

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 5664 of 1995

IN THE MATTER OF an application by the
Australian Education Union Tasmanian
Branch to vary the Technical and Further
Education Staff Award

re hours of work

COMMISSIONER GOZZI

HOBART, 21 July 1995

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances please?

MR N. EVANS: If the commission pleases, N. EVANS, for the Australian Education Union.

COMMISSIONER GOZZI: Thank you, Mr Evans.

5 **MR C. WILLINGHAM:** Good morning, Mr Commissioner, CLIVE WILLINGHAM. I appear for the Minister for Public Sector Management.

COMMISSIONER GOZZI: Thank you, Mr Willingham. Mr Evans?

10 MR EVANS: Yes, commissioner, before we get into the substance of the matter before the commission today, from the union's point of view there's still a couple of things outstanding from the last time the matter was - well - these matters were before the commission in T.No.5493 of '95 in which the commission made a decision. In relation to that matter, the decision at page 3 reads, and I'll quote:

15 *In that regard and in accordance with the normal conventions that apply in matters of this kind the commission requires the employer to now revert to the arrangements that existed prior to the introduction of those changes.*

The final paragraph of the decision reads:

At this point the commission declines the AEU's request to issue an order, however the commission has an expectation that the requirements outlined above will be observed -

20 and so on.

I'm open to correction about this and I'd be happy to hear anything Mr Willingham has got to say about it but to the best of the union's information those requirements haven't been observed and if that is the case, and as I say, I'm happy for Mr Willingham to tell me that it's not, then the union will be seeking an order to enforce those aspects of that decision.

25 COMMISSIONER GOZZI: So specifically, you're saying the credit for beginning teachers - seven hours?

MR EVANS: I have a draft order that I - that will -

COMMISSIONER GOZZI: Yes - and the other relates -

30 MR EVANS: And the other one is when the employee proceeds on approved leave the appropriate teaching load credit which should be given to such an employee.

COMMISSIONER GOZZI: Right. Well before you give me the draft order maybe your concerns are misplaced.

MR EVANS: Yes.

35 COMMISSIONER GOZZI: Mr Willingham, any light you can throw on that?

MR WILLINGHAM: Mr Commissioner, I simply say this: Mr Evans makes the assertion - I'd be interested to know upon what basis he founds that view.

MR EVANS: Yes, well I can assist the commission if that would help - with an exhibit that would help.

COMMISSIONER GOZZI: Exhibit AEU.11.

5 MR EVANS: This is an exhibit under the signature of M. Fairhall, Associate Director - Administration North-West Institute of TAFE, and it refers to a bulletin that the union put out in relation to the commission's decision in relation to this matter which suggested that the requirements of the commission would be adhered to from the 3rd July as stated in the decision.

As you can see, the document itself says:

10 - *the Agency has NOT given any instruction for any changes to be made.*

- because the commission's resolutions haven't been put to the secretary. That the date on that is the 12th July, and I'm not aware of any subsequent correspondence or anything to countermand this memorandum.

COMMISSIONER GOZZI: Mr Willingham?

15 MR WILLINGHAM: Well, Mr Commissioner, the exhibit that perhaps Mr Evans should have presented to you is in fact correspondence from myself to the union. If you'll forgive me for one moment I'll just find the date of that. It's dated the 7th July, commissioner, and it responds to a letter from the Australian Education Union, dated the 5th July in which I personally responded to the question put to me by the union.

20 The exhibit that Mr Evans has just placed before you, that is, a document signed by M A Fairhall, Associate Director - Administration, of North-West TAFE, I'm unaware of that having been issued. I say frankly it ought not to have been issued, and to the extent that it may have caused some consternation in the collective minds of the Australian Education Union, it should be disregarded.

25 However, in defence of my colleague, Ms Fairhall, a quick reading of that exhibit suggests that Ms Fairhall was attempting to address matters raised by Mr Evans himself in something called a tabloid - a TAFE tabloid of the 29th June 1995. That is not before me or indeed it is not before the commission, so in order to gain a correctly balanced perspective of just what this exhibit is about, it would have been useful to have been able to sight the tabloid. However, I've said what I needed to, commissioner. I indicate to you that - and I have previously indicated to you, sir, that we will respect the wishes of the commission as expressed in T.5493, and I reiterate that there is no reason for concern either by this commission or by Mr Evans that we will not, until this matter is decided, fail to fulfil the wishes you expressed.

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35 COMMISSIONER GOZZI: Fine. That clears it up, I think, Mr Willingham. Thank you very much. Mr Evans, does that satisfy your circumstance?

MR EVANS: I mean I guess I'd like to say yes, but I still - we still have failed, from our point of view, to see any evidence of anything happening in terms of instructions to institutes, you know, to implement the decision. There haven't been any such things. They're the ones that have to do the work in implementing the decision and no instructions, to my knowledge, have been issued to them. If Mr Willingham is saying that they will be, well yes, I'm satisfied.

COMMISSIONER GOZZI: Well the indications from Mr Willingham are quite clear that the intention is to observe the commission's decision.

MR EVANS: Yes - well - yes, but that hasn't been done to date and it's been some three or four weeks since the decision has been available.

COMMISSIONER GOZZI: All right, well -

5 MR WILLINGHAM: Mr Commissioner, can I interrupt my colleague and say, look I've said what I've said. I don't know that I can do any more. I'm not certain that I'm particularly concerned whether or not Mr Evans or any other officer of the AEU sights the department's internal correspondence. Our obligation, such as it may be stated in accordance with your decision in T.5493, is clear. The department has a choice to make whether it wishes to observe the wishes that you express in that decision or
10 whether it does not. I have indicated to you prior to this hearing and I've indicated to you quite unequivocally this morning, that we will observe those wishes. The method by which, as an internal mechanism we ensure that all officers are aware of the relevant requirements, is not a matter for Mr Evans's concern.

15 COMMISSIONER GOZZI: All right. Well look, I accept that. Mr Evans no doubt that indication - unequivocal indication that the decision will be observed should be satisfactory to you - to the AEU.

MR EVANS: Yes, Mr Commissioner.

COMMISSIONER GOZZI: Thank you. Mr Evans.

20 MR EVANS: Before I commence in relation to the matters before the commission today, I would like to seek the commission's leave to make one small amendment to the application that's before the commission today.

COMMISSIONER GOZZI: Mm. Whereabouts is that?

MR EVANS: If you go to attachment A of the application -

COMMISSIONER GOZZI: Mm.

25 MR EVANS: - and there is a proposed award variation there - there are in fact two - the second paragraph of the first - of the variation labelled 1 states:

Provided always that teachers in their first year of permanent employment -

I'd like to - the commission to amend that so it reads: Provided always that teachers in their first and second years of permanent employment -

30 COMMISSIONER GOZZI: First and second year -

MR EVANS: Yes.

COMMISSIONER GOZZI: - of permanent employment. Mr Willingham, any objection to that amendment?

MR WILLINGHAM: No, Mr Commissioner.

35 COMMISSIONER GOZZI: All right. Mr Evans the application will be amended as you've requested.

MR EVANS: Thank you. Thank you, commissioner.

This application relates to two matters. The first is the provision of a teaching load reduction for beginning teachers in their first and second years of permanent

employment; and the second matter is the matter of an appropriate teaching load credit for persons on approved paid leave other than recreation or flexible leave. And the word 'persons' of course means persons employed under the TAFE Staff Award - so in effect, TAFE teachers.

5 I would have - in relation particularly to the first matter, it would be our contention that given that it is the employing authority who actually wishes to change the situation in relation to the teaching load reduction for beginning teachers, something which exists in an industrial agreement approved by this commission, then they surely would be the ones who would bear the major onus of demonstrating why the change should occur.

10
15 In our submission all we're attempting to do is uphold what currently exists in - in an industrial agreement which has been approved by this commission. However, having said that, and the teaching load reduction for beginning teachers itself goes back until at least 1980, and has recognised the work involved in undertaking - in teachers undertaking the Diploma of Adult and Vocational Education which, until recently the employer admitted it required of new teachers - required the undertaking by new teachers who didn't come to take teaching with teaching qualifications. As the commission would be aware, the situation of - of TAFE teachers in relation to their professional qualifications is somewhat different to almost all other areas of employment and they have historically been gained on the job, in a combination on and off the job training, or at undergraduate level, in the beginning years of a TAFE teacher's employment.

20
25 In 1982 when the Diploma of TAFE Teaching was overhauled to be an integrated on and off the job program, the then 30 hour attendance time of a TAFE - of a beginning TAFE teacher was split up into 10 hours teaching, 10 hours training or 10 hours release time to undertake training and 10 hours incidental or DOTT time. A few years later when the program was changed to what it is now to a block release program with teachers attending significant amounts of the university program in their holiday periods or in non-teaching weeks, the teaching load was increased to 14 hours per week or 504 per annum and it was this teaching load for beginning teachers which was included in the second tier agreement between the parties, which I'd like to tender as an exhibit.

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COMMISSIONER GOZZI: That's AEU.2.

35 MR EVANS: In relation to this exhibit, the first six pages of it are actually the second tier agreement between the parties. The last three pages represent a report-back which was made to the commission in relation to the implementation of this agreement. The relevant part for the purposes of these proceedings is, in my submission, the second last page of the exhibit which lists the agreed hours - it does say from 1989 - and on the bottom there it states that:

40 *beginning teachers will have a weekly load of 14 hours and an annual load 504 hours.*

45 That was the situation which applied up till the commencement of 1995 and in some cases still applies. The department has allowed teachers who are part way through their teaching qualification to continue to receive the benefits they had when they commenced their teacher training. But for all new employees undertaking teacher training there is no such reduction.

