between times I was the - - -

PN2593

Let us talk about when you were recycled, what year was that?---I'd have to go and look at my affidavit, I think it was about '95.

PN2594

Well, in 1995 who operated the Mount Lyell mine?---RGC - the company you are talking about? Yes. Just for the benefit of the Commission in between times I was with the Hydro Electric Commission and they were involved in underground mining, so I was still very much involved in the industry.

PN2595

Okay. 1995 RGC was operating the Mount Lyell mine?---Correct.

PN2596

Who was operating it in 1997?---What did they call themselves after that? I really lost context with all the merges.

PN2597

Are you aware that RGC relinquished its lease of the Mount Lyell mine?---Yes, and it went over to Goldmines of Australia and they had a fully owned subsidiary called Copper Mines of Tasmania. Three points.

\*\*\*\* STEPHEN PHILLIP KNOTT

XXXN MR FLANAGAN

PN2598

Can you recall what the industrial arrangements were that CMT put into place?---Given that I put them into place I do recall them quite well and I had a couple of angry AWU officials outside Bevan Johnson's office when we registered some section 61 individual - they were - the arrangements were put in place, there was a quirk under the State system at the time that if you had less than five employees the number of employees could sign on and be bound by a non-union agreement and that agreement then would bind the entire operation. So that's what happened at Copper Mines of Tasmania and the unions just did not get a look in and had no legislative opportunity to get a look in. So there was a major change.

PN2599

Do you know if there is still a section 61 in place at Copper Mines of Tasmania?---My understanding is and again I'd defer to my Tasmanian manager, but I understand that the industrial regulation arrangements that were in place back in those days have gone and there are other arrangements in place today which I understand the AWU has some involvement in. I could be wrong on that.

PN2600

Are you familiar with the Beaconsfield Goldmine?---I was.

PN2601

Are you aware of the form of employment arrangement which has traditionally regulated employment at Beaconsfield?---Back in my time, back in the late '80s and early '90s there was a Federal Beaconsfield Gold Award which the AWU was party to and was the principal union involved in that process.

PN2602

Are you aware of the company moving away from the award as the principal form of regulation utilised in AWAs?---Yes, I am.

PN2603

Are you aware of the AWU embarking on a campaign to encourage Beaconsfield to move away from AWAs to a collective agreement with the AWU and the AMWU?---I'm aware that there has been activity in that area. My State manager has informed me of that. One of my staff members in Victoria came down with some Commission proceedings before President/Deputy President Leary and there was some fairly robust conciliation processes that occurred.

\*\*\*\* STEPHEN PHILLIP KNOTT

FXXN MR FLANAGAN

PN2604

So can you tell me is there any mine in Tasmanian where the AWU has not got a presence today?---The answer to that is no.

PN2605

And how does that - - -?---There's no operation where they don't have a presence.

PN2606

How does that compare to the position in 1999?---In terms of - I think I know where you are heading there, in terms of 1999 there would have been a number of operations where the AWU presence was either limited or non-existent, but that's not the case today.

PN2607

Yes, thank you.

PN2608

THE COMMISSIONER: Mr FitzGerald?

PN2609

MR FITZGERALD: No questions, thank you, Commissioner.

PN2610

THE COMMISSIONER: Mr Knott, you are excused.

#### <THE WITNESS WITHDREW

PN2611

THE COMMISSIONER: Just go off the record for a moment.

**OFF THE RECORD**

[2.15pm]

**RESUMED**

[2.20pm]

<MATHEW DAILY, SWORN

[2.20pm]

**<EXAMINATION-IN-CHIEF BY MR FITZGERALD**

PN2612

MR FITZGERALD: Can I just confirm that this is your statement and there are points 1 to 35 and you have prepared this statement?---Yes.

PN2613

Just a couple of further questions which arise out of other parts of the evidence yesterday. Can you just give me - or give the Commission not me - give the Commission a summary of what arrangements you had in place for right of entry to the AWU at the Henty site and both yourself and your predecessors?---Yes. I hadn't changed the right of entry that existed with my predecessors. The AWU actually notifies in writing before requesting that they will be visiting on a certain day and they have taken the approach of meeting in the car park. We have offered them a room in the building but they would prefer the car park.

PN2614

So are you aware that there has been a number of cases where right of entry has been granted?---Yes, over - in my time.

PN2615

Thank you. Some mention was made in the evidence of the CFMEU witnesses yesterday that there is - it is inferred at least there is a link between non-union arrangements and a decline in OH and S performance, can you speak of the OH and S performance at Henty in general terms?---Over the last four years there's been a significant reduction in lost time injuries, lost time injury frequency rate and also medical treatment injuries, so I'd say there has been no decline in the safety performance of our people on site.

PN2616

To the contrary an improvement?---Yes, much.

PN2617

And that has been during the time when the union really hasn't had a presence - or had a major significant presence on site?---That's true.

PN2618

There is also mention about for a better term the Kathryn Heiler Inquiry, the inquiry into hours of work, how does Henty fit into the - not so much the report, but the recommendations or the directions coming from Workplace Standards to other sites? How does Henty fit into those arrangements?---Henty has conformed with those directions, those orders placed in one of our peer operations.

\*\*\*\* MATHEW DAILY

XN MR FITZGERALD

PN2619

Thank you. Just a couple of more questions then I will finish. There has been mention of the CFMEU Lodge, when did you first become aware of the concept of the CFMEU Lodge?---The first awareness was at the Commission hearing in Launceston.

PN2620

Okay. The last time the matter was on?---Yes.

PN2621

Has there been any - can you describe if there has been any discussion between the CFMEU and Henty on particular issues prior to that?---Not to my knowledge at all.

PN2622

Are you aware of the CFMEU consulting with employees at Henty in respect to that application, the current application?---Certainly not the one I've got knowledge of.

PN2623

No, I have no further - just one question. Can you just confirm that the points 1 to 35 inclusive are a true account and you swear to their correctness?---Yes, I can. I can swear to their correctness.

PN2624

Okay. Thanks very much Mr Daily.

PN2625

THE COMMISSIONER: I will mark Mr Daily's statement, R4.

## **EXHIBIT #R4 STATEMENT OF MATHEW DAILY**

PN2626

THE COMMISSIONER: Yes, Mr BUKARICA?

### **<CROSS-EXAMINATION BY MR BUKARICA**

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2627

MR BUKARICA: Mr Daily, you have just attested to the fact that the statement that has been marked R4 is your evidence?---Yes.

PN2628

Nobody else's evidence, just yours?---No, it's my evidence.

PN2629

Now, in relation to the section 55 agreement that has been reached between the AWU and Henty Gold is that the agreement that has been lodged with the Commission?

PN2630

MR FLANAGAN: I thought, with respect Commissioner, this wasn't actually dealing with the 55?

PN2631

MR BUKARICA: Well, it is in his statement.

PN2632

THE COMMISSIONER: But his statement may well do.

PN2633

MR FLANAGAN: Okay, well Mr Daily can't answer that question.

PN2634

MR BUKARICA: Well, I am sorry at paragraph 18 he says, "I'm aware that the AWU have over the past three years advised AMMA" - I am sorry that is the wrong one, about section 55. There is certainly reference in the - - -

PN2635

MR FLANAGAN: I haven't got that far down the statement yet, sorry.

