



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT CROSS

RE2024/288

s.505 - Application to deal with a right of entry dispute

Health Services Union

and

**Salvation Army Aged Care Plus T/A Bethany Aged Care Centre
(RE2024/288)**

Sydney

10.00 AM, FRIDAY, 22 MARCH 2024

PN1

THE DEPUTY PRESIDENT: Mr Tomisich and Mr Peyton, you're back on the line. As you can see, Ms Wiles and Mr McDonald are on the line. The reason why all parties are on the line is that the attempt to resolve the matter by way of conference has been unsuccessful. Your proposal has been rejected and Ms Wiles has indicated a desire to proceed with her application. Any questions before that occurs?

PN2

MR M TOMISICH: No, Deputy President.

PN3

THE DEPUTY PRESIDENT: All right. Ms Wiles.

PN4

MS K WILES: Could I pass this over to my colleague, Mr McDonald, please.

PN5

THE DEPUTY PRESIDENT: All right. Mr McDonald.

PN6

MR J McDONALD: Thank you, Deputy President. Quite simply the applicant relies on material in its application.

PN7

THE DEPUTY PRESIDENT: Do you want to tender them as a group or separately?

PN8

MR McDONALD: I'll tender the whole application, if I can.

PN9

THE DEPUTY PRESIDENT: So the application and annexures A and B - anything else?

PN10

MR McDONALD: Was there a C; an annexure C? So there is an annexure containing - - -

PN11

THE DEPUTY PRESIDENT: Well, there is a - - -

PN12

MR McDONALD: - - - his right of entry notification.

PN13

THE DEPUTY PRESIDENT: The 'Re union visit' is in fact attachment B.

PN14

MR McDONALD: Yes, and then - - -

PN15

THE DEPUTY PRESIDENT: There is also the letter.

PN16

MR McDONALD: And the letter from the respondent to Ms Wiles.

PN17

THE DEPUTY PRESIDENT: 20 March '24.

PN18

MR McDONALD: Yes.

PN19

THE DEPUTY PRESIDENT: So that will all be exhibit A1.

EXHIBIT #A1 APPLICANT'S BUNDLE OF DOCUMENTS

PN20

THE DEPUTY PRESIDENT: Any other exhibits?

PN21

MR McDONALD: No other exhibits.

PN22

THE DEPUTY PRESIDENT: Just while we're dealing with the documents before me, Mr Tomisich, I would imagine you would rely on your reply and the attached three photographs.

PN23

MR TOMISICH: Yes, that's correct, Deputy President, but also, if I may, if we were provided the opportunity very quickly to arrange a further exhibit which confirms previous attendances that were held in the conference room that has otherwise been suggested. Unfortunately, I don't have them to hand. It would have to be that we attend to that very quickly.

PN24

THE DEPUTY PRESIDENT: Yes. How quickly can you do that?

PN25

MR TOMISICH: Perhaps five minutes. I would need to speak to the centre manager to obtain them

PN26

THE DEPUTY PRESIDENT: That's fine. It might give Mr McDonald and Ms Wiles an opportunity to consider how they wish to put their case, and also if you can email them as soon as possible to Mr McDonald and Ms Wiles so that they have a chance to view them before we get back on the record. What you have just generally outlined to me might be of some relevance in the proceedings.

PN27

MR TOMISICH: Certainly.

PN28

THE DEPUTY PRESIDENT: So, Mr McDonald, any objection if we stand the matter down say until 11 o'clock?

PN29

MR McDONALD: No objection.

PN30

THE DEPUTY PRESIDENT: Just before we do, just so I can understand what documents we have before us to date, we have the reply and the three attached photos. They will be exhibit R1. Any objections to any of that, Mr McDonald?

PN31

MR McDONALD: I haven't actually seen them yet. I don't think I was copied into the correspondence of the respondent sending those to chambers - - -

PN32

THE DEPUTY PRESIDENT: You will get them as a matter of urgency.

PN33

MR McDONALD: - - - so if I could read them over the adjournment.

PN34

THE DEPUTY PRESIDENT: Yes, that's fine.

PN35

MR McDONALD: But unless there's something particularly controversial in there, I don't imagine objecting to them.

PN36

THE DEPUTY PRESIDENT: No, no problems. Take your time. Also while you're getting the materials you are getting, Mr Tomisich, could I also get a floor plan of the facility that outlines staffroom, RAT room and training room?

PN37

MR TOMISICH: I would have to seek instructions on that. I'm not sure that that could otherwise be provided immediately, but certainly we'll do our best.

PN38

THE DEPUTY PRESIDENT: We'll adjourn the matter until 11 o'clock. Thank you very much.

PN39

MR TOMISICH: Thank you, Deputy President.

SHORT ADJOURNMENT

[10.04 AM]

RESUMED

[11.05 AM]

PN40

THE DEPUTY PRESIDENT: Just picking up from where we were prior to the short adjournment, firstly, Mr McDonald, did you have any objections arising from those documents that were marked provisionally exhibit R1?

PN41

MR McDONALD: No objections.

EXHIBIT #R1 RESPONDENT'S REPLY PLUS THREE ATTACHED PHOTOGRAPHS

PN42

THE DEPUTY PRESIDENT: Then, Mr Tomisich, were you able to obtain the documents you want and/or any floor plan?

PN43

MR TOMISICH: Yes. So, Deputy President, we I understand have directed to chambers a floor plan.

PN44

MR McDONALD: My apologies. Sorry, the screen and audio sort of froze for a little bit. I missed that part after the Deputy President asked if Mr Tomisich obtained those other documents.

PN45

THE DEPUTY PRESIDENT: He said yes, and they've been sent to my chambers. Have they been sent to Mr McDonald?

PN46

MR McDONALD: No.

PN47

MR TOMISICH: Certainly I'll attend to that immediately. I do apologise. I do apologise, Josh. If you could give me your email I'll direct that to you now.

PN48

MR McDONALD: Yes, it's josh.mcdonald@hsu.asn.au.

PN49

MR TOMISICH: Okay. Thank you very much. I have just directed that to you now. Deputy President, if I may, we have had some difficulty in obtaining evidentiary materials that go to previous use of the conference room that has been proposed. However, we would be seeking to call a witness who is on the call now, Ms Louise Gallagher, who can speak to that, but can also speak to the floor plan which may be of further assistance.

PN50

THE DEPUTY PRESIDENT: Well, this is without notice to you, Mr McDonald, but it seems to be relevant material. What do you say?

PN51

MR McDONALD: I don't have an objection.

