

HEARING RECOMMENCED 2.17pm

COMMISSIONER: I'll take appearances.

MR I. PATERSON: If the commission pleases, IAN PATERSON, appearing for the Australian Municipal Administrative, Clerical and Services Union.

COMMISSIONER: Thanks, Mr Paterson.

MR J. O'NEILL: If it pleases the commission, O'NEILL J., appearing for the Tasmanian Chamber of Commerce and Industry Limited. Sir, appearing with me is MR TIM BUGG, appearing for and on behalf of the Law Society of Tasmania. Mr Bugg will need to seek leave of the commission to appear, if it pleases.

COMMISSIONER: Yes. Thanks.

MR T. BUGG: Thank you, Mr Commissioner. I'm the immediate past president of the Law Society of Tasmania, on its executive, and I seek leave to appear this afternoon on behalf of the society so I can explain the society's position in relation to these proceedings.

COMMISSIONER: Thanks, Mr Bugg. What do you say about that, Mr Paterson?

MR PATERSON: I have no problem with the appearance of Mr Bugg from the Law Society.

COMMISSIONER: Thanks, Mr Paterson. Leave is granted.

MR BUGG: Thank you, Mr Commissioner.

COMMISSIONER: Right. Who's kicking off?

MR PATERSON: If I may, commissioner, seeking your indulgence perhaps - power outage seems to have gone through my brain as well as through our computer system. I believe you have two applications in respect of this matter before you, only one of them is brought on for mention. Is that correct?

COMMISSIONER: I believe it is, yes.

MR PATERSON: There was an application lodged by the union, signed, acknowledged by the registrar on 17 November, T8717 of 1999. With the commission's leave and with the consent of the parties, in line with proceedings in other matters that the union has brought on, we'd seek leave to withdraw that application and amend the original application for the sake of procedural simplicity.

However, the draft order that accompanied that application, I would seek to also have, and I'm not sure - I'd seek your leave and the

parties' consent to have that draft order reflected as the draft order in respect of T7903 of 1998.

COMMISSIONER: Yes. Now, I don't see anything wrong with that myself. We'll see that the other side says, Mr Paterson.

5 MR PATERSON: I'll just at this point provide the details of the proposed amendment to the original application to the parties. What that seeks to do is to encompass in the application principles 2, 5 and 16 of the Wage Fixing Principles, effectively to allow this application to encompass not only the structural efficiency and the minimum rates
10 adjustment process but also the award review and the award reformatting process. If the commission pleases.

COMMISSIONER: Thanks, Mr Paterson. What do you say about all that, Mr O'Neill?

15 MR O'NEILL: Sir, we certainly have no problem with that. It was always our understanding that eventually this application may be amended to - the original application may be amended to include the award review process. Thank you.

COMMISSIONER: Yes, thanks, Mr O'Neill. Have you got anything to say, Mr Bugg, or has that shot over your head as it has with me, to
20 some extent?

MR BUGG: I was going to say, that I'm not sure I really understand it, Mr Commissioner, but certainly my understanding had been that the purpose of these proceedings ultimately would be for a review of the award in its entirety and I understand that's what Mr Paterson is
25 saying, that the effect of this amendment is.

COMMISSIONER: Yes.

MR PATERSON: If I can just very briefly clarify. The original application only went to the question of the classifications and minimum rates. I think, to some extent, the proceedings were
30 overtaken by subsequent decisions of the commission. I believe the original application in fact was lodged before the 1998 wage case. Therefore, this seeks to just encompass all of those principles to give effect to a reformatted award in the terms proposed. It is in effect procedural in relation to the Wage Fixing Principles rather than
35 anything substantive that goes to the content of the award.

COMMISSIONER: Yes, and really, you're seeking to consolidate in one claim matters that were initiated in the first claim but also occurred and been included in the second claim?

MR PATERSON: That's correct, commissioner.

COMMISSIONER: All right. I'll grant that application to amend your application, Mr Paterson. What now?

MR PATERSON: I do have some further documentation but I probably will leave that until it's clarified just exactly how we are proceeding today. It's the union's position that this matter does go back some considerable time. I think the application, as I said, the original application was made, I believe in early 1998. It first came on in the commission, I believe, in August 1998. So, it has been a considerable time which, in principle and subject to what the other parties have to say, there's certainly been more than ample opportunity for the employers, to the extent that they're represented by the TCCI, to form a view and have a position to present.