This applied, as I said, until the commencement of this year when the department stated it was no longer requiring persons appointed in TAFE, or as TAFE teachers to possess or obtain any teaching qualifications at all.

In line with this decision, it sent the following memorandum to staff, which I'll also tender as an exhibit.

COMMISSIONER GOZZI: That's exhibit AEU.3.

5 MR EVANS: What this exhibit is directed to is a change in the arrangements for the whole area of funding of teacher training by the department, whereas used to have been the case that reasonable expenses were sort of as of right of employees who were undertaking their teacher training, the introduction of this scholarship meant that there was a limited amount of money for which people who were undertaking teacher training could make application for and would be - and which would be assessed by a committee. And some people would be successful and others wouldn't in their application for these scholarships. And that's not a matter which is before this commission today. The relevant part, I guess, of the exhibit is under Eligibility and Conditions, point 2 which states:

15 *Teaching load reduction will not be part of the scholarship offered to successful candidates.*

Which has meant and has been - and there has been implemented that teachers undertaking the teacher training program through the University of Tasmania now carry the same teaching load as all other employees.

20 It's now apparently the view of the employer that as it isn't requiring these teaching qualifications, it is not required to provide any support for them.

However, in our submission, there is a game of semantics going on in relation to this matter as in its advertisements for permanent teaching positions the department continues to state that successful applicants for new permanent teaching positions will be expected to undertake a course of teacher training.

25 And in relation to that I can tender exhibit of Tasmanian State Service Notices.

COMMISSIONER GOZZI: Exhibit AEU.4 - mark both - AEU.4 is the 10th May '95 and AEU.5 is the 12th July.

30 MR EVANS: As the commission can see, this is a copy of the Tasmanian State Service Notices - AEU.4 - as - Wednesday, 10th May. If I can take the commission to page 445 of that - of those State Service Notices. The bottom right hand corner, under Industrial Relations, Vocational Education and Training, advertises a job as teacher in electrical trades, lists the salary range and then it reads as follows:

35 *Salary is dependent upon qualifications and experience. Unless already holding acceptable teacher training qualifications the successful applicant will be expected to undertake a course of teacher training and to attend an induction course. The position is full-time, and may involve regular evening teaching.*

40 The commission will see then on the next page the same - there are a range of other positions advertised - teaching - permanent teaching positions with the same statement included; that the applicant will be expected to undertake a course of teacher training.

If I turn to exhibit AEU.5 which is - which I've included to show that this was - that this is still continuing now. This exhibit is the Tasmanian State Service Notices of Wednesday the 12th July - just last week, and there is also on page 678 of those notices a Teacher Horticulture position advertised which also states that:

Unless already holding acceptable teacher training qualifications, the successful applicant will be expected to undertake a course of teacher training.

COMMISSIONER GOZZI: Whereabouts is that? What page is that on?

MR EVANS: Page 678.

5 COMMISSIONER GOZZI: Six seventy eight.

MR EVANS: Right on the bottom left hand.

COMMISSIONER GOZZI: Bottom left hand.

MR EVANS: Teacher Horticulture.

10 COMMISSIONER GOZZI: Right. Okay. Right, now just go back to AEU.4 on page 446 - I'm having trouble picking up those words in that.

MR EVANS: The Teacher Horticulture position?

COMMISSIONER GOZZI: No, on top of page 446 - top left hand corner.

MR EVANS: I'm sorry, commissioner, that particular advertisement starts on the previous page.

15 COMMISSIONER GOZZI: Oh, I see. That's what you drew my attention to.

MR EVANS: Yes.

COMMISSIONER GOZZI: Oh, sorry. Yes, okay.

MR EVANS: It flows over onto the next page.

COMMISSIONER GOZZI: Yes, that's okay. Yes, okay.

20 MR EVANS: You'll notice that those words aren't included in the Teacher Horticulture position on the bottom of page 446.

COMMISSIONER GOZZI: Why not?

25 MR EVANS: Because that is advertised as a temporary position and it's never been the case that teachers employed only as temporaries have had to undertake a course of teacher training.

COMMISSIONER GOZZI: Right. Okay.

30 MR EVANS: So, as can be seen, the employing authority is placing advertisements which state that they expect their employees to undertake teacher training. The Oxford Dictionary defines an expectation as something looked for as due and a requirement as something asked as of right, which seem to me to be the same thing. In our submission, it is now disingenuous to claim that somehow the difference in words from required to expected allows the employing authority to no longer provide the assistance it once did.

35 One might have expected in the case of a removal of such a longstanding and significant industrial condition, that some negotiations may have occurred between the parties perhaps with a view to reaching some sort of compromise position, perhaps

there is an argument that the teaching load reduction for beginning teachers should be reduced in that it is too great, or something in that order, but those discussions are never ensued basically because the department was just saying that the whole thing would be abolished.

5 I should also refer to the fact that this matter was briefly addressed in the special case proceedings, with which we are all familiar. The AEU, as part of its application, claimed that all teachers should be released from duty for the equivalent of two hours per week averaged over a full year. The submission also went to the assistance with costs involved in undertaking study and a whole area of support for people
10 undertaking teacher training. The commission, at page 149 of the special case decision, refused the AEU's submissions on these matters on the basis, it appears to me, that adequate regulation was made by virtue of the State Service Act. We would submit that that decision is not directly relevant to this matter for a number of reasons.

15 The first of those is that this application is different in character to the previous matter, as this application does not go to costs involved with study or to release from duty, simply to a longstanding condition of a teaching load reduction which until the commencement of this year was enjoyed by the employees concerned. The special case decision of August 1993 had no direct impact on the provision of that teaching load
20 reduction. In fact, for the remainder of 1993 when the decision came down and for the entirety of 1994, the teaching load reduction was in fact granted.

Mr McCabe, for the employer, at page 3836 of the transcript of the special case, which I have copies of that will assist the commission.

COMMISSIONER GOZZI: That's AEU.6.

25 MR EVANS: At page 3836 of the special case transcript, stated at the top of the paragraph:

*- formalisation of such training in an award does not serve the best interests of the department and removes the discretion which management should have in deciding whether an employee should or should not be given paid release from
30 work to undertake study. It is a management function to determine these things on a case-by-case basis for each employee seeking to be released for study.*

Then further down the page, Mr McCabe in the second last paragraph stated:

*- We are already providing that sort of release to employees. As I have said, it is in their department's interests to do that. We do not - we are not aware of any
35 complaints from employees or from the staff society about that staff - the teaching training - teacher training that is provided at the moment. I think it is more than generous and I do not think it needs to be formalised in an award.*

40 That was the position of the employing authority at the time. Remembering of course that the issue, at that stage, a fair bit broader than the one that is before the commission today. It did deal with the whole area of support for teacher training.

45 There was no indication in that submission from Mr McCabe that the department would seek to remove the teaching load reduction in its entirety. In fact, one could be forgiven from thinking in terms of the submission about Mr McCabe saying it was in the department's interests to providing the release to there being some sort of implication that it would continue. We would suggest that the fact that that teaching load reduction has been removed is a significant new circumstance.

In the part of the submission of Mr McCabe that I've just quoted to the commission, he suggested that the issues in relation to assistance with teacher training would be approached by the department, or should be enabled to be approached by the department, on a case by case basis. This is not happening in relation to the teaching load reduction where the department has just made a blanket decision that it won't allow such a reduction to anyone. So, in accordance with Mr McCabe's submission that the department should be allowed to make a decision on a case by case basis, that isn't what's happening. They've just decided that no-one can access the reduction.

The AEU accepts that reimbursement of the costs of teacher training are covered by Regulation 273 of the State Services Act, as are in fact reductions in attendance time. However, there is nothing in that regulation which specifically allows for the situation of TAFE teachers whose work is split by their award into teaching and non-teaching duties. This therefore is not a matter which relates to training provisions which may be applicable across the State Service, as is envisaged by Regulation 273. It is a specific matter relating to the teaching load of newly appointed TAFE teachers undertaking teacher training, a situation which occurs nowhere else in the State Service, and undertaking teacher training which is, at the very least, expected of them by their employer.

I might just briefly go to the actual structure and work load involved in undertaking the diploma. I will only, just for background, briefly mention this. The diploma is a full time programme which runs over two years and is usually undertaken by TAFE teachers who gain permanent employment in the first two years of their employment. The course has 14 units which must be completed in the two years and there is a mixture of face to face and distance learning. There are in fact eight weeks of face to face study where the employees, or students as they are in this circumstance, attend the University of Tasmania and those eight weeks' attendance are now all done in their holiday period. That is, these people effectively, or as far as they're concerned, for the first two years of their employment enjoy three weeks' holidays.

The people who undertake this programme which is a fairly intense one, as can be seen by the fact that it is 14 units - the university recommends 10 hours' study a week. These people are then, with three weeks rather than 11 weeks' holidays, as their colleagues have, with at least 35 hours' attendance and probably more, with 10 hours' study required by the university and required also to undertake the full teaching load of a teacher not in the situation of having the expectation of the department on them in relation to teacher training.

It would be our submission that the first two years of teaching are difficult enough. Some state school systems give a teaching load reduction to teachers to compensate for the work load involved in learning the ropes and preparing their teaching programmes, as graduates straight out of university. There can be no doubt of the significant benefit to the department of the study that is undertaken and I'm sure no-one from the department would dispute that they receive that benefit.