PN2636

MR BUKARICA: At paragraph 34, "I'm content to agree to such a course." I just want to clarify whether that section 55 agreement has been reached, that is the first question.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2637

Has there been an agreement reached with the AWU?---I've signed a document, yes.

PN2638

Is that the same document that was lodged in the Commission?---I presume the intent of the document is the same, yes.

PN2639

No, the question is, is that the same document that was lodged in the Commission?

PN2640

MR FLANAGAN: Perhaps if I can assist, Commissioner. There is a document which I have which I intend to tender at the appropriate time which is not the document which was filed with the Commission.

PN2641

THE COMMISSIONER: No, that is - you foreshadowed you intend to amend the document.

PN2642

MR FLANAGAN: To save Mr Daily trying to - - -

PN2643

THE COMMISSIONER: I am not quite sure where this is going, Mr Bukarica. It is not unusual for agreements to be amended in some form or other on the day of the hearing and I am not quite sure where we are heading down this track?

PN2644

MR BUKARICA: Well, it goes Commissioner to the process adopted and I will be frank the suggestion I want to put is that there was indecent haste in getting

something in the Commission. The document that was actually lodged with the Commission is simply a replication of the existing section 61 and therefore there hasn't been - at least at the time the matter was notified to the Commission - a proper negotiation process whatsoever.

PN2645

MR FLANAGAN: Well, Commissioner, with respect under the legislation the AWU has simply entitled to sign the document, file it and ask for it to be registered. There is no process spelt out under the Act.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2646

MR FITZGERALD: Unlike the Federal Act.

PN2647

THE COMMISSIONER: There isn't a - - -

PN2648

MR FLANAGAN: That is not to say we haven't followed one, Commissioner, and quite methodically, but there is no legislative requirement for the union to go down any particular course other than sign and file and ensure that the agreement meets the no disadvantage test under the wage fixing principles, that is all that is required.

PN2649

THE COMMISSIONER: And I agree that is correct. That is the extent of the statutory requirements and as I have observed it is not unusual for documents to be amended on the day. Sometimes even totally substituted. I did that within the last three working days, accepted a totally substituted document on the day. Mind you, you don't do that lightly particularly if there is any contest to its registration, but we are not dealing with that yet. I will allow the question, but I am not quite sure where it is heading.

PN2650

MR BUKARICA: Well, I was going to then head, Mr Commissioner, to the document that has already been marked, I think AWU1 which seems to indicate a fair degree of disagreement and I was simply going to put that really there wasn't an agreement when the agreement was lodged with the Commission and it was simply a devise to try to forestall the CFMEU application.

PN2651

THE COMMISSIONER: Well, it is quite legitimate for you to cross on the process of negotiation for section 55 agreement, I think that is quite acceptable. So proceed and we will see how far you get.

PN2652

MR BUKARICA: If the Commission pleases.

PN2653

MR FLANAGAN: Commissioner, I need to inform you that in the context of negotiations for the section 55 I will be giving the evidence on behalf of the AWU. So I need to declare that for everyone's benefit I think at this stage. If the Commission pleases.

PN2654

THE COMMISSIONER: Yes.

PN2655

MR BUKARICA: So the position now, is it Mr Daily, that there is a signed agreement from Henty Gold and the AWU?---Yes.

PN2656

Section 55 agreement?---Yes.

PN2657

And it is intended that that section 55 agreement replace the existing section 61 agreement that is in place?---Yes, at its expiry, yes.

PN2658

At its expiry. What was the intention of the company six weeks ago in relation to the industrial arrangements to be applied on the Henty Gold site?---Six weeks ago?

PN2659

Yes, approximately six weeks ago when the matter was last before the Commissioner, what was the stated intention of Henty Gold in relation to industrial arrangements; do you recall?---This was the first matter that was held in Launceston?

PN2660

Yes?---We were to continue with offering our employees the individual contracts for employment and we were then approached by the AWU to come into an arrangement with an enterprise agreement with our employees and the union.

PN2661

So the answer to the question is at the last hearing of this matter the intention of the company was to have individual contracts?---We were considering to continue that approach which we had commenced and but however it was brought to our attention by the AWU that it would - when the EA existing 61 agreement expired then there would not be an underpinning enterprise agreement or an award.

PN2662

So you weren't aware of that prior to that hearing date?---We pursued offering the individual contracts of employment on that basis at that stage. We knew that the AWU has approached AMMA and Henty in the past of actually becoming party to a collective agreement.

PN2663

So I understand you only commenced in 2002?---Yes, that's correct.

PN2664

But you understand that the history of industrial regulation at Henty Gold has been, what, three successive section 61 agreements; is that the case?---Yes, to my recollection, yes.

PN2665

No union involvement?---Union involvement has been at the disputation of certain grievances or concerns of those particular 61 agreements and the union has represented those employees.

PN2666

I am sorry, I maybe ask the question more specifically. Was any union party to those agreements?---Not to my understanding.

PN2667

And indeed the agreements were developed solely between the management of Henty Gold and its employees?---That is my understanding.

PN2668

Yes. So there is a period of how long, eight years or so of non-union arrangements - my maths is not very good?---I think with the operation commencing in 1996 until - yes, it would be I'd say approximately something of that period.

PN2669

And at the last hearing of this matter six weeks ago the stated intention of Henty Gold was individual contracts; that is correct?---Yes.

PN2670

I put to you Mr Daily that Henty Gold knew that upon the expiry of the existing section 61 agreement that there wouldn't be any underpinning award, but - let me finish?---Yes, sorry.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2671

- - - six weeks ago the intention was just to have the common law individual contracts; that is correct isn't it?---We were also under the full understanding that the Metalliferous and Mining Award - Processing Award was being under negotiation with the AWU and the industry and that would actually underpin the individual contracts, however it was not certain that that would be in place September the 18th.

PN2672

What led you to believe that it would be? As I understand it the award has been around for years?---Yes, it's my understanding that it was basically 90 per cent complete, there were a couple of finalising details, but it was impressed upon me that they may not be actually completed by the expiry of the EA.

PN2673

I have seen your statement, Mr Daily, where you make that claim about it being 90 per cent completed, but that wasn't your understanding six weeks ago at the Commission was it?---Yes, nothing has changed at the agreement - the award the

AWU is pursuing in the industry, the Mining and Processing Award. There appear to be no barriers to that being completed, it was the timing.

PN2674

Pardon me. It was your expectation that the Metalliferous Mining Award would be in place imminently six weeks ago?---Would underpin, yes.

PN2675

I suggest to you Mr Daily that that is not the case and you and representatives of Henty Gold knew that not to be the case?---We were always aware that the award was being pursued. We knew that it was taking a long while and we knew that it was coming to hopefully a near conclusion.

PN2676

Now, Henty Gold is a member of AMMA obviously; is that correct?---Yes.

PN2677

And generally supportive of AMMAs policies?---Yes, we seek their advice.