It would be our intention to proceed to have this award made as soon as possible. The substantive matters in terms of the classifications are a reconfiguring of the classifications that in effect do two things; 1) they take the basis of their structure and identification of skills and classification level from the generic seven level clerical and administrative employees classification structure, common to the Clerical and Administrative Employees (Private Sector) Award and also common to a number of other awards of the commission.

On top of that, there is an overlay of legal industry skills. The development of these skills has been informed by the developments in the area of training packages and identification of relevant competencies for the legal industry and those legal services/skills are added to the generic descriptors as you would be aware and certainly, as the TCCI are aware.

The general clerical classifications have a Part A, General Requirements and a Part B of Specific Skill Requirements. These encompass technical skills, secretarial information and business financial skills among others. What our application seeks to do is from Grade 3 in this new proposed classification structure, to develop legal skill levels which are identified as requirement C.

In order for an employee to be classified at a given level, they could either meet the requirements in the same manner as a clerical and administrative employee would, that would be either the general requirements at A plus the administrative and clerical skill requirements at B, or the legal skill level, the general plus the legal skill level.

It's been my intent in that process to mirror the national training package. I haven't proceeded to the point of being prepared to make full submissions to the extent of the parity, if you like, between these classifications and the certificates III, IV and diploma in the national training package for legal industry, however, I'm more than happy to go to those issues.

I remain optimistic that with due process from here on we may be able to reach a consent position. In the event that we can't see our way clear to a consent position then, clearly, we would be putting this matter up for arbitration and decision by the commission.

5 The distinction is further bifurcated, if you like, in that legal industry skill level 1, if one goes to page 16 of the draft that was attached with the latter application and look at Grade 3 classification and go to page 16, legal skill requirements, you will see the legal skills identified at level 1. Then to move to page 18 of the next classification 4, legal skills
10 level 2 and in this case -

COMMISSIONER: Just a minute there, Mr Paterson. I might be looking at the wrong document. I've got one here - what are we looking at, because those pages don't seem right to me?

MR PATERSON: Because it was an extensive document, without
15 having the copy sent back from the commission, I really am -

COMMISSIONER: Is the one in that -

MR PATERSON: One way to check in fact is to go to the index. My belief as to the latest document that we're talking to - if one goes to page 2 of the index, the part numbers are in capitals, the clause
20 numbers are in lower case.

COMMISSIONER: Yes.

MR PATERSON: And in an earlier draft there was a stray bracket that I believe had crept in after the word, scope. If the index page, particularly under Part 1 doesn't have any stray paragraph or bracket
25 marks, then I believe we are looking at the same document. It may be a numbering of pages error that relates to -

COMMISSIONER: I think you're right there. The one that is correct, from what I can make out, is the one that came with the application that's been withdrawn.

30 MR PATERSON: That's correct. That's the document that I would like to take as the substantive application for the draft order.

COMMISSIONER: It's all right. I've been following you, except with the page references, I got lost. Page 16, Legal Skill Requirements, legal skill level 1 and I have that now.

35 MR PATERSON: Very good.

COMMISSIONER: Now, if you want to keep going from there.

MR PATERSON: Without going to the detail of those legal skills, that's the first legal skill level identified. In Grade 4, it's the second level of legal skills and in that case those skills are identified as, on

page 19, being performed under general supervision and general instruction. At level 5 the legal skills are in fact the same as that previous level, but they're exercised under minimal supervision and limited instruction. So in fact the same skill levels span grades 4 and 5
5 and similarly legal skill level 4. Also, it spans grades 6 and 7 but again the work environment, the supervisory regime under which they're performed, is differently defined, such that at level 7 those duties are performed with much more autonomy with minimal supervision and limited instruction.

10 That is the manner in which this application gives effect to the legal training package skill classifications which do, as I say, according to the documentation provided to the parties at a much earlier stage in these proceedings, encompasses a certificate III qualification, certificate IV qualification and a diploma of Business Legal Services.

15 They're the three substantive classifications in the new national training package for the legal industry. At the time of the earlier proposals being developed, they were in draft. I am not at this point in time able to confirm that they have in fact finally been endorsed by the relevant national training body, however, I believe that any changes
20 that were being contemplated to them were more in the nature of form and the identification of, if you like, units of competencies from other training packages that may be able to be accessed by a trainee undertaking relevant training. My information is that the broad descriptors for the legal industry skills have remained unchanged
25 since that earlier stage.