Being expected to undertake this two year course by the department in one's first year of teaching and to carry a full teaching load and to give up eight weeks of your leave time, leaves these employees to wonder how committed the department really is to quality educational provision, but also not only that, but also whether they can continue to undertake the programme. One of the reasons for this is that teachers in their first year are not necessarily confident of their teaching abilities and fearful of the impact on their students or their own attempts to juggle teaching, family commitments and study time. As I have already stated, they already contribute significant amounts of their own time by attending the face to face part of the course in their leave time.

Commissioner, any new teacher without teaching qualifications who is serious about their teaching will soon recognise the desperate need they and their students have for

them to undertake such training. Their employer tells them it is expected of them, yet in the most difficult of their teaching lives, the same employer expects them to undertake this course of study, at undergraduate level, and carry the same work load as all other teachers, and it's only this year they've expected this of these people.

- 5 We also would contend that this decision to remove this teaching load reduction impacts unfairly on persons with family responsibilities and therefore particularly women and places a significant barrier on the career paths of women and people with family responsibilities in TAFE. To that end, I have another exhibit.

COMMISSIONER GOZZI: Exhibit AEU.7.

- 10 MR EVANS: This is a letter to myself from Shirley Gregg, Director, Operations DIRVET, which is a response to the union writing and asking a direct question as to whether or not the employer was requiring teachers to undertake teacher training. This is the answer. For these purposes, the relevant paragraph is the second one and particularly the second sentence, but I will quote the whole paragraph:

- 15 *This agency regards the Diploma of Teaching as a highly desirable qualification for "future permanent teaching employees" to either hold or obtain. The Diploma of Teaching would also be a significant determinant for future progression.*

- 20 It is particularly that second sentence, which is of some concern in relation to this matter because, in our submission, people with family responsibilities and particularly women will and already are finding it difficult to balance their work requirements, their study requirements and their family responsibilities. This lack of support in terms of time from the department will now place a barrier to progression through TAFE ranks for those sorts of people. This sort of barrier, in our submission, should be
25 of great concern to this commission.

In relation to that, I would refer to ILO Convention 165, which as the commission would be aware, is now a schedule to the Federal Industrial Relations Act, obviously of course of no legal status in this commission, but it still has some relevance and I can tender a copy of that, if the commission pleases.

- 30 COMMISSIONER GOZZI: Exhibit AEU.8.

MR EVANS: Schedule 13, Section 170KA, which appears at the top of this exhibit, because this is taken from a copy of the Federal Industrial Relations Act. I take the commission to the fourth page of this exhibit to the heading Training and Employment. I will just quote two of the paragraphs. Paragraph 13 reads:

- 35 *In accordance with national policy and practice, vocational training facilities and, where possible, paid educational leave arrangements to use such facilities should be made available to workers with family responsibilities.*

I will also quote paragraph 15:

- 40 *Workers with family responsibilities should enjoy equality of opportunity and treatment with other workers in relation to preparation for employment, access to employment, advancement within employment and employment security.*

It would be our contention that the expectation of the employer that these people undertake teacher training and their own stated intention to use it as a determinant for future progression and then not to allow support, or not to support people

undertaking that - or to fulfil that expectation, is not in the spirit of those paragraphs of the ILO Convention.

5 It is important to remember in this debate that what we're talking about is not an extra or a post graduate qualification for these teachers, it is their base professional teaching qualification. It is not something extra they're going along to obtain for the sake of it, or to improve their circumstance. It is to give them their base level professional qualification.

10 I will not go on much longer about this, but we would ask the commission not allow the department to escape its obligations to support people undertaking a teaching qualification, which they do for the benefit of themselves certainly, but also for the benefit of the department and the benefit of students. We would contend that this is an obligation which appears in an agreement endorsed by this commission and the department is attempting to escape it by simply putting the qualification under highly desirable, rather than essential on the position description, at the same time still
15 advertising that there is an expectation that people will undertake the training and stating that it will be a significant determinant for future progression in TAFE teaching ranks.

20 I think that will conclude my submission to that part. Perhaps I should mention the application itself, say what we think it actually says and means. It does delete clause 13(c) of the award and replace it with a new clause, the effect of which will just be to add the second paragraph in relation to the application. The first part of the proposed variation is what currently appears in the award. The second part of the application reads:

25 *Provided always that teachers in their first and second years of permanent employment and undertaking an approved course of teacher training shall have an annual teaching load of 504 hours.*

30 That simply reflects the agreement in the second tier arrangements and the 504 hours is arrived at by 36 weeks times 14 hours. That is our understanding of what the variation would mean, if approved by the commission. I would also say, it doesn't seek to extend the application of the teaching load reduction to anyone who it hasn't been extended to prior to this year. It only still extends to permanent employment, people who receive permanent jobs.

COMMISSIONER GOZZI: How has a beginning teacher been defined previously? One or two years?

35 MR EVANS: People have access to teaching load reduction whilst they've been doing the course and for as long as the course has been a two year course, they've got the reduction for two years.

COMMISSIONER GOZZI: I haven't got the history file before me, but I thought at some stage - beginning teachers, weren't they defined in the award at one stage?

40 MR EVANS: I haven't been able to find such a definition, commissioner.

COMMISSIONER GOZZI: Going back to the parent award days of the Public Service Board.

45 MR EVANS: That may be possible, yes. It is often a vexed matter to define exactly what is a beginning teacher and to some extent that is why those words are not used in this application.

COMMISSIONER GOZZI: No, I understand that. It's a term that's been generally understood in the system.

MR EVANS: Yes. I think people may have had varying understandings of what it actually meant. In fact, commissioner, whether it does mean temporary employees.
5 Does it mean part time employees? Does it mean only people undertaking teacher training?

COMMISSIONER GOZZI: Yes. There was something in the back of my mind, that I thought it was in earlier awards. Perhaps not.

MR EVANS: That concludes my submission in relation to Part 1 of the application.

10 COMMISSIONER GOZZI: Right. I think, Mr Evans, it might be appropriate for Mr Willingham to respond on that. It might be easier to keep it all together. I mean, the other argument is separate. How do you feel about that, Mr Willingham? Does that impede what you want to say, in respect of both matters?

MR WILLINGHAM: I would have appreciated a five minute break or something, just
15 to sort through the rather larger than expected number of exhibits. I will have a go, commissioner, on the basis that if I forget anything I can come back to it on the second item.

COMMISSIONER GOZZI: Yes.

MR WILLINGHAM: I should never ever forget the propensity for the Australian
20 Education Union and its predecessors, to bring down a confetti shower of exhibits.

COMMISSIONER GOZZI: Would you like five minutes?

MR WILLINGHAM: No, commissioner. Let's soldier on and get the business at hand completed. I will be very brief, I imagine, anyway, Mr Commissioner.

I want to open up by dwelling on the comments of Mr Evans, in relation to, and I quote
25 him:

The department's failure to fulfil its obligations to support beginning and training teachers.

Which is at the very kindest, the most gross oversimplification. It is just simply not
30 true and it is not a balanced view to submit that merely because of the abolition, or the projected abolition of a teaching load reduction, that can be then construed as a failure to provide support, simply does not stand up to any kind of scrutiny, charitable or logical.

Mr Evans would have you bring a tear to the corners of your eye, Mr Commissioner, in
35 relation to the situation in which these particular people are reduced by the actions of the department. He says that here we have this group of people who are required not only to work but to have some sort of social and family life and also to embark and be engaged in some form of training - tertiary training, undergraduate training and that the circumstances are such that he needs to quote to you ILO 165, which I note he said is a schedule to the Commonwealth Industrial Relations Act 1988, and of course
40 the Australian Education Union would be well familiar with that particular publication. What is different, Mr Commissioner, between beginning teachers and virtually any other person who aspires to acquire credentials and experience which would suit that person, or those kinds of persons, both in a personal and a professional perspective? There is none. You've done it, Mr Commissioner. I have no

doubt that everyone in this room has probably done it at some stage or another, where you have to juggle three balls, those of your work, those of your professional education for advancement-type qualifications and those of your social and domestic responsibilities, and it is true to say that anyone who has experienced them will know that they can be difficult juggling acts to perform.

However, Mr Commissioner, not everyone who has to perform that juggling act has to do it on conditions as generous as those which overall apply to teachers. Not everyone has the conditions of employment which are characterised by the TAFE Award to enable them to undergo that kind of training. Mr Evans does not say, for instance, that these employees are prevented from being released for such training, or that they are provided with cash support, as evidenced by his own exhibit. That is exhibit AEU.3. Mr Evans does not indicate to you that those persons contemplating embarking upon this kind of career know by dint of AEU.3 at 2 under Eligibility and Conditions that those are the rules. So one imagines that when those people take on this job they say, yes, it might be a difficult juggling act for these competing interests, but I will take it and I will embark upon them.

I just want to make, finally, it crystal clear that the issue of removing the reduction in teaching load for beginning and training teachers is not the same as and must not, in my respectful submission, be construed as the department providing no support to these employees. If the commission pleases, or believes it is relevant, then I will take leave to provide the commission and the AEU with an enumeration of the kinds of support which are provided, not only to beginning and training teachers, but all staff of the department, whether they are undergoing training and educational qualifications.

On that last point, Mr Evans says that some employees will and 'are finding it difficult' because of the removal of the teaching load reduction. In a matter of this significance, Mr Commissioner, my submission is that it is not sufficient for Mr Evans to make such an assertion from the bar table and leave it uncorroborated. In my submission, it is incumbent upon Mr Evans to produce witnesses that one presumes have conveyed such information to him and give both this commission and the minister's advocate an opportunity to probe the substance of such an assertion.

