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TRANSCRIPT OF PROCEEDINGS

O/N 0704

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER J.P. McALPINE

T No 9925 of 2001

COMMUNITY SERVICES AWARD

Application (as amended) pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 by the Australian Municipal, Administrative, Clerical and Services Union to vary the above award re wage rates and work value changes

HOBART

2.15 PM, TUESDAY, 20 JULY 2004

Continued from 8.6.04

HEARING COMMENCED

[2.15pm]

PN271

MR I. PATERSON: I appear for the Australian Municipal Administrative Clerical and Services Union.

PN272

MR T. KLEYN: I appear for the Health Services Union of Australia, Tasmania Number 1 Branch.

PN273

THE COMMISSIONER: Are you proposing to make a statement?

PN274

MR KLEYN: No, not really. We are a respondent to this award. As you are aware, we have sort of been here off and on keeping an eye on things.

PN275

THE COMMISSIONER: Thank you.

PN276

MS J. THOMAS: I appear for the Tasmanian Chamber of Commerce and Industry Limited.

PN277

THE COMMISSIONER: Mr Paterson?

PN278

MR PATERSON: Thank you, Commissioner. I would like to hand up a folio of documents that I have provided to the other parties.

PN279

THE COMMISSIONER: Thank you. We will call this exhibit D1.

EXHIBIT #D1 FOLIO OF DOCUMENTS

PN280

MR PATERSON: Commissioner, I propose to take you through the outline of my submission. You will also note that I have provided the parties with a disk copy of this. There are various places in the document where I have included links to relevant decisions or other documents and they can be accessed from the disk copy. As you are aware, this matter was before former Deputy President Watling and his decision was handed down on 21 January. Most notably, he found that we had satisfied the onus under the principles and determined, that over the period of review, changes have taken place in the nature of work skill and responsibility so as to constitute a significant net addition to work requirements.

PN281

The parties since then have followed the direction that we have further discussions regarding the quantum of the increase that should be attributed to the

classifications under review and that the process may also lead to the review of current classification structures. I would submit to you that we have met that requirement and we are in a position to proceed. Although we do not have a consent document to put to you, I believe we are as close as we can possibly get in these sort of proceedings in the environment that we find ourselves in.

PN282

I have included the wage-fixing principles in my document. Particularly, I think, the principle 9.5 is the most relevant. The outcome that we are putting up chooses to identify as background, and background in terms of other awards that may be relevant, we have identified those - and I will come to those in a minute. We have tried to look at the most appropriate way to reflect the evidence before Deputy President Watling and we looked at a number of different ways of giving effect to the outcome, either by varying the relativities and setting new scales of relativities or applying a percentage increase across the board. It is the latter that we have adopted in this case.

PN283

The relevant awards over the page at point 3, I have referred, both in totals and figures and with those links, to awards of the Federal Australian Industrial Relations Commission. In doing so, I would like to state - and you can find it by the references to the complete awards - that the principal reason for choosing those awards is that they have a very comparable classification structure.

PN284

Particularly at levels 1 to 6, we have differences with our grade 2B because of an issue that was dealt with some years ago and, on investigation, I found that the descriptors for level 8 in those awards actually are what we currently have at level 7 in ours. So there was a need to look at a different definition of level 8. So level 7 and the level 8 depart from the descriptions in those other awards; but, certainly, at 4, 5 and 6 the descriptors are very comparable.

PN285

The other point that is relevant, in this page here I identify a number of relevant decisions. If you go to the structure of the document I have presented you with, the body of the document goes through to the first coloured tab. After that there are draft orders, then another coloured tab. Following that are what I will refer to as the attachments. They are the ones behind the last card tab, the first of which is a decision of the Federal Commission, Senior Deputy President Cartwright in respect of the Social and Community Services Award in Western Australia. A similar decision follows that after two pages, which is a decision in respect of the Social and Community Services (Queensland) Award.

PN286

What is, I think, relevant in this is that both of those awards, as similarly the ACT and Northern Territories awards, were previously paid rates awards and came under the process in the Federal Commission - I will convert award simplification - and the related paid rates review and the conversion principles. I cite these in particular because the issue there in those four awards and the two that I have provided the specific references to were about establishing whether the awards had appropriate relativities. In both cases - and you will see in respect of the

Western Australian award decision, you will see at para 9 the Senior Deputy President found that the rates equate to properly fixed rates in other awards.

PN287

In the subsequent paragraph the Deputy President also noted on the matter of increments and found in that case, as in the others, that the rates are properly fixed minimum rates, don't require conversion and they survived. In the Queensland decision, that issue is also, I think, quite specifically dealt with in terms of saying that the incremental rates, in effect, do meet the work value criteria. So whilst not subject to the same case, whilst not subject to the same sorts of evidence, those awards, the relativities within them and the retention of increments were found to be justifiable on the basis of the relevant work value principles and approaches adopted in the Federal Commission.

