

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 4146 of 1992

**IN THE MATTER OF** an application by  
the Australian Social Welfare  
Union pursuant to section 23 of  
the act for hearing to vary the  
Community Services Award

re making of a new award

COMMISSIONER GOZZI

HOBART, 23 December 1992

TRANSCRIPT OF PROCEEDINGS

Unedited

COMM. GOZZI: Appearances in 2225 of '89 and 2311 of 1990 could I have those, because those matters were joined some time ago. So I'll take appearances in those matters first.

MR I. PATERSON: If the Commission pleases, Ian Paterson appearing for the Australian Social Welfare Union.

COMM. GOZZI: Thank you Mr Paterson.

MR W.J. FITZGERALD: If it pleases, I appear on behalf of Tasmanian Confederation of Industries, Fitzgerald, W.J. and with me the Reverend Doctor R. Rayner, thank you.

COMM. GOZZI: Yes, thank you Mr Fitzgerald.

MR WARWICK: Mr Commissioner, I'm not sure whether those matters, the ones you just mentioned are the title and scope matters. We did seek leave to intervene in respect to those at the time. I'm unclear as to the status of the application, but they are listed today.

COMM. GOZZI: Yes, Mr Warwick. 2311 and 2225 of 1989 have got to the stage of an award being made in respect of title and scope and that was consequential to the - the scope was made as a matter of course following discussions you had with the T.C.I. and the Australian Services Union going to the question of scope and included certain demarcations agreed between the HSUA and ASU. Now I think the HSUA decided that it would not be involved, given those demarcations which are contained in the scope clause, it would not be involved in further proceedings going to the body of the award. Is that how you recall it?

MR WARWICK: I can't say that that's my recollection, Mr Commissioner.

COMM. GOZZI: What is your recollection?

MR WARWICK: That we gave a commitment that we would not be seeking an interest in the award on the basis of the demarcation.

COMM. GOZZI: So you're saying that you would want to be involved in the proceedings?

MR WARWICK: I think we'd seek leave to intervene simply on the basis to monitor the demarcation agreement. Nothing more than that.

COMM. GOZZI: So in respect of 2311 of 1990 and 2225 of 1989 your application for intervention arises consequential to the making of a new award in respect of title and scope?

MR WARWICK: I think contents are relevant as well, sir.

COMM. GOZZI: Yes, but your intervention arises now because

that new award has been made in respect of title and scope and you want to intervene in respect of what may follow?

MR WARWICK: Yes.

COMM. GOZZI: All right.

MR WARWICK: I should say that, while I'm on my feet, I mean obviously you'll need to address the question of the intervention, but perhaps to save time - the demarcation agreement which has been reached between the parties has been a very effective document and I'm sure Mr Patterson would share that view and we simply seek leave to intervene on the basis to ensure that we follow through in relation to that.

COMM. GOZZI: All right, thank you Mr Warwick. Is there any objection to the intervention?

MR PATERSON: On behalf of the Union, Commissioner, I quite agree with what Mr Warwick has just said. The other point I suppose in fact is that the ASWU was the only union that sought an interest in the award and has in fact been added. I think the fifth clause, or effectively the fifth clause of the award and at this point we've got no objection to the Health Services Union intervening in these proceedings.

COMM. GOZZI: What about you, Mr Fitzgerald?

MR FITZGERALD; Commissioner, if I could say that, likewise, we have no objection to the HSUA intervention here this morning.

COMM. GOZZI: Thank you, well the intervention is granted, Mr Warwick. Now appearances in the matter 4146 of 1992, are there any appearances in that matter?

MR PATERSON: If the Commission pleases, Ian Paterson for the Australian Social Welfare Union.

COMM. GOZZI: Thank you.

MR W.J. FITZGERALD: If it pleases I appear on behalf of the Tasmanian Confederation of Industries, Fitzgerald, W.J. and with me the Reverend Doctor R. Rayner.

COMM. GOZZI: Thank you, Mr Fitzgerald.

MR WARWICK: I simply seek leave to intervene on the same basis of the previous submissions, Mr Commissioner.

COMM. GOZZI: All right. I'll take it there is no objection to the intervention? All right, leave to intervene is granted Mr Warwick. Now, Mr Paterson, we'll get this procedural matter woult of the way, is there any reason why 4146 of 1992 should not be joined with the other applications?

MR PATERSON: No, I see no reason why they shouldn't be joined. Basically our intent in putting that forward was to formalize the position that we've reached and given where we're at we can have a go to make sure that the matter was referred on and that the pace was kept rolling.

COMM. GOZZI: All right. Mr Fitzgerald?

MR FITZGERALD: There is no objection to the joining, sir.

COMM. GOZZI: All right. Well the applications are now all joined for hearing purposes and subject to what anybody has to say I intend to make application 4146 of 1992 the vehicle in these proceedings.

COMM. GOZZI: Well if there's no problem about that we'll use that particular application and the proposed variations as the principal file and perhaps you'd like to commence your submissions, Mr Paterson?

MR PATERSON: I take it that as the material was submitted as an award variation that all the parties, forward of me at least, have in fact received copies of that and I don't need to further circulate that, if I understand correctly.

MR FITZGERALD: Do you have a spare copy?

MR PATERSON: I do have spare copies here. I suppose I could quickly go through the content of what was in fact made available in terms of the application. The application sought to make the award in terms of the original application which I enclosed, so that is the original T2311 of 1990, which was the union's claim in its full form. That was then amended by four amendments, or attachments, which were in fact a classification - well headed: "Community Service Award Classification, User Guide and Glossary of Terms", which is in effect a classification structure for the award. The attachment A - I'm not sure what that last one - well starting the other way - the attachment A was a list of variations to the original claim, including at the end a consequential re-numbering of the arrangement clause. Attachment B was the classification structure. Attachment C was a proposed overview of that and relativities between the levels of classification and I think the D, the final one if I'm correct, was in fact a structural efficiency in award modernization type of amendment. So they, in fact, are the four. I tender a copy of those.