Mr Evans, Mr Commissioner, has drawn to your attention already the provisions of State Service Regulation 273. Mr Evans may similarly have chosen to draw to your attention the State Service Act, and in particular section 3(6), section 81(2) and section 81(12) and I say that, Mr Commissioner, just to evince that if the commission is minded to, it may make an award which relates to the hours of work of an employee. So we are not here arguing that such an award is beyond the power of the commission as constituted.

Mr Evans has already drawn to your attention that as a result of the special case teaching qualifications are no longer required. That is a fact. He then goes on to say that because qualifications are regarded highly, or highly desirable in the department's view, and that because advertisements placed by the department use wording such as 'it is expected', that that is tantamount to being mandatory. Well, it isn't. It isn't.

COMMISSIONER GOZZI: He'd be pretty silly not to do it though.

MR WILLINGHAM: Indeed. Indeed. I could put to you, Mr Commissioner, many analogous circumstances. For instance, just let me use Mr Evans' and my profession. You can be recruited as an industrial officer. It would be highly desirable for you to pursue some academic course, which is appropriate to that discipline. It is not essential for your appointment, but it certainly might be highly desirable both for yourself and for your employer and perhaps for your future advancement, to undergo such a course. Simply what this means. It means no more than what it says.

COMMISSIONER GOZZI: I'm not quite sure whether you could write that comment in a letter from Ms Gregg off as lightly as that, surely.

MR WILLINGHAM: My colleague, Ms Gregg's comments in which respect, Mr -

COMMISSIONER GOZZI: Yes, AEU.7 where:

5 *The Diploma of Teaching would also be a significant determinant for future progression.*

And saying is if you haven't got it you're not going to progress.

MR WILLINGHAM: I don't have an argument with that, commissioner.

10 COMMISSIONER GOZZI: Well that wouldn't stand up in the context analogy that you're drawing if somebody in industrial relations didn't have the academic qualification they'd probably still progress - maybe probably think twice about it if you're a good performer.

15 MR WILLINGHAM: I think that's fair - very fair comment, commissioner. The point that I make - let me reiterate it, is that it is not a prerequisite to appointment. I accept that in many cases lack of formal qualifications as iterated may mean that a person without such qualifications does not advance or does not advance as rapidly as someone who does have them. The same would be true in industrial relations.

20 But to take your example, commissioner, a good performer, with or without qualifications, will generally find the rise to the top of the hierarchical tree speedy with or without the qualifications and that would certainly be the case in our department. I don't have any quarrel with the sentiments written by Ms Gregg in ASU.7, and neither, in my submission, does what Mrs Gregg has written in any way act to detract from what I've put to you. What I have said is that the situation that Mr Evans has portrayed to you is common to virtually every vocation. What Mr Evans wants, Mr Commissioner, is that while he grudgingly accepts that formal qualification is not required, he wants the employer to support in more generous measure the attainment of educational qualifications than the employer is currently prepared to provide. That's the simple issue.

30 COMMISSIONER GOZZI: Well isn't it a case of a thimble and pea trick to a certain extent? I mean in the special case -

MR WILLINGHAM: I'm -

35 COMMISSIONER GOZZI: - Mr McCabe said, look, don't put it in the award we'll look at it on a case by case basis. The employer has had since August '93 to think about that and in March 1995 provides a scholarship arrangement which really in effect allows these particular teachers we're talking about - the beginning teachers - to ask for a scholarship and in the same - by the same time - or by the same method then - rather - decides that there will be no credit for teaching load. I mean there was a credit for teaching load for a beginning teacher.

MR WILLINGHAM: Yes.

40 COMMISSIONER GOZZI: Yes. I was told, look, don't put it in the award, we can sort this out ourselves, which I - we didn't do and in 1995 the department decides, well, we'll now run a scholarship in the same time - at the same time we'll delete the teaching load credit for beginning teachers which was there in the award prior - which was there beforehand.

MR WILLINGHAM: Yes, commissioner.

COMMISSIONER GOZZI: Mm. So isn't that, as I said, a thimble and pea trick?

MR WILLINGHAM: Look, forgive me, I see neither the thimble let alone the pea.

5 COMMISSIONER GOZZI: Well the thimble simply was that the entitlement was there for a beginning teacher. The pea was the argument that, look, let the department or management deal with this on a case by case basis. No submission - and no argument about the teaching load credit. And then when 1995 arrives there's still the requirement - not in the award - but still to all staff, an invitation to be involved in a scholarship, but all of a sudden the teaching load credit has gone missing.

10 MR WILLINGHAM: Yes, commissioner, I less than enthusiastic when I find people's submissions in something like 5,500 pages spread over two and a half years being extracted so selectively -

COMMISSIONER GOZZI: Well that's not selective.

15 MR WILLINGHAM: Well let me just say, commissioner, it's extracted so selectively to support a position. I mean if I was doing my job properly - and I'm probably going to regret this later - I would now go back to TAFE transcript and read all 5,500 pages and find out what I can extract selectively that supports my case. But three things spring to mind: (1) Mr McCabe used these words on the 20th October 1992 - that's nearly
20 three years away. By Mr Evans's own submission the general thrust of Mr McCabe's words was in relation to a much wider issue, and indeed so wide was the issue it doesn't specifically refer in fact to beginning and teaching - beginning and training teachers.

Now that's how wide the issue was and there's a very good reason for that, secondly, Mr Commissioner, because at the time Mr McCabe, who is now enjoying the Elysian
25 fields of the Department of Health and I can assure you, Mr Commissioner, is much relieved he is not having to do this, which is a lot more than be said for me. He is now - he is now - and the 20th October 1992 - talking about something which is more than a year away. How could he possibly have, in the context of these words given any
30 relevance and meaning to what ex post facto my friend and colleague, Mr Evans, talks about because no-one knew you were going to remove the teaching qualifications from the award.

COMMISSIONER GOZZI: Well maybe I should give more credit to the department's long range thinkers. Maybe the intention was always there to persuade me not to put something in with a view to removing that particular

35 MR WILLINGHAM: I think about October 1992 we were coming out of a pretty severe bout of winter of discontentment, commissioner. We were expecting very little. I'll comment no further on whether that expectation materialised or not, but certainly we weren't expecting much, but Mr McCabe - my point, commissioner, is solely that I think any - any reasonable interpretation of that extract of Mr McCabe's submissions
40 which suggested it's most unlikely that he could have possibly contemplated those words being used in the context of today's exercise. That's all I'm making the point about.

COMMISSIONER GOZZI: Mm. Well he does refer to teacher training but -

MR WILLINGHAM: Yes but in the most - yes he refers -

45 COMMISSIONER GOZZI: - - in the broader sense you say.

MR WILLINGHAM: As the most broad sense - the most broad sense, commissioner.
And I -

COMMISSIONER GOZZI: Well Mr Evans doesn't think so.

MR WILLINGHAM: Mr Evans did, I think - was generous enough I think to
5 acknowledge that it was in a much wider sense than the narrow context being used
here this morning.

However, if necessary, commissioner, I'll - if it becomes a point of some issue I will
seek leave of the commission to revisit some thousands of pages of transcript to see
whether I can find a choice morsel which not only counteracts what Mr Evans has put
10 but in fact reduces its value to nil - if that's possible - if such a thing exists.

COMMISSIONER GOZZI: Well I did read every page. I can honestly say I read every
page and on this particular issue you won't find too much more than what is probably
there.

MR WILLINGHAM: I am always indebted for your knowledge and wisdom of that
15 particular matter, commissioner, but you would, I know, understand if I wanted to
reassure myself from a personal reading.

COMMISSIONER GOZZI: All right.

MR WILLINGHAM: However - however, I've made the point that I wish to, to the
20 commission. Whether the commission is disposed to give it weight, of course, I'll wait
to - I'll wait to discover.

Now the final issue that I'll use here, commissioner, is that in effect, as I understand
the application, the union would have you effectively give a reduction of seven contact
teaching hours per week. Now I make that figuring simply by Mr Evans's - or from Mr
Evans's submission that the figures he's used are 36 weeks by 14 hours and since
25 that - since that, I think, equals 504, the difference between that and the specified -
currently specified - teaching load of 756 is 252 hours per annum and since Mr Evans
uses the 36 week divisor, dividing 252 by 36 equals seven. So I've just made that
assumption.

Now it's difficult to say what rhyme or reason, Mr Commissioner, there is for selecting
30 the figure seven as distinct from two or, heaven forbid, 10, other than the exhibit
provided by Mr Evans as AEU.2, which was the second tier agreement, I believe.

Commissioner, I believe you did that one too, didn't you?

COMMISSIONER GOZZI: Yes, I think I was involved.

MR WILLINGHAM: Commissioner, I get the feeling that you and I have been involved
35 with this particular area of industrial relations for too long.

COMMISSIONER GOZZI: I think you're right.

MR WILLINGHAM: Seven years and we still - I - in some respects, commissioner, I
have to grudgingly concede to you that I have sometimes some sympathy because
you've basically been hearing much the same sort of melody played in different keys
40 for at least seven years, to my certain knowledge. I hope you've enjoyed some of it.

But let me just go to the page that Mr Evans drew to your attention which I think is -
I'm not sure that it's numbered, commissioner, but it is in fact the last -

COMMISSIONER GOZZI: Yes, I've got it.

MR WILLINGHAM: - page in the inside of that, and he says that in 1989 the beginning teachers' undertaking required teacher training whose current weekly load is 14, equals 504 per annum.