PN288

If you follow over to the next page you will see a chart which is headed National Comparison. This compares those four awards at the relativities for each of the levels. There are some differences in that some of the awards have, for instance, a level 4.4. The others only go to 4.3. So there are differences within the awards. They are not identical, but it is interesting to note that they align. Level 5 and 6 are close and level 7 and 8 are virtually the same. I have provided in that same way to establish the range of relativities that are appropriate and that we consider it be appropriate in other external appropriate awards. If you proceed over to table 1, the national rate comparisons, that provides both the relativities and the total weekly wage.

PN289

This document was prepared by our national office, and particularly the Queensland and the Northern Territory awards had to be massaged, if you like, because there is a premium in some of those levels - or had been a premium in some of those levels in lieu of overtime.

PN290

THE COMMISSIONER: So have you discounted that?

PN291

MR PATERSON: That has been discounted in these tables so that we are comparing like with like, and although the position in the final column, SACS Tas proposed, is not actually what we are seeking here today, I have left it in that form because the chart as it is is based on the rates that were operative after the 2003 wage increase and that Tasmanian proposed rates are again, in that sense, point to point comparable.

PN292

As I say, they are not the rates that we are seeking to have established at this point in time - and I will return to that question later. I think the important thing in seeing this again is that the rates that we are proposing, clearly, significantly, are higher than the current rates in the award, but that is the whole point of the exercise, but they do align with some consistency, greater deviation towards the level 4 and almost point to point on track at the higher levels.

PN293

The other issue that we have raised and would submit to you - and I will provide further documentation that I didn't have included in the folder - is excerpts from Professional Scientists and Engineers (Private Industry) Award. The relevance of this relates to our position that the relativity for 210 per cent in an appropriate relativity. The four pages are the cover page, the two pages with the salary rates and relativities on them and the final page includes the definitions for the level 4 professional engineer, professional scientist and the professional information technology employee.

PN294

Clearly, we are not saying it is the same industry but, clearly, we are not saying that the same technical or professional skills are involved. However, I maintain, and have done at other times in this process, that the degree and the level of professional work, the complexity of the work, the authority and the responsibility exercised at this level is relevant and comparable to what we are seeking to include at level 8 and, on that basis, we contend that the 210 per cent relativity will be an appropriate relativity to include at level 8. The approach that we have adopted to produce the final outcome that we are seeking, and your endorsement of and the decision to confirm the new rates in the award, effectively has a process which puts a 12 per cent premium on top of the rates in the Community Services Award.

PN295

We have discussed this matter with the TCCI and we propose that that 12 per cent premium be applied to the rates, as they will be after 1 August, and that is the reason for the departure from the rates and the proposal in table 1. Again, I will return to the specifics of the proposal later. I have included as an attachment at the second tab after the Queensland and Western Australian decisions the evidence that was put before Deputy President Watling in A11, work value indicators. That evidence is what has been relied on to amend the classifications and to produce draft classifications. The draft classifications, as proposed, are included in a following tab with the attachments towards the back of the document.

PN296

The parties have further work to do, but not all that substantial work to do, to finalise an agreed set of draft classifications. We believe that we are fairly close to agreeing to those classifications although, on both sides, there are a number of issues that have been raised that will require some further discussion between the parties. We expect that we wouldn't need more than two weeks to complete that and may well be able to do it in a much shorter time.

PN297

The proposed descriptors that I have included in the attachments at the end of this document, the additions to the classification descriptors compared to how they are currently in the award, are in bold, so everything other than headings that is in bold is a new descriptor. Given that we haven't finalised our position on those, I won't spend much time on those but I would like to go through them just to quickly identify the way in which those changes have been reflected in the classifications.

PN298

THE COMMISSIONER: Just for my clarity then, that which is in bold, although not agreed, is your proposal?

PN299

MR PATERSON: That is correct.

PN300

THE COMMISSIONER: Okay.

PN301

MR PATERSON: We actually have not had the opportunity to sit down and identify where our specific points of departure are, so at this point in time it is the union's proposed draft - - -

PN302

THE COMMISSIONER: By way of illustration.

PN303

MR PATERSON: By way of illustration. I think that most of what we are putting here won't be contentious. At level 4 we are adding in requirements that raise the level of the statutory knowledge of requirements of work and specify the capacity to respond appropriately to client needs and manage potential conflict of interests. That is also reflected again in the indicative tasks and functions. Further over the page, we have identified that participation in inter-agency projects and collaboration in other forums in a whole range of settings as an important function that has not previously been identified and we have restated at an appropriate level the co-ordination management functions at level 4.

PN304

Turning over to level 5, going through the copy, nearly every piece of technology tried to spit it on me in the last two days from the printer to the photocopier, but I persisted. Level 5, the requirements, starting with grades, the identification of the high level of understanding of legal obligations.

PN305

THE COMMISSIONER: Could I just make a point there? Higher level, higher level, etcetera, has been used quite a bit. It is quite indefinite. It would be difficult to practically assess that. If you could have a think about what would be a better term, like, earlier you referred to a comprehensive knowledge of statutory - well, that is measurable. Just "higher" is a relative term. I just think you might have a little bit of a think about - - -

PN306

MR PATERSON: I will certainly take that on notice, and in the making of the award back in '95 we did - and those terms are not only the different - the hierarchy of knowledge from a comprehensive detail specialist professional was deliberately used and is defined in the definitions, so I will take on board that issue, and it may be useful.