PN52

THE DEPUTY PRESIDENT: Ms Gallagher, in order to obtain evidence from you, do you wish to take an oath or a non-religious affirmation?

PN53

MS GALLAGHER: I am fine with whatever the Deputy President wishes.

PN54

THE DEPUTY PRESIDENT: No. See, it's not whatever I wish. Ordinarily when people are giving evidence by way of audio-link, the affirmation is preferred because of the absence of the Bible or other religious document.

PN55

MS GALLAGHER: Yes, that's fine. That's fine.

PN56

THE DEPUTY PRESIDENT: So if you can listen to my associate, you will receive some instructions.

PN57

MS GALLAGHER: Thank you.

PN58

THE ASSOCIATE: Please state your full name and employment address.

PN59

MS GALLAGHER: Louise Patricia Gallagher. Employment address, 2-6 Gray Street, Port Macquarie.

<LOUISE PATRICIA GALLAGHER, AFFIRMED [11.09 AM]

EXAMINATION-IN-CHIEF BY MR TOMISICH [11.10 AM]

PN60

MR TOMISICH: Our position would be certainly with reference to case authority that may be of assistance in these circumstances, but in reference to Paisley Park Early Learning Centre - - -

PN61

THE DEPUTY PRESIDENT: Can I stop you there.

PN62

MR TOMISICH: Yes, yes.

PN63

THE DEPUTY PRESIDENT: You have just sworn a witness who you said you wished to lead some evidence from.

PN64

MR TOMISICH: Yes, that's correct.

PN65

THE DEPUTY PRESIDENT: Why are you making a submission?

PN66

MR TOMISICH: I apologise. That was - - -

PN67

THE DEPUTY PRESIDENT: That's okay. I'm just trying to keep on track here.

PN68

MR TOMISICH: Yes, yes. Okay.

PN69

Ms Louise Gallagher, if possible could you walk us through the materials that have been directed to chambers that outline the floor plan to provide some assistance for the Commission so that it can provide further assistance by way of its size, as opposed to the staffroom, and why it may otherwise be better in utilising that particular room.

PN70

THE DEPUTY PRESIDENT: Firstly, Mr McDonald, do you have this floor plan?

PN71

MR McDONALD: I do. Thank you, Deputy President.

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN72

THE DEPUTY PRESIDENT: Please continue?---So it's page 7 of the 15-page document you would have received. Are you on page 7?

PN73

MR TOMISICH: Confirming I only sent page 7, Louise?---Thank you. Okay. To the right-hand bottom side - sorry.

PN74

THE DEPUTY PRESIDENT: Hold on. Who sent - there is one floor plan attached to Mr Peyton's email and one floor plan attached to Mr Tomisich's. Are we going by the Peyton email?

PN75

MR TOMISICH: Yes.

PN76

THE DEPUTY PRESIDENT: All right.

PN77

MR TOMISICH: In the interests of expediting - not having to trudge through 15 pages.

PN78

THE DEPUTY PRESIDENT: Well, it's not opening for me, so maybe you might go back to the 15 pages. It seemed to me that page 2 seemed to be of some relevance.

PN79

MR TOMISICH: Louise, if we could speak to page 2 - - -

PN80

THE DEPUTY PRESIDENT: I want to make sure everyone is on the same page, literally.

PN81

MR TOMISICH: Yes.

PN82

THE DEPUTY PRESIDENT: So I have got what seems to be the 15-page document. The first page is a carpark.

PN83

THE WITNESS: Page 2 is fine.

PN84

THE DEPUTY PRESIDENT: Page 2 is the 'Evacuation diagram Aged Care Plus'. Is that the document that you're referring to?---Yes. It's below the wording of 'Aged Care Plus' you see two verandas and, yes, you are correct.

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN85

Yes. Mr McDonald, do you see that?

PN86

MR McDONALD: I do. Thank you.

PN87

THE DEPUTY PRESIDENT: We are all on the same page.

PN88

THE WITNESS: So where the arrow is pointed to saying 'You are here' and the blue dot, the education room sits to the right of that.

PN89

THE DEPUTY PRESIDENT: Yes?---And the staffroom, which is directly below it with the word 'Office' written on it.

PN90

Yes. Is it the staffroom?---Yes.

PN91

The education room is - I see. Sorry to interrupt, yes?---So the education room is larger than the staffroom, but you enter via the same internal door.

PN92

And that is the door near the stairway?---Yes, correct.

PN93

Mr Tomisich.

PN94

MR TOMISICH: So, Ms Gallagher, could you please provide the Commission with your evidence with respect to previous attendances within the conference room in question?---Yes, so pre-COVID, so pre-2021, there were times when the HSU would meet the staff in the education room based on the fact that it is an education room and can hold a large amount of people.

PN95

So to the best of your knowledge how many attendances have been made in that particular room previously before COVID-19?---To the best of my knowledge at least two to three times.

PN96

In the interest of understanding the label that is given to that particular room, which is the RAT room, is it fair to say that it is - or previously having that label of RAT room, it was in fact simply a conference room?---Okay. So the RAT room is not the room that we're talking about at the moment.

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN97

I do apologise, yes?---So the education room is secondary to the RAT room. The RAT room is near reception and it's actually a conference room, but we affectionately refer to it as RAT for the RAT testing that we do there on every shift. It's also a larger - - -

PN98

THE DEPUTY PRESIDENT: Where can we see that on this map? Where is reception?---Yes, so reception - you're going to have to move down the map further. So you see room A10?

PN99

Yes?---Yes. To the right of that is the word 'Reception'.

PN100

I see, yes?---Yes, and if you go in through where the green line is travelling past reception to the right - not up, but to the right - there is a wording 'Office' and there are two rooms both stating 'Office'.

PN101

Okay?---That's the RAT room.

PN102

So you go from reception - you have the reception, then you have the lift above and to the right?---Yes, yes.

PN103

Then below to the right is office and then below that to the right is office?---Correct.

PN104

They are the two offices you are talking about?---The ones closest to the bus carpark. So there are two opposite each other, but not directly behind reception. They are opposite reception.

PN105

Below?---Correct.

PN106

So if we were to proceed in a line, there is the entry that goes to reception?---Yes.

PN107

And then to the right of that is the store?---Yes.

PN108

Then the office?---Office number 1 and office number 2 adjoining it, yes.

PN109

At number 2?---Yes, that's the RAT room.

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN110

Office number 2 is the RAT room?---So far, yes.