COMM. GOZZI: Well I don't need those copies. I won't mark them because I've got all that information.

MR PATERSON: So --

PRESIDENT: What I would like to see, Mr Paterson, is a consolidated document, cover to cover, which we can use as the vehicle, in which you can go through clause by clause and Mr Fitzgerald can then respond. And, of course, having regard to Mr Warwick's intervention the way that I intend for these proceedings to operate is that you would go first, Mr Paterson, followed by Mr Warwick, followed by Mr Fitzgerald and on the way back Mr Warwick you would then have right of reply, followed by final right of reply by Mr Paterson.

MR PATERSON: I can certainly endeavour to do that.

COMM. GOZZI: I think it would be useful, Mr Paterson, if we had the one document which really represents your claim, if you like.

MR PATERSON: Yes. Certainly in the time that was available to us and I hadn't prepared this basically to table on the 10th and consolidate the material on the 9th. So at that

point in time there was no opportunity to do that.

COMM. GOZZI: No, I'm just saying as far as -- this is not going to be over today.

MR PATERSON: No, no.

COMM. GOZZI: So it will be useful to have it all.

MR PATERSON: I will have to see what resources are available in our office. So I'll be looking at the period between now and the next hearing as to how that can be done. It may in fact be that I'm unable to do more than a cut and post job and it might not be a word processed version, but we will see what we can do with our office resources.

COMM. GOZZI: Well as I say it certainly well be useful for everybody, including myself to have an award document, proposed award document, cover to cover, which reflects in succinct terms the claims that you want to make and the areas that you want to explore in a way that everybody then can respond. It makes the whole process a lot tidier than having bits and pieces. Yes, okay.

MR PATERSON: While I'm on my feet I suppose it may well be appropriate for me to continue with what I have to say this morning, unless anyone objects to that?

COMM. GOZZI: Yes. No.

MR PATERSON: The classification structure was put to the Confederation of Industries and Doctor Rayner, representing the Community Services Employers Organization of Tasmania and I'm not sure of the date of that, but it was some eight to ten weeks ago and at our last meeting, which I guess was around four weeks ago, I presented the schedule of relativities between those positions.

The two other documents, while I'm on my feet, I'd like to table that the don't object, as far as I know have copies of, are my preliminary assessment of the survey that we did in terms of numbers employed, gender, full, part time, casual and a series of wages profiles. I'll tender that document as the Union's preliminary results of the survey. I believe the parties have copies of that.

COMM. GOZZI: Well we'll also start with new exhibit numbers. That will be ASU 1.

MR PATERSON: As far as the Commission is concerned at this time, as far as I know, the ASWU is still the registered union. As far as I understand it the ASU is in the process and has had discussions with other unions and that is yet to be finalized.

COMM. GOZZI: Well ---

MR PATERSON: I'm happy for it to be numbered ASU 1.

COMM. GOZZI: Well no, we'd better than make it ASWU 1.

MR PATERSON: The other document that is, I think, vitally relevant to this area and particularly relevant to some areas is a Federal Government policy called "Movement to Award Wages". This document has its greatest impact, or its policy has its greatest impact in the terms of Commonwealth funded programmes. Some organizations which receive wholly Commonwealth funding will be covered by this award, other organizations such as migrant resource centres receive substantial Commonwealth funding for particular positions and then there is a more complex issue yet to be resolved in terms of how this policy affects joint programmes and block granted funds that the State basically manages on behalf of the Commonwealth.

COMM. GOZZI: Well we'll mark this document Exhibit ASWU 2.

MR PATERSON: In terms of proceedings today I suspect that we're not in the point of arguing through the clause by clause and for the moment I leave my presentation at that and say that I would like to see the outcome of today to being the firm determination of hearing dates. My position in terms of timing is still one of, perhaps optimistically but certainly still the intent to see as much progress as possible towards the finalization and making of the award by the end of March.

COMM. GOZZI: Well what stage have you reached now, Mr Paterson?

MR PATERSON: We have had discussions, but I have received nothing back from the Confederation of Industries, the Community Services Organization. At our last meeting Mr Fitzgerald undertook to provide material as going to the question of what the TCI considered to be existing standards in State awards. That material is not in my hands at this point in time. So I put the material to the Confederation of Industries and the CSO too, but I suspect given the time of year, given the nature of the other commitments of the people involved in those organizations it has in fact proved difficult to progress any response to the documents that I have put before them. While we clearly would, I imagine, seek to have time in order to progress those discussions before the hearings I think that the setting of dates on which matters will be heard and argued will in fact provide the incentive and, you know, the driving force that will see as much response as is possible from the employing organizations in the industry as covered by this award.

COMM. GOZZI: So just recapping then, what you've got before me now in application 4146 of 1992 is reference to the original claim in 2113?

MR PATERSON: I believe that is correct, yes.

COMM. GOZZI: Yes, plus the attachments A, B and C.

MR PATERSON: A, B, C and D.

COMM. GOZZI: And D. And, as I indicated, it would be useful to bring all that together so it flows from start to finish?

MR PATERSON: Yes, I can undertake that. Attachment A, if I can just very quickly go through it, attachment A almost subsumes B and C. It goes to the question of classification and wages and refers to B and C, to identify those. It amends the contract, it proposes an amendment to the contract of employment clause, which is clause 8 in the T2311. It proposes amendments to clause 9. It argues for leave reserved in respect of sleep-over, which was not included in the original claim. It goes to amendments on clauses



12, 33, 35. It deletes clause 38, consequential upon the new bill being passed.

COMM. GOZZI: Right.

MR PATERSON: And it amends clause 41 and renumbers it, adds a new clause 41 on anti-discrimination and then basically consequentially renumbers the rest of the award - of the original application, including the arrangements clause.

COMM. GOZZI: So your last clause is superannuation still?

MR PATERSON: The last clause -- the original clause 40 becomes 42. The original clause 40 was ---

COMM. GOZZI: Rates and conditions.