PN2678

Including the industrial relations policy such as Mr - you weren't here for the evidence of Mr Knott, but generally the published policies of AMMA?---We take their advice in Tasmania, I wouldn't say that Henty Placerdome adheres to all the policies, they actually advise us.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2679

And it is the case isn't it, Mr Daily, that there has been a preference of AMMA members including your company to pursue either non-union agreements or individual contracts in the metalliferous mining sector; is that the case?---Sorry?

PN2680

Sorry, I will start with your own company, okay?---Yes.

PN2681

The evidence is you have had a section 61 which is effectively a non-union agreement for the life of the operation?---Yes.

PN2682

That is the case?---Yes.

PN2683

And AMMA actively supports both those sorts of arrangements and AWAs; that is the case?---Yes.

PN2684

Indeed, the employees in the metalliferous mining sector have been at the forefront of, if you like, non collective union agreements; would you agree with that?---That is some of the operations take that approach.

PN2685

And up until six weeks ago at its latest the position of your company was that you were pursuing individual contracts for the Henty Goldmine?---We were pursuing that, yes.

PN2686

No union involvement?---No union involvement.

PN2687

However, you get a phone call from the AWU and there is a road to Damascus conversion, isn't there Mr Daily?---No, I disagree. We'd always continued - considered that the Mining and Processing Award would underpin and which we were very aware that the AWU were the principal union involved on that and that would actually - and it was brought to our attention and as it was a possibility that it would not be underpinned we were approached with forming a joint - an EA, a section 55 as I recall and this was not indifferent to Placer has done with some of its other operations, that have already - - -

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2688

You mention Osborne - - -

PN2689

MR FITZGERALD: Yes, sorry.

PN2690

MR BUKARICA: Where is that by the way?---In Queensland.

PN2691

Yes. Now, Mr Daily, you must admit that the conversion from a non-union section 61 agreement where you have had that in place since '96 to an overnight - overnight to a union section 55 agreement is a pretty dramatic change in your operations?---It had always been considered that it was an approach that may have been taken because the AWU has approached Henty and AMMA about converting at the expiry of this one, so we were aware of it. We were also aware that the award was progressing and be it that it may not easily we felt that the award would bridge that gap, but it was brought to our attention that - - -

PN2692

So AWU has over the years contacted the company and said, "Look, we would like a section 55," but up until six weeks ago your answer was no thank you, wasn't it?---Really the company was a no answer. We were progressing on the award and that was our focus.

PN2693

Well, Mr Daily, have you personally been involved in the negotiations of the award?---No, nothing has occurred in my time.

PN2694

Indeed, you rely primary on Mr FitzGerald from AMMA to represent your interests in that award?---My predecessors and some of my senior management were involved on that.

PN2695

But the position of Henty Gold has been since 1996 that: (a) there has been no underpinning award; that is correct?---At that - yes.

PN2696

And that you have had non-union section 61 agreements; that is correct?---Yes.

PN2697

And that up until six weeks or so ago the position you were - the company was pursuing was individual contracts without any sort of enforceable industrial instrument in place at the mine; that is correct isn't it?---No, we were actually pursuing those with the understanding that the Processing and Mining Award would be in place in the future.

PN2698

When in the future?---That is what was brought to our attention that it may take longer, even though it has been on the board for a number of years and - - -

PN2699

Mr Daily, the proposition is really this isn't it, that Henty Gold had no interest whatsoever in a collective union agreement until there was some sort of prospect of the CFMEU getting its foot in the door; that is correct isn't it?---I can't agree to that with the previous owners, Placerdome already have an arrangement with unions and they don't see it as a negative to an operation, so in Henty's perspective it is not an issue.

PN2700

But Henty has had a non-union agreement for eight years?---Yes, I do understand that, yes.

PN2701

And it has been issued - we will get to that shortly about the degree of co-operation of the union, unions in the generic sense, but so you are saying that the adopting of the section 55 agreement has got no connection with the approaches of the CFMEU; is that what you are asking the Commission to accept?---The actual AWU is the one that approached us for the 65 - the 55.

PN2702

Yes. Sorry, I am saying to you - I am sorry if I am not clear about the question. Are you asking the Commission to accept that there is no connection between the company adopting a section 55 agreement with the AWU and the recent attempts by the CFMEU to gain representation on the site?---Our preferred approach is a similar arrangement that we have at Osborne. The AWU up until and well over the recent years has shown active interest in pursuing it. We see them as withholding the majority of membership on site of union membership, that they are the more representative union to represent people in Henty Goldmine as well as the industry itself.

PN2703

So is the answer to my question, yes there is a connection between the CFMEUs presence and your choice of adopting the section 55 agreement?---I disagree, I think your - the Commission hearing might have prompted the AWU to notify us again that they are willing to undertake an EA with us.

PN2704

So was it just a matter of the AWU asking for it, was it? Is that what you are saying?---No, we weren't pursuing any other course other than continuing with individual contracts with the aim of having the Mining and Processing Award would in future underpin that.

PN2705

But why - if that is the case why enter into an agreement with the AWU, a section 55 agreement?---Well, we had a request, we hadn't had a request from any other union and we approached in the Placer group my superiors and they said with the Osborne case we can pursue the same arrangement.

PN2706

So it is just a matter of asking is it, Mr Daily? Just a question of being asked?---No, it was an opportunity that we had to discuss.

PN2707

Mr Daily, I put to you again that the principal purpose of the section 55 agreement that you have negotiated with the AWU is to try and lock out the CFMEU from the site?---I disagree with that.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2708

Mr Daily, union membership on site. In your statement you make some comments about your knowledge of union membership on site; do you recall?---Yes, I have some understandings of the level of membership.

PN2709

Now, can I ask you firstly how do you - what do you base your knowledge of union membership on site?---We don't have any other mechanism other than the payroll deductions of our AWU members.

PN2710

I see. How long has the payroll deduction facility been in place at the mine?---Only recently because that was part of our negotiations with the enterprise agreement with the AWU.

PN2711

I see. So in the last four or five weeks, perhaps?---Yes, I don't know how many people were paying directly before because - - -

PN2712

Well, I suggest to you there was no payroll deduction facility offered by the company was there, Mr Daily?---No, there wasn't but Placer's approach as they do have at Osborne is they do allow and encourage - well, not encourage - but allow the payroll deductions. Orion Gold and predecessors' basically company policy was not.

PN2713

I am sorry, I don't know if I heard your last answer, but is it the case that at Henty you allowed, prior to the most recent involvement of the AWU allowed payroll deduction for AWU members?---No, the previous owners didn't, no.

PN2714

Did you - when you came on the scene in 2002 did you allow it?---I must admit I wasn't approached and I didn't - wasn't aware of any approaches to the company. So - and my understanding was people were paying directly as we knew that there were AWU members there, some people - - -

PN2715

Okay, let us start on that issue. When you arrived in 2002 what was your understanding of the AWU membership on site?---Actually I didn't take very much, but I knew it was high.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2716

It was high in 2002?---That's what I heard.

PN2717

From whom?---Just it was - well, you are correct I don't have any firm record or proof what numbers were, but I was on the understanding that it had a reasonably high level of AWU membership now that I couldn't - and I wasn't pursuing it because we had a section 55 in place and working - 61, sorry.

PN2718

What do you call a reasonably high level, Mr Daily? Five, 10, 50?---I would guess to me on a non-union site most likely at least 10.