5 The point of my introduction to that, commissioner, reminding ourselves how long we've been together on this case, is that you would be very, very familiar with the circumstances by which this agreement developed. My colleagues, Mr Brough, Mr Leo and others - I remember at the time, commissioner, you were extolling the virtues of this particular agreement as being something a little bit different from what had
10 previously been experienced and I suspect somehow completely different from what was experienced subsequently.

15 But the purpose of that schedule, commissioner, was because it was agreed by the parties that post-1988 there were a number of matters still in need of review, discussion, debate and ultimately decision, all of which include teacher hours. You'd be well aware of that, commissioner and that is why the heading there says 'the agreed hours for 1989 will be', because the anticipation was we would do a holding pattern in relation to that year and the anticipation was that those things that might need to be changed would be effected for the year 1990, although if my memory serves me correctly, I believe that that was not the case either.

20 Apart from - apart from that document, that is, AEU.2, Mr Commissioner, I find no explanation - no rationale - as to why, even if we accept the underlying principle of the AEU's application, why the number of hours' reduction should be seven. There is no attempt to explain why that proportion of the regular teaching hours is correct - why it is appropriate, why it will relieve all of the symptoms Mr Evans claims are now in
25 evidence in relation to the employees concerned, or whether indeed it will relieve them. There is no evidence from Mr Evans as to what effect his application would have upon the department in terms of cost.

30 Mr Evans does not give me, as the representative of the department, any suggestions as to what we might do if we have to take a number of teachers and eliminate from their timetables a third of their teaching hours.

35 COMMISSIONER GOZZI: I mean - yes - I mean that's - I understand that, but isn't it up to you to demonstrate all those factors? I mean the status quo really is a credit of seven hours, it's the department that's made the change. Now isn't it up to the department or the minister in the strictest sense to demonstrate why it made that change? It's not up to the AEU surely.

40 MR WILLINGHAM: My submission, commissioner, is that it's not my application, it's the AEU's. If it seeks to vary the award to give effect to its wishes, under the wage fixing principles and under the public interest test imposed by this commission, it is totally incumbent upon the applicant to satisfy those tests, and when the applicant chooses so to do, of course I will respond in - in best measure as I can. But I don't think, commissioner, that the onus is on me at this stage, having heard not one word uttered in relation to those matters, to justify the submission I'm making.

45 COMMISSIONER GOZZI: Well the point is though that this application arises at the direction of the commission and arises primarily because the AEU observed that direction, but that surely doesn't change the onus in the context of how this whole matter evolved. You just can't forget that, surely. And it's the department that made the change not the AEU. So doesn't that then place some onus and obligation on the minister?

MR WILLINGHAM: All right, commissioner, let me put it this way: one of the - get into this aspect to - I often think that the AEU - I must learn some lessons from them because they all seem to put me - or somehow I manage to be manoeuvred or manoeuvre myself into this sort of position.

5 I'll make this undertaking now, commissioner, that if the issue is simply a matter of semantics about expectation versus highly desirable, if that's all the issue reduces to, I will ensure that henceforth no advertisements will appear with those wording - that wording to which Mr Evans has quite specifically drawn to your attention. I will ensure
10 - I will ensure, commissioner, that in relation to the exhibit which goes to the scholarships at the wording at point 2, to which Mr Evans has drawn your attention, is removed. In other words, what I will do, I will ensure from the department's behalf that no reference is made to the desirability or otherwise of qualifications for the teachers in TAFE institutions. That is, it will be wholly consistent - wholly consistent - with the terms of the award as it currently sits.

15 COMMISSIONER GOZZI: Mr Willingham -

MR WILLINGHAM: And -

COMMISSIONER GOZZI: - I'm sorry, I don't think that's the issue.

MR WILLINGHAM: No - may I just continue, commissioner. On that basis teachers would then be recruited without regard either to their existing qualifications other
20 than those that are prescribed and to their future attainment of qualifications. Now in that situation, Mr Commissioner, in that situation I would then say to you, and I would come to you and say, there is no need for a reduction in beginning teacher hours because we don't require it, we don't regard it as desirable for you to have it, it will not be any form of impediment to your progression or your advancement and Mr
25 Evans's concerns are then eliminated, your concerns, as I understand them, Mr Commissioner, are eliminated and then we will seek to have, if Mr Evans is successful, we will seek to have his proviso to the clause removed. And that, Mr Commissioner, is what we will do.

Now if that means - if that means, Mr Commissioner, that you find for Mr Evans, and
30 that you insert the proviso in the award, I guarantee that an application will be back before this commission next week to excise it, and that is what we will do if that is what the Australian Education Union are going to manoeuvre us into and that in anticipation of your decision, commissioner, that you find for Mr Evans.

It's as simple as that. If that is the sort of manoeuvring we have to go to, to protect our
35 position in what we believe is a proper position and a logical position, then that's - that is what we - we will do. I mean I can't say more than that and I think to detain the commission longer is unnecessary. So I'm ambivalent as to whether the commission thinks that Mr Evans should justify his position, as I just a short while ago suggested, according to the wage fixing principles public interest test. If the commission believes
40 the onus is upon me I'll take it a different way. I'll go to the line of least resistance and we'll just remove these references from any published material from the department. It - if that's the way we're impelled to go.

COMMISSIONER GOZZI: Well you'll admit that you've finished up, if I can say, on
45 the back foot, in these proceedings, but the reason for that is not because there's some intent by the commission to put you on the back foot, but the reason for it is that it was the minister who altered an existing condition of employment.

MR WILLINGHAM: Yes, commissioner.

COMMISSIONER GOZZI: And it seems to me in those circumstances that the commission ought to be told why that was necessary.

5 MR WILLINGHAM: Commissioner, I agree with you and we have - and let me just reiterate very, very quickly, the reason that we've removed the condition is because the commission agreed with us that qualifications were not necessary to recruitment.

COMMISSIONER GOZZI: Everything subsequently -

MR WILLINGHAM: Well the commission has -

COMMISSIONER GOZZI: - highlights the desirability.

10 MR WILLINGHAM: Well that's the issue, isn't it? That's what I've just finished submitting to you.

COMMISSIONER GOZZI: Yes, but isn't - what you're putting to me now, to delete all this reference to qualification and so on, but isn't that throwing the baby out with the bath water?

MR WILLINGHAM: Well I -

15 COMMISSIONER GOZZI: Obviously it's desirable to have trained teachers.

MR WILLINGHAM: - think it's the thimble and pea trick that's - I said I couldn't see the thimble and I couldn't see the pea. I might be able to see the thimble now - I'm never going to get the pea, commissioner. The fact of the matter is that qualifications are not prerequisite for appointment.

20 COMMISSIONER GOZZI: Mm - I understand that.

MR WILLINGHAM: And on that basis the whole of this 504 hours arrangement was predicated on the basis that such qualifications were a prerequisite -

COMMISSIONER GOZZI: But -

MR WILLINGHAM: - and on that basis the arrangements were put in place.

25 COMMISSIONER GOZZI: All right.

MR WILLINGHAM: Once those prerequisites were removed we questioned - and certainly, yes, commissioner, we decided that those arrangements were no longer necessary. Mr Evans says to you by our own words, that argument is flawed because whilst it's not a prerequisite -

30 COMMISSIONER GOZZI: Mm.

MR WILLINGHAM: - it is highly desirable. It is expected. And the Oxford Concise English Dictionary says that 'expect' means to impose a right or some such, and that therefore the thimble and pea trick in his view is very, very clear. We say that's not correct and I further submit that if you find that that is correct - that you favour Mr Evans's submissions irrespective of whether it is desirable or not for teachers to be trained, if it means that that cost imposition is going to be placed upon the employer then we will say to those employees, no, it's not highly desirable, no, it's not an expectation and if you choose to attain qualifications, if you choose to attain a better level of education which will enable you to advance and progress in your professional career, then it's a matter of your choice. You may do so at a time and at a pace and at a cost of your choosing.

35
40

Now, Mr Commissioner, unless you have any further questions, I have nothing further to submit in relation to that matter.

5 COMMISSIONER GOZZI: Well, isn't the circumstance one really where in the event training is undertaken whether it is desirable in the job description, expected, or whatever, essential whatever, shouldn't that person then be entitled to a pre-existing condition of employment?

10 MR WILLINGHAM: Well, in relation to the new appointees of whom largely we are speaking, commissioner, without wanting to get into semantic arguments I would argue certainly that for a new appointee it is not a pre-existing condition that the person accepts the job on that basis, fully aware of what the implications are.

15 And if that was only the argument between us that Mr Evans wanted to maintain the current teaching load reduction for existing employees, that is those employees either in first or second year, or first year as his original application was, I probably say, yes, there is not a lot we can do about that, that's fair enough, I'll wear that. But he's wanting to perpetuate this, hence my reluctance to concede anything.

That's the answer to your question, commissioner, I think.

COMMISSIONER GOZZI: All right. Thanks, Mr Willingham.

MR WILLINGHAM: If the commission pleases.

COMMISSIONER GOZZI: Mr Evans, do you want to sum up on that one?

20 MR EVANS: Yes, thank you, commissioner. Although I don't have the longevity of Mr Willingham and yourself in these matters, I often feel already like seven years is nothing in these sort of circumstances.

25 I mean, I think at the outset I have to say it disappoints me extremely to hear representatives of the minister basically say that in our view at least that they are prepared to make such a significant decision about the professional qualifications and therefore the quality of provision of TAFE basically to maintain an industrial position in a matter like this; I find that quite disappointing. But obviously it is a matter which would not, you know, is not essentially industrial. I guess, political.