MR PATERSON: ----rates and conditions to be maintained. That has become the last clause.

COMM. GOZZI: And 41 was superannuation.

MR PATERSON: 41 becomes 40, because of the loss of the preference clause, which can't be in the award matter.

COMM. GOZZI: Oh right, I see, yes.

MR PATERSON: Superannuation becomes 40, anti-discrimination becomes 41 and the rates to be maintained becomes 42.

COMM. GOZZI: Now seeing as I'm asking you to format the application, which included the attachments, I'm not sure if it is going to be a big problem for you or not, but it would be useful to have it in alphabetical order, in other words to follow the format of awards to the Commission generally.

MR PATERSON: I suppose what I --

COMM. GOZZI: You can talk to Mr Hunter about that. He'll give you some assistance with that, but it would be useful.

MR PATERSON: In terms of the index rather than the actual contents?

COMM. GOZZI: Yes, it starts off with the title, scope, arrangement and goes all the way through to clause 8: salaries and then after salaries it is alphabetical order.

MR PATERSON: Is that in terms of just the arrangement clause, or the actual contents of the award?

COMM. GOZZI: Well clause 1 to 8 is a standard format.

MR PATERSON: Yes.

COMM. GOZZI: And it goes title, scope, whatever. It's got

supersession --

MR PATERSON: Well if that's the standard format --

COMM. GOZZI: ---parties and persons -- supersession: parties and persons bound, definitions, salaries and what's clause 3 -- is the arrangement clause, right, and those standard clauses and after that they're in alphabetical order.

MR PATERSON: Yes. I suppose the way I've presented it it is probably more in line with the federal model which sees all the leave clauses aggregated and sees the TCR type clauses at the end and sees the hours, overtime type clauses at the beginning of that section. So ---

COMM. GOZZI: I see I suppose the way to start it would be to look at application 2311 of 1990, which you have got as part of 4146. It's the last document there.

MR PATERSON: Yes, yes.

COMM. GOZZI: Put the attachments in order and then just repaginate it, if you like, as you've got there on application 2311 of 1990, you've got title, scope, arrangement, date of operation, parties and persons bound, definitions.

MR PATERSON: Yes.

COMM. GOZZI: All that is in accordance with the way it is set out here. After that, after clause 8, after the salaries clause, if you then put it in alphabetical order and just looking at it it will just mean that --

MR PATERSON: Oh yes, that will ---

COMM. GOZZI: ---some of them, like civil liability and so and so forth, you've got that down with rates and conditions to be maintained and union membership and so on.

COMM. GOZZI: Just put those in alphabetical order.

MR PATERSON: Assuming that there is personnel and space on the computer to do that it should be no problem in having that done.

COMM. GOZZI: As I say Mr Hunter will be able to help you with that if needs be. Your new clause 41, anti-discrimination probably ought to be under (a), after clause 8, things like that. So your main attempt this morning, Mr Paterson, is to lock in some dates for a further hearing?

MR PATERSON: Yeah, I don't - I'm more than happy to go to arguments as to the relationship between the classification structure relativities and the survey results of existing rates and conditions, but clearly the main intent of these proceedings today I would see as being firming up dates for 1993.

COMM. GOZZI: Mm and it might be useful too just from a procedural point of view if the claim is reformatted. It really becomes a draft order in the end, if you like, to go through it seriatum. Title is agreed, scope is already agreed because they were done by virtue of full bench, arrangement is a machinery clause, date of operation - you might want to hold that over, parties and persons bound - supersession parties and persons bound, definitions and so on and away you go. Anyway I'll leave that to you. In your opinion is there any mileage in having further discussions with Mr Fitzgerald on the application?

MR PATERSON: I think the point is probably beyond just the discussions. I mean the material is before the Confederation of Industries. I think the expectation of the Union is that we're at the stage now where a response, or a counter-document is what is required. There are some matters that we have entered into preliminary discussions on I would see as being basically embraced by such a counter-claim if you like, or a statement of what is agreed, or --

COMM. GOZZI: So at this stage all that's happened is your document has been presented, but there's been no negotiation in your document?

MR PATERSON: There's been no formal negotiations as to relative clauses, or claim/counter claim. There has been some discussions about the difficulties using some of the areas that will be difficult to resolve and some preliminary toing and froing on the wages relativities as they were put up, but nothing - I just stand corrected by Mr Fitzgerald, but nothing that really amounts to anything beyond discussions and certainly nothing that comes to negotiating comparative positions.

COMM. GOZZI: You haven't sat around the table so to speak?

MR PATERSON: Not for the point of comparative position being on the table.

COMM. GOZZI: Just before you sit down Exhibit ASWU 1 --

MR PATERSON: Is the survey results.

COMM. GOZZI: Yes. What do they show in your opinion?

MR PATERSON: One of - I mean a number of striking characteristics about the nature of employment in the work force not surprisingly is the high predominance of women workers in the industry, but probably the single most outstanding feature in that to my way of looking at it was the very high proportion of casual employees. On the basis of the return, and there's one since I collated these, we're looking at something like a third of the workforce being employed casually. In terms of numbers of persons, not in terms of hours or wages bills or anything else, but in terms of the number of employees we're looking at close to a third of the workforce being casual.

COMM. GOZZI: Is that what you expected, or not?

MR PATERSON: It is much higher than I expected, I mean - and it may be that - I mean I think the survey is fairly representative. It was looking like twenty per cent and then in fact the Anglicare response came in and lifted the casual from twenty per cent to thirty-two and that reflects a high reliance on casual, or sessional counsellors in particular services. So, you know, I think the range and spread of responses from my overview of it indicates that it has covered the range and spectrum of services. There are very few gaps. There are - I think it is a fairly representative sample. So I think it is an order of magnitude, not a precise number, but somewhere between a fifth and a third of the workforce I would imagine is employed on a non-permanent basis.

COMM. GOZZI: Mr Paterson, I think we inspected something like about thirty-five places, didn't we? Thirty-five, thirty-six?