PN307

THE COMMISSIONER: Yes. It would just make life easier other than as a contentious point at a later stage.

PN308

MR PATERSON: In that context, I must also say that, again, I think it is relevant that those four Federal awards use very comparable descriptors to what we currently have in the award. The nature of the work is such that it will always need to be described conceptually and the closer we can get to clarifying boundaries and the hierarchy of understanding knowledge or skill, we certainly will always look to that and it may well be that there in ongoing work needed to be done as well. But, clearly, as we have said previously, we were at pains not to allow that exercise to become so big as to overtake the achievement of an outcome in this matter.

PN309

Again, the indicative tasks and functions relate to some of the service delivery skills and the program design, development and implementation skills that were identified in our evidence to the Commission. The level of reporting I think is probably one thing that I have endeavoured to clarify at levels 5, 6, 7 and 8. The level of delegated authority, I think, is a key criteria. The evidence in A11 particularly stressed that in respect of the higher level classifications, particularly with merging models of governments of organisation, there is a significant degree of authority delegated from boards and committees of management to employees with the authority to, for instance, negotiate on behalf of an organisation being handed to the employees at a particular level and, again, there is a need to reflect a hierarchy in the extent of that delegation. Moving to level 6, you will see that issue again restated there:

PN310

Employees may be required to negotiate matters on behalf of the organisation and collaborated with other organisations in relation to higher level policy and practice standards.

PN311

And over the page, where employees have a service delivery role - and I should say that at these levels, 6 and 7, I think we have mixed roles in the community sector, there are people in positions at levels 6 and 7 currently who are in a service delivery role with contact with clients providing a fairly high level of counselling or support or other assistance, often in fairly critical situations where the clients have experience of trauma or crises of some other sort, that requires a very high level of professional and highly developed skill.

PN312

At the same time at those levels there are people who are exercising managerial responsibilities either for programs or sites or organisations as a whole, and in these classifications at levels 6, 7 and 8 we have endeavoured to reflect those requirements at both levels of - particularly at 6 and 7, at both the level of an employee with managerial responsibility or operating as a senior specialist. I acknowledge that we may need to do particularly more work in defining the characteristics at level 7 which are essentially the current provisions of the award unchanged with the addition of a new level 8. It would clearly be envisaged, I think, that some employees at level 7 would be reporting to an employee at a higher level, whereas previously that was the highest award level.

PN313

THE COMMISSIONER: Yes.

PN314

MR PATERSON: So it is an amendment there or it is an item of discussion there that we will pursue. Again, the boundary between what is a level 7 and a level 8 will need to be further worked on. I think, in a sense, we have a conceptual understanding between ourselves and the TCCI that the level 8 person is employed with a very high level of delegated authority to act on behalf of the organisation. What, in the private sector, might be called a chief executive officer, sometimes in the community sector would be referred to as CEO. Some organisations may call them a director but the job title is not the critical issue, but I think we have a fairly clear idea in a very broad-brush way as to what people at this level would be involved in.

PN315

There will always be, where there are smaller organisations in terms of staffing levels or levels of service delivery, peak bodies, for instance, where - I mean, a peak body in Tasmania may only employ between three and five people but the organisation has a high level of responsibility for articulating issues and developing the articulation of issues by the sector that they represent and carrying those positions or output from those processes through to dialogue with Government or even through to participation in national bodies and I am sure that there are a number of people at that level who would, in fact, be the constituents of national organisations, being the State director or the State executive officer of an organisation.

PN316

We have always been at pains to try and capture the breadth and the diversity of the community services sector in the classifications that we have developed and used for this award. As I say, we accept and we will be having further - accept the need for and will be having further discussions with the chamber on the issue of classifications. The other matters that I wish to turn to before going into the detail of the claim are, very briefly, the process that the parties have adopted to reach this point, so returning to the body of the submissions at point 5, the negotiation process, the union established two reference or co-ordinating groups consisting of 10 to 12 members in positions where they had a degree of understanding of the broadness of the issue as well as a personal interest in the outcome.

PN317

I have met with those two groups over the last probably two years on a three-or-four-times-a-year basis, depending on where we are up to in the process. Various steps in the development and the articulation of our position have been communicated to those people and I have relied very heavily on their input and their endorsement of what we are putting today. Ms Thomas can clearly talk to the role that the employers have played in this issue. I would like to acknowledge the positive contribution that they have made. I think the level of engagement by the TCCI with the Community Service Employers has been at a level that we haven't seen before and it has certainly made it much - facilitated us getting from the interim decision of Deputy President Watling to today a period of just under six months in a way that probably five years ago wouldn't have been imaginable.

PN318

The difficulty that the parties have faced - less so ourselves, I expect, than the employers - is that it has been very difficult to find a level at which Government can and will engage in this process. In a sense, the union would have liked to have seen a more collaborative approach to remove the uncertainty around funding issues. The fact that Government has adopted a position which, in effect, is "hands off until there's an outcome" means that we have had very little option but to develop and push on with what we think is a realistic and achievable outcome.

