

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 4568 of 1993

IN THE MATTER OF an application by
the Australian Liquor, Hospitality
and Miscellaneous Workers Union -
Tasmanian Branch to vary the Child
Care and Childrens Services Award

re insertion of traineeship
clauses

COMMISSIONER GOZZI

HOBART, 22 September 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances please?

MS P. SHELLEY: If the commission pleases, I appear on behalf of the Australian Liquor, Hospitality & Miscellaneous Workers Union - SHELLEY, P.

COMMISSIONER GOZZI: Thank you, Ms Shelley.

MR W.J. FITZGERALD: If it pleases, I appear on behalf of the Tasmanian Chamber of Commerce and Industry - FITZGERALD, W.J., and with me, **MR R. MURRAY.**

COMMISSIONER GOZZI: Yes, thank you, Mr Fitzgerald. Ms Shelley?

MS SHELLEY: Thank you, Mr Commissioner. This is an application which seeks to vary the Child Care and Children Services Award to insert clauses to enable workers within the industry and employers within the industry to access the Australian Traineeship System.

The commission will be aware that during the award restructuring process in 1991, leave was reserved in respect of both the junior rates and traineeships, so in one respect this is the final step in the process which was begun during that restructuring. And what this will allow employees in the industry to do is to enter at the bottom of the structure, so to speak, and to be able to progress through the position of training and skills, but right from entry level up to the promotional level within that award.

The variations that we seek are in many respects similar to other award variations - other award clauses for ATS trainees, but there are a couple of unique features that we will refer you to as - as we go through this draft order.

You may have already received a copy of that which was faxed to the commission -

COMMISSIONER GOZZI: Yes, thank you, Ms Shelley.

MS SHELLEY: - within the last day or two.

COMMISSIONER GOZZI: Yes I have, thanks, I'll mark that - have you got some other -

MS SHELLEY: Yes, I have.

COMMISSIONER GOZZI: - we'll mark it exhibit S.1.

MS SHELLEY: This is a consent document, sir. It's the result of lengthy negotiations and there is agreement on every point.

The first clause is self-explanatory; it merely seeks to amend the award by inserting the trainee in the arrangement clause.

Clause 2 similarly, it's self-explanatory; it seeks to insert the definition of a trainee child care and also to define the meaning of a training agreement.

COMMISSIONER GOZZI: Mm.

MS SHELLEY: The - then go on to amend clause 7 which is also part of the definitions clause to describe within the award the qualifications and experience required by a person at this level and the indicative skills that would be expected of that person and how they would advance and - or progress further the career path following the completion.

It refers to the automatic progression of a junior trainee upon completion of the traineeship to the third incremental level of Level 1, so, in other words, what they're doing is, they're actually skipping one - 1 year in order to reach that third year in recognition of the fact that they have in effect completed a 1-year structured training program.

COMMISSIONER GOZZI: So they miss level - in other words they miss out Level 1?

MS SHELLEY: They miss out the second incremental stage within Level 1.

COMMISSIONER GOZZI: Right.

MS SHELLEY: Each level encompasses three incremental stages which - a worker, if they complete one full year plus in-service training would automatically progress within each incremental level each year. In this instance, one of those years would be skipped. Right? If you turn -

COMMISSIONER GOZZI: Well I'm just trying to follow that through at the moment.

MS SHELLEY: Mm.

COMMISSIONER GOZZI: So junior rates - childrens service worker -

MS SHELLEY: If I refer you to page 5 of the award -

COMMISSIONER GOZZI: Yes, I've got that - oh well, no, I'm just looking at the - at the rate 372.80, 90% and 95% of 372.80.

MS SHELLEY: Right, well that's moving a little bit further forward.

COMMISSIONER GOZZI: Yes, I'm not quite sure I follow it. You'd better take me through it.

MS SHELLEY: Right, so I take you back to 2.1 on the draft order -

COMMISSIONER GOZZI: Right.

MS SHELLEY: - at the very bottom of the first page under 2.1 where it refers to advancement -

COMMISSIONER GOZZI: Yes.

MS SHELLEY: - in the case of juniors, progression to Untrained Junior - 3rd year shall be automatic upon completion of the traineeship.

Now if I refer you to page 5 of the award -

COMMISSIONER GOZZI: Right.

MS SHELLEY: - at the bottom of page 5 where it says 'advancement', it says:

Progression through the incremental levels of the Level 1 Children's Services Worker Scale shall be automatic upon:

(a) completion of one year's service at each level;
and -

COMMISSIONER GOZZI: Right.

MS SHELLEY:

- (b) completion of 15 hours of in-service training a year.

Now what this is saying is that instead of having to complete 3 years - I'm sorry, instead of having to complete 2 years and the in service training, the trainee would only do the trainee year to go to the top of that level 1.

COMMISSIONER GOZZI: Well the progression only contemplates 1 year.

MS SHELLEY: No, the progression within the award contemplates a rate on starting, a further progression and then a further progression.

COMMISSIONER GOZZI: Yes, but I'm not quite sure - we're talking about the one on page 5 _

MS SHELLEY: Mm.

COMMISSIONER GOZZI: So progression through the incremental levels of the level 1 childrens services worker scale shall be automatic.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: Upon, and then (a) and (b). Now upon completion of 1 years service -

MS SHELLEY: At each incremental level.

COMMISSIONER GOZZI: Yes, all right. So it's three - oh, I see, so there's three levels -

MS SHELLEY: Yes.

COMMISSIONER GOZZI: - and you're one because of the 12 months training.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: Yes, okay. So you're starting off on the second year of level 1. Are you?

MS SHELLEY: Their training commences at basically the first level, right?

COMMISSIONER GOZZI: Yes, that's during the training -

MS SHELLEY: The first year of the first level.

COMMISSIONER GOZZI: Yes.

MS SHELLEY: Exiting the traineeship they enter at the third year of the first level.

COMMISSIONER GOZZI: Why do they do that?

MS SHELLEY: Because their traineeship is of more worth in terms of the worker gaining skills than 1 year just working on the floor would be.

COMMISSIONER GOZZI: So 1 year on year 1 -

MS SHELLEY: Which is really the trainee year.

COMMISSIONER GOZZI: - which is a trainee year.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: At the end of that they go immediately to the third year -

MS SHELLEY: Yes.

COMMISSIONER GOZZI: - because of the worth of the training.

MS SHELLEY: Yes, that's right. Because of the skills gained through having successfully completed the traineeship program.

COMMISSIONER GOZZI: That's interesting, isn't it? Why is the training in a traineeship regarded to be ahead of the on-the-job training of somebody that has to go 1 year, 2 years, 3 years?

MS SHELLEY: Well in my view, they really should go straight to level 2, but - because a traineeship is 1 years training, right? Level 2 is, in fact, a 1 year trained level but, in fact, we couldn't quite achieve recognition of it having the same worth as somebody who may have spent 1 year full-time in an institution. But it is of more worth because it's a structured training program which has, as you know, 39 weeks on the job following a structured training plan, right, that actually has specified outcomes or performance criteria, learning outcomes, however you may wish to refer to them.

And the trainee actually has to demonstrate that they have gained those competencies in order to successfully complete the training program. There's also a formal curriculum for the off-the-job training that operates in the same way, in that it's criterion based or competency based or whatever you want to call it. So they have to demonstrate that they actually have those skills in order to complete it.

Now at the exit point of that traineeship that worker should or would have more skills than a worker who had just been working on the floor without that structured program and without having to demonstrate that they had gained those competencies. And I have here - I haven't made copies for the commission because they are extremely lengthy documents, but they're here for perusal. This is the training plan which is a 96 page document.