MR PATERSON: That's correct, yes.

COMM. GOZZI: Thirty-five. Out of those thirty-five how many responded to the survey?.

MR PATERSON: I haven't squared one against the other, so I can't give you an indication of that.

COMM. GOZZI: No. Did some respond though? Did some respond?

MR PATERSON: Some responded. Some responded. Yes, we got a fair cross-section. I would, just of the top of my head, guess that perhaps a third responded and I guess

some of the other third thought that the fact that they'd been inspected had done the job and no doubt in a lot of other places the survey just got snowed under the other work that presents itself to those organizations.

COMM. GOZZI: I mean look --

MR PATERSON: And for some, such as Anglicare, I mean the exercise of collating the response was a huge task given the size and diversity of the organization and their response is certainly appreciated, because it did fill the gap that was missing in terms of major, large, multi-service, state-wide organization.

COMM. GOZZI: We're looking at thirty-nine out of ninety-five responding that's very high. That's a good --

MR PATERSON: Yeah, I was pleasantly surprised. I mean basically we surveyed the thirty-five that we inspected plus another sixty.

COMM. GOZZI: Mmm.

MR PATERSON: I was aiming for a hundred for a round number, but for one reason or another there was a bit of double counting. I think we ended up sending out ninety-five.

COMM. GOZZI: It's a good return.

MR PATERSON: Yeah, it's a good return and my best guess, where you see under the first table the total number of employers - two hundred and forty, that's really just my best guess of the number of employers in the industry. So on the basis of the number of employers, and that's just a best guess, we surveyed close to forty per cent of the industry and got a forty per cent return, which in effect gives us a total employment of close to twenty-two hundred. And that's the other surprising result to me, because on the basis of other data available, such as ABS, which takes a lot of interpreting to bring it into the same definitional scope type terms as we deal with here, drawing out childcare, drawing out the disability services that are covered by the Health Services Union and best guesses I would have said eight hundred, six - eight hundred, maybe a thousand tops as the number of employees. So the survey has in fact somewhere between close to - or more than doubled the number of employees that I would have estimated to be covered by the industry as we've defined it. So I mean that's another - from that first page, or from the employment detail that and the casual employment are certainly the outstanding features.

COMM. GOZZI: Mmm. The other aspect, looking at the rates of the wages profile and as expected there is a great diversity, isn't there, there's a great range, starting off at twenty-three thousand and going through to forty-five thousand, five hundred and forty-six?

MR PATERSON: There certainly are and whilst the Union's position is for a generic wages structure that enables all positions to be embraced, for the purposes of presenting these results I found it useful to aggregate according to the particular groups of employees. There is some overlap. A small service might employ one person and call them an office manager. Arguably they could be a coordinator, or a service deliverer, but for the purposes of this analysis the group A are the directors, managers and coordinators; group B are the - both the generic and specialist social welfare positions, basically the service delivery positions; group C aggregate the supported accommodation and residential workers, residential shelter workers and the reason for that is clear when we look at those figure and the group D are basically the admin. support officers, admin. workers, office managers by and large, who perform, you know, a central role in the organization. And depending on how big and how complex the structure of the organization some of them may in fact grade up to directors and managers. The point of the group C is in fact they probably show the greatest uniformity and that tends to reflect the fact that the funding of those positions under the Supported Accommodation Assistance programme provides for a funding formula and services at best pay to the funding formula and in other services there is a redistribution of that formula to allow for higher wages to be paid to coordinators and lesser wages to the residential support workers. The top of the range in that category, the C3 - sorry, --

COMM. GOZZI: Yes, C 3 I think ---

MR PATERSON: C -- sorry, not C - B we're looking at --

COMM. GOZZI: Shelter workers - I was just going to --

MR PATERSON: Ah yes, there's an error in this. Yes, there is an error in this. B are the shelter workers, C are the administrators, D are - I mean so the group numbering on the first page is in fact incorrect. If you just leave the words in place it should be A, D, - A are the directors, B are the shelter workers. So if you renumber C - where it says group A, B, C, D, renumber C as B, renumber D as C and renumber B as D.

COMM. GOZZI: All right, so -- hang on a sec!

MR PATERSON: So where it says - under 'wages' - "for the purposes of preliminary analysis positions are grouped as follows--" it should in fact be group A director, Group D generic specialist --

COMM. GOZZI: Group D? Oh yes, that's right.

MR PATERSON: Yeah, A, D, B, C.

COMM. GOZZI: On the front page there.

MR PATERSON: Yeah on the second page under 'wages', yeah.

COMM. GOZZI: So it is A, D --

MR PATERSON: A, D, B, C.

COMM. GOZZI: B and C.

MR PATERSON: And looking at the D's the top rate of pay in those services in fact, Richmond Fellowship, which is outside of the State funding programme, is funded by a different source. So in fact the range within those services is even closer than this would indicate. I have attempted, in terms of the wages profile, to give some indication of the size of service and number of people either employees or volunteers of the services and whilst there is a diversity in range I think that within the existing rates and conditions you can find fairly close parallels, if not you know exact counterparts to the sort of wages position that the Union would advocate.

The top end of the salary range under Directors is in fact, as would be expected a statewide organization, is in fact Family Planning Association. That's leaving aside the sixty thousand dollar package.

COMM. GOZZI: Mmmm.

MR PATERSON: Which was in fact the Marriage Guidance Council and it is interesting that in those cases the lead, if you like, is being provided by Commonwealth funded organizations, the Family Planning, the AIDS Council, the Marriage Guidance Council, with substantial or totally Commonwealth funded services, do in fact pay and deliver the best rates and conditions.