30 And, in relation to that, I think there is something being said too here which the minister has himself said publicly in relation to the qualifications issue which I think requires clarification, and that is the commission in my understanding did not say that TAFE teachers should not have teaching qualifications. The commission simply said that it was a matter for the employer to decide and, therefore, not appropriate to be placed in an award.

35 The decision as to whether or not to require those qualifications is one for the employee, and the employer has made that decision. But it is not, it hasn't, in my understanding, it's not a decision that has been made by the commission that there shouldn't be teaching qualifications.

40 COMMISSIONER GOZZI: But if the employer decides to stipulate, as is submitted by Mr Willingham, that it is highly desirable and there is no expectation, why wouldn't the employer be in a position - why shouldn't the employer be allowed to do that?

45 MR EVANS: Well, there are a couple of things I'd say about that. It doesn't answer my point. The only reason I raised that initially was to say that it wasn't right and proper for the government to put the responsibility for making that decision on the commission. It is clearly their own decision to do that. And I accept that if they are to

do that, that's a matter that the union has to fight at another level other than in this place.

5 However, even if we accept that they are entitled to do it, and in an industrial sense there is no doubt that they are, in a professional or a political sense it might be another matter. But, industrially, they are.

But I think the exhibits I have shown, and Mr Willingham I guess by his last submission almost accepted. it. By their actions, that is not what they are doing. They are saying that is what they are doing, but it is not effectively at the moment what they are doing.

10 COMMISSIONER GOZZI: What sets TAFE teachers. beginning teachers, apart from other employees who may undertake a course of training or qualification?

MR EVANS: Well, I am glad -

COMMISSIONER GOZZI: And there are lots of them.

15 MR EVANS: Yes, there are. The important thing, and I think I have already said this in my submission, is that there is no - you won't find in any of these other advertisements in the State Service notices anywhere - that talks about an expectation for people to undertake their professional qualifications when they are appointed. That's the difference.

20 Because remembering that the difference goes also to the fact that TAFE teachers come to their position with qualifications and experience already from their prime vocational area, if you like. That's the area where they come to the employer with their qualifications in relation to, and if you look at the advertisements that are in the State Service notices, as AEU.4, you will see that on page 446, for example, the advertisement for Teacher, Building states, as I have already quoted in relation to the
25 expectation about teacher training, but further down there is another paragraph which is headed, 'Desirable Qualifications' and which relates to:

Successful completion of an apprenticeship or trades certificate or equivalent, technical or commercial qualifications, or a degree or diploma or associate diploma deemed appropriate to the teaching area.

30 So TAFE teachers not only possess their professional teaching qualifications or are required to or are expected, whatever terminology you seek you choose, but they also - unlike any other of their counterparts in the State Service come to the job with their vocational, if you like, qualifications, whether that be a trade or a degree level.

35 So that is why they are different. There are two sets of qualifications expectations, requirements, desirable, whatever you call them, which don't apply in other spheres. For example, a school teacher comes to their employment with their teacher training already, but that school teacher may come straight out of a university at an undergraduate level and is not required to, expected to, have any other sorts of qualifications, and that is a significant difference between TAFE teachers not only here
40 but all over Australia and other State Service employees. That it's their vocational qualification which is their underlying, if you like, qualification into the job, and their teacher training is in addition to that. So that would be my submission as to why they are different. And it is a significant difference.

45 I don't think I want to say too much more about it. I mean, in terms of Mr Willingham's suggestions that we should bring all sorts of evidence as to what we are

asking for is appropriate. All I can say is all we are seeking to do or to put in place what has been as is existing practice. Nothing more than that.

We would have been quite open to the department coming to us and saying seven hours is too many, how about three or four, or you know, can we talk about this, this is no longer appropriate. But that didn't happen. All that happened was that this notice went out. So, to that extent, we haven't been able to respond to any of those sorts of issues that the department might have.

I think that's all I want to say about the matter as this stage, commissioner.

COMMISSIONER GOZZI: All right. Thank you, Mr Evans.

MR EVANS: Mr Willingham is suggesting that I am being a bit unfair because our organisation was invited in relation - there is a scholarship committee - it's been established -

COMMISSIONER GOZZI: Yes, I saw that in the - that you're invited to attend.

MR EVANS: - to assess people's applications. The union was invited to be part of that scholarship committee, but the terms of reference for the scholarship committee which were given to us to say do you want to be on this said no teaching load reduction. So we said, well on those conditions we can't be part of the scholarship committee. I mean, we weren't presented with an opportunity to discuss what the terms of reference to the committee were, it just said come on this committee with these terms of reference. So I don't think I am being unfair in relation to that part of the matter.

COMMISSIONER GOZZI: Item 2?

MR EVANS: Item 2, if I can find my notes, Mr Commissioner.

The other matter addressed as No. 2 in the proposed variations is an application - in our application - is the addition of a new subclause 13(j) to the TAFE Staff Award to address the situation of the teaching load of teachers on approved paid leave.

COMMISSIONER GOZZI: Haven't I dealt with this, Mr Evans? I thought I'd dealt with this issue. Maybe not in specific terms, but I thought I'd dealt with the principle of that issue in the special case.

MR EVANS: The matter was dealt with in the special case, or was discussed in the special case, and I can get to that in my submissions.

COMMISSIONER GOZZI: Well, more than that. I think the principle, I thought, was decided, wasn't it?

MR EVANS: What is the principle?

COMMISSIONER GOZZI: Well, I think -

MR EVANS: I don't think it was, no.

COMMISSIONER GOZZI: In respect of public holidays, anyway.

MR EVANS: Oh, yes, in respect of public holidays, yes. The principle is basically if you don't teach you don't get a teaching load credit.

COMMISSIONER GOZZI: That was it. That's right. So, what is different about this?

MR EVANS: Well, you can't - these people are on approved leave. For example, in the case of long service leave three months. It can't be the reasonable expectation of either the employer or the commission that they take three months' long service leave and still be expected to complete a full year's teaching load. I am sure that wasn't the intention of the commission, and that certainly wasn't raised in any of the special case discussions.

COMMISSIONER GOZZI: Well -

MR EVANS: I mean, the -

COMMISSIONER GOZZI: The teaching load and the exhibits that were demonstrated or put forward for demonstration purposes show that in many cases the teaching load, the 500-odd hours, or whatever it was at the time, now 756 or 714, whatever it was, now is 756 for everybody. That that had in many cases been exhausted well within the teaching year.

MR EVANS: Yes, that is the case. That is the case in some cases, in other cases I am sure evidence could be brought to you that shows that it is not reached for some people.

COMMISSIONER GOZZI: That being the case, why wouldn't then the 756 be available to be used as and when necessary?

MR EVANS: Well, already -

COMMISSIONER GOZZI: There was no weekly teaching load, Mr Evans, was there?

MR EVANS: No, there isn't a weekly teaching load, but I guess to some extent -

COMMISSIONER GOZZI: No, but an annual teaching load.

MR EVANS: There are two other ways I could answer that. Firstly, in relation to public holidays they are holidays which are programmed every year to fall on particular days over which an employee has no, or employer, has no discretion. In relation to sick leave and long service leave, which are the two main areas we are talking about here, they are not set, established, public or those sorts of holidays. They may or may not be taken in any period of time.

And what I would say about what you are saying is the management itself - I mean, the issue that brings us to the commission is not whether or not there should be a credit for when people are on leave because the department is already applying one - the issue is, what should that credit be.

COMMISSIONER GOZZI: Yes. You see, I wouldn't want to get back into a situation in respect to this provision where we are talking about the 21 hours' nominal teaching load being set in concrete, because that's all it ever was. I mean, I deliberately moved away from a weekly teaching load to an annual teaching load to provide greater flexibility.

MR EVANS: Yes. I don't think we are attempting to do that in any way, shape or form. We are not arguing that this should in any sense prescribe how many hours a teacher can be asked to work or to teach in a particular week.

COMMISSIONER GOZZI: So you not - you are saying, this is not in keeping with the principle I determined in the special case - this is something different?

MR EVANS: No, I am saying significantly different, for at least the reason that public holidays are fixed, set holidays in which whether or not an employee or the employer likes it they are there, and in relation to sick leave and long service leave which are the main sorts of leave that we are talking about here they are a completely different thing
5 which may or may not be taken in a particular year.

And, in our submission, it would be entirely unreasonable for a teacher to have three months off, or even six months off on long service leave, or sick leave, and then be expected to, or able to undertake a full year's teaching program.

The assessment of the commission in deciding that the full teaching load was 756 was surely based on the fact that that teacher would be in attendance for 41 weeks. Some of those 41 weeks would include public holidays and, therefore, a teacher should not get a credit for them.
10

But if a teacher is absent on long service leave or sick leave for an extended period of time they won't be in attendance for 41 weeks and therefore can't be expected to undertake a full load.
15

And I guess that's really the significant difference. The public holidays doesn't alter the number of weeks that a teacher attends. It is still 41 weeks. But, if he or she is on approved leave, leave approved by the department, it will alter the number of weeks that he or she attends work that year, and on that basis their load should be reduced.

20 COMMISSIONER GOZZI: Yes.

MR EVANS: And the department accepts that. The department doesn't demure from that position.

COMMISSIONER GOZZI: Yes, of course 756 hours is not calculated in respect of 41 weeks, it's 36 weeks, isn't it?

25 MR EVANS: Yes, that's right, but it can be taught over 41 weeks, and is, yes. Yes, that is right. It doesn't bear any relationship to the calculation and that's the guts of it, if you like to put it that way, of the argument between ourselves and the department in relation to this matter.