COMMISSIONER GOZZI: Yes, look, I'm not worried about that really. I understand what you're saying about that. But what it does do, and has to potential to do, at least, is to disadvantage the person that's not a trainee because a person that's not a trainee, having regard to the childrens services worker level 1 criteria there, should be a person that acquires skills and does training and so on and has a 3 year incremental pattern to get to the top of level 1, and because of the trainee having that concentrated training, someone who is actually working full-time and doing it tougher, I suppose, is penalised, finishes at the top of the scale 1 year later.

MS SHELLEY: What we would hope really is that workers would choose to use the traineeship option anyway, provided, of course, the employers are prepared to put them on. It's certainly not our intention to disadvantage any workers. We would hope that training options and a variety of them were available to as many workers as possible. But this award, as you will recall, really contemplates right throughout it the recognition of skills gained through training, and the training is gaining those skills on and off the job in a more concentrated manner -

COMMISSIONER GOZZI: Yes, that's what I mean.

MS SHELLEY: - and is required to be tested more stringently and to actually achieve outcomes that the worker on the job does not have to do. They will get to the same point eventually but the trainee is more accelerated because there are more onerous demands upon that worker to more rapidly achieve those skills.

COMMISSIONER GOZZI: But my point is that that is a matter of judgment, isn't it, because simply if the services worker level 1 works in accordance with the intent of the award, then that employee would be gaining qualifications on a part-time basis and the testing of those qualifications would, I would put to you, be more stringent because of the examination requirements which are probably not inherent in the traineeship.

MS SHELLEY: The down side, I suppose, for the trainee is that they're receiving 25 per cent less income than the worker on the floor throughout that year.

COMMISSIONER GOZZI: Well if you're talking about catch up -

MS SHELLEY:

COMMISSIONER GOZZI: - that's may be a different argument. I don't know.

MS SHELLEY: But level 1 is an untrained level -

COMMISSIONER GOZZI: Yes.

MS SHELLEY: - right, is an untrained level, so really the trainee, when they complete their training, is really a trained worker. They really have a one year training course, so to put them at the top of - at the third level of level 1, I think is - well it's a compromise, because I really think that they should -

COMMISSIONER GOZZI: Yes, I -

MS SHELLEY: - they are a trained worker. Whereas the other untrained worker may -

COMMISSIONER GOZZI: They're not a qualified -

MS SHELLEY: - choose to stay forever at level 1. They might do the same year thirty times.

COMMISSIONER GOZZI: Well if - yes, but the point I'm making is that they are a trained worker, but they are not necessarily a qualified worker.

MS SHELLEY: That's true; that's true.

COMMISSIONER GOZZI: And the intent of the level 1 is for the person in that classification to gain child care qualifications.

MS SHELLEY: No.

COMMISSIONER GOZZI: Well that's the - I mean, if it operates the way it's intended to operate, or a person - I mean, I'm looking at the other side of that definition for children service worker, level 1 which the first part of it is: a person at this level shall be an unqualified person.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: Fair enough, and in that respect, what you're saying about the trainee has some credence - or the other part of that though, a person undertaking part-time study leading to a relevant child care qualification. So the person that's actually doing that and is going off to TAFE or wherever that study is undertaken, meets the course criteria, goes through that 3-year stint - it takes 3 years to get to the top, whereas somebody who isn't study towards the qualification, does it in a shorter period of time.

MS SHELLEY: But, Mr Commissioner, a person at level 1 who is undertaking part-time study leading to a relevant child care qualification is actually undertaking an associate diploma course and upon completion of that, goes to level 3.2 -

COMMISSIONER GOZZI: Yes.

MS SHELLEY: - whereas the trainee only comes out at level 1.3.

COMMISSIONER GOZZI: Oh, well, look, that's true, but it's up to the trainee, after that first 12 months, what the trainee does. I mean, the trainee is not precluded from gaining formal qualifications -

MS SHELLEY: That's true -

COMMISSIONER GOZZI: - to get that same progression.

MS SHELLEY: - and what the completion of the traineeship would do is allow them entry into the associate diploma and hopefully a credit transfer, but no accelerated process through the associate diploma. They would really be starting the associate diploma as any other new person going in and would apply for appropriate credit transfer or whatever, but they would then have to work - they would then have to apply for - apply for admission to level 2 through demonstration - and demonstrate to the employer that they have the skills and abilities and knowledge to work at level 2 -

COMMISSIONER GOZZI: Right.

MS SHELLEY: - then they would continue working towards their associate diploma. When they have completed two-thirds of their - they could just stay at the top of level 1 either when they've completed two-thirds of their associate diploma, they would move to level 2. It's not really - I don't think it's advantaged one over the other. I think it's providing a range of opportunities to achieve the same end, if people so wish it which is progression through the career path.

COMMISSIONER GOZZI: Look, I'm reasonably relaxed about the untrained person who might stay at that level for a long period of time, but if you're relaxed about the fact that you're not creating an anomaly in the award in respect to the person who is actually going out - gaining qualifications from year - from day one and saying, 'Well, look, that really is a lesser value than the traineeship because you're being penalised by one year', when you - and if you looked at the year one course criteria for an associate diploma in child care and lined up against - lined that up against the traineeship requirements, if you are able to do that and say, 'Well, look, the traineeship really is ahead', and that justifies that progression, I tell you I'd be fairly dirty if I was the person that was going to TAFE every - however often, doing the course curriculum to qualify and suddenly somebody 39 weeks training and gained a year on me.

MS SHELLEY: Well I wouldn't be dirty if I were that worker because if I were doing the associate diploma from day one, at that end of 2 years I would have completed two-thirds of that on a part-time basis and I would be going to level 2, whereas the trainee would only be going to the top of level 1.

COMMISSIONER GOZZI: Yes, but look at it from the point of view of the relative merits of the curriculum in year one versus the traineeship period. Now if you're saying to,

'Well, look, Mr Commissioner, I'm going to come back here and argue an anomaly at some stage', well, you know, I'm prepared to accept that, but I just wonder how closely you and Mr Fitzgerald have looked at that particular scenario.

MS SHELLEY: Yes, very closely indeed, Mr Commissioner, through the Community Services and Health Industry Training Board, Child Care Division, there was established an articulation and credit transfer committee which was a tripartite committee and we worked very closely indeed with the Department of Employment, Industrial Relations and Training principal curriculum officer to look at those issues. They go by various names - nesting or whatever you want to call them.

COMMISSIONER GOZZI: Yes.

MS SHELLEY: How one course nests into another; how the competencies at one level line up with competencies at another so that each level keeps its integrities so that each level of the award keeps its integrity and so that each step on the way through the training pathways - and there are many training pathways that can converge to the same point -

COMMISSIONER GOZZI: Yes, I accept that.

MS SHELLEY: - but each keeps its integrity, and that there are always opportunities for people to have recognition of what they may have done at a different level through a different pathway and we are completely satisfied. I mean, it's been a lengthy process.

COMMISSIONER GOZZI: Yes.

MS SHELLEY: These discussions have been going on in excess of a year -

COMMISSIONER GOZZI: And the -

MS SHELLEY: - and those issues have been very sensibly canvassed.

COMMISSIONER GOZZI: And I'm very confident that they do interlink and structure properly to an end point, and you are quite prepared to say to me - having regard to that - that there is pay equity as well for those people that might be going through the different streams.

MS SHELLEY: I believe that there is in the - in the final analysis when you look at, say, the wage discounting of people who are doing on and off the job and full-time wage of people who might be studying part-time, and the foregoing of a wage at all for those who are doing it full-time, I think that it is an equitable outcome.

COMMISSIONER GOZZI: All right.

MS SHELLEY: Right. And then in the next paragraph on top of page - the second paragraph on the top of page 2 of the draft order indicates as I said - I think I may have already referred to that after the completion of a further year, that worker can be appointed to level 2 which is a 1-year, full-time - a 1-year training level. Right? Now -

COMMISSIONER GOZZI: Well what's 'possesses sufficient knowledge'?