PN2719

So you say as of 2002 your understanding was there was something like 10 members on site?---Could have been as a minimum I would have thought.

PN2720

Could have been as a minimum. Again what do you base your knowledge upon in relation to this issue?---Just a comment on - we have AWU members on site.

PN2721

Who told you that?---I think it was my predecessor most likely as well as Ian Jones who was a local rep requesting.

PN2722

But there was no payroll deduction facility at that time?---No, no the previous owners didn't allow it.

PN2723

Now, up until these proceedings you weren't aware of any CFMEU members on site?---Not aware of any.

PN2724

Does Henty Gold provide a payroll deduction facility for the CFMEU?---Not in the past, no.

PN2725

Is it your intention to provide such a facility?---I think if we see them as the representative union for Henty site.

PN2726

Do you see the CFMEU as a representative union?---Well, actually I see the AWU as the representative union because they cover the metalliferous industry in most States and particularly in Tasmania and the other peer operations.

PN2727

Mr Daily, does the employer decide which union an employee is a member of?---No, the employee should.

PN2728

Yes. And if the position was that the CFMEU had legal rights to cover employees at Henty Gold, you would be acting either improperly or unlawfully if you prevented such employees from being members wouldn't you?---The company doesn't have a right to prevent employees from being members of a union.

PN2729

Now, you mention coverage of the industry and in your statement you refer to the - at least I think you do - the section 118(a) order?---This is the orders placed by VP Moore.

PN2730

Yes, I think at paragraphs 24 and 25?---Yes.

PN2731

Now, what is your understanding of the effect of the order of Vice President Moore in relation to Henty Gold?---I guess bluntly it was - for want of a better word - demarcation order or whatever saying that the AWU are the representative union for the Mining and Processing industry.

PN2732

For?---For Tasmania.

PN2733

Is that the advice that you received?---The advice - that is why we see Henty being covered appropriately by the AWU because it applies to the other peer operations.

PN2734

The question I want to ask you, Mr Daily, is have you been told that the order of Vice President Moore applies to Henty Gold?---In our opinion that it could actually apply to the - the inference is that it would apply to the mining industry in Tasmania excluding the coal industry.

PN2735

Could have, inference, I am asking you a direct question?---Sorry, it is my understanding that the intent of the order was to cover the mining industry, excluding the coal mining mines in Tasmania.

PN2736

Mr Daily, have you read the order itself?---No, but I got advice.

PN2737

Perhaps if the witness could be shown a copy of the order. It is the last section marked. Please take the time to read the order to yourself, Mr Daily, and I will ask you a couple of questions about it.

PN2738

MR FITZGERALD: What part of the order?

PN2739

MR BUKARICA: The last part, it is highlighted?---Schedule 1 is it? Just the part you have - - -

PN2740

Sorry, it is the very last part - yes, the schedule yes?---Sorry, it actually refers to clauses 8 - - -

PN2741

Beg your pardon, could I approach the witness and just indicate the section.

PN2742

THE COMMISSIONER: Yes?---Sorry, just in that reading - - -

PN2743

MR BUKARICA: Yes, those two paragraphs?---Yes, but it refers to some clauses, sub-rules.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2744

I just want you to read that paragraph there?---Yes.

PN2745

Now, you make mention to reference in the introductory paragraph to the other paragraphs, can I just for your benefit say that they refer to other parts of the union rule, particularly the - what is called the FEDFA rule. Now, in relation to the order of Vice President Moore, does Henty Gold appear in those list of companies?---No, it doesn't. Henty Gold was not in operation until 1996.

PN2746

Yes. Could I also ask you does the term or terms to the effect of coverage in a metalliferous mining industry in Tasmania appear, or words like that?---I thought the actual first paragraph covers that. It actually related to those particular operations listed there, "Without limiting," commencing with that.

PN2747

The words say:

PN2748

*Any person employed by the following employers in metalliferous mining in Tasmania or South Australia.*

PN2749

?---Yes.

PN2750

Okay. Now, do you accept that the order is limited to those specific companies?---When it was placed in 1990 - I think it was early '90s - Henty wasn't in operation.

PN2751

Yes, but that is not the question, the question is what is the effect of the order?---It doesn't mention Henty there, that's true.

PN2752

Now, you said earlier in your evidence that the effect of this order was to exclude the CFMEU from Henty Gold; is that your evidence?---No, I'm saying that the intent of the order was to say that the AWU was the principal union to represent the metalliferous and processing industry and that was Henty's advice.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2753

And that is advice from AMMA is it?---Yes.

PN2754

So your entire understanding of the representational rights of the CFMEU in respect of your site rely upon that interpretation of the decision given to you by AMMA; is that correct?---That advice that the interpretation could be that case, yes.

PN2755

Now, if the position was arising from these proceedings, for example, that the CFMEU had legitimate rights of representation, would the company prevent the CFMEU from exercising its rights?---If that's the outcome from the hearing we'd have to agree with the order.

PN2756

Now, Mr Daily, it has been the case hasn't it that the CFMEU has been denied right of entry on your site, the Henty Goldmine site?---On that particular day that the representative turned up to our gate unannounced.

PN2757

Well, there is evidence Mr - putting aside whether there was - the visit was announced, could I ask perhaps a prequel question. Is it the policy of Henty Gold to allow the CFMEU to exercise right of entry on the site?---My understanding is Henty Gold has never been approached before by the CFMEU.

PN2758

Let us assume for the argument, the sake of this question that the CFMEU did approach you properly, regularly in terms of notice, what would be the position of Henty Gold?---At that stage we would still be as we are now that we feel it is not the representative union on site and we wouldn't allow them entry.

PN2759

Yes. So notwithstanding that the CFMEU may have a legitimate representation rights in terms of its constitution, you would deny right of entry?---We wouldn't deny right of access to our people who wished to meet with the union outside of work hours, off site and with due notice.

PN2760

Mr Daily, you were there weren't you when Mr Hinds approached both yourself and Ms Hartman in respect to access to your site on 17 March this year?---Yes. I can't remember the date.

PN2761

Now, do you recall Ms Hartman using words to the effect of, "You can't come on site. If you want to meet with the guys you do it off site between shifts in the car park," words to that effect?---That's the same application we apply to the AWU and they request to meet off site. And off site is off site. We don't consider the CFMEU to be the representative union on site, so they can quite happily to meet off site. If the AWU choose they can meet on site as well if they like.

PN2762

So that was the position on 17 March. I put it to you, Mr Daily, that had the AWU approach you on 17 March the answer would have been the same, "You can go off site"?---No, they already had the right to use an office in our building, but they chose to meet off site.

PN2763

Mr Daily, does your section 61 agreement, or the existing agreement, provide for right of entry to the AWU or any other organisation?---I'd have to have the document in front of me to confirm that.

PN2764

So is the answer you don't know?---I don't know, I don't have the document in front of me, I don't know it word by word.

PN2765

The existing section 61 agreement really doesn't provide for any union role whatsoever does it?---I'm not too sure. I have got to be honest I don't have it in front of me.

PN2766

Now, in relation to the section 55 agreement, you have given evidence that you were approached by the AWU?---Yes.