PN111

MR TOMISICH: Ms Gallagher, if I may, can you please tell the Commission with respect to the Skilled Care trainees whom we understand would ordinarily utilise the room that's now being offered to be utilised to the applicant, what, number 1, will be the effect insofar as - or if it's imposed to the applicant to otherwise undertake their discussions - union discussions respectfully?---Okay, so I'm not understanding what you are asking. So you're asking me how easy would it be for me to ask for the Skilled Care people to relocate for a number of hours or an hour?

PN112

Correct, correct?---It would just be a phone call.

PN113

Right. So it's not of too much difficulty to arrange that?---No, and they are only there for the next three weeks.

PN114

Another question that I would like to pose to you, with respect to other staff members that may not otherwise be union members or, for that matter, would ordinarily be union members of the HSU, such as cleaners or managers, kitchen workers, would it be fair to say that if the staffroom is utilised and those

employees may be within that staffroom - would it cause in your view some discomfort to those employees?

PN115

MR McDONALD: I object to the question.

PN116

THE DEPUTY PRESIDENT: What is the basis of the objection?

PN117

MR McDONALD: Well, one, it's a hearsay question. She is speculating about the views of other people who aren't here. I also reject the characterisation of the question which is that cleaners or managers - I can't recall the other classifications - are people who wouldn't ordinarily be members of the HSU. They fall within our coverage. They are exactly the people that a right of entry to hold discussions is to have discussions with.

PN118

THE DEPUTY PRESIDENT: Mr Tomisich, any reply?

PN119

MR TOMISICH: Yes. If I could provide in more specificity, Louise, concerning clinical coordinators and nurses, would it be fair to say that they are - - -

PN120

MR McDONALD: I object again. The HSU rules cover nurses.

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN121

MR TOMISICH: Okay.

PN122

THE DEPUTY PRESIDENT: Why don't we wait until the question is asked before we object, for a start.

PN123

MR McDONALD: Okay.

PN124

THE DEPUTY PRESIDENT: Now, an objection has been raised.

PN125

MR TOMISICH: Yes. With respect to cleaners and managers, Louise, are those particular employees outsourced?---Yes.

PN126

Have those employees, particularly cleaners, expressed their willingness to hear or be present whilst the union ordinarily is having discussions with union members?

PN127

MR McDONALD: I object. Staff members are not obliged to provide such a request to their managers.

PN128

THE DEPUTY PRESIDENT: Mr Tomisich, do you press the question?

PN129

MR TOMISICH: With respect then - - -

PN130

THE DEPUTY PRESIDENT: So you don't press the question?

PN131

MR TOMISICH: No, we don't press that question.

PN132

With respect to the trainees and students, being that they are under age or minors in some cases, would that pose a risk without them having permission, if you like, to be privy to conversations that the HSU may be having with union members?

PN133

MR McDONALD: I object again. Firstly, it's a leading question. Secondly, they are workers within the workplace and are able to listen to discussions with a union representative. I can't imagine what possible risk there would be. They are clearly able to work, they are eligible to be union members and they have the right to sit in on a union discussion.

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN134

THE DEPUTY PRESIDENT: Mr Tomisich, any response to the objection?

PN135

MR TOMISICH: Yes. The question that we would press is that those minors, to the best of our understanding, would require permission to be privy to those discussions and, Louise, if I - - -

PN136

THE DEPUTY PRESIDENT: You are stating a legal proposition.

PN137

MR TOMISICH: Yes.

PN138

THE DEPUTY PRESIDENT: Well, you just make that in your submission, don't you? Do you need to get the witness to agree with legal propositions? It's not going to convince me one way or the other.

PN139

MR TOMISICH: Louise, can you provide us information whether permission would be required for minors to be privy to discussions?

PN140

MR McDONALD: I object again. This has been dealt with by the Deputy President. This is a matter for submissions.

PN141

THE DEPUTY PRESIDENT: Yes. Move on.

PN142

MR TOMISICH: Why in your view, Louise, would it be of more benefit to utilise the conference room in question as opposed to the staffroom?

PN143

MR McDONALD: I object again. The question is not clear. Who is this meant to be more beneficial to?

PN144

MR TOMISICH: We say the entirety of the staff that may be present in that particular facility who may or may not - may or may not - be comfortable with union representation, the union members, otherwise discussing in union matters.

PN145

MR McDONALD: I object to the question on the basis of before, that this is purely speculative, and Ms Gallagher, through no fault of her own, can't give any probative answer to that question.

PN146

THE DEPUTY PRESIDENT: Yes. I reject the question. Move on.

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN147

MR TOMISICH: Ms Gallagher, can you confirm that there are any employees that may not have coverage for HSU membership?---Yes.

PN148

Whom may they be?---Our registered nurses.

PN149

Ordinarily who would the union be? So, for example, would it be the ANMF?---Yes, the Australian Nurses Association.

PN150

MR McDONALD: I object. It's a leading question.

PN151

MR TOMISICH: Sorry.

PN152

THE DEPUTY PRESIDENT: And midwives.

PN153

MR TOMISICH: Yes, Midwifery Federation.

PN154

Can you explain if there would be employees that would not be HSU members?---Yes, there would be - - -

PN155

MR McDONALD: I object. Ms Gallagher is not aware who is and isn't a member of any particular union within her facility.

PN156

THE DEPUTY PRESIDENT: She may be. Maybe that needs to be established.

PN157

THE WITNESS: Am I answering?

PN158

THE DEPUTY PRESIDENT: Yes?---Yes. Yes, I am aware of who is with a union and who isn't.

PN159

And how? How are you aware?---Just purely by them telling me. I like to know and make sure that there is union coverage for the staff.

PN160

MR TOMISICH: Has any employee expressed their inconvenience in previous occasions in which HSU has held union discussions in the staffroom?---Yes.

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN161

And what was the nature of those discussions or representations made to you?---I was approached by two staff after Karen's most recent visit. Their words, they felt harassed - or one of them definitely felt harassed. She was a CSE. The other staff member was an agency-registered nurse. The agency-registered nurse was not involved in the conversation. She was just in the lunch room and was uncomfortable with the conversation.

PN162

Ms Gallagher, can you explain to the best of your understanding how many people would comfortably fit in the staffroom as opposed to the conference room proposed?---So the staffroom - sorry, I'm just referring to the photo - is a lot smaller than the education room. The staffroom is - if you go via COVID rules of safe distancing and social distancing, four - there is a sign in that staffroom indicating that four is the maximum and the education room is 10.