MS SHELLEY: The award itself defines the knowledge and skill for each of the levels.

COMMISSIONER GOZZI: Yes. Well, why isn't that - all right. Yes, fair enough.

MS SHELLEY: It says, 'The employee - '

COMMISSIONER GOZZI: Yes. Okay.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: Yes, fair enough.

MS SHELLEY: Three of the draft order we come to the wage rates.

COMMISSIONER GOZZI: Okay. And they're just straight from the award?

MS SHELLEY: Well, they are not within the award because the wage rates referred to there include the final minimum rate adjustment which is not yet been consolidated into the award that you have probably got before you.

COMMISSIONER GOZZI: Oh, right, okay. So, that was that 2nd of December decision.

MS SHELLEY: The final minimum rates adjustment - operative date was the first pay period on or after the 8th of August 1993.

COMMISSIONER GOZZI: Just let me look at the rates of pay.

MS SHELLEY: But they in fact - now that I come to think of it, this level - those minimum rates adjustment don't apply. What clause 3 is actually doing is - it really refers more to that leave reserved matter where we were looking at both junior rates and trainees as a sort of a package.

COMMISSIONER GOZZI: Yes. Right.

MS SHELLEY: What clause 3 does is that it represents the first stage of a phasing out for junior rates for trained workers in recognition of the nonsense I think that it is to have a junior rate for a trained worker. I mean, either they are trained and have achieved the skills encompassed in that training -

COMMISSIONER GOZZI: But -

MS SHELLEY: - or they're not. So these junior rates here in point 3 of the draft order, what's happened here is that there use to be, for trained workers or trained juniors who hadn't attained the age of 3 years, they still could - they could complete the training and still complete - and still have 3 years at a junior wage rates level. What this done is that it's actually dropped off one of those years.

COMMISSIONER GOZZI: But how can you do that? I mean, the award specifies what should happen.

MS SHELLEY: But this is seeking to vary the award -

COMMISSIONER GOZZI: Well you want me to -

MS SHELLEY: - by agreement.

COMMISSIONER GOZZI: - you want me to vary the wage rates clause as well.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: By virtue of this agreement.

MS SHELLEY: Well this is not an agreement. This is seeking to vary the award.

COMMISSIONER GOZZI: Yes. This is a consent document.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: So you want me to take out the 1-year - the first year - the 85 per cent junior rate, children's services worker rate?

MS SHELLEY: Yes.

COMMISSIONER GOZZI: Why?

MS SHELLEY: For the - because this is - we're not seeking to take it out at this stage for untrained juniors; we're seeking to take it out for trained juniors because -

COMMISSIONER GOZZI: Well -

MS SHELLEY: - it is the view - and it certainly was a view even, I think, expressed by yourself at the time of the award restructuring that it is better to have a system where you have structured entry level training where people are paid according to their training and their skills than paid according to their age.

COMMISSIONER GOZZI: Yes. But if I take that out that means that juniors are entering the - they don't come via the traineeship course. They are going to come in at 90 per cent of the service worker level 2 rate.

MS SHELLEY: But this is - no - this is a trained - if we look at 3(a), that's the trained junior 1-year trained. Right. So that is somebody who has entering -

COMMISSIONER GOZZI: Yes.

MS SHELLEY: - who has already completed training.

COMMISSIONER GOZZI: I might be misunderstanding you. You're not seeking for me to delete the junior rate levels currently in the award.

MS SHELLEY: Yes, for trained workers. We're seeking to delete the 85 per cent -

MR FITZGERALD: The first step.

COMMISSIONER GOZZI: Well -

MS SHELLEY: Is it 85 per cent?

COMMISSIONER GOZZI: Yes, 85 per cent rate.

MS SHELLEY: Yes. Now, the history behind this actually is that both the employers and the union are of the view that the notion of having an age related wage rate for somebody who has a formal qualification is really rather nonsensical if we're looking at an award which encompasses paying people according to their skill levels and their training, that wage - once they've got the training, age isn't a factor because they've demonstrated that they have the skill levels, so this is the first stage in a lengthy process that has been agreed -

COMMISSIONER GOZZI: Well -

MS SHELLEY: - to recognising that you pay people according to skills and training once they have them, not according to their age.

COMMISSIONER GOZZI: Ms Shelley, the junior rates in the traineeships matter certainly was leave reserved -

MS SHELLEY: Yes.

COMMISSIONER GOZZI: - in December '92. But clearly those rates and this award were established on proper examination and the first year rate applies to a trained junior - 1-year trained.

MS SHELLEY: These wage rates -

COMMISSIONER GOZZI: And there's no - there's no automaticity about just changing that - I'm surprised that you'd think - you'd just automatically change that.

MS SHELLEY: The - I mean I don't - I'm - well, you're probably right, they were established at some stage, but that's -

COMMISSIONER GOZZI: In that award - in the making -

MS SHELLEY: - that's a hangover of - from the days when it was a division of the old WAVA Award - the Welfare and Voluntary Agencies Award, that it actually had junior rates for trained workers.

COMMISSIONER GOZZI: Well then -

MS SHELLEY: Now that's not something that - that's not something that - that we've ever been happy with and now that we're actually examining closely - and as I say -

COMMISSIONER GOZZI: Well I'm not examining anything.

MS SHELLEY: - that the employers and the - and the unions have really closely looked at this whole question of entry level training - how people enter - enter the - enter the profession - it's like - it's the appropriate time - it's the appropriate time to try and more properly align these.

COMMISSIONER GOZZI: Yes, but the only - I mean how are you going to do that under the principles? How are you going to say to me that there's been some change that I can comprehend under the wage fixing principles? What have you and Mr Fitzgerald thought about that?

MS SHELLEY: It's really a matter of the award trying to, I think, make more sense, and that there probably are not - I mean really, it's a matter of modernisation in some respect.

COMMISSIONER GOZZI: Well it's more than that.

MS SHELLEY: Because there probably really aren't - there wouldn't be very many people that would complete their training and still be under the age of 20.

COMMISSIONER GOZZI: But, Ms Shelley, by deleting the '85 year level -

MS SHELLEY: Eight five per cent.

COMMISSIONER GOZZI: - 85% - yes - 85% level, we're talking here about the \$17 a week pay increase by the stroke of a pen.

MS SHELLEY: We're talking about recognising the fact that somebody has complete - somebody has actually completed a course - the equivalent of one year full time and in order to complete that they must have the same skills as somebody who would complete that if they were 44 or 64 or 31, and that this award during the restructuring process - this award was clearly - was restructured clearly in such a way that it was based upon skill and qualification, and this - and these matters were reserved so that the parties could look more closely at those others which is what we've now done.

COMMISSIONER GOZZI: Well what are you going to do about the junior employee definition? Yes? How does that all work? I mean what you're really saying to me is that juniors should start off at 90% of the service worker Level 2 - Childrens Service Worker Level 2?

MS SHELLEY: No - Level 1. We're looking at 3(a).

COMMISSIONER GOZZI: No, it's -

MS SHELLEY: That's the one year trained.

COMMISSIONER GOZZI: Yes.

MS SHELLEY: Right? first year rate - yes, that's right, because Level 2 is the one year - it's the one year trained level.

COMMISSIONER GOZZI: Yes, yes.

MS SHELLEY: Yes?

COMMISSIONER GOZZI: So there's already recognition that it's tied to Level 2 that that is a trained childrens service worker rate. Now you're further upping the ante in respect of that by making the commencement point 90%. I've never heard of a junior rate starting at 90% of a rate which applies to a trained - applies to a trained employee.

MS SHELLEY: Have you heard of juniors who are - have completed training having -

COMMISSIONER GOZZI: Well if you want to argue - if you want to put that, then maybe you ought to have the capacity in the order - and I think you probably already have - to have put people on classifications commensurate with the skills and qualifications that they hold. I've got no - I've got no problem about that.