Clearly, we may need to look further into that before this matter is finalised.

If I can turn to the proposed wages in this application and at this point it may be appropriate if I do put forward another document. The wages
30 clause in this application at page 8 is the rates that would give effect to the first minimum rate adjustment of a proposed minimum rates adjustment process.

COMMISSIONER: That's on page 8?

MR PATERSON: Yes. Page 8 is the wage rates, which give effect to
35 the first minimum rates adjustment. So I'd seek to put that set of documents forward as an exhibit. What they contain is a translation of existing classifications to the new structure. They contain a second page which has the new classifications, the final relativity and the current and final wage rates and the table which plots the four MROs
40 over time.

COMMISSIONER: Right, we'll mark that **EXHIBIT P.1**. Just for clarification, Mr Paterson, the draft order of the award that was in application T8717, which we've been using, have we not?

MR PATERSON: Yes, commissioner,

COMMISSIONER: We've been referring to. That will be transposed over into T7903, won't it?

5 MR PATERSON: That's the intent that that be - that that document that was the draft order attached with that application be deemed to be the draft order for the purposes of T7903.

COMMISSIONER: Yes. What about the award reformatting clause changes. Are they going over too, are they?

MR PATERSON: Those changes are incorporated into this document.

10 COMMISSIONER: Yes, I see. Right.

MR PATERSON: As you'll see from the index page, it is organised by parts, in accordance with the outcome of the commission's review process of 1998.

15 COMMISSIONER: Yes, but the award reformatting clause changes. I'm a bit unfamiliar with that myself. How is that incorporated? Does it go at the end of the award as an appendix?

MR PATERSON: That issue, commissioner, I'm more than happy to consider how that happen. You'll note that - and I hope and trust that the final two pages of the document do in fact include the award reformatting clause changes.

COMMISSIONER: The final two pages? I'll just have a look. Do you mean - I've got page 56 and I've got the award reformatting at the front.

25 MR PATERSON: My document has been stapled in a different order then, I presume. The actual page that is headed, Award Reformatting Clause Changes, I'm more than happy to have that as an appendix to the document, but it shouldn't be a substantive part of the award because within some 6, 12, 18 months, it will become redundant or obsolete, in my view. I'm more than happy to have that as an appendix. We'll see what Mr O'Neill and Mr Bugg think about that, when we get around to it.

MR PATERSON: That would be my intention, however, at the time of preparing the draft order, I had not included those changes in the body of the document, so they didn't appear in the table of contents.

35 COMMISSIONER: No. All right. Anything else, Mr Paterson?

MR PATERSON: Just further to the question of the wages and going back to page 8, this award, in a sense, has a dimension which is different to other unstructured clerical and administrative classifications in other awards.

The older standard, if I can refer to it as that, for clerical classifications had classifications based on between, I believe, 1 and 5 years of service, then rates for employees in charge of more than 2 or more than 5 other staff and for an accountant. The Barristers and Solicitors Award, to an extent, does have a classification structure that goes beyond that. The current award has two grades of clerks and three grades of law clerks. Within those grades there are rates for years of adult experience.

It's my understanding that the nature of the industry means that, to some extent, that is appropriate to be continued in the new award and therefore the general approach to the new or the contemporary clerical and administrative - contemporary at the time, that the structural efficiency exercises were undertaken, doesn't have increments beyond grade 3. This proposal has two levels within grades 4, 5, 6 and 7 as well as a third level in grade 3. So that makes it a different proposal and goes therefore to some matters that are beyond the standard approach to the reclassification or restructuring of generic classifications.

There are a number of other matters that would be appropriate to have a look at when we go to the substance of the award reformatting, however, I don't propose to take up the commission's time at this point in time with that issue. However, I believe there is one important change that is more than the usual run of reformatting and changes consequent upon reformatting and by that I mean, the sort of changes that seek to make consistent things like terms of engagement or periods of notice and that is at clause 16 of the current award, has a number of exemptions.

These exemptions go to, (a) legal practitioner; (b) articulated clerks and apprentices at law, and then (c), (d) and (e) are aged-based exemptions and it's the union's position that whilst the occupational exemptions of legal practitioner, articulated clerk and apprentice at law are appropriate and have been incorporated in the scope clause of our proposed draft order for this award, we would assert that the aged based exemptions are discriminatory and ought not carry over into the new award and that that is encompassed within the provisions of the award reformatting principles in terms of removing obsolete or discriminatory provisions.