PN163

So if I might request some more clarification with respect to that. Given that we are now outside of COVID restrictions being as, let's say, prohibitive that they were previously, could you give an indication still to the Commission what would be a reasonable amount of persons within - employees within that particular room that may or may not be HSU members or in fact coverage-wise would not be HSU members?---Sorry, I'm not really sure what you're asking.

PN164

So what I'm putting to you, if COVID restrictions were not applicable to that room, what would be a fair estimate of how many employees could be in that particular room - this is the staffroom?---Yes.

PN165

As opposed to the conference room?---Okay. Well, first of all, we are still - under aged care we are still under the rule of COVID restrictions for infection control reasons, so I'll put that out there first, but, if there was no COVID, comfortably four, possibly five in the staffroom. There is a table that only seats four in there. The education room would hold 10 to 15. There is a large conference table in that room with 15 chairs around it.

PN166

So, Ms Gallagher, would it be fair to suggest that it would actually be of more benefit to the applicant for those discussions to in fact be held in the conference room that's proposed?---Well, yes, you would get more people in there.

PN167

Can I ask whether in your previous experience - or currently for that matter - do employees in fact eat their lunch within the conference room occasionally?---Do the employees eat their lunch in there? I have seen them in there eating their lunch. They are free to go - that's staff only in all those areas beyond the stairwell indicated in the photo, so they can go out on that veranda also.

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN168

So it would be fair to suggest that there is no restriction as to an employee - - -

PN169

MR McDONALD: I object. This sounds like a leading question.

PN170

THE DEPUTY PRESIDENT: He hasn't finished yet.

PN171

MR TOMISICH: To suggest that employees do utilise that conference room for the purposes of eating their lunch?---Sorry, you've dropped out a little bit. Are you asking me am I aware of people using that conference room for their lunch?

PN172

Correct?---Yes. The home and community care office is also beside that. We also run home and community care out of the facility, and the team members use the kitchenette that in adjacent to or within that education room. So there is a small kitchenette to the side and the home and community care staff utilise that, as well as the maintenance who has an office down the back there, to do things like heat their meal up if they've got a heated meal.

PN173

So correct me if I'm wrong: with respect to the kitchen utilities, they are in fact in a separate but close location to the staffroom or - - -?---There are two. So the

staffroom has its own separate kitchenette and utilities, as well as the education room also has that for the purpose of - like we are running now, the Skilled Care students can eat within that room or out on that veranda and use that kitchenette within the education room.

PN174

Would it be fair to say that given the proposal that we are offering to be held in the training room, access to the alternative kitchen utilities outside of the staffroom could be utilised?---Yes. If the education room is being utilised by anyone, the home and community care team and the maintenance team already know that they can utilise the kitchen. They already do that - the kitchen within the staffroom.

PN175

I think that will remain all the questions that - the witness evidence that's provided. Thank you, Louise, for your assistance.

PN176

THE DEPUTY PRESIDENT: Do you wish to tender the evacuation diagram?

PN177

MR TOMISICH: Yes, Deputy President.

PN178

THE DEPUTY PRESIDENT: Any objection, Mr McDonald?

*** LOUISE PATRICIA GALLAGHER

XN MR TOMISICH

PN179

MR McDONALD: No, no objection to the diagrams.

PN180

THE DEPUTY PRESIDENT: So the evacuation diagram, which is at page 2 of the 15-page document, titled 'Evacuation diagram Aged Care Plus', will be exhibit R2.

**EXHIBIT #R2 DOCUMENT TITLED 'EVACUATION DIAGRAM
AGED CARE PLUS'**

PN181

THE DEPUTY PRESIDENT: Any cross-examination?

PN182

MR McDONALD: Yes, but only short, Deputy President.

PN183

THE DEPUTY PRESIDENT: Yes.

CROSS-EXAMINATION BY MR MCDONALD

[11.35 AM]

PN184

MR McDONALD: Ms Gallagher, thank you for making yourself available on such short notice, firstly. You were asked at one stage if there were staff at your facility who don't fall within the coverage of the HSU and I believe you answered RNs; is that right?---There are RNs, contractors; such as our cleaners are contractors and our catering team are contractors. We also have Never Laid Electrical utilise the staffroom, as well, so there is a number of external contractors and I'm really not sure whether they are covered with HSU or not.

PN185

Other than these external contractors - - -?---Yes.

PN186

- - - you gave an answer of RNs?---Correct.

PN187

Have you read the HSU's rules?---No, I'm not part of the HSU.

PN188

So how did you come to the view that RNs do not fall within the coverage of the HSU?---Because I'm a registered nurse myself and I have never ever known a registered nurse to be part of HSU, so I apologise if I am wrong.

PN189

Are you aware that there are workers in Australia who have the possibility of being covered by more than one union?---Am I aware of that?

*** LOUISE PATRICIA GALLAGHER

XXN MR MCDONALD

PN190

Yes?---No, no.

PN191

You're not aware of coverage disputes between unions ever happening?---No.

PN192

I will attempt to share my screen, with permission, Deputy President.

PN193

THE DEPUTY PRESIDENT: Yes.

PN194

MR McDONALD: To show a copy of the HSU's rules.

PN195

THE DEPUTY PRESIDENT: How is this relevant?

PN196

MR McDONALD: It goes to the evidence that Ms Gallagher has given about coverage.

PN197

THE DEPUTY PRESIDENT: All right.

PN198

MR McDONALD: Can you see that - - -

PN199

THE DEPUTY PRESIDENT: If you are to be sharing the rules of the HSU, I was going to say how long are the rules? Only 45 pages - - -

PN200

MR McDONALD: I'm showing just the relevant part, Deputy President.

PN201

THE DEPUTY PRESIDENT: That's pretty short for union rules.

PN202

MR McDONALD: So there are - if I can scroll up to it, I confirm these are the HSU rules.

PN203

THE DEPUTY PRESIDENT: No, that's okay.

PN204

MR McDONALD: Part A. Can you see there, Ms Gallagher, in Part A(a)(ii) it says:

*** LOUISE PATRICIA GALLAGHER

XXN MR MCDONALD

PN205

The Union shall consist of an unlimited number of persons employed in or in connection with retirement homes and villages (excluding company or strata title retirement units) but including establishments which are attached to or have a nursing home or facility providing nursing care located within the grounds of the retirement village and further including retirement villages operated by religious organisations and/or charitable institutions and/or voluntary non-profit organisations.

PN206

Do you see any exclusion there for registered nurses?---No, but I believe for me it's just common knowledge that I'm not allowed to be part of the HSU if I'm currently registered and in management.

PN207

So there is no exclusion there for registered nurses?---No.

PN208

No?---No.