MS SHELLEY: Well that's exactly our position - that's exactly our position, but this is - this is a phasing out to reach that - to reach that point that you've just described.

COMMISSIONER GOZZI: But not every junior will come in with that sort of experience, and it would be -

MS SHELLEY: No they won't, but the ones who don't -

COMMISSIONER GOZZI: So where are they going to be paid?

MS SHELLEY: A junior - if you look at 3(c) which is your untrained junior - one who has not completed any training, that remains unchanged - the first year they're 70%, second year they're 80%, third year they're 90%. If you look back to 3(a) where we're now - we're talking about trained juniors - those who are entering - those who are entering - entering the industry who have already completed a 1-year full time relevant industry training qualification which is the full time technical certificate.

COMMISSIONER GOZZI: Ms Shelley, what's changed between now and when these rates were put in to substantiate what amounts to a significant pay increase for these employees?

MS SHELLEY: What has changed is that the whole award has been restructured to - to reflect a career path and appropriate rates of pay commensurate with training and skills, rather than age and appointment or seniority or whatever it was in the past. There's a following down that pathway that was commenced - when we commenced these award restructure negotiations for 1989.

COMMISSIONER GOZZI: But there's no change to any requirements; there's no additional qualifications required. I mean all those things are already in place in the award.

MS SHELLEY: Well there - there is a - there is a change in the requirements since those percentages were established which was what we, through 8 months of hearings in this commission indicated in detail to show the increased complexity of the industry, the increased needs of training, the more advanced skills that people need -

COMMISSIONER GOZZI: And that's why you've got the salary levels in the award that you've got.

MS SHELLEY: But we reserved the question of the junior rates and trainees.

MR FITZGERALD: Commissioner, can I suggest - there is obviously some difficulty with this matter - that maybe we could go into conference with the assistance -

COMMISSIONER GOZZI: I don't want to go into conference, Mr - I am quite concerned about what's been put before me here.

MR FITZGERALD: Yes. Well I was just trying to alleviate those concerns, and with the -

COMMISSIONER GOZZI: Well, you can alleviate them with your submissions, because I am going to write a decision on this, having regard to what's said.

The fact of the matter is that you are asking me to put a traineeship provision in the award, which I have got no difficulty with, but when I really look at it and listen to you you are not only looking to put traineeship rates in you are also looking at changing the whole junior rates structure on the basis that something has happened -

MR FITZGERALD: I can understand that, and -

COMMISSIONER GOZZI: - which I would like to know how you justify it.

MR FITZGERALD: Well, with respect, I think it would assist if - particularly with experts in the industry - Mrs Simmonds is here today, and -

COMMISSIONER GOZZI: Well you can call Mrs Simmonds if you want, but at the moment Ms Shelley is on her feet and she can continue -

MR FITZGERALD: Right. Well I am just trying to assist the process. It is a consent document, as Ms Shelley indicated, and -

COMMISSIONER GOZZI: Well, Mr Fitzgerald, I appreciate you are trying to assist, but let me finish with Ms Shelley and then you can put yours.

MR FITZGERALD: Well, that's fine. Alright, I will leave it to you.

MS SHELLEY: During the 8 months of hearings in the restructuring of this award we clearly indicated the massive changes that had taken place in the child care industry since the creation of the WAVA Award and this of course. What was then the Child Care Award, which became the Child Care and Childrens Services Award, was originally a division of the

Welfare and Voluntary Agencies Award, at which stage the junior rates percentages were first arrived at. Right?

During the restructuring we presented detailed and expert evidence to show how the community expectations, the skills in the job had changed enormously.

As a result of that we created a new classification structure.

COMMISSIONER GOZZI: Yes, with some pain here and there.

MS SHELLEY: With considerable pain.

MR FITZGERALD: I can't recall that, actually.

MS SHELLEY: We eventually arrived at something that has been hailed by all parties as working extremely well in practice and I think people are very, very happy with what that has meant.

As far as the junior workers were concerned we didn't actually address them during that process, but what we did do was say, well we'll go away and look at that in the context of putting into place the entry level training structures within the award.

So we looked at that as a package. We looked at what's required of trained workers on the job and what's required of trainees and what's required of people entering the service, and we have concluded - and during these lengthy discussions that the skills and the knowledge that are required of people at those particular levels are not actually altered. When you get to the trained levels they are not altered by the age.

Once you get to your level 2 and your level 3 level the work that is required of those people does not differ. The value of that work is no different, depending upon the age of that person.

So we have -

COMMISSIONER GOZZI: But that's where I think the whole thing breaks down. The fact of the matter is, if a junior gets to that classification level that's the rate that ought to apply.

MS SHELLEY: Mm, that's right.

COMMISSIONER GOZZI: But that's quite a different argument to what should apply to a junior starting work.

MS SHELLEY: But we haven't changed that.

COMMISSIONER GOZZI: The fact of the matter is - no - the fact of the matter is the junior comes in and if the junior has got

the qualifications or whatever and is promoted to Service Worker Level 2, well obviously that person is paid at Service Worker Level 2, or 3 or 4 or 5, or whatever.

MS SHELLEY: Well if they were coming in with 1 year training they would automatically go to level 2. Our organisation concurs, they should be paid the rate for level 2. Now the employers have also agreed that that's what they said, but the industry can't bear the cost to do that immediately so we will do it on a 3-year basis, and this is the first stage of that, and phasing out one of those years we are getting towards that point where a level 2 worker who is level 2 because they have 1 year training will be paid the level 2 rate, and this is the first step towards reaching that point.

MR FITZGERALD: And will ultimately phase out altogether.

MS SHELLEY: And it will ultimately phase out altogether, as Mr Fitzgerald has just reminded me.

So it's really congruent with the positions that were arrived at about the skill levels in the decision of 8 November 1991.

COMMISSIONER GOZZI: The point I am making is that a trained junior already gets the benefit of being paid relative to a classification which is a promotional classification.

A junior is not paid, a trained junior is not paid in respect of the Childrens Service Worker Level 1 classification. The junior is paid relative to the Childrens Service Worker Level 2 which is a trained level. Right? And in your scenario with these trainees with no formal qualifications apart from a concentrated traineeship which gives them acceleration through level 1, and then they go to level 2 -

MS SHELLEY: Only if they are appointed.

COMMISSIONER GOZZI: If they are appointed, yes. They are appointed. If they are then paid, on your situation here, irrespective of whether they are appointed or not, they are paid - they drop off one further point, one further salary point.

MS SHELLEY: Not just trainees. It would be anybody who was entering -

COMMISSIONER GOZZI: Why -

MS SHELLEY: Anybody who was entering level 2, right, whether they've been - whether they got there by being a trainee or whatever, it would apply to.

COMMISSIONER GOZZI: But this is not that they have to be on level 2. If I understand this document correctly, this will

be the rates applicable to juniors who may be appointed at level 1. Your junior rates - right - if you look at the existing award provision, the junior rates - and maybe we're talking here at significant cross purposes. I tell you what I see. Juniors - trained juniors currently come in and get paid on that scale that's in the award presently - 85 per cent, 90 per cent, 95 per cent of the level 2 rate.

MS SHELLEY: Trained juniors -

COMMISSIONER GOZZI: Yes, trained -

MS SHELLEY: - 1-year trained.

COMMISSIONER GOZZI: - 1-year trained.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: 1-year trained.

MS SHELLEY: That's right.

COMMISSIONER GOZZI: Now, that is irrespective of whether they hold a substantive position or not.

MS SHELLEY: I don't quite know what you mean by that.

COMMISSIONER GOZZI: Well they don't hold - they don't have to hold a level 2 job to be paid that. As long as they are trained -

MS SHELLEY: But that's what the award does. The award is not task related, appointment related -

COMMISSIONER GOZZI: No.