PN2767

And for some reason related to the need for an underpinning award you have agreed to the section 55 approach with the AWU?---Yes.

PN2768

And your evidence is it has nothing to do with the CFMEU making this application or its attempts to recruit on the site; is that your evidence?---The phone call might have been coincidental at the time of the hearing in Launceston that the award was proposed by the CFMEU, but - and we'd already had approaches by the AWU over a number of years, both AMMA and both Henty in getting a collective arrangement after the expiring of our existing EA, so I don't

- - -

PN2769

Your evidence was that six weeks ago the position was no thank you, you were pursuing individual common law contracts?---That's true with the looking forward to an underpinning Mining and Processing Award and the AWU approached us after that.

PN2770

In light of that evidence are you still contending that the section 55 agreement before the Commission has got nothing to do with - - -

PN2771

MR FITZGERALD: Well, Commissioner, I object. I was guilty myself and admitted on occasions that I did repeat things. This is just going over old ground and I think it is about the third time we have been over it. So I think it is going to harassing the witness. Mr Daily has given his answers on numerous occasions and he is repeating them. I think it is unnecessary.

PN2772

THE COMMISSIONER: Well, I think it is a fair way short of harassing the witness. It is a legitimate question in the scheme of these proceedings and I will allow it Mr Bukanica. It has been asked in a slightly different form before, so if you are trying to pull things together I will allow it in that context.

PN2773

MR FITZGERALD: If the Commission pleases.

PN2774

MR BUKARICA: Mr Daily, do you need me to repeat the question or do you understand it?---No, you were asking me?

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2775

I am putting to you that the context - if I could rephrase the question - the context in which the Henty Gold goes from having a non-union arrangement proposed being individual contracts six weeks ago to now having a section 55 agreement with the AWU is intricately tied up with keeping the CFMEU off site. That is a proposition I am putting to you?---No, I disagree with that.

PN2776

Now, you had contact with Mr Hinds on 17 March albeit brief; is that correct?---At the front gate, yes.

PN2777

Did Mr Hinds conduct himself in a way that was aggressive or hostile?---He actually demanded to come on to the site and waved some paperwork at us and Henty's approach was we don't see you as a representative union on site, that being the AWU.

PN2778

Mr Daily, did Mr Hinds raise his voice or threaten or do anything like that?---There was a call for the number for the police, but I wouldn't say that was threatening as I left the office with Arlene and Julie.

PN2779

I put it to you Mr Daily that Mr Hinds attempted to convince you that he had a legitimate right of entry on to the site and that you essentially ignored him and turned your back on him and walked away; is that correct?---We were threatened with legal - well, sorry I saw it as being a threat with the police as in, "What is the police number?" And as we walked away and true before that we were very firm in saying that we don't see the CFMEU as being the representative union on site. They'd made no previous approach to us and as my manager, Julie, pointed out they could have met with the employees outside of the site which was in the car park after the employees hours are finished.

PN2780

Did Mr - as a result of your refusal to allow right of entry to Mr Hinds threaten to shut the place down or undertake any industrial action?---No, not that I heard.

PN2781

Have you had any dealings with Mr Hinds at all in industrial relations?---No.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2782

Do you have any reason to believe that Mr Hinds conducts himself in a manner which is inappropriate or in some way contrary to the laws of this country - of this State would you say?---That was the only time I met Chris Hinds at the gate and I couldn't say anything else other than what was on that day because I don't know Chris outside of that - Mr Hinds.

PN2783

What experience have you had in dealing with the CFMEU in this State, Mr Daily, any or some; none?---None.

PN2784

And do you have any knowledge of the coverage of the broader CFMEU in this State? Do you know which enterprises the CFMEU conducts its business in this State?---I do understand that they - I think it's Temco and maybe another couple of smelting places, but I do know that the metalliferous industry is covered by the AWU.

PN2785

Now, what about the broader CFMEU coverage in the timber industry and construction and so on, are you aware of any of that?---Not familiar because my main focus is in the mining industry and that's where my background lies.

PN2786

Mr Daily, is it your experience that the CFMEU in this State conducts itself in an inappropriate manner in industrial relations? Is there any reason for you to come to that view?---I don't have any experience with that at all, the way the CFMEU has conducted itself at all.

PN2787

You mentioned earlier Temco, have you got any knowledge of industrial arrangements with Temco?---No, all I thought was that was one of the unions that - sorry, one of the sites that they were covering.

PN2788

What about what used to be Pasminco Hobart Smelter, have you got any view about the CFMEU there or knowledge?---I have no opinion at all.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2789

If I put to you, Mr Daily, that the CFMEU was represented in a number of major enterprises in this State and have conducted themselves - the officials conduct themselves properly in accordance with the law you wouldn't have any basis to dispute that would you based on your experience?---No, my experience is limited in Tasmania, so yes.

PN2790

Similarly, any perception you may have of what the CFMEU may do if they had a presence on the Henty Gold site, what, you are relying on other people's experience is that what you are saying?--I guess I'm relying on mixed union experiences quite a number of years back where you have a predominant union and the site can be disrupted quite significantly by a smaller union.

PN2791

How long ago - what experiences are you referring to and how long ago was that?---That was quite a number of years back at King Island Shellite.

PN2792

So I think that closed down about 1987 didn't it?---Yes, something - early 1990s yes.

PN2793

Early 1990s, okay. So in respect to how the CFMEU would approach dealing with Henty Gold do you have any views about that?---No, I wouldn't have perceptions of that.

PN2794

Do you have any reason to believe that representatives of CFMEU if granted representational rights at Henty Gold or had those rights affirmed, wouldn't conduct themselves in an appropriate manner? Do you have any reason to doubt that?---I think there is the potential for disruption by having a majority of a site represented by one union and a number of personnel represented by another union. That may cause some disruption.

PN2795

Mr Daily, you are not an industrial relations manager are you, of human resources background, is that - - -?---No, I don't have.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2796

But you have some knowledge of industrial arrangements in - well, certainly in the metalliferous mining industry; that is the case?---Yes.

PN2797

And in relation to say heavy industries generally?---No, more the mining industry, yes.

PN2798

Is it the case within your understanding that sole - a single union in a single workplace is the predominant arrangement in this State?---It occurs in a number of mines. I know there's a mix of unions in say for instance a close peer operation, CMT which is ETU and I understand a metal workers union for their fitters. So it does vary from site to site I understand.

PN2799

You couldn't dispute, could you, the proposition that there are many sites in this State where there are multiple unions in place and parties to one industrial instrument?---Yes, I don't have a familiarity with many of the sites.

PN2800

You don't have the knowledge?---No, so I'm really just - - -

PN2801

Now, clearly the company has adopted the view of vigorously opposing the CFMEU having the proposed award; that is correct is it?---Sorry, vigorously opposing?

PN2802

Vigorously opposing the application made by the CFMEU. That is the approach the company has adopted?---We haven't sat down and gone through that other than that first hearing. As I understand that is listed with this.

PN2803

But clearly you are not sitting down with us and saying, "Well, let us talk about the terms of the award," are you Mr Daily?---Well, the enterprise agreement proposed with the AWU and those that they have shown active interest, not just in my short time but in my predecessor's time of coming to some arrangement representing employees at Henty.