PN209

Can you go down a little to Part B:

PN210

The union shall also consist of all persons of good character who are admitted as members of the union who are employed as Chief Executive Officers,

Deputy Chief Executive Officers, Directors of Operations, Directors of Corporate Services -

PN211

it goes on and on. It also has:

PN212

Managers, Deputy or Assistant Managers -

PN213

et cetera. So managers and registered nurses, would you agree, are covered by the rules of the HSU?---Well, I'm not sure. I can't see the words 'registered nurses' there.

PN214

It says:

PN215

The union shall consist of an unlimited number of persons employed in or in connection with retirements homes and villages -

*** LOUISE PATRICIA GALLAGHER

XXN MR MCDONALD

PN216

et cetera. Are registered nurses employed in or in connection with retirement villages or charities operating them for those sorts of villages?---Yes, but you asked me if I could see registered nurses and - no. The answer is I can't see registered nurses in there.

PN217

But they are employed in there so they would fall within that definition, wouldn't they?---Of being employed by the aged care facility, yes.

PN218

Yes. Thank you. I'll stop sharing that now. You mentioned some previous complaints from Karen Wiles's most recent visit and one of those was from an agency employee to someone not employed by the Salvation Army, and you said that she felt harassed; is that right?---No. She overheard the conversation because she was having her lunch break in the staffroom. The original complaint had come from a care service employee.

PN219

So this agency staff member felt uncomfortable just hearing a discussion between a union representative and an employee?---Yes.

PN220

That agency worker could have left the room at any point, couldn't she?---Well, she's on her break, so probably wanted to utilise the most she could of her half hour.

PN221

But you have given evidence already that staff are allowed to have their breaks sort of anywhere within that staff area, including in the training room?---Possibly, yes. If she had chosen to, yes.

PN222

She could have. Is there also any outdoor area attached to the lunch room?---Yes.

PN223

So she could have gone out there?---I'm sorry, I didn't hear what you said.

PN224

She could have gone into that outdoor area?---She probably wouldn't have if she's not a smoker. That's where all the smokers go.

PN225

But there are other areas for any employee who wishes not to partake in a discussion with union representatives. They could go anywhere else?---It's designated as a staffroom. That is the only area that's designated as a staffroom and that would be on her orientation as an agency RN. The education room would not be told to an agency RN as being a staffroom, because we don't refer to it as the staffroom. It's a conference room or an education room.

*** LOUISE PATRICIA GALLAGHER

XXN MR MCDONALD

PN226

But any employees of Salvation Army could go into that education room?---If it's not being utilised by the home and community care team or by the maintenance team, then, yes, they could.

PN227

You also gave some evidence about previous use of that education room by that HSU?---Mm-hm.

PN228

It was two or three times?---Mm.

PN229

How often has the HSU used the lunch room to hold discussions?---I'm not a hundred per cent sure. I'm sure that Karen would know that information.

PN230

Do you receive the right of entry notifications?---I do, but I have had some extensive leave in the last 12 months.

PN231

So you wouldn't be able to hazard a guess over what has happened over the last 12 months in terms of where union discussions have been held?---I could say that I've seen her there twice in the last 12 months, but she doesn't make contact with me usually unless I'm at reception.

PN232

And when you say - - -?---Apart from the email.

PN233

So when you say 'there', do you mean the lunch room?---I'm sorry?

PN234

When you say you've seen her in 'there' two or three times, do you mean the lunch room?---No, in the facility.

PN235

Right. Okay. I don't have any further questions, Deputy President.

PN236

THE DEPUTY PRESIDENT: Any re-examination?

PN237

MR TOMISICH: Yes, Deputy President.

RE-EXAMINATION BY MR TOMISICH

[11.43 AM]

*** LOUISE PATRICIA GALLAGHER

RXN MR TOMISICH

PN238

MR TOMISICH: Louise, again Josh - Mr McDonald had talked to provisions of the HSU's materials that were tendered and talked about coverage. Now, can you confirm you have indicated that there were contractors, electrical contractors, that in fact attended the service?---Yes, many. Plumbers, electricians - mainly Never Late Electrical - aircon replacements. We've been going through a number of those recently and they're all offered the staffroom by maintenance - by the property team, as well.

PN239

Would it be fair to suggest that those same persons would be, if you like, in earshot to discussions held by the union within the staffroom?---Yes, definitely. It's not a big room. They would - yes, they would hear conversations; everyone's conversations.

PN240

Would those same persons or same contractors not be privy to those discussions if those same discussions were held in the proposed training room?---No, definitely wouldn't hear it.

PN241

If we go back to the evidence provided by Mr McDonald, is there any other employees or contractors that you may be aware of that may not fall under the coverage that was suggested by Josh?---Sorry, I don't understand the question. So are you asking me do I know of any other contractors that wouldn't be covered by HSU?

PN242

Yes, contractors or employees that would not be covered by the HSU in which Josh - Mr McDonald had referred you to in materials that he provided us?---Yes, I can list off all the contractors that we have had in there recently, as well as palliative - residents' families who have actually had to utilise the pathway

through the staffroom, as well. So we have a lot of plumbers in there at the moment for plumbing issues at Bethany. We have a lot of aircon replacements and that's site-wide aircon replacements, so they are there for a number of hours throughout the day. We offer to the fire training people, as well.

PN243

We offered the use of the staffroom - it's also, as I mentioned, a right of way for external access from the carpark; a right of way for any resident relatives that are staying. We offer a hospitality unit that is down the back of that corridor to any palliative care residents that are staying from out of town and have to come in in the middle of the night. We offer that two-bedroom unit down the back to them as a means of extending sympathies really at palliative care status of a resident and those families can only access the facility in through that staffroom, as well.

PN244

If I can put to you, would it be fair to say under the right of entry permit conditions that it would cover particularly contractors that we're talking about in these circumstances?

*** LOUISE PATRICIA GALLAGHER

RXN MR TOMISICH

PN245

MR McDONALD: I object. I don't think the question is clear. I'm not sure what is being asked.

PN246

THE DEPUTY PRESIDENT: Neither am I.

PN247

MR TOMISICH: Well, I'll put it - - -

PN248

THE WITNESS: I wouldn't think that a palliative care resident - - -

PN249

THE DEPUTY PRESIDENT: No, please do not answer the question because we're dealing with whether in fact it can be asked. Mr McDonald doesn't understand it, I don't understand it, so I don't know that your answer is going to be of any utility. You can rephrase or move on.

PN250

MR TOMISICH: Rephrase.

PN251

Within the right of entry notice that you received, did it cover contracting staff, cleaning or catering in specificity?