PN319

In saying that, I am not being particularly critical of this Government. I think it is disappointing that we haven't found, really, in this country a different way of managing this issue. It is the way that it seems to have happened in almost every other State when similar award variations or the making of new awards have taken place. The other aspect which I will make very brief reference of is that the community sector does have a forum which is referred to as the agency sector forum. That meeting is a meeting of the deputy secretary of the department and people with a quasi representative role from the community sector.

PN320

This issue of the impact and the potential impact of an award variation have been raised at that level and so, while the Government as a whole has had an arm's length approach, the Department of Health and Human Services, as the principal funding department for the majority of the sector, is fully aware of it, has been informed and probably is in a position to respond quickly. I have included further in my submissions - and I don't propose to go to any length on these - at point 6 an excerpt from the submissions from the Trades and Labour Council to the State wage case held recently.

PN321

The point I make in broadly including this is to touch on the requirements facing you, Commissioner, in terms of the economic impact and the consideration that you must make under the Act of that and with, again, a very broad brush. I think the economic considerations that the Trade and Labour Council referred to and the citing of the Tasmanian budget overview and budget papers for 2004-2005 indicate that this economy is probably - the State's economy at this point in time is probably in as good or better position as it ever has been to be able to respond to and deal and with the issues that will arise from this in terms of funding of the community sector.

PN322

A couple of pages over, at 4.7, I have included a reference there which, again, in the disk version of the documents there is a hyper link to the State budget papers, particularly budget paper number 2, which includes the detail of the arrangements under the budget for the Department of Health and Human Services. I have also included - and this is the last of the attachments after the last purple tab at the end of your folder - overheads presented by the department in respect of the key features of the Department of Health and Human Services funding to the community sector. On the second page of that you will note that the total funding

to the community sector is now over \$100 million. That is across some 240 organisations providing some 450 services.

PN323

The disability grants, which is the largest single component of that allocation, I would suggest, falls overwhelmingly to the Disability Service Providers Award and wouldn't be relevant in this context. However, there are people employed in disability programs where the scope of their activities falls outside of the scope of that award and, that being the case, they may fall to this award. Similarly, there are persons employed in positions that are not covered by the classifications in the Disability Service Providers Award that may again fall to the Community Services Award.

PN324

That leaves, clearly, the two biggest programs, being the Home and Community Care and Support of Accommodation Assistance program which would leave us with an estimation that probably at the top end of the estimate would be something like 44 per cent or around \$44 million of funding would be to services under the Community Services Award. That may well be overstating it on one hand but, on the other hand, there are services such as Community Legal Services and others that are funded from outside of this department; so, again, there would be swings and roundabouts that some six Community Legal Services are funded through the Commonwealth.

PN325

There are smaller streams of funding that come from the Education Department, for instance, to the Youth Network of Tasmania and, from time to time there will be various other programs that may come out of education or justice; or, for instance, a community based prisoners support program may well come out of justice rather than out of health and human services. In addition to that - and this has been one of the areas of concern that we acknowledge but don't see it as an issue that would lead us to change our approach to the award and the award variation - there are a small number of services which operate with little or no Government funding.

PN326

Some of them have been very long-established organisations like Lifeline with their counselling, volunteer counselling services. They may pick up funding for a particular project but their core activities, as I understand them, are unfunded. Australian Red Cross has maintained to us, although never provided us with. We have never taken the debate to the point where we have needed to identify the fine detail of it, but they have a significant dependence on their own revenue raising for services. I think I can probably identify, or have had knowledge, of maybe five organisations that would fall into that category. Certainly, the overwhelming amount of money that is in the community sector is in the funded sector, and in these program areas I would suggest there is a very, very high dependence on funding and that is the overwhelming characteristic of the industry.

PN327

It is also important to note - and whilst there has been a lot of tension around this issue, I think it is an area where some recognition should be afforded to all the participants, both inside Government and the department and in the community

sector - that the community services industry in Tasmania has reached a point where it again has indexation which is as good as it has ever been. We will always have issues with the way in which the amount is arrived at or the adequacy of the funding formula to deal with costs that arise outside of the predictable, but it is noted that I think it is important has managed to develop a system and a capacity to meet indexation, which I think is a good sign for their capacity to manage any impact of this award as well.

PN328

To return to the body of the document and, really, to the substance of the issue, the details of our claim are what I would like to turn to. These are at point 7 in the document. It actually is a numbered page. I apologise for the fact that not all the pages are numbered. The various permutations and combinations that we went through to arrive at an outcome that we thought was both appropriate and realistic in terms of the dynamics, particularly around funding, was to look at the introduction of grades into each level. If you turn particularly to table 2 with the current and proposed rates, the current rates on this table do include the \$19 2004 safety net adjustment and the proposed rates on the right are based on a 6, 9 and 12 per cent increase to the current award.

PN329

The issue that that creates for, I believe, in part, the Commission and in part for the practitioners in the industrial relations world, is that it produces unusual or uncommon numbers in the relativities column. For instance, level 5, grade 1 would start at 157 per cent - and I have never seen 157 per cent anywhere else. But it did make more sense to treat this as an exercise that really relied on the fact that the value of work in the sector has uniformly increased with a lead that there aren't pockets or sections of the industry or occupations that have dipped out and others that are right up there; so we have adopted an approach which applies a uniform increase.