\*\*\*\*

MATHEW DAILY

XXN MR BUKARICA

PN2804

I see. So this coincidental industrial arrangement you have reached with the AWU now takes away the need to discuss issues with the CFMEU?---Well, we see - the company sees the AWU as the appropriate union for representing the site based on their involvement in the mining industry in general in Australia excluding coal mines and it's an appropriate approach that's used in Placer with the Osborne mine in Queensland.

PN2805

So the answer to the question is you won't sit down with the CFMEU and discuss the award?---Well, we have an enterprise agreement. We feel that should be the way it should go.

PN2806

Now, Mr Daily, are you in a position to refute the evidence of Mr Hinds that the CFMEU has 12 members on your site?---I don't know how many members they have got on site.

PN2807

I think in your statement you refer to a small number of members?---Yes, I understand it is about 50/50 in the plant.

PN2808

In the mill, are you saying the mill area?---In the plant - yes, the mill sorry.

PN2809

Now, the mill consists of four shifts?---Four shifts.

PN2810

Four operators per shift?---Yes.

PN2811

That is 16 isn't it?---Yes.

PN2812

Twelve of 16 doesn't sound like half to me?---Yes, I don't know whether they have got 12 members.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2813

But you are not in a position to reject that are you?---Or to confirm it, no.

PN2814

Or to contradict it. So if the CFMEU was in a position of having 12 members in the mill section, it would clearly be the dominant union in that section would it not?---Just on numbers base?

PN2815

Yes?---If that was the case.

PN2816

And on your site the mill operations and the underground operations whilst on the same site are distinct parts of the mine operations?---Geographically yes, but they are linked.

PN2817

Now, Mr Daily, you don't have personally any particular views about which union your employees are members of do you?---No, I've got no - - -

PN2818

Do you take an interest in that?---I have no influence over my employees at all. It's not my right to impose any interest.

PN2819

And your primary interest in these proceedings is to make sure that the mine is productive and safe and working well, that is basically your interest as a mine manager?---My primary interest is the health and safety of my employees, yes.

PN2820

And having a good operation at the Henty mine?---Yes.

PN2821

So can I summarise your position in relation to the objection to the CFMEU and tell me if I am wrong: it is that there is a view from the company that the AWU is the appropriate union, I think you have used that term several times?---Yes.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2822

And secondly, that there is a potential for some sort of competition or problems if you have two unions on the site; is that basically it?---To refresh Henty sees the AWU as the appropriate union because of its coverage of the metalliferous industry and because we have as part of the Placer Group a successful working relationship at the Osborne mine. There is the potential for disruption to our employees if we've got a majority of employees with one union and a number with another union, and that's really where it sits.

PN2823

Now, you mention the Osborne site is there any other Placerdome Pacific sites in Australia?---Yes, there's a number. There's one in Pilbara; in New Guinea there's also the Granny Smith operation; in WA there's the Kananabell and the KalWest areas, yes.

PN2824

Is there any reason why you mention Osborne but not the other sites in relation to industrial arrangements?---No, it's just that something that's what Placer's approach that it's not alien to them because they've got one out of six operations already with an AWU EA.

PN2825

So the rest are, what, non-union or AWA sites; is that right?---A mixture I think, yes.

PN2826

But predominantly non-union?---Yes, it's sort of a sign in the West Australian operations they tend to go that way.

PN2827

And like most West Australian operations it is non-union and individual contracts; is that your understanding?---I think around Kalgoorlie there is particularly the Kananabell and KalWest they were originally Australian Workplace Agreements. I think they have recently come to a - I can't remember the right section name for the arrangement they're under now, but the iron ore industry I think is different again.

PN2828

So you said earlier in your evidence that you thought the AWU in 2002 had a significant presence on site?---Yes, I thought that was my understanding.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2829

And by significant you said figures of about 10?---For a non-union site I think that's - it was always classed as a non-union site and I think that was unquestioned, that was reasonably significant.

PN2830

So by that same measure the CFMEU having 12 would also be significant would it not?---If they would have at that stage, yes but I do understand that now it has certainly - - -

PN2831

As of very late hasn't it, Mr Daily?---I'm not too sure of the time frame, but it's happened, yes.

PN2832

Now, the case is it not is that over the last few weeks since these proceedings have started is that there has been frequent visits to your site by AWU officials?---Most likely - frequent most likely would be - it would certainly be under half a dozen visits.

PN2833

And that is from a proposition of what, from a position of never being on the site prior to that time?---Well, the role is once we agreed that we would go for a joint collective arrangement with an EA, we allowed full access for them to speak with their employees and - speak with our employees who are members of the union, yes.

PN2834

You allow full access any time?---Pre - they've got to which they have done is pre-arranged with us entry to the site and access to our people for the - sorry.

PN2835

Sorry. And so by free access you mean provided that obviously they are properly safety equipped and the like the can talk to any employee on the site, range - - -?---They are treated as a visitor. They are taken in and allowed access in the conference room at the mine mill control room and - - -

\*\*\*\*

MATHEW DAILY

XXN MR BUKARICA

PN2836

And what is the message that the management sent to the employees about this position?---I spoke to all my employees informing them that the company was approached by the AWU to get engaged with a collective enterprise agreement with Henty and as I said to the people this is not alien to Placer and that it is their right to have that exposure and they will be met by the AWU and it was their decision which way they wanted to go.

PN2837

Don't you think that is sending a pretty strong message to your employees in a context where there has been no union presence on the site or very limited for eight years of non-union agreements?

PN2838

MR FLANAGAN: Objection, Commissioner. That assumes that there was no union presence or very limited presence when the evidence has already been given that we had a significant presence.

PN2839

MR BUKARICA: I am happy to rephrase the question, Commissioner.

PN2840

THE COMMISSIONER: Yes, if you would thanks.

PN2841

MR BUKARICA: I put it to you, Mr Daily, that by the company giving AWU free access to the site facilitating frequent visits, addressing employees and giving them the message that you have that you are sending a pretty strong signal to your employees?---I'm sorry firstly we didn't give them free access and we did allow them when they approached us about times, we actually changed times to suit our company business to allow them access to our employees. And because an enterprise agreement revolves consultation with employees, the unions and the company those people of the union was allowed access to do that and as far as sending a strong message I don't know whether that was the case, only the employees could say that. I don't personally think it was.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2842

So okay let us approach it this way your evidence is that I guess prior to the payroll deduction facility being established there was what maybe 10 AWU members at the site?---It could have been more. I know back when I first started that was the number that was being put to me as being a minimum and that's when I said that's significant on a non-union site. So I don't know how many other people were direct paying before the payroll deductions were available.

PN2843

Then since the payroll deduction procedure has been introduced and since you have addressed the employees and allowed the AWU access in the way you described what is now the membership figure?---I'd be guessing because I don't have it, but I'd say there'd be at least 40 maybe. I don't know, but I know it's quite - at least - - -

PN2844

So there was a - sorry, finish?---I'd have to get the documents to find what we actually payroll deduct to give you an exact figure.