PN252

MR McDONALD: I object. That's not what a right of entry notification does.

PN253

MR TOMISICH: I'll move on, Deputy President.

PN254

THE DEPUTY PRESIDENT: Yes.

PN255

MR McDONALD: The right of entry notification is in evidence.

PN256

THE DEPUTY PRESIDENT: Yes.

PN257

MR TOMISICH: I think we'll leave it at that, Louise, so thank you.

PN258

THE DEPUTY PRESIDENT: Thank you. I have a few questions.

PN259

Firstly, I might have missed it at the beginning, Ms Gallagher, but your position, what is it?---Centre manager, Bethany Aged Care, Port Macquarie.

*** LOUISE PATRICIA GALLAGHER

RXN MR TOMISICH

PN260

Thank you. I think I missed that, sorry. Now, you gave evidence in relation to previous attendances by Ms Wiles and you said pre-COVID 2021 there would be meetings in the education room?---Yes. I can actually still see the people that were in there.

PN261

What happened post-2021?---I don't understand - so, yes, I noticed she had moved everyone to the staffroom.

PN262

So is it the case - and I'm just trying to understand this, but when you said at least two or three times prior to COVID, how often does Ms Wiles attend the facility on average each year?---Because I don't physically see her and because this last year is a bad example, I would say probably three.

PN263

Nothing further from me. Any questions arising from my questions, Mr Tomisich?

PN264

MR TOMISICH: Deputy President, no, no. No further questions.

PN265

THE DEPUTY PRESIDENT: Mr McDonald?

PN266

MR McDONALD: No, no further questions. Thank you, Deputy President.

PN267

THE DEPUTY PRESIDENT: Thank you. You're excused, Ms Gallagher. You can remain and watch the proceedings if you wish or get on with life?---Thank you very much. I shall leave. Thank you.

<THE WITNESS WITHDREW

[10.51 AM]

PN268

THE DEPUTY PRESIDENT: Any further evidence from the respondent?

PN269

MR TOMISICH: No further evidence, Deputy President.

PN270

THE DEPUTY PRESIDENT: Anything in reply, Mr McDonald?

PN271

MR McDONALD: No further witness evidence. If we could just move on to our submissions.

*** LOUISE PATRICIA GALLAGHER

RXN MR TOMISICH

PN272

THE DEPUTY PRESIDENT: What do you wish to put?

PN273

MR McDONALD: So, to start, we rely on the application and the annexures that were filed. The view of the HSU is quite clear here; section 492 of the Act, particularly subsection (2) of section 492, is clearly enlivened. There is a valid right of entry in play by a valid permit holder. That seems to be agreed between the parties.

PN274

There has not been agreement on where the permit holder is to hold these discussions with workers, which brings us to section 492(2) - which meets the criteria, sorry, of subsection (2), which brings us on to subsection (3) which is that the discussions may be held in a room. Where there is no agreement, a room that - I may as well read the actual language so I don't get it wrong:

PN275

The permit holder may conduct the interview or hold the discussions in any room or area: (a) in which one or more of the persons who may be interviewed or participate in the discussions ordinarily take meal or other breaks; and (b) that is provided by the occupier for the purpose of taking meal or other breaks.

PN276

That is the staffroom that is being talked about between the two parties. Nothing that has been put on by the respondent in either its evidence or submissions does anything to take away from this section. If I can speak to the submissions of the respondent. Firstly, there are a number of errors in it that I would like to address. If I can speak to the numbered paragraphs in the respondent's submissions, numbered paragraph number 2, that the employer's request for

discussions to be held in the RAT testing room is in compliance with sections 484 and 500 of the Fair Work Act.

PN277

Section 500 is that a permit holder must not hinder or obstruct anyone while carrying out their duties and section 484 says nothing that is really of relevance to this dispute. It's just the right for a permit holder to enter a workplace and hold discussions. The request from the respondent that these meetings be held in the RAT testing room or training room, as the case may be now, do not go to sections 484 or 500 at all.

PN278

THE DEPUTY PRESIDENT: Okay, but you tell me why we're here. What section of the Act do you apply under and what are you seeking from me to do?

PN279

MR McDONALD: Section 492 - - -

PN280

THE DEPUTY PRESIDENT: Yes.

PN281

MR McDONALD: - - - is the section that we say is the section we're relying on, which is quite simply if the parties do not agree on where to hold the discussions, subsection (3) provides that where there is no agreement, those discussions are to be held in - if I'm summarising - a lunch room.

PN282

THE DEPUTY PRESIDENT: Yes, but what do you want me to do?

PN283

MR McDONALD: So we are seeking an order, as is in the application - an order from the Commission that the applicant be able to hold those discussions in the staffroom.

PN284

THE DEPUTY PRESIDENT: Now, the powers of the Commission are outlined under section 505 and my powers are to determine the types of rights the parties concerned should have rather than an adjudication of existing legal rights. What relief are you seeking?

PN285

MR McDONALD: Simply, again, an order that the HSU be able to hold its discussions in the staffroom for the reasons that have been discussed already. This is where staff have their breaks. It is where they are available to have these discussions. It is where they are on break and it is where they have their discussions. It is envisaged by parliament that this is an appropriate place to hold these discussions.

PN286

It is the respondent's evidence insofar as people who are or aren't members of the union, is irrelevant to this. Right of entry is to hold discussions with people who are members and who aren't members. There should be no caveat imposed on the ability of a permit holder to speak to workers in an area simply because they aren't members. It would undermine the right of entry system.

PN287

I note that what the respondent relies on in its submissions is that the Commission can make an order or resolve the dispute by restricting the right of entry under section 508 if the right of entry has been misused. There has been no misuse of a right of entry. The Act does not impose any particular obligation on permit holders to agree with an employer or, you know, the occupier of a premises on where discussions are to be held.

PN288

There is nothing in there that says they must concede on certain grounds or other grounds. Likewise, there is nothing that would impose an obligation on the employer or the occupier of the premises to concede on any ground. That is why there is this default room - or default area to hold discussions. It is for exactly this type of situation where the parties cannot agree on where to hold the discussions. There is a default set down by parliament.

PN289

To give any other order other than to, you know, just allow what is envisaged by the legislation would be to undermine the right of entry of a permit holder, particularly in circumstances where there are no restrictions on her permit. There is no allegation of misuse of her permit. She is, for all intents and purposes, an ideal permit holder simply seeking to exercise basic rights to be able to discuss what is, you know, an historic decision by the Commission with workers who are affected by that decision.