MS SHELLEY: - it is automatic progression dependent upon holding of qualifications.

COMMISSIONER GOZZI: But am I -

MS SHELLEY: An automatically - you cannot be appoint - if you hold a qualification, the award does not allow you to appoint anybody to a lower level than that which specifies that qualification.

COMMISSIONER GOZZI: Right. So, the point is that you can have juniors who are 1-year trained who are actually not appointed to a level 2 job.

MS SHELLEY: No.

MR FITZGERALD: Just train juniors.

MS SHELLEY: No. The award says that if you have a 1-year qualification, you must be at level 2.

COMMISSIONER GOZZI: Where does it say that?

MR FITZGERALD: Trained 1-year level - trained 1-year trained.

MS SHELLEY: Level 2: a person at this level shall be a person who has successfully completed a 1-year full-time course, and if you - also it says, at the - level 1 says: advancement to level 2 shall be on the basis of successful completion of a recognised 1-year child care course. Children's Services Worker, level 2 - and you can be - just come in off the street if this qualification - a person at this level shall be a person who has successfully completed a 1-year full-time course.

COMMISSIONER GOZZI: So the 1-year trained in your draft order refers to this -

MS SHELLEY: Level -

COMMISSIONER GOZZI: - person on level 2 -

MS SHELLEY: Yes.

COMMISSIONER GOZZI: - 1-year full-time trained?

MS SHELLEY: Yes.

COMMISSIONER GOZZI: Well what's that got to do with the trainee provision?

MS SHELLEY: What it has to do with the trainee provision is that this is a draft order to vary the award in respect of inserting the traineeship and - I guess maybe the - my application was deficient because I think should also have made a reference to the alteration of junior rates.

COMMISSIONER GOZZI: Yes, it certainly should do that.

MR FITZGERALD: Yes.

COMMISSIONER GOZZI: So this is totally -

MS SHELLEY: And neither Mr Fitzgerald and myself picked that up.

COMMISSIONER GOZZI: - this is totally incidental to the training provision?

MS SHELLEY: Well it isn't. It's actually - I mean in terms of our discussions it's been discussed as a package, that we

are phasing out the junior rates for trained people and putting trainees - entry at their proper structured entry level training and -

COMMISSIONER GOZZI: So, the trainee, after 39 weeks training, right -

MS SHELLEY: Yes. Oh, it's 52 -

COMMISSIONER GOZZI: - after the end of the first year -

MS SHELLEY: It's 52 weeks training.

COMMISSIONER GOZZI: Right, 52 weeks training, will go to the third year level 1.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: And what, in the final year go -

MS SHELLEY: No, only if they are appointed. If they don't actually have a 1-year full-time child course that's been completed at an institution which is what you must have for level 2 to be automatically appointed there.

COMMISSIONER GOZZI: So therefore these junior rates here are not really relevant to the trainee -

MS SHELLEY: Well -

COMMISSIONER GOZZI: - because the trainee is being paid the year - 3-year rate of level 1.

MS SHELLEY: But they would be relevant to that trainee if like any other employee, they were either appointed - they actually got to level 2 and they were still under the age of 20 years.

COMMISSIONER GOZZI: But they only way they could get there is if they had 1-year full-time training.

MS SHELLEY: Or were appointed.

COMMISSIONER GOZZI: Well you just told me they can't be appointed.

MS SHELLEY: No, they can be appointed.

COMMISSIONER GOZZI: Well a person at this level shall be -

MS SHELLEY: Yes, or a person who, in the opinion of the employer, possesses sufficient knowledge or proven practical experience to work at this level.

COMMISSIONER GOZZI: Yes. Well look, I think the best think I can do is let you finish and let Mr Fitzgerald respond and then take it from there.

MS SHELLEY: Yes. Okay. Right. So, their wage rates clause we're seeking to delete that which is within the award and replace it with it these new rates which, as far as trained workers, whether they are 1-year trained or 2-year trained, begins the phasing out process of junior rates for trained workers.

Page 3 of the draft order refers - is once again part of the wage rates clause in which it addresses the formula for the payment to the trainees. And I'll try and explain this clearly so as not to confuse any of us further. But we're actually contemplating three different types of trainee - or three different classes of trainee even though they're all, in fact, accessing the same traineeship.

One is those who are engaged as such. In other words, they are employed by the employer as a trainee. They apply and they get appointed to be a trainee. The second class of employee are those that are already existing employees but they've actually been taken on, on the understanding that they will later convert to a trainee. For example, that they may have started in August and there's not a trainee intake into Tech. until February. Right, so they start the work on the understanding that they will later convert. And the third category is that of a full-time employee who may agree to convert their existing employment contract to that of a trainee. So those are the three classes.

Now in the case of the first class, going back to (d)(1), the trainees engaged as such. Right?

COMMISSIONER GOZZI: Yes.

MS SHELLEY: It sets out the standard provision.

COMMISSIONER GOZZI: Right, I'm with you.

MS SHELLEY: Okay. And that is established by multiplying the rate for an untrained junior 1st year, right -

COMMISSIONER GOZZI: Mm.

MS SHELLEY: - by 39 representing the actual weeks spent on the job and dividing that sum by 52 to provide a weekly wage, with a proviso that it doesn't fall below the minimum rates established in the Australian Traineeship Guidelines. And, in fact, they're above that.

(d)(2)(i), the employees employed upon the basis of later conversion to the trainee, they also have that same rate, that

same formula applied to their weekly wage rate. And in the third case, which is existing employees who agree to convert to the trainee, they have their wage rate determined by applying the formula to their existing wage rate.

The clause here, 2(a), clearly specifies that an existing full-time employee - I mean, this could be somebody who has been employed there for years - shan't be made to convert, right? That it's purely by agreement that they would decide to convert, and there would be advantages to that because it would actually give them the opportunity to access the training pathways.

So the clause here says unless there is genuine agreement between the employer and the converting employee to apply the formula referred to, the trainee will be paid the same wage rate as that which would have applied had he/she not converted to a traineeship. So if the employer says: I want you to do the traineeship, and the employee says: But I don't want to, this gives the opportunity for the employer to say: Well I want you to do it but I'm not expecting you to have your wage discounted. Right? So unless there is agreement they can't have their wage discounted to become a trainee.

COMMISSIONER GOZZI: Mm.

MS SHELLEY: Okay. Over to page 4. This clause allows an existing part-time trainee to convert as well because trainees are actually full-time employees. And this is there so that when we - just to clarify that when we're talking about the rate that the formulas applied to, we're actually talking to the full-time rate, not to the rate that that part-time employee would have been receiving because they worked part-time.

Do you have any questions at this point before we leap into the question of these adult trainees?

COMMISSIONER GOZZI: I've got heaps of questions, Ms Shelley. I'm not sure whether I should save them up for Mr Fitzgerald or -

MR FITZGERALD: No, ask them now.

COMMISSIONER GOZZI: I mean, the obvious question that comes to mind is why wouldn't you seek to vary the award in respect to putting in a trainee classification structure as opposed to mucking around with a junior rates structure? You've gone so far as - and I haven't really looked at this even though you faxed it to me. But just listening to you this morning you've gone so far as to seek an amendment in the definitions clause to put a trainee child care definition in.

MS SHELLEY: Mm.

COMMISSIONER GOZZI: But you don't want to back it up with a classification structure in the award. And I'm just wondering why you didn't opt for that path because what you seem to be saying is that the juniors will, in fact, become the trainee classification which may or may not necessarily be the case.

I mean, the trainee classification structure comprehends a whole lot - or these trainee provisions here comprehend a whole range of issues which may not necessarily - and I won't go any further than that - may not necessarily be comprehended in a junior rates situation. So I ask you the question, seeing as you've invited me, why in defining trainees as you have - and juniors are defined as well - why didn't you seek to amend the award by putting a trainee classification structure in the award? Wouldn't it have been simpler?