COMMISSIONER: Where are they to be found?

MR PATERSON: They're not to be found in the new agreement, they're deleted. If you look to the table of changes, I believe under, scope, the table of changes identifies the old clauses as 2 and part of 16 and identifies that the discriminatory exemptions have been deleted.

COMMISSIONER: Thank you.

MR PATERSON: There is one other matter that does involve a substantive change. This award has currently different periods of notice under contract of employment at clause 13. I believe this was a matter we got hooked up on when we did one of the 1998 orders for this award.

Our draft order would propose a single notice of termination provision and that proposal can be found, I believe, in Part 2, clause 5 and it goes to the higher standard of four weeks notice.

Also, whilst in that part, there is a provision there for trainees and I have a matter that I would seek to put forward as an alternative to that clause. However, I'll stay my hand on that until we see exactly where we are in these proceedings, other than to place it on notice that that was a proposal from the ASU, that the ASU has been advancing in a number of proceedings.

In those other proceedings, we've agreed that that matter is a matter larger than any single award and I have an alternative proposal which I will put in an appropriate time, which reverts the trainee clause to the provision that I believe is in the current award. Sorry, it's not.

In the current award we've got an ATS traineeship clause, which is redundant. The scheme doesn't exist any more. There is no alternate proposal. It will be very similar to that but it is based on the generic trainee clerks provision appropriately modified but largely in terms of making the definitions that relate to trainees and traineeships relevant to the current trainee framework.

Unless the commission has further matters that you wish to have clarified at this point in time, and I did note in passing that there are a number of other errors and omissions of a relatively minor nature. For instance, the meal allowance hasn't been updated in this document to encompass the last change.

The award interest is actually not correct, although what is in the award interest is accurate. It is probably not as specific as the commission may require. In terms of the Chamber of Commerce and Industry and the Trades and Labor Council, rather than specify subsections, I've just identified that they're both pursuant to section 62. It may be that one should be 62(3) and the other should be 62(2). We can look to that.

One other minor matter was an error in the parental leave clause in terms of a clause reference. And also arising out of other matters that we have progressed in this commission, I would also be proposing that the definitions at 1 also include a definition for a permanent employee and a full-time employee, full-time being defined as the full-time hours in the award, which I think I've probably made a mistake on, and the proposal for a permanent employee is that a permanent employee be one engaged on a regular and continuous basis.

5 No doubt, as with some of these other proceedings that we've had in the commission, I expect that there will be errors and omissions perhaps relating to clause references and there would be one or two other matters that will still remain to be finalised including the superannuation clause. However, I don't see those as being either fundamental or threshold matters in these proceedings.

The fundamental issue that does require the careful consideration of the parties is the classification and the wage rates. If the commission pleases.

10 COMMISSIONER: Thanks, Mr Paterson.

MR PATERSON: If the commission pleases and excuse me, it may be appropriate that the draft order that was attached to the latter application be given a number for the purposes of these proceedings.

15 COMMISSIONER: **EXHIBIT P.2.** That's the order by consent, 11 May 1999?

20 MR PATERSON: That's the identifier on the bottom left-hand corner and it may be at some stage we do need to - once we've worked through this a bit further, there will be a need for a further draft order to be put forward to encompass a number of the changes that I have mentioned and certainly at that stage we will do it in a manner that makes it absolutely sure that everyone is looking at the same version number.

25 COMMISSIONER: I'll leave the award reformatting clause changes for the moment, on the basis that it's at the back of the document and we'll discuss whether or not it's going to be an appendix. I say now, it's my preference that it be added, for the time being, so the persons using the award at least have got some indication of what's happened as opposed to a previous award. Is that all, Mr Paterson?

MR PATERSON: For the moment.

30 COMMISSIONER: Mr O'Neill, how do you react to all that?

35 MR O'NEILL: Thank you, sir. How I react is that TCCI, on behalf of their members, have received no adverse comment from members in respect of what Mr Paterson proposes, save and except for the issues that he did outline to you that still need to be resolved in the final award being put to the commission as a consent matter.

I think it would be appropriate at this stage, that I request that Mr Bugg address the bench in respect of the Law Society's position and where they're at as far as this particular application's concerned. If it pleases.