PN290

I note, as well, it was the evidence of the respondent that cleaners and food service workers aren't affected by this decision and that is completely wrong. They have received a pay rise and it is exactly those types of comments coming from an employer which is why it is so crucial that union officials are able to speak to workers directly in a way that's accessible to them, at a time that's accessible to them, in a location that's accessible to them which for most of them is on their lunch break in the area that they're having their lunch break.

PN291

This is a nation-changing decision that has been handed down last Friday and of course our officials are trying to speak to as many affected workers as possible to let them know about that decision. They clearly can't rely on the advice of their employer, because their employer's advice is clearly wrong.

PN292

THE DEPUTY PRESIDENT: What is wrong?

PN293

MR McDONALD: The employer's position that they put in their submissions - in their evidence that food services workers and cleaners are unaffected by the work value case. They have received a pay rise through the work value case and that should be explained to them.

PN294

THE DEPUTY PRESIDENT: We are now talking about the difference between the education room adjacent to the staffroom and the staffroom; correct?

PN295

MR McDONALD: We are.

PN296

THE DEPUTY PRESIDENT: At the time the application was lodged it was a difference between the RAT testing room and the staffroom.

PN297

MR McDONALD: That's correct.

PN298

THE DEPUTY PRESIDENT: One wonders what could have occurred if in the intervening period there had been discussions between the parties to narrow the position between them. The narrowing has only occurred under the auspices of the Commission this morning; correct?

PN299

MR McDONALD: That's correct.

PN300

THE DEPUTY PRESIDENT: And the obligation is on the parties to make a genuine effort to try and agree prior to the default position becoming available; correct?

PN301

MR McDONALD: There is, and we have tried to agree on a room to hold those discussions. It just so happens that the room that we tried to agree on is also the default room.

PN302

THE DEPUTY PRESIDENT: But the other room is right next door and is bigger, and it would be a matter of metres away; a matter of five steps.

PN303

MR McDONALD: It is not where - - -

PN304

THE DEPUTY PRESIDENT: I'll stop talking.

PN305

MR McDONALD: So it's not where workers typically have their lunch. The evidence was that I think occasionally Ms Gallagher has seen people in there. It's

not where they actually go and sit and have their breaks, and it's not where the smokers are.

PN306

THE DEPUTY PRESIDENT: You don't have to meet where somebody might eat. You meet in an agreed position or, if there can't be reasonable agreement, then you go to the default. Now, I'm putting it squarely to you, have we got to the point where we go to the default? That's what I'm concerned with.

PN307

MR McDONALD: I believe we are. We would still press that the HSU has been reasonable in trying to come to an agreement over where to hold these discussions. Subsection (2) of section 492 does not have an obligation of not reasonably agreeing, it's just where they cannot agree, and that is clearly enlivened now; the parties cannot agree. I'm not saying at all that the HSU have been unreasonable or especially that the Salvation Army has been unreasonable. Reasonableness isn't a factor in whether or not the two sides agree. It's just whether they do agree or not and clearly they have not agreed.

PN308

THE DEPUTY PRESIDENT: Yes. Anything further?

PN309

MR McDONALD: Nothing further.

PN310

THE DEPUTY PRESIDENT: Mr Tomisich.

PN311

MR TOMISICH: Yes, certainly, Deputy President, I think the point of distinction here is that there was no discussions that were held before reaching an impasse and providing - I should say - I will retract that. The respondent had not engaged in discussions with respect to alternatives before reaching an impasse with respect to the agreement or reaching an agreement and on that basis argues they should simply fall back on the default position under the legislation.

PN312

We would argue that given the fact that there was no alternative discussed but for the staffroom, that the Commission should take that certainly into account in deciding whether to exercise their powers - your powers under section 505 when taking into consideration automatically falling back to, as discussed, the default position insofar as it must. We would argue again 'may' is the wording under that particular provision as far as I understand the case to be, therefore, not mandating the fact that we should otherwise be forced to fall back on a staffroom, so I think that would be our primary submission.

PN313

A further submission that we would seek to apply is that again insofar as the argument with respect to plumbers - the evidence that was provided insofar as plumbers or contractors or the like, those very contractors in fact are not employees of the TSA and on that basis still utilise, or may otherwise utilise, the

staffroom. Our argument would be that the purposes of the HSU's attendance on site should reasonably be confined to the employees of the TSA and not external persons, contractors or stakeholders for that matter.

PN314

On that basis we would submit that the Commission consider exercising their powers under 505 on those two bases. That's all. Thank you, Deputy President.

PN315

THE DEPUTY PRESIDENT: Thank you. Anything in reply?

PN316

MS WILES: Was that directed to me?

PN317

THE DEPUTY PRESIDENT: No, no, Mr McDonald.

PN318

MS WILES: Okay. Sorry.

PN319

MR McDONALD: Can you hear me now?

PN320

THE DEPUTY PRESIDENT: Yes.

PN321

MR McDONALD: In relation to the contractors, whether they are direct employees of the respondent or contractors is completely irrelevant to the exercise of the right of entry to hold discussions. What is relevant is whether they are workers who are either members or potential members of the HSU. As you saw from the rules, the evidence from the respondent is that they haven't read the HSU rules so they're not in any position whatsoever to make any kind of submission about who is and isn't covered by the HSU.

PN322

It was quite clear, it is anyone who is employed or in connection with a nursing home or retirement village or a charity that provides such services. Contractors working in those places are employed in connection with those places. I don't want to turn, you know, what should be a simple right of entry dispute into a rules determination, but we say that these submissions in relation to contractors have no relevant whatsoever. There is also no evidence put forward at all by the respondent that these contractors would be uncomfortable or feel harassed or any other thing by the mere presence of a union official in a lunch room.

PN323

The other thing that I wanted to speak to was the respondent's submission on the meaning of the word 'may' in section 492, that it's not mandatory. You know, they seem to be going with the idea that it's just a possible thing. I would submit the definition of 'may' in the Cambridge Dictionary has a number of definitions. One is, 'Used to express possibility,' as in that, you know, something

may occur, something might happen. It's possible that something could happen. The other definition is, 'Used to ask or give permission.'

PN324

Now, our submission is that it is this second definition, 'Used to ask or give permission,' that is the correct definition in circumstances of these sections of the Act. It would be nonsensical for a section of the Act that is essentially dealing with a deadlock, providing a default area when there is a deadlock and a lack of agreement between parties, to say, 'Well, it's possible that you could hold discussions in this area.' The legislation would clearly be saying, 'That permit holder has the permission to hold the discussions in this area,' when it says, 'The permit holder may hold those discussions.' If read in the context of the Act, it is clearly about providing permission to that permit holder. That is our submission there.