MS SHELLEY: Isn't it doing that?

COMMISSIONER GOZZI: Well I don't know.

MS SHELLEY: If we go back to 2.1 of the draft order, we are amending the classification structure by inserting the trainee

COMMISSIONER GOZZI: Yes.

MS SHELLEY: - at the appropriate point.

COMMISSIONER GOZZI: Yes, you're doing that by - yes, all right. Yes, okay. Where are the rates for the trainee?

MS SHELLEY: They're all part of - with trainee - I mean -

COMMISSIONER GOZZI: They really are the junior rates, aren't they?

MS SHELLEY: Well they're a formula that's based on the junior rates. I mean, this actually is - by describing the formula in this way, this is the standard way to do it in -

COMMISSIONER GOZZI: Well, I know, but you're deleting junior rates. You're seeking to delete the junior rates and include junior rates childrens services workers - these new rates -

MS SHELLEY: We're seeking to -

COMMISSIONER GOZZI: - which are new junior - trained junior and untrained junior rates of pay, right? And I'm asking you the question -

MS SHELLEY: Well we're still on - yes.

COMMISSIONER GOZZI: - why you aren't seeking to include rates of pay for the classification that you're seeking to be included, i.e. rates of pay for the classification of trainee child care?

MS SHELLEY: Well there are various rates -

COMMISSIONER GOZZI: I mean - sorry, let me just continue. Trainees need not necessarily be - and as you further get into your draft order it becomes evident - trainees need not necessarily be juniors.

MS SHELLEY: That's right.

COMMISSIONER GOZZI: And to me it's a bit of a fruit salad, quite honestly. But, you know, I'm responding to you at the moment, making comments off the top of my head. I'll have a good look at it.

MS SHELLEY: Okay.

COMMISSIONER GOZZI: You've still got a lot to say, Mr Fitzgerald has as well. But that's an obvious question that arises.

MS SHELLEY: Seeking to delete the existing wage rates clause and replace it with - by putting back the wage rates clause but including the traineeship rates is precisely what we've done, and which is the standard way that it's done in all other awards of this commission that I've had a look at, that include the traineeships.

COMMISSIONER GOZZI: What I'm saying is you've got a trainee child care definition, you've got a trainee classification and it seems to me what you've done then is seek to vary the junior rates to accommodate that classification and that definition.

MS SHELLEY: No, that's not what we've done.

COMMISSIONER GOZZI: Well -

MS SHELLEY: We've sought to change the junior rates to phase out junior rates. The first step in the phasing out of junior rates is for trained workers, right? And then we're inserting in the wage rates clause the instructions as to how you apply the formula to those wage rates to get the traineeship wage rates which is the way it's done in all of the awards of this commission.

COMMISSIONER GOZZI: Well I must be missing something in the translation.

MS SHELLEY: I mustn't be explaining it clearly.

COMMISSIONER GOZZI: Well the whole point is that you are seeking to delete from the award the junior rates and include these new rates which you see apply to trainees and/or juniors.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: Right?

MS SHELLEY: Yes.

COMMISSIONER GOZZI: So the effect is that there is a higher level rate of pay provided for both trainees and commencement rates for juniors.

MS SHELLEY: For trained juniors. Well we can't say a higher rate for trainees because they've never been employed before.

COMMISSIONER GOZZI: All right, okay, well a new rate -

MS SHELLEY: A rate for trainees and a higher rate, slightly higher rate beginning the phasing out of rates for -

COMMISSIONER GOZZI: Okay, and I'm saying why should those two issues be linked, why wouldn't the junior rates continue in the award and the trainee rates be identified as, in fact, a new classification rate? Because I'll tell you why, if you really want to get - I'm not sure how other commissioners has approached this particular issue, but let me tell you the other thing in the back of my mind and Mr Fitzgerald may have thought of it. He may have even discussed it amongst you.

The fact of the matter is, under the wage fixing principles the structural efficiency exercise was intended to exhaust all work-value matters. So in the context of change your datum point is the datum point for when the second 3 per cent SEP went into that award, whenever that was. And in strict terms of application of work-value of the wage fixing principles you'd need to be able to demonstrate some change. I mean, you have to establish the classification on some change, some basis of change.

MS SHELLEY: I'm aware, Mr Commissioner, through my discussions with colleagues of other instances where the - in fact, the junior rates have been removed altogether when inserting trainee rates. And, in fact, what we're doing here is just phasing out.

COMMISSIONER GOZZI: Well, you see, I don't know what the basis of --

MS SHELLEY: Because it's a bit incongruent really to have a discounted rate for trained workers.

COMMISSIONER GOZZI: You know, there's no doubt that junior rates in some cases and the junior rates award in the public sector, I think, has gone a long time ago.

MS SHELLEY: We have many awards that have no junior rates.

COMMISSIONER GOZZI: Yes. And I'm simply making a point that if you're saying to me that junior rates ought to go and you want to put in a new classification structure in lieu, then you need to establish that.

But I'm not sure how this exercise can be accommodated on the basis of simply giving all other juniors a significant pay increase which is quite a distinct matter from starting trainees, that you're talking about here, at a rate of pay, which may just happen to equate to the 90 per cent rate of services worker level 2.

MS SHELLEY: Well it isn't giving all other juniors a significant pay increase.

COMMISSIONER GOZZI: Well it does, Ms Shelley, because -

MS SHELLEY: It's giving those who have a formal training - who have a formal qualification, not all juniors.

COMMISSIONER GOZZI: No, but in the context of the current award it deletes the 85 per cent rate.

MS SHELLEY: Yes, for trained workers.

COMMISSIONER GOZZI: Yes, that's right.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: And anybody who's currently part way through or just started at their 85 per cent level, as a consequence of this, will go to the 90 per cent rate.

MS SHELLEY: Yes.

COMMISSIONER GOZZI: And that amounts to -

MS SHELLEY: The whole to or none of them. I mean -

COMMISSIONER GOZZI: Well I don't know. It's the principle that we're talking about.

MS SHELLEY: Well it's also the principle that we're concerned about, that it's a skill related award and this is consistent with that.

COMMISSIONER GOZZI: Well it is and the whole structure and the whole evaluation that I did, if you go back, and it was based directly on that. There's no argument about that.

MS SHELLEY: That's right. And we did make many references there in the transcript that we would be - that this is precisely what we would be doing, that we would be making sure that the award was eventually varied so that the workers who had those skills that are defined by having those qualifications would get that rate. Now the award at that stage really was inconsistent because it said: Okay, you've got the skills because you've got the qualifications, but we're going to discount it based on age.

COMMISSIONER GOZZI: Oh, yes, but look, there are still some bugs in the award even though it is a good document. But the fact is that even in terms of qualifications and training the award still provides access to people who haven't gained those qualifications. You just referred to a couple yourself a moment ago when you referred me to sections in the award.

Now as I said, I'm quite prepared to listen to what you have to say and consider it in due course. But I am raising those issues so you can address them, as you are doing.

MR FITZGERALD: Commissioner, again trying to assist the process, I just wonder whether we could have a brief adjournment to discuss the proceeding of this process with Ms Shelley. Some of the confusion seems to lie in the fact that it's contained within one application. And, in fact, if it were subject to two applications it may have made the process a little easier, in my view. But I just wonder whether we could seek an adjournment, with Ms Shelley's consent, with the objective of changing the application before you, seeking to change the application before you to , I think, allow the process to proceed more easily. I make that suggestion, Mr Commissioner.

COMMISSIONER GOZZI: Yes, thank you, Mr Fitzgerald. The concerns I have are these: 1) that you are seeking to delete a particular classification level which will produce a significant pay increase for a number of employees. It automatically does that. It removes the 85 per cent rate.