PN2845

So there is something like a 75 per cent increase in rough terms of AWU membership on site in the last four to six weeks?---Yes, on advice from my payroll HR department we've got a majority of the employees on site - when I say that they are on the mining, processing and emergency services officers are AWU members.

PN2846

Now, is it the case that you had supervisors on your site urging employees to join the AWU?---I'm not aware of that, no.

PN2847

Are you in a position to state categorically that it hasn't been the case, or are you just unaware?---Not with my permission because I am very strong that nobody is forced to do anything.

PN2848

Now, in relation to the position of the CFMEU what advice has the company given its employees?---None.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2849

Has the company said, "Look there is another union which claims to have representational rights, perhaps you want to talk to that union as well as the AWU," have you said that?---The approach - there has been no approaches made to Henty of CFMEU representing the company other than that original Commission hearing up in Launceston. My discussion with my employees has been we've been approached by the AWU to enter into an enterprise agreement and that's where my discussions have revolved around.

PN2850

You didn't choose to inform your employees about the application made by the CFMEU?---No, that would have been.

PN2851

No?---No.

PN2852

Was there any attempt to circulate drafts of the CFMEU application for comment or feedback?---No, it's a company/union situation that we were going to be hearing today.

PN2853

I see. And so, however, you addressed the employees on site, that is your evidence, and indicated that an agreement had been reached with the AWU ---?---No, no.

PN2854

- - - and we are now going to move to a collective arrangement?---No, sorry. My approach to the employees was to inform them that the company had been approached by the AWU. We were putting together an agreement and it was for their review and to talk to the AWU reps that were presenting that to them. We didn't say that there was any exclusion or anything.

PN2855

But in that context you didn't inform employees about the alternative application here; that is your evidence?---No, the company had had no approach.

PN2856

And in fact the last - the evidence already been given, the last attempt to come to - the CFMEU made to enter the site, it was refused right of entry; that is correct?---That first and last in my time.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2857

Would there be any opportunities for the CFMEU to - other than the car park shift changeover scenario that you have already identified - to address the employees

on site? Have you for example provided a list of employees for mail-outs or anything like that?---No.

PN2858

Would you do that?---I don't see the CFMEU as the representative union.

PN2859

So the company has determined to embark on a course which is a section 55 agreement in place of its non-union agreements with the AWU and sees there is no potential for the CFMEU to become part of that agreement, to be involved on the site at all?---We see the AWU as being the principal union representing the metalliferous industry and - - -

PN2860

And that is that?---And that is really the approach we have taken, and that is where it is.

PN2861

Now, Mr Daily, your view of the CFMEUs role has been primarily formed by your advice from AMMA has it not?---For their involvement in the metalliferous industry and from my own experience around Australia I see the main union being the AWU.

PN2862

I see, but is the answer to my question that that is your main advice on the involvement of the CFMEU?---We use AMMA for our key advice, yes, but my experience in the industry over the years has certainly shown to me that the AWU is the key metalliferous industry union.

PN2863

And your main experience, apart from Henty Gold, is what King Island Shellite; is that what you said?---King Island Shellite, Kananabell Goldmines in Kalgoorlie and Warrego Mines in Tenant Creek and the Pilbara.

PN2864

We will go through those. King Island Shellite shut down about the early 1990s?---1991 I think, yes.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2865

Kalgoorlie Goldmines, a non-union operation?---Kananabell when we started up it was non-union in 1995 - sorry 1992.

PN2866

And the other mine you mentioned, sorry?---Warrego was AWU underground. Robe River - this is at the time of the Pekoe takeover so it was - - -

PN2867

Non-union I suggest?---No, it was very union.

PN2868

MR FLANAGAN: At the time it was union.

PN2869

MR BUKARICA: Okay?---And the AWU still had representation when I left there in '95.

PN2870

So really in relation to the CFMEU and I put this to you, Mr Daily, and I will leave that questioning your view is primarily determined by the views expressed by AMMA; is it not?---No, we get our advice from AMMA and we've been approached by the AWU and - - -

PN2871

And the advice from AMMA I put to you, Mr Daily, is if you are going to have to have a union have the AWU. They are the lesser of the two evils?---They weren't the words. The words were that they are seen as the most appropriate union as they represent most of the metalliferous industry if not all.

PN2872

The proposition wasn't put to you, Mr Daily, was it that the AWU would be more compliant or easier to work with, is that the nature of the advice?---No.

PN2873

Now, the agreement - the existing section 61 agreement expires on 19 September 2004?---Yes, I think it is the 18th. I had the 18th in my mind, but it's pretty much the end of September.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2874

18 September 2004. Now, what is the urgency of having the existing section 55 agreement filed and served at this juncture?

PN2875

MR FLANAGAN: With respect, Commissioner, the matter was brought on today at the AWUs request not the company's request. That is the position. We have asked for this matter to be listed at the same time as the CFMEU, application for an award.

PN2876

THE COMMISSIONER: Yes, I - that is correct. As I recall it was ultimately a joint request that it brought on at the same time, so I will allow the question, because we wouldn't put on an agreement only on the say-so of one party.

PN2877

MR FLANAGAN: Yes, I accept that.

PN2878

MR BUKARICA: If the Commission pleases.

PN2879

The proposition is, Mr Daily, that the company wants the section 55 pushed through as quickly as possible in order to forestall the CFMEU having any role at the site, that is really the proposition isn't it?---No, I disagree. I think we have come to a point where the enterprise agreement is being signed by both parties, the union and the company and that the employees are happy with that.

PN2880

Has it been put to a vote?---It is my understanding.

PN2881

When was the vote?---I haven't spoken to the AWU about exactly when they did that. That is what their role is and they've - - -

PN2882

Are you aware that the majority of mill employees who are members of the CFMEU have informed the CFMEU that they have not been consulted about the terms of the agreement?---No, I'm not aware of that, but I'd be surprised because each of the meeting - crews have been addressed by the AWU and they were all on site at the time.

\*\*\*\* MATHEW DAILY

XXN MR BUKARICA

PN2883

Mr Daily, are you in a position to - I withdraw that. Can I ask you, Mr Daily, by conclusion the nature of some of the classifications that you have on the mine. What I intend to do is name some classifications, general sort of classifications, occupational groups and could you inform me whether they exist on site. So for example dozer operators? Do you have dozer operators on site?---As in track dozer operators? No, we don't - we do contract one in every so often to shovel the stockpiles.

PN2884

Shuttle car operators?---No.

PN2885

Mill operators?---Our title for our process technicians, so when you say mill operators I guess working in a processing plant you'd call them.

PN2886

Yes, workers who work in the processing plant?---Processing plant, yes.

PN2887

Front end loader operators?---Surface we have front end loaders, underground we have boggers, so similar.

PN2888

Which is a similar function but just an underground version. You don't have any loco drivers there do you?---No.

PN2889

Truck drivers - ore truck drivers?---We have truck drivers underground who drive the underground haulage trucks and a contractor on surface.

PN2890

Fork-lift operators?---Part time - - -

PN2891

Either the traditional - - -?---Part time we have, part time in our supply department there is one.

PN2892

I know the lines in fork-lifts are getting very blurred these days, some of them are more cranes than fork-lifts and so on?---Yes. No, we do have fork-lifts on site.