PN330

Had we adopted an alternate approach - for instance, I considered an approach which would have varied the relativities and established a new set of relativities - that would have produced very different increases at different levels and it was our view and the view of the members I consulted with that that would potentially create some inequities, particularly if the increases were less at level 4 than 5 where the jobs might not be that very different to the person trying to catch a bus in Macquarie Street. The other issue in terms of relativities, of course, is that flat rate wage increases clearly distort the relativities as they apply to a total wage.

PN331

Very briefly, to turn to the next chart, which I think really does nail what we have been talking about in this matter and why we believe this is an appropriate outcome, this chart is headed Queensland and Tas Work Value and Current. The yellow triangles represent the current single spot salaries for level 4, 5, 6 and 7 in the Community Services Award in Tasmania. The value lines represent the current rates in Queensland. The blue line to the left of the chart actually spans two levels, 4 and 5, and the blue line to the right of the chart spans the Queensland rates for 7 and 8. You will see in this that, bearing in mind that the previous graph that I referred to showed the consistency, particularly at the higher

levels of the interstate awards. This outcome here shows how, in fact, we are proposing to redress those differences.

PN332

The rationale that I have applied in this situation as to why this is appropriate is the - and why, in fact, it is appropriate that the rates in this award rise, as you can see from that chart, are slightly above the rates in the Queensland award, is that those awards have not been through this work value exercise, and the nature of the work conducted in those interstate and the changes that have occurred here are not Tasmanian specific changes; they are changes that arise from broader changes in the nature of the development of the community services industry, the nature and changes around funding relationships between community organisations and Government and the whole raft of issues which I believe we did a very thorough job in encapsulating those changes in A11, which is why I have again included it in this documentation, and the feedback I have had from our national office is that those changes are, in fact, evidence across the whole community services sector.

PN333

The other aspect in terms of this proposal, if we again go to the table of current and proposed rates, the union is, and always has been through this process, mindful of the need to produce something that is a manageable outcome, if you like. That arises, I think, on two counts. Firstly, we do have members who are in the position of being at levels 6 or 7 and would be at the new level 8 where they are going to bear a lot of responsibility for managing this change and this process and we also know that if the bar was far too high, then the difficulties that that would create would be, really, not worth the gain.

PN334

We have, I believe, in this proposal, come to a very significant accommodation in a number of respects. Our earlier positions that we have articulated to the chamber were pitched around an increase of around 18 per cent and, whilst I have a personal view that something between 12 and 18 would have been a better and desirable and appropriate and an achievable outcome, we think that this is, in all the circumstances that we are aware of and that we confront, a reasonable outcome. The proposal will see a deferral of the operative date. We are proposing a time lag between the date of your decision and the operative date of the decision, so the decision would take effect from the first full pay period after 1 October.

PN335

In October each this year each of those levels 4 to 8 will just have the single grade 1. In 12 months time, in October 2005, the award would have two grades at each level, grade 1 and 2, and in October 2006 the full three grades would come into existence. In suggesting that accommodation and proposal, the union has had two principal issues in mind: one of managing the transition and the application of service at a particular point and how people move through the grades and, allied very clearly to that, our belief that has with the rest of the awards, appropriate that there is more than a single spot in each salary that effectively recognises that somebody of no experience, or limited experience at a particular level in this award will gain considerably in their skills and their contribution and their ability to contribute to service delivery in their first couple of years of employment.

PN336

In the absence of anything else, it is a proxy skill acquisition measure. Secondly, it is - - -

PN337

THE COMMISSIONER: Sorry, before you go on, can I just clarify? When does your first level 8 come in?

PN338

MR PATERSON: The first level 8 will be coming in and would come in immediately and as a single spot.

PN339

THE COMMISSIONER: And that would be by assessment of current 6s and 7s?

PN340

MR PATERSON: We haven't discussed with the TCCI the process, and happy to do so, but primarily I would think the people in positions who are currently at level 7 will principally be the ones who are upgraded to level 8 - and obviously any new positions that are created, there may be organisations that have pitched the design of job descriptions around a current level 7 who may realise those against a level 8.

PN341

THE COMMISSIONER: Right, thanks.

PN342

MR PATERSON: And the issue there that is, in effect, a compromise and why the full level 8 would come into effect immediately is that we have chosen not to pursue multiple grades at level 8; so level 8 would be a single spot salary - and with full effect immediately.

PN343

THE COMMISSIONER: Okay, thanks.

PN344

MR PATERSON: The other issues that we have discussed that we would want to see incorporated or clearly stated and clearly understood is that these proposals clearly are developed at this point in time and the rates would need to be amended and certainly not in the offset for any future wage increases; so any safety net adjustments that come out of State wage cases in subsequent years would clearly be on top of this, which creates an issue in terms of how the outcome is managed in terms of an order reflecting prospective variations to the award.