The other thing is, relative to that position, how do you justify that under the wage fixing principles. I would have thought that you would have to demonstrate significant work-value change in respect of the junior rates classification as it currently is.

The third point is that if you are seeking to put a new classification into the award then the process is a bit different. That would be a new classification determined on proper criteria having regard to the wage fixing principles.

And if you want to phase out junior rates altogether and you want to argue that that shouldn't apply, then that's another proposition - and be replaced by some other system.

Now if other commissioners have done it I'd be interested to be appraised of the decisions that they've written on it and for you to tell me how this mixture of things has been able to be accommodated within the wage fixing principles.

MS SHELLEY: I'm happy to have a small adjournment to discuss this.

COMMISSIONER GOZZI: I mean, you're saying this sort of identical - these sort of identical arrangements, Ms Shelley, have been included in other awards of the commission.

MS SHELLEY: What I'm saying is that the introduction of traineeships in certain instances has accompanied the phasing out of or the deletion altogether of junior rates. You have trainees instead of juniors.

COMMISSIONER GOZZI: Well I've included provisions for trainees in some awards and I've also deleted junior rates in certain awards, but what we're looking at here is to increase, in effect, junior rates.

MS SHELLEY: But if you've deleted junior rates in other awards then that results in wage increases for all of those people who were juniors.

COMMISSIONER GOZZI: Well not necessarily, it depends what replaces them. But just take the point or consider the point that phasing out or deleting junior rates is different than increasing junior rates by virtue of imposing over the top a multiplicity of classifications.

You want to retain the junior rate classification as it is.

MS SHELLEY: Well I don't. The employers -

COMMISSIONER GOZZI: Well the employers do.

MS SHELLEY: - want to phase it out rather than remove it all together.

COMMISSIONER GOZZI: Yes, and you also want to include a new classification.

MS SHELLEY: The new classification is trainee.

COMMISSIONER GOZZI: Yes, that's right.

MS SHELLEY: Right?

COMMISSIONER GOZZI: Yes, with new rates of pay.

MS SHELLEY: Well how - if it's a new classification, it's got rates of pay. It's not changing the existing rates of pay that applied to that traineeship classification because it didn't exist before.

COMMISSIONER GOZZI: It affects - it has an impact on existing junior rates. The existing junior rates will increase -

MS SHELLEY: For one -

COMMISSIONER GOZZI: - on the basis that the first year is deleted - the 85 per cent level is deleted.

MS SHELLEY: For trained workers, not the untrained juniors.

COMMISSIONER GOZZI: Yes, well currently for trained workers it's 85 per cent of level 2.

MS SHELLEY: Well if it's 85 per cent -

COMMISSIONER GOZZI: I think it's 85 per cent, isn't it?

MR FITZGERALD: Yes, it is.

MS SHELLEY: It's 85 per cent for 1-year trained and for 2-year trained. For untrained it's 70 per cent -

COMMISSIONER GOZZI: Yes, but -

MS SHELLEY: - and that will remain.

COMMISSIONER GOZZI: Yes, but the trained rate you see coming in at 90 per cent and therefore -

MS SHELLEY: This year.

COMMISSIONER GOZZI: Yes, for this - and therefore the current junior - those people -

MS SHELLEY: Yes, I understand that, but the employers have agreed and they believe that when we establish the skill levels for people at level 2, that the - and their wage rate was fixed to that, the skill and the wage rate - it's not being changed, right? They recognised that that's the skill and wage rate. What they are doing is phasing out a discounting of that that's relative to age. The skill levels and the proper rates of pay were established during - and it met the wage principles - during the hearings that we had in 1991.

COMMISSIONER GOZZI: Yes, and I'm saying, what's not changed to justify deletion of 85 per cent? And what I'm saying to you is that I see - and you mightn't agree with me, but I see two distinct classifications. I see a junior rates classification currently in the award which is sought to - is currently being sought to be maintained and I see, on the other hand a new classification being sought to be introduced as well. There would be nothing preventing employers, under your amendment, to employ juniors. The only difference would be they would be on 90 per cent or 85 per cent or alternatively employing trainees, subject to certain - subject to these training arrangements. There are two distinct type of employees, as I see it.

MS SHELLEY: What this clause is doing in its references to trainees within the wage rate clause is giving the trainee rates - and it's the case, as I say in other awards, are determined by reference to the junior rates, right, and all that is doing is giving us the formula and referring to the junior rates. Now your questions about the wage fixing principles, we've been through that exercise. We have determined - we have determined the work value or the worth of the work at those levels. Right?

COMMISSIONER GOZZI: Yes, I -

MS SHELLEY: We have now agreed that that is what applies - this what applies. That is the worth of the work for the level. That isn't changing. That's established in the adult rates.

COMMISSIONER GOZZI: Yes, but you - I understand what you are saying to me. I'm not sure whether you understand what I'm saying to you.

MS SHELLEY: I understand -

COMMISSIONER GOZZI: I'm saying that you might agree that 90 per cent of service worker level 2, first year of service, is the appropriate rate for 1-year trained trainee.

MS SHELLEY: Not a trainee, no. It's not a trainee. A 1-year trained person is a person who has already completed a qualification.

COMMISSIONER GOZZI: Well I'm talking about the trainee that you have defined. You defined a trainee child care and you're looking for a classification for that, and you are saying to me, I think, that that person ought to attract a rate of pay, if he is a junior or she is a junior, as set out in that draft order, and I'm saying, fine, well maybe that is the correct rate, but I also see that there may be other employees who are juniors and not trainees who are not -

MS SHELLEY: Yes.

COMMISSIONER GOZZI: - who are not child care trainees, and I'm saying what's changed for them to justify deleting the 85 per cent level?

MS SHELLEY: This is really for them - these people who have the training - fixing something that probably should have been fixed in 1991 because they should be paid - they have the skills. They should be paid - it changed - it really changed when we restructured the award and it's just that those people at that stage remained having been paid only 90 per cent or - sorry, 80 per cent or 85 per cent of the skills that they actually were defined as having.

COMMISSIONER GOZZI: Well, look, I understand what you are saying. Now, you might be quite content to carry on and explain the rest of this for me and - or you might want to have some further discussion with Mr Fitzgerald -

MR FITZGERALD: Yes, I think so.

MS SHELLEY: Well perhaps we should -

COMMISSIONER GOZZI: - that's fine. But I understand what you are saying.

MR FITZGERALD: Yes, yes, that's right, yes.

MS SHELLEY: All right. Well perhaps we might just carry on at this stage.

COMMISSIONER GOZZI: Yes.

MR FITZGERALD: Well I just wonder whether I could have an opportunity to speak to Ms Shelley, if that's possible?

COMMISSIONER GOZZI: All right. Well we'll adjourn for 5 minutes.

MR FITZGERALD: Thank you.

SHORT ADJOURNMENT

COMMISSIONER GOZZI: Ms Shelley, I've just taken the trouble during the adjournment to check with some of the other commission members, and the ones I've spoken to haven't been involved obviously in the area that I'm talking about, so thinking about what I've said to you, there's no reason that I can find that I'd want to alter what I have endeavoured to explain, but maybe what we should do is - subject to what you

want to say now - is for you to continue what - you know, what you want to say in respect of your application, and Mr Fitzgerald could then respond and then you have the right of reply and I'll certainly have a good look at it.

MS SHELLEY: Thank you. Thank you for the granting of that short adjournment. The employers and myself have agreed that a way out of our current difficulty may be to amend the application that's presently before you to delete the references to deletion of the junior rates which is on page 2, that's point 3 down to the bottom of the page.

COMMISSIONER GOZZI: Hang on now, the - the statement - the application seeks to vary the award rates of pay and insertion of traineeship clauses - that's the application.