There are some other issues that make it difficult to produce strict comparisons. For instance when you look at shelter workers the bottom end of the salary range is in fact at St. Vincent De Paul, where although effectively what they have done is lower the base provide for penalty rates and loadings that other services don't, so the accrued dollar/wage figure doesn't indicate the income, or the earnings of the individual workers because in that setting they actually receive penalty rates and entitlements that other employees don't. So the comparison ---

COMM. GOZZI: So that the nine dollars sixty--

MR PATERSON: The nine dollars sixty figure for a shelter worker is in St. Vincent De Paul where they are paid - for instance, on their weekend work they are paid a fifty per cent loading for Saturday and a hundred per cent loading for Sunday. So they in fact get paid loadings and their weekday supervisor gets a fifteen per cent shift loading.

And when you look to the 'conditions' details on the last two pages of this you'll see how rare that occurrence in fact is. And skipping to those last two pages on the conditions of employment I have put in a couple of --

COMM. GOZZI: So only two pay shift loading out of the one survey? One is St. Vincent De Paul and who is the other one?



The other one was, in fact, the Salvation Army establishment and the significance, I suppose, of those, is that they are two services that have drawn their existing rates and conditions from the Welfare and Voluntary Agencies Award and have tended to align to the provisions of that award and that has, in fact, included paying shift loading. Other services have sort of stabbed in the dark and done the best they could and loadings are not paid in those other five services so - and what I've done there under ours and - yes, under ours is I've provided the information from both the survey and the inspections. It's also interesting that of the other than the residential services the majority, far and away the majority of services work a Monday to Friday week. Thirty-one services or thirty-three services altogether and there were two exceptions to the Monday to Friday week of basically thirty-five services and one was that the family based Respite Care organisation which places personal care is on weekends and one other service reported and as required under the span of days of the week but clearly for other than residential services, Monday to Friday is the working week.

The overtime arrangements as reported by twenty-eight services were certainly no surprise to me. That basically two services provided for paid overtime, the first one being the Sexual Assault Service and the second one, I can't recall which service the second one was, it may again have been under the Salvation Army Services by virtue of their tying of rates and conditions to the waiver award. So clearly of twenty-eight services time in lieu was the norm and -

COMM. GOZZI: Time for time -

MR. PATERSON: Time off in lieu of overtime and by far the way the majority of those clearly - basically the overtime arrangements were reported by twenty-eight services, only two reported paid overtime which left twenty-six reporting time in lieu and of those twenty, twenty out of twenty-six, overtime was just an hour for hour overtime, effectively no loading and I think that's the biggest single area where existing rates and conditions will not support the standard that a union would want to see established in this area. There may be other ways of dealing with that problem and no doubt we have to deal with those in the future. But it's clearly an unacceptable arrangement to have people just working additional hours as defined as overtime because these arrangements were reported as overtime arrangements so they are over normal hours either by being an addition to normal hours or outside the spread of normal hours, people working just additional hours at additional ordinary time rates effectively.

COMM. GOZZI: I guess the point, you'll have to be a bit careful there. If overtime tracks to hours beyond the normal hours as opposed to necessarily being overtime beyond the spread of hours, the spread of hours could be seven 'til seven, say, or six 'til six, or whatever, and hours beyond that may not be overtime, they might be shift work or whatever.

MR. PATERSON: They may in fact be -

COMM. GOZZI: Yes, but you need, - I mean -

MR. PATERSON: Clearly it depends on how we define overtime and when overtime applies.

COMM. GOZZI: Yes, well any time outside spread of hours isn't necessarily overtime, that's the point I'm making.

MR. PATERSON: No, it's not necessarily overtime but for people who work, yes.

COMM. GOZZI: It depends what happens before. Now, the other point is that, do you know why, out of the respondents, not everybody reported on all the areas in the questionnaire?

MR. PATERSON: There were large gaps and there were clearly other areas where it was not relevant, obviously in the area of shift work, when outside of residential services there is very little shift work so that was very difficult to actually comply whether it was not applicable or not responded. There wasn't a, I mean, in some respects the questionnaire could have done with a piloting to identify some of the short comings in it, the major one being that not all organisations identified themselves on the questionnaire.

COMM. GOZZI: Then, you see, Notice of Termination, you've got thirty-two responses.

MR. PATERSON: The majority of the rest would have been no response, well, the rest would have been no response. So it would just not indicate any termination period, although some of them may, in fact, have indicated not applicable. So basically they were the twenty-three, the thirty-services that indicate that put in an indication as to Notice of Termination and that was their response. The others were either no response or a response that said something to the effect that it didn't apply. Which - and in those terms I've - we've drawn that as the - the conditions of employment section relates either directly by the response on the questionnaire or by an overview of the questionnaire to the organisation. By and large across the - within each organisation the conditions are fairly consistent and there may have been one or two cases where different positions indicated different entitlements but by and large it

was - there were some cases where that was the case, where there was an office worker or a day co-ordinator and shift workers, then obviously penalty rates and shift provisions did not apply to the co-ordinator, they tended to work day time. So they're basically an aggregation of the organisation or response.

COMM. GOZZI: All right, that's good. Now, the movement to award wages, can you just tell me again what the situation is there?

MR. PATERSON: My understanding of the origin of this policy is that it, in fact, originated, if you look to page two of the introduction, it originated with discussions between the Commonwealth Government, the A.C.T.U and A.T.S.I.C, the Aboriginal and Torres Strait Islanders Commission, which was largely in the areas of Aboriginal tribe care and I think Aboriginal hostels. That policy was extended in its making to include the Community Services sector. The guidelines provide that where appropriate awards are being phased in, whether that is in Community Services or Aboriginal and Torres Strait Islander organisations, where they are being phased in by the making of first awards or by the restructuring of existing awards and where the criteria identified are met, there may be between seventy-five and a hundred per cent of supplementary funding to those organisations, the basic criteria are that there is an involvement of D.I.R, the Commonwealth Department of Industrial Relations, appropriate restructuring and to rates and conditions not exceeding community standards. The document basically goes on to further talk about some of those standards.

COMM. GOZZI: So this provides supplementation up to award standard, presumably?

MR. PATERSON: That's correct. If you look at the -

COMM. GOZZI: Presumably to what might be - well, hang on, presumably to what might be determined in a proceeding such as this?

