

- 1) CHAIR:** Do you believe that the views of employees covered by an agreement should be taken into account in applying the BOOT test?

The AMWU is seeking to clarify the response provided by our witness to this question.

It is the view of the AMWU that enterprise agreements are not like contracts that require individual consent; it is the consent of the majority. The function of the BOOT is to ensure that all workers that are covered by an enterprise agreement is at least better off than they would be if their pay and conditions was determined by the relevant Award.

The BOOT provides protection for those workers who may be occupationally different from the majority of the workers on a site (eg maintenance workers, clerical workers) or from a weak bargaining position (such as apprentices) that their minimum conditions cannot be traded away to support a better outcome for the majority.

More detail on the types of workers covered by the AMWU that would be worse off in a system where the majority could make agreements that left a minority worse off can be found in our submission.

- 2) CHAIR:** Do you support the focus on actual circumstances rather than hypothetical circumstances?

The AMWU is seeking to clarify the response provided by our witness to this question.

The AMWU notes that the nominal expiry date of an enterprise agreement can be four years after the date of approval; and will continue to operate until it is replaced by a new enterprise agreement or terminated by the Fair Work Commission.

In the experience of the AMWU that the duration of an enterprise agreement can see changes in the pattern of work performed by employees that can result in different entitlements arising under the Award. This is particularly the case for enterprise agreements that cover labour hire workers as their employer may win new contracts during the term of the enterprise agreement that are dealing with industries that have different patterns of work than what was contemplated when the enterprise agreement was first made – for example labour hire companies supplying maintenance workers might win contracts to supply mining operations with workers. Different shift patterns can give rise to different entitlement under an Award and an enterprise agreement would be required to be better off than the Award under all these circumstances.

It is important that the BOOT be applied in such a way as to cover the actual shift patterns for existing workers and hypothetical patterns for the changing needs of the enterprise during the lifetime of an agreement.