PN2893

And what there would be other miscellaneous type of engine drivers or plant operators on site?---We don't have any power generation as in diesel engines or - sorry, what was - - -

PN2894

Other types of plant operators? You mentioned boggers and so on, other types of - - -?---Yes, we have jumbo operators for the drilling jumbos. We contract in crane drivers. The rock breaker crews on the hydraulic rock breaker, he also operates a skipman as a skipman.

PN2895

So really pretty typical collection in hard rock mining?---It's a typical hard rock mine, yes.

PN2896

I have got nothing further if the Commission pleases.

PN2897

Thank you, Mr Bukarica. Yes, Mr Flanagan?

PN2898

MR FLANAGAN: I will be brief, Commissioner.

## <CROSS-EXAMINATION BY MR FLANAGAN

PN2899

MR FLANAGAN: Could you tell us if you employ maintenance employees and when I mean maintenance employees I am referring to fitters and electricians?---We contract that from a local engineering firm.

PN2900

So you don't have your own employees engaged in that function?---No.

PN2901

Can you tell me how long Placerdome has had ownership of Henty?---Sorry, Rob, how long?

PN2902

Can you tell me how long Placerdome has had ownership of Henty?---I can't remember the actual takeover date, but it would have been October 2002, somewhere around there.

PN2903

And prior to that who owned Henty?---Orion Gold.

PN2904

Were you engaged at Henty when Orion Gold was the owner?---My initial approach to takeover the position Orion Gold was the owner then. That was in the month of October and the takeover progressed to finalise - I think the final legal takeover was a number of weeks after I commenced I think, I'm not too sure.

PN2905

So you were brought in by Placerdome were you?---I was originally approached by Orion Gold, Placerdome confirmed my appointment on a temporary basis until they'd taken over full ownership.

PN2906

So did you have the opportunity or not to become familiar with the policies of Orion Gold?---In general policies, not the specific policies, but generally yes.

PN2907

Can you recall Orion Gold's policy in relation to unions?---Quite honestly, no, I can't.

PN2908

Can you tell me what time your mill employees start and finish work?---They work - start at work at 0600 hours in the morning and work a 12 hour shift completing at 6 pm when the oncoming shift comes on.

PN2909

Can you tell me what time the mine employees start?---They start at 0700 in the morning and finish at 7 pm at night.

\*\*\*\*

MATHEW DAILY

XXN MR FLANAGAN

PN2910

Can you tell me what time the emergency service officers start and finish?---They start at 7 - they're the same as the mining roster, 7 to 7.

PN2911

No further questions - one further question. Has the AWU ever sought, and have you ever provided a list of employees' details for mail-outs?---Not as far as I know, no.

PN2912

Thank you.

PN2913

THE COMMISSIONER: Mr FitzGerald?

PN2914

MR FITZGERALD: Very briefly also, Commissioner.

**<RE-EXAMINATION BY MR FITZGERALD**

PN2915

MR FITZGERALD: Mr Daily, have Henty Gold been involved in the Mining and Metalliferous Processing Award making processes?---Yes.

PN2916

And have you had anyone particularly involved in it at your site?---My predecessor and my HR manager was involved, I think, before I got the site.

PN2917

Right. So Ms Hutton has been involved?---My understanding, but before my time.

PN2918

So during your time there has been ---?---Sorry, I think there was one meeting after I commenced that Ms Hutton attended.

PN2919

Okay. So it is true that you are a company which is instructing AMMA in the making of that award?---Yes.

\*\*\*\*

MATHEW DAILY

RXN MR FITZGERALD

PN2920

Okay. A question was asked by Mr Bukarica about that you are aware of multiple union sites and you are aware of the Pasminco Rosebery - now Zinifex Rosebery site and the union representation there?---Not of actually the whole unions, but only familiar closely with the CMT one.

PN2921

Is it your understanding that there are at those other sites, metalliferous mining sites that there are two unions competing for the same coverage. Or is it more the unions dealing with their discrete occupational groups such as fitters?---I'm more aware of sites having like fitters and electrical trades looking after their own trades. What I'm saying is ETU with electrical tradesmen, AMWSU with fitters and boilermakers.

PN2922

Okay. If the CFMEU application were granted and the AWU agreement was also approved what impact do you see in terms of competing for membership on the site at Henty?---I would see it as being pretty competitive because they're both actually focusing on mining, milling and SOs.

PN2923

So they would be competing for the same members?---Yes.

PN2924

And what impact do you see that financially on a business - potential impact?---There could be an impact particularly if there was disputation between various groups, certainly.

PN2925

Okay. I have no further questions. Thanks very much Mr Daily for your evidence.

PN2926

THE COMMISSIONER: Thank you, Mr Daily, you are excused.

**<THE WITNESS WITHDREW**

PN2927

THE COMMISSIONER: We will go off the record.

**ADJOURNED INDEFINITELY**

[3.40pm]

## INDEX

<b>LIST OF WITNESSES, EXHIBITS AND MFIs</b>
---

<b>CHRISTOPHER GREGORY HINDS, ON FORMER OATH.....</b>	PN1569
<b>CROSS-EXAMINATION BY MR FITZGERALD.....</b>	PN1569
<b>CROSS-EXAMINATION BY MR FLANAGAN .....</b>	PN1910
<b>EXHIBIT #AWU1 COPY OF DOCUMENT, FORMS PART OF ATTACHMENT TO STATEMENT OF C.G. HINDS .....</b>	PN2187
<b>RE-EXAMINATION BY MR BUKARICA.....</b>	PN2250
<b>WITNESS WITHDREW .....</b>	PN2266
<b>STEPHEN PHILLIP KNOTT, SWORN.....</b>	PN2276
<b>EXAMINATION-IN-CHIEF BY MR FITZGERALD.....</b>	PN2276
<b>EXHIBIT #R3 STATEMENT IN RESPECT TO CFMEU RULE CHANGE PROCEEDINGS.....</b>	PN2292
<b>CROSS-EXAMINATION BY MR BUKARICA .....</b>	PN2293
<b>CROSS-EXAMINATION BY MR FLANAGAN .....</b>	PN2495
<b>EXHIBIT #AWU2 COPY OF ACTU EXECUTIVE RESOLUTIONS OF DECEMBER 1991 .....</b>	PN2528
<b>RE-EXAMINATION BY MR FITZGERALD .....</b>	PN2551
<b>FURTHER CROSS-EXAMINATION BY MR BUKARICA .....</b>	PN2572
<b>FURTHER CROSS-EXAMINATION BY MR FLANAGAN .....</b>	PN2592
<b>WITNESS WITHDREW .....</b>	PN2611
<b>MATHEW DAILY, SWORN.....</b>	PN2612
<b>EXAMINATION-IN-CHIEF BY MR FITZGERALD.....</b>	PN2612
<b>EXHIBIT #R4 STATEMENT OF MATHEW DAILY .....</b>	PN2626
<b>CROSS-EXAMINATION BY MR BUKARICA .....</b>	PN2627
<b>CROSS-EXAMINATION BY MR FLANAGAN .....</b>	PN2899
<b>RE-EXAMINATION BY MR FITZGERALD .....</b>	PN2915
<b>WITNESS WITHDREW</b>	PN2927