40 COMMISSIONER: Yes, all right. Thanks, Mr O'Neill. Mr Bugg?

MR BUGG: Yes, thank you, Mr Commissioner. On behalf of the society, I seek an adjournment of the proceedings to enable the society to consult more widely with its members.

5 By way of background I had early contact, when I first became president of the society late last year, with Mr Paterson because I was aware that there were moves afoot to review and indeed replace the current award which affects the legal industry in this state.

10 We had a couple of meetings, the first early in this year and then later in the middle of the year and following that second meeting, the society resolved to consider two issues, first, it's membership of the TTCL. At the moment, I think only three law firms are members of that organisation and it was considered that as the peak body of the profession it might be more desirable for us to be a member. We've been looking at that. It's taken some time, regrettably, but as part of
15 that process we've also asked, in a recent survey, approximately five weeks ago for all the law firms to indicate the number of staff employed by them pursuant to the current award, the number of staff in each classification under the current award and whether or not those employees are being paid in accordance with - they should be
20 paid in accordance with the award, but rather, whether they're being paid above the award.

I suspect, from my own personal experience in this area, that most people are being paid above the award and I believe as a result, that the major issue is going to be the categorisation Mr Paterson has referred to. I don't know if there's any disagreement with the proposed
25 categorisation and the training scheme envisaged by the proposed new award.

The survey which went to the profession is at an end in that I think as many people who were going to respond have responded and, clearly,
30 the society now urgently needs to confer further with Mr Paterson with a view to seeing whether some agreement can be reached about this issue and if the commission is minded to adjourn these proceedings further and it would appear in any event that that's desirable in light of the new material raised by Mr Paterson today, I would expect the
35 society to attend, as a matter of urgency, to consultation with Mr Paterson with a small group of members of firms to be satisfied that the categorisation proposed is one that would have currency in the profession and wouldn't be irrelevant to the profession.

40 COMMISSIONER: Thanks, Mr Bugg. What do you say about all that, Mr Paterson?

MR PATERSON: As I think I've put on the record on previous occasions, from my understanding that tracking back a considerable number of years, this process was effectively derailed by differences of opinion between the industrial and other parties. I'm anxious and have

been anxious throughout these proceedings to avoid that becoming an impediment to the progression of this matter.

As Mr Bugg has indicated, we were more than happy - I was personally more than happy to have those discussions with the Law Society, to the extent that those processes are about ensuring that the classification structures and skill descriptors are relevant to the industry in Tasmania. I believe that's a more than appropriate insurance in terms of any suggestion - or the issue that the commission must in fact consider in terms of the public interest and the impact of the award making process.

My concern would be that this probably means that the final proceedings, being realistic about it, won't be in place until February, depending on the commission's availability. I'm at this stage, more than likely, to be unavailable in January myself. It may be that we need to talk to the employers about an agreement to compress two of the four minimum rates adjustments as a measure that reflects the fact of the delays in this proceeding and the fact that we haven't taken a hard line about bringing the matter to a head and forcing the issue.

I haven't discussed dates at all with Mr O'Neill and, clearly, that would have to be a matter for discussion between the industrial parties, which brings me to my final point, that whilst we're happy to have the - we accept the granting of leave to the Law Society to appear here, we believe that the final position in this matter is a matter for the industrial parties and to that extent, it's incumbent on employers in the industry to resolve their issues in terms of the manner in which they are industrially organised.

It is not our business to do that, however, my 10 years of experience, mainly in community services, tells me that unions are in fact more effective where employers are also organised. The issue then remains one of, what period of time are we looking at for an adjournment, given the time of year, what is a realistic time frame. Mr Bugg has confirmed what my understanding would be, that allowing for a spread and a range across current rates of pay in the industry, that the extent of over-award payments against the current award would certainly diminish the financial impact on most legal firms, particularly the larger firms.

I'm certainly aware of, from our current and past members, the level of remuneration to legal secretaries, for instance, tends to be well in excess of the current award rates at the top end. As I say, my detailed knowledge of that is not firm and I would appreciate the opportunity to discuss with the Law Society the results of their survey in a way that obviously wouldn't necessarily identify any individual firm.

I would like to ask for a report back before Christmas, to the extent that that's possible for the commission and the parties to timetable. I would, subject to our computer facilities being up and running within

the next week, and probably even if they're not, I would be able to provide a new consolidated draft order within a fortnight.