MR. PATERSON: Correct.

COMM. GOZZI: Mmm, okay.

MR. PATERSON: And my discussions with Lillian Burgess of the Department of Industrial Relations Office in Hobart indicate that and it's certainly unclear as to how it would actually happen but that the same policy could be applied to the Commonwealth Component of joint funded programmes and that if a state government receiving block granted money on behalf of the Commonwealth was to implement this policy, then there would certainly be an argument that the Commonwealth would be receptive to that would see that block grant of

money topped up on the basis of the state implementing this policy. But obviously that's a matter for political negotiation between state and federal, governments and industrial negotiation between employers and funding departments and the union remains more than happy to participate with the employers in those two processes as agreed.

COMM. GOZZI: All right, thank you, Mr. Paterson. Just finally, those exhibit numbers, instead of having ASWU exhibits, we'll mark them "P1" and "P2".  
Mr. Warwick, anything you'd like to add?

MR. WARWICK: Thank you Mr. Commissioner. I'd seek to reserve any comments we might need to make at this - I'd like to make at this stage. We would be interested to see the documents which you refer which is a cover to cover document of the formal claim before we make any significant submissions, that is if we need to. In that regard we seek to specifically look at the classification standards and consider whether the scope and the standards taken together might not be beginning to cover some of the people that we might represent and if that were to be the case, well, we'd seek to put particular submissions to you about that or indeed consider where we're going in respect to the whole matter. But I should say that our intention throughout has been to have a system whereby the A.S.U has its awards and we have ours and that's our objective we hope to achieve that in. If the Commissioner pleases.

COMM. GOZZI: All right, thank you Mr. Warwick. Mr. Fitzgerald.

MR. FITZGERALD: Thank you Commissioner. In response to Mr. Paterson, I think I can say Commissioner that the report which is presented to the Commissioner is indeed accurate and does reflect what has occurred in recent times. Unfortunately I haven't my 1992 diary - I can't recall the last time when we did meet but I think it was some eight to nine weeks ago when those documents or some of those documents were in fact presented. The major one which we saw of significance was, in fact, the classification structure and associated material. At this point in time, we haven't, as Mr. Paterson indicated, responded formally by in the form of a counter document and I think it's our intention to do so after getting some instructions in from members. Now, I think we appreciate that in this area it's a bit difficult to co-ordinate instructions and we have a co-ordinating group, but at this time we're still not in a position to present that document. I would-

COMM. GOZZI: So a co-ordinating group has been formed has it?

MR. FITZGERALD: Oh, yes, there is, certainly with employers and Doctor Raynor(?) here is representing that group so I think there's the vehicle to enable the award to progress certainly. I would concede and I apologise to Mr. Paterson that the undertaking which I gave in respect to standard award clauses hasn't been provided this time, however we see it simply as those standard clauses which are in most state awards, they don't call them standard clauses. That includes such things as the enterprise clause, the contract of employment clause which allows an employer to direct an employee to do a range of tasks, annual leave, sick leave and as it will now be parental leave and so I don't think they'll come as any shock, simply in regard to those awards which show there are clauses which exist in the state awards and in the facility type clauses which are becoming fashionable now as well. But I'm certainly able to do that at the earliest opportunity but I don't - I think the major area of discussions centres around the classification structure and we're happy to further progress discussions there. The document was first put on the table some eight or nine weeks ago, as yet, because it is complex and I'm sure when you've had time to peruse it Commissioner, you will see that it is complex and we're not really in a position to respond directly but we certainly will very shortly. In terms on the survey, "P1", I just make the point, Commissioner, this is the first time we've seen this document. We certainly appreciate that Mr. Paterson's gone to the trouble of preparing, obviously, a very comprehensive and I assume, accurate document and congratulate him for that. We would like the opportunity to be able to peruse those results as it is the first time we've seen that and I think that collation of results does assist in the award making processes from here on.

Commissioner, we're not able to say what agreement we can reach in respect to the classification structure, I think that will be the major area. We would just simply make the point at this time, Commissioner, that in the making of any awards consistent with the Commissioner's principles and it presents somewhat of a difficult circumstance in this area because of the diversity of services and the range of remuneration packages, etcetera, we would submit that this time, Commissioner, that the minimum criteria which is inherent in the Commissioner's principles should be one which should be strictly observed. But I think in terms of this future award process, Commissioner, we - firstly in terms of the report back, I think the next step is, of course, to progress it. My instructions are that we would wish to proceed by way of consent rather than arbitration and we trust that there is an opportunity to do that. It would be our preferred position, Commission that if there are any problems with negotiating

classification structure, that we could seek the assistance of the commission in conciliatory capacity to try to resolve that. We would certainly prefer that and that we haven't discussed with the union at this time. Now, given that there is a very complex structure which has been presented, I think we need to allow some reasonable time, although I think the commitment of employers is to progress with it as quickly as possible. The other point I'd like to make is, a very trendy coloured document which has been presented. The Commonwealth seem to have printing expertise these days in being able to present documents which are helpful and I'm aware of this document, in fact, I was going to present it as an exhibit here today in a preliminary format. I too had discussions with the Department of Industrial Relations in respect to this document. Obviously it presents somewhat of an assistance to progress - sorry, progress the award making process. I would submit at this point, Commissioner, that it may be appropriate that and I understand, in fact, that the Department of Industrial Relations Federal office were, in fact, interested in at least monitoring these proceedings on the last time it was programmed before the matter was postponed and they may not have been aware and I'm certainly, it was remiss of me not to make them aware of these proceedings today, that they may not have been aware of these proceedings today. But certainly, it was their intention, maybe not to formally intervene, but certainly to provide assistance in the implementation of this policy. So I think they are an integral part in these proceedings as well and I just make that point at this stage. Immediately, Commissioner, I think that's the position of employers at this time. We will be anxious in the New Year to be able to sit down and progress - it may be in the form of a counter document but it may be that we just respond with discussions, by discussions with - in respect to the document which has been presented in - which has been noted "P2." The only other point I wish to raise at this time, Commissioner, is and Mr. Paterson may be able to help and I haven't raised this with him recently, but as you're probably aware, there are Federal proceedings which are in train and I really just like to know what status or what position, what - what's the current status of those proceedings and what sort of implications there are for these proceedings.