COMMISSIONER GOZZI: Yes, but effectively 36 weeks could be spread over a 48 week period.
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MR EVANS: I don't think it could be spread over 48 weeks.

COMMISSIONER GOZZI: Why?

MR EVANS: Because a teacher is entitled to 11 weeks' leave.

COMMISSIONER GOZZI: Yes; fair enough, but, yes, the college remains open for 48 weeks.
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MR EVANS: The college remains open for 48, and any of those calendar weeks, 48 calendar weeks, it could occur, yes, but it wouldn't amount to 48 weeks of work for the individual.

COMMISSIONER GOZZI: But there have been circumstances where, in fact, individuals have worked up to 48 weeks.
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MR EVANS: Oh, yes, there are, and there is capacity for them to carry over their leave, their flexible leave, from one year to the next. Not beyond the following year, but they do have to take into account what you are saying, commissioner.

COMMISSIONER GOZZI: Well, let's hear what you have got to say.

5 MR EVANS: The practice of TAFE management as of early this year has been to credit teachers in such circumstances on sick or long service or other approved leave 17.4 hours a week.

10 Now the rationale for that action by the management is that the effective annual teaching load is 17.4 hours a week once the two week reduction for examination and assessment is taken into account, which can be taught over 41 weeks. Therefore, 714 divided by 41 comes to 17.4 hours a week. In our view, clearly what should be credited is the nominal weekly teaching load, and that is 21 hours.

15 As we have already stated ourselves, commissioner, that is the nominal weekly teaching load and it is worked out over 36 weeks. And, in our submission, it is that which should be credited towards the teacher's annual load when he or she is on approved leave, and therefore determine how many hours he or she will be required to teach when they return from leave.

20 We would say that the argument for 17.4 hours as the relevant figure falls down in at least two ways. Firstly, it ignores the fact that the teaching load is established on the basis of 36 weeks. The AEU understands and accepts that teachers can be required to teach in any of the 41 weeks they attend, but it is another thing altogether to suggest that this alters or changes the nominal weekly load which I think can be seen from clause 13(c) of the award which states that the annual load is 756 hours less 42, representing a credit equivalent to the nominal weekly load multiplied by 2. Therefore, the nominal weekly load is 21. And to suggest that that is changed by the fact that teachers are able to teach over 41 weeks we believe is a furphy.

30 Secondly, we would say that the award contains other clauses where the nominal weekly load, or nominal weekly teaching load is relevant. For example, subclause 13(d) which refers to averaging of teaching hours. For the purposes of this clause the employer continues to use 21 hours as a relevant figure. This clause refers to that no teacher shall be required to teach for more than four hours per week in excess of the relevant nominal teaching load or for any period in excess of three consecutive weeks or for more than two hours per week in excess of the relevant nominal weekly teaching load for any period in excess of 17 weeks.

35 For the purposes of that clause the employer continues to use 21 hours as a figure. This clause is therefore interpreted as meaning no teacher shall be required to teach more than 25 hours per week for any period in excess of three consecutive weeks, or for more than 23 hours per week for any period in excess of 17 weeks. In our submission, the employer can't have it both ways. The nominal weekly load can't be 40 two different things, depending on what clause it appears in.

45 Consequently, to clarify the matter we've proposed the award variation that is the subject of this application. We would say that if it is 17.4 hours, which we don't accept when people go on long service leave or sick leave, then clause 13(d) should be interpreted as meaning no teacher shall be required to teach for more than 21.4 hours in excess of the nominal weekly load, or in excess of 20.4 consecutive - sorry, in excess of - or for more than 19.4.

COMMISSIONER GOZZI: Nineteen point four.

MR EVANS: Yes. The employer can't say that for those purposes it is 21 and for other purposes it is 17.4.

And, to some extent, that's what bring us here. I mean, we may have been prepared to listen to argument about 17.4, but when it is not applied consistently that's what causes us and our members problems.

The clear intention of the variation before the commission is to provide for teachers taking periods of approved leave. In particular we are talking about sick and long service leave, which is where these matters arise, to receive a teaching load credit equivalent to the nominal weekly load, i.e. 21 hours. This clause that we've suggested provides a proviso that it applies only when a teacher is absent for a full working week or longer. It is our understanding that this would reflect the current situation, allowing a teacher's annual - sorry, actual - time table teaching to apply for periods less than a week. It also places a maximum of 36 weeks as this is the number of weeks used to calculate the annual load. Not to put such a maximum in place would allow for the payment of excess hours when no teaching has been performed, and clearly that's not our intention.

We would suggest that this is a matter which requires award regulation to ensure consistency across the TAFE system and so that TAFE managers know where they stand. It is our understanding that this situation has arisen not from a departmental directive but from agreement reached between TAFE associate directors' administration in the face of a vacuum left in relation to the issue both by the award and by the department.

When the issue was indirectly addressed in the special case, Mr McCabe for the government, submitted that seeking this sort of regulation would restrict the way the management organised and regulated their teaching staff. This was said in the context of an argument that teaching hours should not be included in the award at all. Well, thankfully, teaching hours are included in the award and managers in TAFE institutes have the practical task of administering them. The amount of hours credited to persons on leave is obviously not a matter of managerial prerogative or of individual choice. The managers themselves have demonstrated that by imposing their own standard. The only argument is what that standard should be. In our submission, making the variation we've requested fills a gap in the award and provides certainty to both those who administer and work under the award. That is all, thank you.

COMMISSIONER GOZZI: Thank you, Mr Evans. Mr Willingham.

MR WILLINGHAM: It's a pity we couldn't have the forthcoming dispute before you as well, Mr Commissioner. You'd have got that out on the one morning. Much the same sort of theme, less and less hours.

I did overlook one point in my submission in the earlier matter but it is common to both of these variations, commissioner. When we are assessing the plight of teachers as distinct from other employees in the State Service, I cannot immediately bring to mind any other employees in the State Service who have 11 weeks' leave each year. A significant advantage, I would have thought, commissioner, in relation to those aspiring to educate themselves and fit themselves professionally for advancement in their chosen careers.

The situation of course is equally pertinent to this second variation sought by the AEU. I should imagine that the minister for Public Sector Management, commissioner, or indeed in earlier times, the minister administering the State Service Act, because that is how long we go back in this matter, has emphasised time without number the peculiar provisions which apply to the employment of teachers. I was thinking perhaps that should be the employment conditions peculiar to teachers, but I will use it as

peculiar conditions. That is, as Mr Evans has just argued before you, that effectively the working year is 36 weeks. We have a 756 hourly teaching load, which is straight off the bat, reduced by 42, and it might better have been expressed at 714 without the reference to the reduction for examination and other time. So, we lost 42 of it before we even blink. Better than 5 per cent has gone, just by provision of the existing award.

Mr Evans says that it is only available to us over a period of 41 weeks because teachers simply can't teach any more than 41 weeks in the year because the rest of the time they're on leave and that's true. It doesn't quite allow for any of the public holidays that might occur, so it's a bit less than that as well.

So, effectively, we've got something less than 36 weeks in which to get to 756 hours, which is really 714 hours. What Mr Evans says is that this is really unfair what the department is doing, is where people are on long service leave or sick leave for three months or six months, it is quite unfair, quite unrealistic to expect that those people should make up their annual teaching load, but that's not what his application asks you, Mr Commissioner. His application doesn't say where people are absent for three or six months because of sick leave or long service leave they should have a credit. His application says where they are absent for a week.

The question of the nominal weekly teaching load of 21 and the way that TAFE institutes are interpreting it, was a matter that Mr Evans addressed you on. He said that TAFE managers are left in some sort of vacuum and because there was a vacuum through the award and through departmental directive, they've taken it upon themselves to do this credit, with which Mr Evans finds himself taking exception. There is no vacuum with the managers. Mr Evans made this comment to me twice previously in discussions and I said there is no such vacuum and if any director believes there's a vacuum, tell me who it is and I'll fix it and Mr Evans declined to tell me.

Again, I have this assertion that somehow there is a vacuum or a lack of direction, or a lack of understanding, or a lack of knowledge between the department's administrative arm and its operational institutions and I refute that and I just wish that the Australian Education would be a little shorter on assertions and a bit longer in substance and facts, specifically when they've been invited to advance detailed information to me so that I can correct the problem.

I would say this to you, commissioner, if someone was absent through ill health for three or six months, I personally wouldn't expect anyone to have to make up in the remaining time - six months is 25 weeks. I wouldn't expect them to make up in the remaining 11 or 12 weeks, 756 hours, and I don't think that Mr Evans is suggesting that we do that. I don't think he is suggesting that. If he can find me any shred of evidence to support that the department is making, or is insisting upon such restitution of the teaching load, I would be grateful for it and I will fix it.

So the issue is, from our perspective, commissioner, what is a fair thing? How much absence should an employee experience and still be required, reasonably, to discharge the annual teaching load? That really, as far as I'm concerned, is what this argument reduces it to. Is it one week, is it four weeks, is it 10 weeks, is it 15 weeks, is it 20 weeks, is it only in respect to absences on long service leave and sick leave? Is sick leave defined as including workers' compensation, jury service, bereavement leave? It may indeed be circumstances where annual leave is relevant, not many, but there may be some. There are all kinds of leave.

COMMISSIONER GOZZI: Annual leave is excluded.