5 If the matters can be progressed that way, if the Law Society, the union and I expect the TCCI, can have a three-way meeting to discuss the relevant issues that Mr Bugg has identified, that at least there is an openness from the TCCI to discuss the issue of the timing of the minimum rates adjustment and if there a report-back hearing before Christmas, then I would consent to the adjournment.

10 COMMISSIONER: Yes. Thanks, Mr Paterson. Now, gentlemen, I'll try and cover the things that are in my mind. It's a bit hard to write them all down, but have we all got a copy of the statement of particulars, that Mr Paterson kindly provided? Mr Paterson, item 2 there, the minimum rates adjustment, has that not been applied to this award as yet?

15 MR PATERSON: That's correct, commissioner.

20 COMMISSIONER: Thank you. I'll just say to the parties, and I presume especially to you, Mr Bugg, that that process is available to the union. It has been for quite some time and it's incumbent upon the parties to reach agreement on that. If they don't do that within a reasonable time and if Mr Paterson requests it, the commission will apply it. I'm just saying these things. Maybe or maybe not the parties are aware of these things but I'm just confirming them.

25 Item 3 - Award review process and State Wage Case decisions: the reformatting and reviewing of the award is a standard process, has taken place in a number of awards, and again it ought to be agreed so that that matter should not be any problem to the parties. Would you concur with that, Mr Paterson?

30 MR PATERSON: Yes, and on that score I think again without having reference back to all of my correspondence with the TCCI, I believe that I undertook to do that at that early award review process and so at least the first cut has been in the hands of the TCCI for probably over two years perhaps. I'd have to check back on that but some considerable time and there are some specific matters, as I mentioned, that are affected or are substantial matters rather than just formatting that arise out of that, but I believe that that there are no fundamental issues of departure. There are a couple of matters like the drafting of an appropriate superannuation clause that will need some finalisation.

40 COMMISSIONER: Yes. So I just confirm that; that the award review process as outlined in paragraph 3 there is generally a standard process and Mr O'Neill in particular would know what I'm talking about so that there should not be too much trouble between the parties reaching substantial settlement on that and P.2, as I see it, reflects that fairly well.

5 There are some key points or major points nevertheless in that covered by that paragraph 3 that may not be agreed. Just for example, the four weeks' notice is an item that seems to me may or may not be agreed. In other words, the commission might have to decide that unless the parties agree. But in general those items covered by paragraphs 2 and 3 should be able to be agreed.

10 Now Item 1 - Structural Efficiency - the main point, as I understand it, in this proposal by the union is for a restructuring of the classification scale based upon the present clerical and administrative scale but geared towards the legal firm - the legal office difference; the peculiarities, if you like, of the legal office requirements.

15 Now that is, it seems to me, a new area altogether and it needs close attention. Mr Paterson might disagree with me in some regards from that what I've just said, but what I'm saying is that if the parties, and particularly the Law Society, find serious concern about that - I'm not indicating one way or another what I think about it - but I can understand that and therefore it may be those matters need to be looked at very closely in the long term and that would mean a very thorough process of investigation which I'm reluctant to go into because it would be quite a detailed and exhaustive process. 20 Nevertheless, it may be necessary.

25 So going back over it all again, I think that the parties ought to be able to reach basic settlement on paragraphs 2 and 3. I'm requesting that the parties look at reaching a settlement on paragraph 1 because that would be good for both sides and I'll leave all that with the parties.

Now there's just some other general comments and there was a time - and I'm going - we'll just go off the record for a minute thanks.

OFF RECORD 3.04pm

ON RECORD 3.06pm

30 COMMISSIONER: I think it's important that these points are put on the record. These matters, whilst in detail they haven't reached as far as they have now, have been before the commission for quite some time and I think it will be on the record that I've made comments to the employer side that I think that Mr Paterson has been quite 35 restrained and if he wants to step up the pace a bit I'd be sympathetic to that.

40 That still applies but I note with gratification and with a certain amount of admiration that Mr Paterson is still saying that he would prefer to do it by settlement, discussion and so on - this process, and I think that's, as I say, to be admired and to be commended because I think going on what my reading of it is so far and I'm not as close as you people, that that is desirable and ultimately the best way of proceeding.

5 So with all that in mind I accept Mr Paterson's point that he'd like to hear a report back close to Christmas and that he thinks that may be February would be the finalisation period. I'll leave that to the events as they unfold. But I think it might be a good idea if the parties came back just prior to Christmas to tell me how far they'd reached.