PN345

We have also contended - and I think probably at this point in time I could take you to the next set of pages where I have actually endeavoured to prepare three draft orders that reflect the issues that I am talking about, so that at point 8, draft order number 1 would be the variation to the award that would be effective on 1 October this year. It incorporates the 2004 safety net increase. It restates the same provisions that are in the existing award in terms of progression and appointment level and it includes a provision that goes to the question of savings

for existing employees to make sure that no existing employee is classified at a lower level solely as a result of the variation and award arising from this matter.

PN346

THE COMMISSIONER: So, again, a bit of clarity there. Does that mean that a person who, in the rearrangement, is in a higher level or grade would be greening it until the salary is evolved that met that salary?

PN347

MR PATERSON: Sorry?

PN348

THE COMMISSIONER: If someone is in a higher level than would come out of this rearrangement, would that person hold that salary until the general salary increases met that before they moved on?

PN349

MR PATERSON: Well, no, we have not gone to that point. I suppose what we have said is that if somebody is currently at level 6, that they shouldn't be classified for lower level 6 solely as a result of these changes and that in that sense they would save their classification level rather than saving their wage rate.

PN350

THE COMMISSIONER: Thank you.

PN351

MR PATERSON: I think the closing in of the grades over time will also facilitate those sort of matters being addressed in an appropriate way at a workplace level.

PN352

THE COMMISSIONER: Yes, okay.

PN353

MR PATERSON: The subsequent pages in my documentation apply effectively the same process to the second and third change with effect on -my copy is missing the last couple of pages of draft order number 3, so I will undertake to provide those to the parties if they haven't got them.

PN354

THE COMMISSIONER: I have, and do you want to talk to them?

PN355

MR PATERSON: No, no, I don't think I need to talk to them. I think they follow the same format with just the three grades in each of the levels. Clearly, in terms of the documentation, that is the easiest way to identify which is which, that in levels 4, 5, 6 and 7 the first order only has the single spot. The order number 2 in October '05 has two grades for each of those levels and the third in October of '06 would have the three grades for each of those levels, but I will confirm with the parties. You have, I believe, the original, so you should have the full set in your - - -

PN356

THE COMMISSIONER: Yes, I have the whole set here.

PN357

MR PATERSON: They are, of course, on the disk copy in the file that you have as well. I don't know that I need to make any further submissions. I think I have outlined our intent and our process. We believe these rates are an appropriate reflection of the directions given to us by Deputy President Watling. We are committed to a process of finalising, hopefully, by agreement with the chamber, the classifications. We have had discussions around both the quantum and the timing and the process and although we haven't reached what might be called a consent position, I believe that we have as a union accommodated the concerns that have been raised with us by the Chamber of Commerce and Industry.

PN358

I believe that it is in the public interest because the community sector faces, as does many other professions and organisations and service providers in Tasmania, a need to maintain currency of wage rates within an award system. The issues of recruitment and retention of qualified and skilled staff, while not principally a work-value issue in their own right, they are more a labour market issue, but I would submit that it does go to reinforcing the desirability of an outcome like this in the public interest and certainly contend there is no offence to any public interest by the variation of the award in this manner.

PN359

I again restate that believe it satisfies the requirements of the wage-fixing principles in terms of work-value changes and particularly the work principle shown at 9.5. Should you, Commissioner, or any of the parties wish to have further elaboration on any of the material, I am happy to extend any further evidence that you might require.

PN360

THE COMMISSIONER: Okay, thank you. A question before you sit down. Your grade 8 doesn't change over the period of the - - -

PN361

MR PATERSON: No, the grade 8 is a single spot salary and would remain so through and after the process.

PN362

THE COMMISSIONER: Okay, thank you. Ms Thomas?

PN363

MS THOMAS: Thank you. The TCCI on behalf of its members acknowledges Deputy President Watling's decision dated 21 January 2004. In that decision Deputy President Watling found that a significant net addition had occurred to the value of work being undertaken by employees occupied in classifications of community services employee levels 4 through to 7 of the Community Services Award. As set out in the Deputy President's decision, the TCCI indicated it had consulted extensively with its members in relation to the ASUs claim.

PN364

The TCCI did not lead any evidence to challenge the evidence presented by the ASU - and please excuse my reference to the ASU; it is much easier than saying AMACSU. But the TCCI did not lead any evidence to challenge the evidence

presented by the ASU on the basis that the TCCIs members accepted that there had been a material change in work value since the award was created in 1995. The TCCI, however, did flag some issues which are identified in paragraph 51 of the decision. We indicated that we may wish to raise issues at this stage of the proceedings, including matters relating to implementation and public interest considerations and the problems associated with funding any increases in wage rates - and I will address those matters later.

PN365

In accordance with the decision and as outlined by Mr Paterson, the parties have had further discussions regarding the quantum of the increase and issues concerning the classification structure and implementation and operative date issues. The parties reported on their progress in those discussions to the Commission in conferences held on 16 April and 8 June. This process has allowed the parties to reach agreement on a number of significant issues, including a delayed operative date of 1 October 1994 for the first phase of the increase to be determined and an effective phasing in of future increases as annual increments over two years. The significance of these agreed outcomes will be referred to later on in my submission.