MR WILLINGHAM: It currently is. I wonder by what logic or rationale or other explanation, commissioner, we would talk about absences relating to long service leave

particularly and maybe not embrace the general concept. The general concept is, if a teacher is unable, through illness or approved leave, to complete a notional weekly teaching load, how many weeks should that occur before that teacher is not required to make that load up in an aggregated annual sense? Now, to me it doesn't really matter what type of leave we speak of, the principle is the same. I understand that Mr Evans has only specified two kinds of leave, but the principle is the same for everything. The principle is the same. There may be a greater argument, commissioner, in relation to ill health than there is to long service leave.

COMMISSIONER GOZZI: Well, whatever the leave is, doesn't it really come down simply to an issue of why is it 17.4 and not 21? Why should there be a 3.6 hour difference in the credit

MR WILLINGHAM: The issue boils down to two things, the first of which, should there be a credit at all. Then if there is to be a credit, what should it be.

COMMISSIONER GOZZI: Well, there is apparently a credit.

MR WILLINGHAM: There is an administrative decision, as Mr Evans himself concedes, which has been taken by some or all of the institute directors to make that credit 17.4 and Mr Evans objects to that. My argument, Mr Commissioner, is whether there should be a credit at all or if there is, should it be on the basis that Mr Evans asks the commission to insert into the award.

COMMISSIONER GOZZI: So, you're not even sure that there should be a 17.4 hours?

MR WILLINGHAM: I am fairly sure in my own mind that I agree. Look how generous I am, I agree with Mr Evans that the figure should be 21. I have probably upset 200 or 300 of my colleagues now.

COMMISSIONER GOZZI: Well, is that then a variation by consent, Mr Willingham?

MR WILLINGHAM: It certainly isn't, commissioner, because the real issue, if you'll forgive me for reiterating it -

COMMISSIONER GOZZI: I thought I had taken a big quantum step in one go. I nearly fell off my chair.

MR WILLINGHAM: The real issue - I'm not unreasonable, commissioner. I'm persuaded by logic.

COMMISSIONER GOZZI: I must have dropped my guard for just a second, Mr Willingham, I thought you were conceding.

MR WILLINGHAM: To the extent that there is a difference of opinion between Mr Evans' organisation and the department about if the concept of deduction is appropriate, should it be 17.4 or should it be 21. I can find no argument whatsoever against Mr Evans' position. I freely concede that. My argument is whether Mr Evans' position, that the deduction - the credit, if you wish, should apply from one week is relevant.

COMMISSIONER GOZZI: But if it's being applied at 17.4 and you've agreed to 21 hours, well isn't that the end of the penny section? Isn't that Q E D.?

MR WILLINGHAM: Well, no, I think it's scarcely Q.E.D. because one of the advantages of an application to vary the award is that it enables me to traverse wide and far. It enables me indeed, commissioner, to make pleadings to you to consider whether the clause is relevant at all, or if it is relevant in your consideration, the scope

and the extent of its relevance and its definition; that's one of the beauties of an award variation. I am not confined to merely addressing Mr Evans' issue of 17.4 and 21. I am not confined to that at all. I am enabled to argue the relevance of the clause.

5 COMMISSIONER GOZZI: You're saying you are quite happy to agree that it be done administratively?

MR WILLINGHAM: I say further - I am not sure how I am going to frame this, because Mr Evans will - he's a gracious person; he probably won't make play of it. One of the difficulties Mr Evans has, as he expresses it to me, and it is certainly difficult for me at times like this, is that quite a number of people seem to have a finger in the
10 administrative pie in this department.

COMMISSIONER GOZZI: It seems that way.

MR WILLINGHAM: And I just wish sometimes that I got to find out about it before the exhibits hit the floor - Mr Evans will know what I mean by that - to the extent the directors have made such a decision, they shouldn't have, commissioner. Well - so I'm
15 going to fix that.

COMMISSIONER GOZZI: Well, you can run outside and hit your head against the brick wall if you like and then come back -

MR WILLINGHAM: No, no, what I am saying, commissioner, and I'm not bleating to you, I'm quite happy to fix these little difficulties up as they come to my attention and I will personally supervise the issuing of instructions that are more relevant and more appropriate to the department's position. That's what I would have done had I been
20 aware of this earlier.

Mr Commissioner, what I ask you to consider is, on the basis of reasonableness and fairness to both the employer and to the employees, whether, as requested by Mr
25 Evans, a period of five working days or greater is proper, and which will lead to circumstances where a teacher's annual load is reduced by the notional weekly equivalent. We would submit, Mr Commissioner, that the period should be not less than four weeks, that is absences of more than four working weeks, that is 20 working days. In excess of 20 working days.

30 COMMISSIONER GOZZI: What's the rationale for that?

MR WILLINGHAM: We believe, commissioner, that given the 41 weeks available to a teacher, that's five over the nominated basis by which the hours are calculated at 36. So, I'm actually using the factor of .8 of that. For instance, in that notional teaching
35 year of 36 weeks - it is true, as you've said, it is a fact that the teacher may teach those hours over 41 weeks. If the teacher is absent for four weeks there is still, if you like, that buffer of five weeks over which those hours may be made up. We say, given those circumstances, and given the circumstances of reasonableness and fair assessment that it is not unreasonable not to demand that the teacher make those hours up, but the teacher may be required to make those hours up. There is no
40 prescriptive requirement by the employer that says you must do these hours, rather, that you may be required to do these hours.

It may be that we simply haven't got time and opportunity to pick up the hours that we would consider owing to us, commissioner. That often could be the case, particularly if the absence occurs late in the year. There would be many circumstances
45 - for instance, if the absences are starting to cut in about now, commissioner. We're talking about absences of four, six, eight, 10 working weeks. There'd be no capacity whatsoever to recover the hours by the end of the year. So, they would be well and truly beyond our capacity to recover.

I would also have to say in absolute fairness, commissioner, for your greater consideration, that I do believe a distinction should be made between a person who is incapacitated through health than perhaps someone who, to the extent that it's voluntary, is taking some form of approved leave other than sick leave. That's just a personal view. I have the greatest sympathy for the person who is in ill health or has been injured, and then that person says I am going to take some leave of some form or another, and then wants a credit as a direct consequence of exercising his or her own voluntary discretion. But in general terms, we would say four weeks. I would add a further rider to that, commissioner. I would say that there are always going to be circumstances which are so compelling that no reasonable person would say, yes, that credit should stand; you will be required to make it up. I think there are always circumstances that are going to emerge where it would be appropriate for that to be reviewed and I believe the clause, if the commission absolutely believes it ought to be inserted, ought to reflect that. I don't think it should be absolute.

In relation to this particular matter, because it has a far greater potential effect on the employer's operation and the employer's costs than does the previous matter, I would respectfully request the opportunity for an adjournment of only a day or so, in working terms, so that I can discuss more fully with the institute directors and indeed the departmental management what Mr Evans has put and certainly review with them what I have put and to ensure that my submission is precise and correct and has had the added opportunity of giving everyone the opportunity to consider what Mr Evans has put.

When I say delay, commissioner, at your convenience. Not more than 15 minutes some time next week is the sort of adjournment I'm talking about. I'm not here speaking about two, three weeks. I'm not here speaking about a parade of witnesses, but I would feel uncomfortable about this issue of what the institute directors are alleged to have done. I would be interested to know whether that has been done According to Hoyle and whether or not when the secretary is fully aware of the circumstances, whether he may not think something else is more appropriate, commissioner, if I could put it that lightly.

On that basis, commissioner, I'd ask if I might withhold the concluding part of my submission until that time, if you're disposed to grant it.

COMMISSIONER GOZZI: All right. Thanks, Mr Willingham.

MR WILLINGHAM: Thank you, commissioner.

COMMISSIONER GOZZI: Mr Evans, any thoughts about that?

MR EVANS: In terms of the adjournment, commissioner, apart from the area of his submission where he conceded we were right about how many hours it should be, I think Mr Willingham's submission evinced some confusion that an adjournment might benefit both of us so we don't end up with something that neither of us like. I say that particularly in relation to the variation where there seems to have been a misunderstanding that what was being said is for a period of less than five days. According to our application, no credit would be granted.

What actually happens and I think I said it in my submission, my understanding at the moment, is where a teacher is absent on those sorts of leave for periods of less than that, they are able to be credited with what they actually would have taught if they'd been there on that day, because people know their timetables are available for people to know what it is. So, a teacher may not have taught anything for that day and they get no credit. He or she may have taught - been timetabled to teach 10 hours that day and they would have got 10 hours' credit. That is what currently operates for periods of less than a week.

COMMISSIONER GOZZI: Well, I think you'd better clarify that for me too, because the way I read this is that if they are away less than five working days, they don't get a credit.

5 MR EVANS: The original application that was in the special case did say that. It broke it down to a daily basis. If they were away for a day, it would be one fifth of a week. It has been our view that the best way to do this would have always been to look at a person's actual teaching programme and say, if you'd been there what would you have taught. If it's nothing, then you don't get anything. Bad luck.

COMMISSIONER GOZZI: Yes.

10 MR EVANS: We'd be reluctant to, I guess, to totally do away with that but if we have to, we have to, I guess.

COMMISSIONER GOZZI: All right. Thanks, Mr Evans.

15 Obviously there is some scope for some discussion on this issue and what I would ask you to do is - I haven't got my diary with me. I left it at home this morning and I'm not quite sure that yours and mine, Mr Hunter, coincide at the moment.

Perhaps what we could do is be in touch with you on Monday and lock in a time later next week.

MR EVANS: I'm basically otherwise engaged from Wednesday onwards next week, Mr Commissioner. Monday or Tuesday are the only days I have available next week.

20 **OFF THE RECORD**

NO FURTHER PROCEEDINGS RECORDED

HEARING ADJOURNED