MR PATERSON: If the commission pleases -

COMMISSIONER: Yes, Mr Paterson?

10 MR PATERSON: - the issue of the structural efficiency in the classifications, please correct me if this analysis doesn't entirely accord with your thinking, but if in our terms a worst case scenario of this classification structure was to be rejected, the issue may then come back to more comprehensive definitions to accompany the existing classifications in the award and a process of establishing appropriate relativities between those classifications or an alternative
15 set of classifications.

Now I think the issue of alternative classifications, if there is any position out there, I believe it's unknown to any of the parties around the table and I think that that would be the most counterproductive way to go; that if this falls over, in essence I think the issue does come
20 back to the structural efficiency and the determining of what should be the minimum rates adjustment to this, would require that issue to be addressed in that way. Is that correct - establishing appropriate relativities and skill-based definitions for the classifications in the award?

25 COMMISSIONER: Yes. Well, thanks -

MR PATERSON: That would be the requirement of the principles, I presume.

30 COMMISSIONER: Yes, well let's see how I'll react to that and see how we are after that. It seems to me that if the minimum rates adjustments have not been applied to this award to date, they could be applied now. They could be. But if the various classifications are going to be reviewed and changed so that the end result is really a new classification scale altogether, it's possible that the minimum rates adjustment amounts will be included in that. It's also, as I see it, they
35 may be agreed to be included but the rates - ultimate rates - different from the present rates may again not reflect that as well and may reflect something else. To me, that's within the structural efficiency and the minimum rates adjustment process.

What's your reaction to that, Mr Paterson?

40 MR PATERSON: I suppose my dilemma is understanding how one in fact - I mean obviously if there is consent and agreement, there's almost no issue so long as it's consistent with the principles. But if the

matter for instance was to go to arbitration, on what basis would the relevant minimum rates adjustments be determined. They would have to be, in my view, determined against the issue of skill-based relativities within the classification structure. I mean minimum rates as such don't stand alone and fall out of the sky, they have to be based on something.

I mean I think that's probably just enough to say on that matter because I still believe that this document has enough points of connection to the industrial reality and subject to those discussions taking place, I believe it does have enough nexus to reality to be an appropriate classification structure.

COMMISSIONER: Yes. And I'm not saying it does or it doesn't, Mr Paterson, because I don't know. But, as I see it, it's much more preferable for the parties to take your proposals as a base and discuss these points that we've raised and go into them in more detail so they're all understood equally and come up with an end result including consideration for structural efficiency and minimum rates, but that's in the hands of the parties.

What I would foresee with some trepidation that there was not agreement, we would have to go and inspect the premises, hear what people are doing and make investigations and in the end result come up with a structure that may or may not be the same as yours, Mr Paterson, which would then be my responsibility to decide how the minimum rates adjustments would be applied, if at all, and the end rates considering the structural efficiency principle - it's rather a nightmarish prospect. That's why I say that Mr Paterson's proposal ought to be looked at positively by all parties. Do you accept that, Mr Paterson?

MR PATERSON: No problem, no problem at all with what you're saying. I mean my difficulty is what could be easier than what we are doing.

COMMISSIONER: Yes. That's your position, Mr Paterson, it's quite understandable. Unfortunately I can't say to the other side go for it because that's not my role at this stage.

Now any questions from anyone?

MR BUGG: Most certainly. If I can just say, Mr Commissioner, it makes eminently good sense because clearly the task of going through various firms would be horrendous because the industry is represented by all sizes of firms, like most industries, and one would hope that it can be resolved quite sensibly on the basis of consensus.

COMMISSIONER: Yes, thanks, Mr Bugg. And I'd be confident as well apart from the numbers working in offices, the basic jobs are still there to be found in every office - basic activities, depending on the

numbers, I suppose. If there's only a half a person working in an office they could hardly do all the work. Perhaps the lawyers do some of it in some places, I don't know.

MR BUGG: We do most of it, Mr Commissioner.

5 MR PATERSON: That's the next award.

COMMISSIONER: We'll go off the record thanks.

OFF RECORD 3.12pm

ON RECORD 3.14pm

10 COMMISSIONER: Well, thank you very much, gentlemen, I appreciate your cooperation in this matter and I consign the matter of negotiations to you with some relief and I hope that you're able to ultimately reach a resolution between yourselves.

Thank you, this matter is adjourned until 9.00am on Wednesday, 22 December.

15 **HEARING ADJOURNED 3.15pm**