PN366

On the issue of quantum, the TCCI is taking an unusual position in not presenting its own proposal on what the outcome of the Commission's decision on quantum should be. Rather, we submit that the Commission exercise its discretion to determine the appropriateness of the ASUs claim as set out in exhibit D1, having regard to the requirements of the wage-fixing principles, in particular, principle 9.5 and the public interest requirements of the Industrial Relations Act as set out in section 36 of the Act. This position has been reached after extensive consultation with our membership since the handing down of Deputy President Watling's decision.

PN367

In terms of the wage-fixing principles, Mr Paterson has already referred to the wage-fixing principles and they are set out in detail in Mr Paterson's exhibit D1. Deputy President Watling in his decision reminded the parties of the significance of principle 9.5 in particular to the determination of this matter by the Commission. This principle provides guidance as to how the Commission should measure the alteration to work value in money terms. It begins by stating that the assessment should normally be based on the previous work requirements, the wages previously fixed for the work and the nature and extent of the change in work.

PN368

The wage-fixing principles do not then clearly elaborate the methodology the Commission must use in making that assessment. The assessment of quantum is an exercise of discretion by the Commission based on the merits of the case and the evidence presented. As noted later, this exercise of discretion is, however, subject to the statutory obligation placed on the Commission to consider any public interest issues that may arise under section 36 of the Act. Principle 9.5 does, however, go on to provide some further guidance in that it states that the Commission will also take account of the relativities and the integrity of the

internal award classification structures and the external classifications to which that structure is related.

PN369

In that regard, Mr Paterson has presented a detailed examination of the relativities established in a number of Federal, social and community services awards and has also drawn the Commission's attention to the 210 per cent relativity appearing in the Professional Scientists and Engineers Award. The TCCI submits that the 210 per cent relativity is appropriate to senior managers who manage in a complex professional project-oriented environment similar to that work performed by managers in the community services sector.

PN370

In relation to the four Federal awards cited by the ASU, the TCCI notes the similarity in the relativities established in these awards through recent award simplification exercises conducted by the Australian Industrial Relations Commission. It is also acknowledged by the TCCI that the classification descriptors in these awards, whilst not identical, are similar to the descriptors in the Tasmania award. The TCCI also accepts that the Federal awards have not been subject to a work-value exercise per se but that the relativities in those awards have been established by a process where paid rates have been converted to minimum rates.

PN371

The TCCI, whilst not acknowledging the existence of any nexus with these awards cited by the ASU, submits that the Commission, as constituted, may find them of some relevance to the determination of the increase that should apply to the Tasmania award levels 4 to 7 and to the new level 8. Turning to the public interest, the Industrial Relations Act requires that the Commission considers the economic position of any industry likely to be affected by the proposed award consider the economy of Tasmania and the likely effect of the proposed award on the economy of Tasmania, in particular, reference to the level of employment and take into account any other matter considered by the Commission to be relevant to the public interest. Those points that I have just raised there are set out in section 36, subsection (2)(a), (b) and (c) of the Act.

PN372

The TCCI has already flagged its concerns about the ramifications of any increase for the community services sector. The ASUs claim is at the upper end of affordability for many organisations in this sector, particularly if the State and Federal Governments do not fund the increase. The TCCI on behalf of its members has been active in raising its concerns with, in particular, the State Government, about the funding issues that will confront many organisations as a result of the increase to be awarded by the Commission. Commitment to funding the increase has been given and it is fair to say that the Government's position is that it is waiting on the Commission's decision before it determines its response.

PN373

The TCCI - and this is acknowledged by Mr Paterson - also has members who rely less on State Government funding but more on fund-raising activities through raffles, door-knocks and donations or who are funded by the Federal Government, either wholly or in part. These organisations potentially face

funding difficulties if an increase is awarded. With this in mind, the TCCI has reached agreement with the ASU on two significant issues which it believes would, some agree, address the public interest concerns that these organisations will have; they being the delayed operative date of 1 October for the first increase and the subsequent annual increases that the ASU is proposing. This allows organisations to manage the full implementation of the increases over a reasonable time frame.

PN374

That is all I will say on the public interest. I do say a little bit more about that in my closing submissions. Turning to the classification structure, Mr Paterson has indicated that we are relatively close in reaching agreement on the detail of that structure. As Mr Paterson outlined, we are, it appears, agreed on what those classifications should say. It is how we actually say that in print is the problem we face. So we should be able to reach an agreed position on that within one to two weeks and have an agreed document for you to consider.

PN375

Turning to the economic information presented by Mr Paterson, the TCCI acknowledges the information presented by the ASU which did form the basis of a comprehensive economic submission made to the recent State wage case Full Bench. The TCCI does not dispute any of the information presented. So, in closing - and my submission has been relatively brief - the TCCI believes the Commission has sufficient information to make an informed decision about the merits of the ASUs claim in accordance with principle 9.5 of the wage-fixing principles.