PN325

When it comes back to it, that is all the HSU is asking for, simply to follow the legislation, reject outright the respondent's submission that there has been no discussions. There is clear email correspondence attached to the HSU's application. There are descriptions of phone calls between the HSU and the respondent in that application. There have been discussions between the parties about where the discussions with workers would be held.

PN326

The result of those discussions is that the parties have not agreed on where to hold the discussions, hence section 492(2), which flows on to subsection (3) which provides that where there is no agreement the room is the lunch room. Nothing put forward by the respondent has challenged in any way how those sections operate or, in my submission, say anything to contradict the submissions of the HSU.

PN327

They have not made out any misuse of Ms Wiles' right of entry permit, so it would be inappropriate in the circumstances to place any restriction on her right of entry, which is all that they have asked for in their submissions.

PN328

THE DEPUTY PRESIDENT: Anything further?

PN329

MR McDONALD: Nothing further.

PN330

THE DEPUTY PRESIDENT: Am I to understand it that Ms Wiles seeks to enter the premises today?

PN331

MS WILES: That's correct.

PN332

THE DEPUTY PRESIDENT: Am I to understand that Ms Wiles is based in the Port Macquarie area and hasn't travelled specially to Port Macquarie to particularly visit the premises today?

PN333

MS WILES: I live outside of Wauchope, so I don't actually live in Port Macquarie.

PN334

THE DEPUTY PRESIDENT: So, what, Wauchope is 15 kilometres from Port Macquarie?

PN335

MS WILES: Yes, and I'm about five kilometres further west from Wauchope.

PN336

THE DEPUTY PRESIDENT: Yes, provided there is not a flood.

PN337

MS WILES: Yes. We get that a lot.

PN338

THE DEPUTY PRESIDENT: Yes, I understand. Well, bearing in mind the urgency of the matter and the intent of the applicant to enter the premises today, I will issue an extempore decision. The applicant has sought effectively a finding by the Commission that their organiser, Ms Wiles, should be permitted to hold discussions with employees pursuant to a notice of entry in the staffroom of the respondent's premises at which employees ordinarily take meals. It is in evidence in the matter a map of the premises and one can gain a ready understanding of the geography of the premises from that map.

PN339

Prior to filing the application, the applicant took a number of steps. The applicant served a notice - on the form 2 entry notice - on the respondent, dated 20 March 2024. Subsequently there was telephone contact between Ms Wiles and the respondent, at which senior management advised that the visit and meeting of employees should be undertaken in the rapid antigen testing room at the premises. The permit holder verbally advised the respondent that the RAT room was inappropriate and that the staff lunch room was the preferred location.

PN340

On 20 March 2024, the HSU responded noting the provisions of section 492 of the Act. The HSU requested written confirmation from the employer that the union visit planned for 21 March would be conducted in the lunch room. The employer provided a response indicating that they saw the rapid antigen testing room as the appropriate place for the meeting. Thereafter, the applicant commenced these proceedings.

PN341

During the proceedings today there has been a refinement in the position of the respondent. Whereas the respondent has previously asserted that the appropriate

meeting place was the rapid antigen testing room, they now have identified what is generally referred to as the training room that may be vacated (because apparently in use) in order to allow for meetings between the HSU and staff.

PN342

Turning to the legislation, section 492 does not operate in a manner whereby the default position of the attendance and discussions in a room or area where persons ordinarily take meals or other breaks is arrived at without some necessary steps being undertaken. As was made clear by the Commission in *CMFU v Austral Bricks* [2014] FWC 5407, there must be, as a minimum, genuine effort to try and agree to the location of the meeting.

PN343

I consider the facts in this matter do not disclose what might be described as a genuine effort to try and agree and, to the contrary, have merely involved a pursuit of the default position as the only position that might be reached. Upon that finding that there has not been a genuine effort to try and agree, the gateway to section 492(3) has not been satisfied and I would not entertain the relief sought by the applicant.

PN344

By further example and support for my conclusion that the appropriate steps have not been undertaken, I note that the refinement of the position of the parties in the conference today itself indicates that further discussions could have been successful in achieving an agreed position, such as is sought by the Act, prior to proceeding to the default position.

PN345

Having dealt with the substance of the application, however, I also wish to issue a recommendation in relation to the further progress of the matter and the relations between the parties. It is abundantly clear on the map of the premises that the use of the rapid antigen testing room in a position so isolated from staff, so isolated from their staffroom and effectively tucked behind reception, accessed through a storeroom, would have been a completely inappropriate proposal for discussions with employees.

PN346

However, as the matter has developed through discussions, as it should have, there has been a refinement in the respondent's position to the training room that is directly adjacent to the staffroom. Whereas the staffroom has the capacity of four to five employees under imposed COVID restrictions, the training room has the capacity of 10 to 15 employees. I also note the geography and the adjacency of those room would allow for simple notice to be placed indicating the presence of the union in the training room to ensure ready access to the union by employees.

PN347

In those circumstances, I issue the recommendation that the appropriate room for the discussions would be the training room. That disposes of the matter. That is an extempore decision that will be published as soon as the transcript is available. I will also aim to - provided there is no objection from any party - annex a copy of exhibit R2, being the map, which possibly somewhat rudimentary circling of the

three relevant rooms to the consideration of this matter in order to allow a better understanding of anyone reading this decision as to what it has all been about. Any objection to that being annexed to any decision published? Mr Tomisich.

PN348

MR TOMISICH: Not at all, Deputy President. Thank you.

PN349

THE DEPUTY PRESIDENT: Mr McDonald?

PN350

MR McDONALD: No objection.

PN351

THE DEPUTY PRESIDENT: Anything further today?

PN352

MR McDONALD: Nothing further. Thank you, Deputy

PN353

President.

PN354

MR TOMISICH: Nothing further. Thank you.

PN355

THE DEPUTY PRESIDENT: Thank you. The matter is adjourned indefinitely.

ADJOURNED INDEFINITELY

[12.22 AM]

LIST OF WITNESSES, EXHIBITS AND MFIs

EXHIBIT #A1 APPLICANT'S BUNDLE OF DOCUMENTS.....	PN19
EXHIBIT #R1 RESPONDENT'S REPLY PLUS THREE ATTACHED PHOTOGRAPHS	PN41
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EXHIBIT #R2 DOCUMENT TITLED 'EVACUATION DIAGRAM AGED CARE PLUS'	PN180
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