COMM. GOZZI: Yes.

MR. FITZGERALD: Not that I see it in any way holding it up but -

COMM. GOZZI: Well, it could do, I mean, I'm pleased you raised it, I'd overlooked it, I wanted to raise it with Mr. Paterson. Time has gone on and I'm not overly attracted, quite honestly, going down a long

path of making a new award if in fact a Federal award is going to be in place in the very foreseeable future. To that extent, it has been my intention to liaise with the Federal Commission, I think that's where it is, to do a number of things. The first is to enquire as to what the status of their proceedings is and secondly, to try and find out what, if any, value there would be in exploring a joint proceeding. I dare say that may not be an attractive option at all, but I certainly had in mind to explore the options because I don't want to - I can see it as an exercise taking some time and quite apart from taking time it's going to take quite a bit of resources which it already has done and if it's going to be cut off at the path by Federal award, well, then really it seems rather pointless. Anything else?

MR. FITZGERALD: I don't think I have anything further to add at this point of time thank you, Commissioner.

COMM. GOZZI:Mr. Warwick, any further comments?

MR. WARWICK: No, Mr. Commissioner.

COMM. GOZZI: Mr. Paterson?

MR. PATERSON: In respect of the last issue you've discussed, on my understanding of the matters is that in fact there are, leaving aside the competitor - Community Employment Training Support Services or basically the Skill Share Award, which is in place and been there since '85, '86, leaving that aside -

COMM. GOZZI:Yes.

MR. PATERSON: There are two Federal award claims in respect of employers in Tasmania in the Commission. One is titled the Crisis Assistance and Supported Housing Award, cash award. Those proceedings were subject to two years of hearings, that claim was served in July '88 and was subject to two years of hearings on a 111.(1)(G) matters. Those hearings concluded in September last year and as yet no decision has been handed down, that is fifteen months on before Commissioner-Deputy President Hancock, so that is -

COMM. GOZZI:Hasn't the issue of -

MR. PATERSON: October, November, December, fifteen months on from the conclusion of hearings and I understand there has been some issues of ill-health and unavailability to write decisions.

COMM. GOZZI:But hasn't he issued a statement?

MR. PATERSON: No, to my knowledge, the union Federally did write to him earlier in the year and he said it was his intention to release a decision before Melbourne Cup Day but he didn't say which year and it wasn't released before Melbourne Cup Day this year. There's been no written decision or statement at all from the Deputy President.

MR. FITZGERALD: I might be of assistance there,  
Commissioner -

COMM. GOZZI: I thought he issued a statement saying that there would be one in three months or something?

MR. FITZGERALD: That's - I did see something come across my desk recently and I think probably in the last couple of weeks, Mr. Paterson may not have seen that but I think there was further apologies for the delay and from recall I think he said something about early February or March.

COMM. GOZZI: That's my recollection.

MR. PATERSON: So, I mean, I haven't seen that and obviously it hasn't made its way from our Federal office to our branch divisional offices.

COMM. GOZZI: Right, I'll take that on board.

MR. PATERSON: In respect of the other claim which is the rest of the world(?) claim, that matter has gone through a couple of, I suppose strategic processes on the union side. At one stage it was our intent to progress that sequentially around the country on a state by state basis. Subsequent to that, with the advent of the imperative of the Commonwealth Government in respect of Job Skills placements, it was an application with the involvement of D.I.R, was put to the Commission to make an interim award, effectively an interim award which would have, in terms of classifications, only gone to the classification of Job Skills employee and would have effectively only gone to full-time employees in respect of other matters. Those proceedings were over optimistically hope to produce results by early December but with the change of government in Victoria and the intervention of the Victorian Government in those proceedings, I, in terms of brief comments from our Federal Division or secretary, there's no confidence in the union that there's going to be any significant or quick movement in that arena and also in respect of those matters, the union has not sought, my understanding is that we've not sought to run foul of the 111.(1)(G) argument so we're not proceeding in respect of organisations that object to that Federal award coverage.



COMM. GOZZI: You've made no secret of the fact, Mr. Paterson, that you see a Federal award cover this area in due course?

MR. PATERSON: I also believe that -

COMM. GOZZI: I mean, that's correct isn't it?

MR. PATERSON: - the state award will also be necessary and whether it is by counterpart award or -

COMM. GOZZI: Yes, but you haven't answered my question?

MR. PATERSON: Yes, that is correct, yes. But I don't see that that, my knowledge of the processes and my knowledge of the industry says to me that that won't make entirely redundant a state award and ideally the content of a Federal award would be reflected in a state award so I actually welcome your comments certainly to liaise and to explore the prospect and/or desirability of joint proceedings and I would ask in that context that you either inform me of that in writing so that I can inform our national division or secretary or that you write directly to our national divisional secretary, Miss Noelene Rutland(?).

COMM. GOZZI: Well, at this stage I'm thinking about that, I'm planting that with you. If I take it any further, certainly it's my intention to have discussions with Deputy President Hancock to see what the situation is. Now, just give me the title of the award again, you said Crisis Assistance ?

MR. PATERSON: Crisis Assistance and Supported Housing Award. That award has in fact been, there has been a consent award made with some seventy organisations, seven of which are in Tasmania but that essentially only goes to a number of minimum conditions. It does not include any cost matters. It doesn't include classifications, overtime, hours - .

COMM. GOZZI: And the other matter is called?

MR. PATERSON: The other matter is called the Social and Community Services National Award, I think.

Yes, so it's basically known as the SACS award, Social and Community Services. S-A-C-S, that's basically the rest of the world(?), claim.