PN376

The TCCI on behalf of its members also submits that whilst it is not possible to totally satisfy the very public interest concerns an increase may have on this industry, the agreement reached between the parties on the delayed operative date and the phasing in of the increases, to a large degree, addresses these public interest concerns. Yes, our members have indicated concerns about their ability to maintain current levels of service provision if the increase is not funded. A reduction in the level of service provision may result in a consequential reduction in employment levels. However, our members also recognise that it is unrealistic to assume that there will not be an increase given the outcome of the last work-value case in this award where similar issues existed at that time as much as they exist now.

PN377

In relation to that, I would like to hand up my only exhibit. It is the decision of Commissioner Gozzi in the making of the Community Services Award where he determined the classification structure and definitions. I have a copy of the full decision, but also just an extract of relevant points I will refer to.

PN378

THE COMMISSIONER: We will just make it one document and call it E1.

EXHIBIT #E1 COPY OF A DECISION BY COMMISSIONER GOZZI IN THE MAKING OF THE COMMUNITY SERVICES AWARD DATED 24/03/1995

PN379

MR PATERSON: If we turn to the second page of that decision, the TCCI in 1995 put some submissions to the Commission around costs and funding issues at that time. At that stage the union's proposal potentially would see significant increases to the industry, and in the second paragraph there:

PN380

Mr Watson agreed that funding per se was not an industrial issue but that it was interwoven with public interest considerations.

PN381

Then just turning over the page, in order to address the concerns that Mr Watson of the TCCI had at that time, he proposed on behalf of the TCCIs members a phasing-in arrangement which, Mr Watson submitted, would accommodate the public interest concerns and Commissioner Gozzi went on to determine a phasing-in arrangement that was different to that. However, it appeared, and whilst it is not clear, on the next page in Operative Date, Phasing and Translation, Commissioner Gozzi found, having regard to all the circumstances, that he would agree to a delayed operative date of, I think, it was 1 July.

PN382

You will note the decision was handed down on 24 March 1995 but that the operative date would be delayed until 1 July and then the second phase of the increase is to apply from 1 January '96. So at that point in time the funding issues were very similar. It was inevitable that all the parties in the industry had to respond to the decision - and they did that - and there were various measures put in place by the State Government to address the funding issues that existed at that time as a result of the decision but, certainly, the phasing-in arrangements from the TCCI members' points of view went a long way to overcoming their public interest concerns. That is certainly the position now and is why the TCCI did reach agreement on the phasing-in arrangements that have been proposed by Mr Paterson today.

PN383

Just in terms of those phasing-in arrangements, they will allow the Government and individual organisations to assess the costs associated with the Commission's decision and to allow consultation between everyone. They will spread the increases across a number of funding cycles - and that is very important. I mean, we haven't simply plucked 1 October out of the air. It actually coincides with the commencement of the second quarter funding arrangements and it will allow organisations who rely less on Government funding to review strategies relating to fund-raising and to examine efficiency measures, where possible. So, if it pleases the Commission, that concludes my submission today.

PN384

THE COMMISSIONER: Thank you. Anything else from you, Mr Paterson?

PN385

MR PATERSON: Just one matter. In looking at the attachments from the decisions in the Federal Commission that I provided to you, I note that the second one in respect of Queensland actually found that the minimum rates conversion process needed to be undertaken. It is actually the subsequent decision to that, if you go back to the second page, the relevant decision is the March '02 one which then follows that through. The conversion issues in respect to that Queensland award is not one that really bothers us here. It is about stripping out that premium in lieu of overtime.

PN386

THE COMMISSIONER: Yes.

PN387

MR PATERSON: The point, however, is that that decision was followed by a further decision that confirmed the relativities in the rates that I have drawn attention to and, should any of the parties need it, the links are there to those relevant other decisions. Other than that, I have no further response to this proceeding. I am in your hands in terms of the making of the decision in a manner that would allow the time link processing of this out there in the industry.

PN388

The issues, I think, that we may need some guidance on is the manner in which you wish to be informed about the outcomes of our discussions on the classification and whether, for instance, it will be sufficient for you to receive documentation from us as a consent agreed draft or whether you will require us to return here into this forum -and I am being conscious of the fact that you will be out of the State in the not-too-distant future and we would clearly like to, for all the reasons relating to putting Government on notice about the outcome of the decision, be able to see a decision as soon as it is reasonably possible. Thank you.

PN389

THE COMMISSIONER: Thank you. A couple of things. It is very clear that 9.5 of the wage-fixing principles will be very much in the forefront of my mind when I go through this. A huge amount of work has been done. I would like to thank both of you. I realise it has taken an awful long time to get this far but the work that you have done has really made my job an awful lot easier that it would have normally been. I certainly appreciate that and I appreciate the co-operation you have both given me as well. I will endeavour to come up with a decision as quickly as possible.

PN390

As far as the inclusion of the various different levels, I would like to take advice on that but my expectation would be, if it is a consent issue, could be slotted in by paper communication but I will take some advice on that; but, other than that, thank you both very much. I will adjourn this and I will hand down my decision forthwith.

ADJOURNED INDEFINITELY

[3.26pm]

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LIST OF WITNESSES, EXHIBITS AND MFIs

EXHIBIT #D1 FOLIO OF DOCUMENTSPN280

**EXHIBIT #E1 COPY OF A DECISION BY COMMISSIONER GOZZI IN
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