COMM. GOZZI: And that's on the basis of an interim award being requested?

MR. PATERSON: That was the one that, the latest development in that was to seek an interim award to enable the placement of Job Skills trainees in our industry.

COMM. GOZZI: And who's that before?

MR. PATERSON: Commissioner MacBean, I believe it's still before him even though he's been moved off the panel dealing with our matters..

MR. FITZGERALD: Sorry, which Commissioner was that?

MR. PATERSON: MacBean.

COMM. GOZZI: That's Deputy President.  
And so from your point of view, you're saying that there might be some merit in the joint proceeding?

MR. PATERSON: Well, I think that given the difficulties, I mean, this matter has been on for three years now as well as the, more or less not a lot different in times to that supported upon the national award claim, so, you know, I mean, obviously in both proceedings comparable difficulties are being experienced. The most significant of one is the very genuine difficulty of organising an employer organisation and an employer position.

COMM. GOZZI: Yes, I can understand the difficulties. Can you tell me if the classification structure and rates of pay sought in the Social Community Services Award reflect those in the application before me?

MR. PATERSON: The classification structure is, in fact, identical to the proposal being developed by the union nationally. It is identical to the document that I believe was tabled in the South Australian Commission in respect of state award matters there and I'm not sure, I don't believe that it has been actually tabled in Federal proceedings, but it represents the state of the art, if you like, of the union's position nationally and it is tabled in respect of all generic classifications that we're seeking. In terms of the wages position in the other attachment, the answer is, no.

MR. FITZGERALD: Just hang on a bit -

COMM. GOZZI: So what proposal has the Deputy President been considering in the context of structure and rates of pay in the Social Community Services award?

MR. PATERSON: Job Skills classification only, Job Skills Trainee classification only is all that is on the table before him at this point in time.

COMM. GOZZI: And is that coming from the Skills Share award?

MR. PATERSON: It is effectively the model, the standard model definition of a Job Skills Trainee. It doesn't, in fact, relate to the broader generic classification structure. So what has been put before Commissioner

MacBean is only a proposal that includes a Job Skills Trainee, all other classifications and rates are on leave(?) - reserved.

COMM. GOZZI: And no timetable set as far as you know for those other matters?

MR. PATERSON: I don't, I'm not aware of the timetable, I know that the intervention of the Victorian Government, I think, earlier this month, the 6th or the 10th, I think the hearing was, basically produced a significant delay in an anticipation of - frustrated in the anticipation of quick progress.

COMM. GOZZI: Because, I think it's right to say, isn't it, that Tasmanian employers have been served with that Federal log?

MR. PATERSON: That's correct, yes. The original log of claims was served on some three hundred organisations, some have fallen by the way and others have been pulled out as a result of the effective implementation of the memorandum understanding between ourselves and the Health Services Union. There were on that original residency list, a number of organisations that were covered by the Health Services Union and in fact, by the welfare and voluntary agencies and now Nursing Homes Award. So there were some identification issues, I suppose and there still remain a number to be settled. So there are certainly complexities in terms of demarcation between unions that will also delay the progress of those Federal proceedings in terms of the field of respondents. I'm confident about the effective implementation of our agreement in that form as well as this one.

COMM. GOZZI: Well, yes, it raises an interesting question doesn't it about that very issue, about the demarcation agreement that you have with the H.S.U.A here. I thought that was Federally predicated though?

MR. PATERSON: No, no, the position is different in every state in terms of union coverage and that is, I think, the predication on that was that we wouldn't rely on it as precedent for demarking coverage in other states but we agree that it is a demarcation agreement in respect of Tasmanian employers, whether in this jurisdiction or the Federal jurisdiction.

COMM. GOZZI: Yes, you've got a Federal log on identical employers subject to these proceedings?

MR. PATERSON: Yes. And that agreement will, it's the intention of the parties that that agreement will effectively work in either jurisdiction. But there is no comparable counterpart national agreement between the two unions. There's been no, I'm unaware of the state of demarcation between us in other states and in other states the role of the Miscellaneous Workers' Union, for instance, is even at greater heights than

it is here, where in other states they have coverage of disabilities services such as South Australia.

COMM. GOZZI: Okay, I won't pursue that.

MR. PATERSON: So, yes -

COMM GOZZI: Anything further at this stage?

MR. PATERSON: I suppose just to restate the position, I think that there will be new employers all the time. I mean, there are a significant number of employers that have not been logged in that Federal process. There may well be employers that win their exemption from Federal jurisdiction. The industry is constantly in a state of flux. A new funding programme produces a new employer and there is a high turnover, not only of employees but of employers and I suppose overlay on top of that, the politics of the Federal Government as to which jurisdiction is going to survive the longest.

COMM. GOZZI: That's an interesting point. Mr. Warwick, anything further you want to add?

MR. WARWICK: Just in respect of that particular issue that you raised, Mr. Commissioner. In terms of the ambit of my organisation's rules, we are autonomous with any agreement we enter as a branch who's bind on a Federal body, rather than the converse which is true of many unions.

COMM. GOZZI: Yes, thank you for that, Mr. Warwick. Mr. Fitzgerald, anything further?

MR. FITZGERALD: No, I have no further comment in respect of the issue.

COMM. GOZZI: Well, it's my intention to allow you some time to have some meaningful negotiations. We'll go off the record and put in some dates for resumption.

All right, confirming the discussions off the record, I anticipate that the parties will hold a series of meetings between now and the 9th of March when this matter comes on next. I anticipate that those discussions will involve the HSUA as intra vires in these proceedings. Also, I think, it's in the best interest of the parties to include both State and Federal representatives. I would anticipate also that the discussions between the parties will result in a substantially agreed document if in the intervening period between now and the 9th of March, you think it is useful to meet with me informally to have some discussions, well, I'll be able to fit that in and we'll review the situation on the 9th of March. And also confirming that notices of hearing will go to the information of the Federal Department of Industrial Relations. These proceedings are adjourned.