MS SHELLEY: So that would all stay as is on page 1. Then we go to page 2, the reference is to the percentages for junior rates; we seek to amend -

COMMISSIONER GOZZI: Well - just - I'm sorry - look -

MS SHELLEY: - the application so that that's not there any longer, so we're now just dealing with the traineeship provision.

COMMISSIONER GOZZI: Well just before you go on, I think the first thing you should do is really particularise what your application is all about.

MS SHELLEY: Right. Well -

COMMISSIONER GOZZI: Which you haven't done in the application.

MS SHELLEY: Well what I'm doing is to seek to amend - with the consent of the employers - to amend the application that's before you -

COMMISSIONER GOZZI: No, but the application - you're not amending the -

MS SHELLEY: - so that the application - so that what we are now discussing -

COMMISSIONER GOZZI: No, but the application is as per application here, Ms Shelley. The application is the application you've made -

MS SHELLEY: Oh right, well that remains as is - I'm sorry - to amend the draft order.

COMMISSIONER GOZZI: Yes, well I'm saying to you is that maybe what you should do is clearly identify in your application what it is you want to do.

MS SHELLEY: Well if you follow the course that I'm about to outline, the application is probably in order.

COMMISSIONER GOZZI: Well, we'll just go off the record.

OFF THE RECORD

COMMISSIONER GOZZI: So the application is amended to read: The application seeks to vary the award rates of pay by insertion of traineeship clauses as per the attached draft order marked exhibit S.1.

Now, Mr Fitzgerald, you don't object to that amendment?

MR FITZGERALD: No objection to that, commissioner.

COMMISSIONER GOZZI: Now, Ms Shelley, you want to amend the draft order how?

MS SHELLEY: Yes, what we're proposing is to separate the two issues, separate the traineeship application - or the traineeship aspect from the phasing out of the junior rates which we would do merely by taking out of the draft order points 3(a), (b) and (c). And we would propose, Mr Commissioner, to bring back that as a separate application - a separate consent application and we will be presenting arguments as to why and how that should be done consistent with the wage fixing principles.

COMMISSIONER GOZZI: Alright, well if you do that, if you take out 3(a), (b) and (c) -

MS SHELLEY: Yes?

COMMISSIONER GOZZI: - what's the effect of that then for what's left?

MS SHELLEY: Only a renumbering.

MR FITZGERALD: Commissioner, actually we - we have got some suggested wording I think; it may again be appropriate if we go off the record if we're seeking to amend the application. I think we - it's a suggestion by Mr Murray does in fact affect Ms Shelley's wish.

COMMISSIONER GOZZI: Well we'll go off the record for a moment.

OFF THE RECORD

MS SHELLEY: Thank you, Mr Commissioner. I don't remember exactly what - the record of what's off now - anyway, to proceed, the - the draft order before you has now been amended with the consent of the parties and we'll continue with the amended order, and we now come to what is now 3(a) which is part of insertion into the clause 8 - wage rates.

Looking at (a)(i) - Trainees Engaged as Such - which I've already referred to, I think, that the - that the formula there is a formula that's based on the quantum of on and off the job training and is just counted accordingly.

And this clause allows for new trainees, employees, who later convert to traineeships on a consent basis. And it also - it also allows for part-time employees to convert to trainees as well, subject to the provisions as outlined in the draft order.

Clause 3.1 of the draft order is to allow trainees above the age of 19 years to also access the traineeship system.

(b)(i) refers to trainees engaged such - which a person - as such - which is persons who are taken on as trainees aged between 20 and 24 years and the difference here with - compared to the juniors is that the formula is applied but it's applied to the adult rates.

COMMISSIONER GOZZI: Right.

MS SHELLEY: And similarly, with 3(b)(ii), the existing employees - employees - of this - of this age group also have the formula applied to their existing pay rate. And part-time employees who convert, have it applied to their existing wage rate but calculated on the basis of the full-time wage rate.

COMMISSIONER GOZZI: Mm.

MS SHELLEY: Then clause 4 refers to the insertion of a new clause within the award which sets out various traineeship provisions and a number of these are standard provisions; (a) is that they should be engaged for a period of 12 months provided that they're satisfactory probation period of 1 month; (b) no existing permanent employees shall be displaced by a trainee, but trainees are not required to be additional to existing staff levels, and that's in recognition of the fact that the child care industry could not afford to take them on if the - if there was an additionality requirement.

(b) refers to existing employees up to the age of 24 years and this says that they can convert, as we've already alluded to,

provided that there is genuine agreement and that the conversion shall not affect the permanent status of the employee.

So with these existing full-time adult and junior employees who convert they - they would - their employment contract as a permanent employee would - would remain even after the completion of the trainee, unlike people who are not already existing trainees who the - they only have a contract of employment for 12 months.

(d) - refers to an allowance for employees who are required to supervise trainees up to 30 minutes per fortnight of paid non-contact time in order to fulfil their record keeping responsibilities relating to the traineeship and this is particular to child care - that's allowing people to actually have time off the floor and away from children in order to comply with their requirements as a trainee supervisor. And just of interest to the commission the document which they're required to fill in to indicate whether or not the trainee has actually completed the tasks they're supposed to complete and attained the competencies they're required to have attained.

(e) - is a standard clause about the receipt on the job training - sorry - on the job training provided by the employer and as specified in the training agreement.

(f) - is that the employer shall agree to the training programs and monitored by officers of the State Training Authority.

(g) - is that the time the trainee spends off - on off the job training shall be allowed without loss of continuity of employment.

(h) -

COMMISSIONER GOZZI: Mm. Ms Shelley, I'm happy about (h) to (m).

MS SHELLEY: Quite happy about (h) to (m) - fine.

COMMISSIONER GOZZI: Ye.

MS SHELLEY: And therefore 5 is just a reference to changes to leave reserved in which we were - in which we have deleted the reference to trainees because that's now been dealt with in this draft order.

The existing leave reserve clause in the award refers to traineeships.

COMMISSIONER GOZZI: Alright. Now that's fine. The - the only thing that when you're preparing the draft order, what

are you going to do about references to the wage rates in - if you go back to Trainee - Child Care (as defined) - Junior, roman numeral (i): Trainees Engaged as Such - and you've related that back to -

MS SHELLEY: Yes, actually if we look at the third line -

COMMISSIONER GOZZI: Yes.

MS SHELLEY: - or you no longer need in - in (c) above. So we delete 'in (c) above'. So that it just reads: -

COMMISSIONER GOZZI: Well you'll fix that?

MS SHELLEY: Yes, that will be fixed, yes. That's - that will be fixed.

MR MURRAY: I was just -

MR: still to go in won't it?

MR MURRAY: I was going to suggest -

COMMISSIONER GOZZI: Well I'm just wondering - look -

MR MURRAY: - yes - (c) will have to still go in, Mr Commissioner -

COMMISSIONER GOZZI: Well I'm not sure -

MR MURRAY: - but it's not above, I think it will be (c) junior rates childrens services, in other words that will tie

MS SHELLEY: Well it can just read, by multiplying the rate for an untrained junior -

COMMISSIONER GOZZI: Well look, I think what we should do -

MS SHELLEY: - first year by 39.

COMMISSIONER GOZZI: Well I think probably what you should do is, and I'm conscious of the fact that you are agreeing and I don't want to inconvenience you, but quite honestly I think you should work it through and come back with a document.

MR MURRAY: I think we'll have to now that we've had these we've got to make it consistent.

COMMISSIONER GOZZI: I think that's - I think that's the best idea. And also when you do come, and I was going to ask you this now, you're establishing the rate - a new rate in the award - well you won't now if you make - if you delete - if

you make that deletion you won't - you'll be establishing the rate having regard to an existing award rate won't you?

MR MURRAY: Yes.

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

MR MURRAY: You see, the ITS rate is always tied to -

COMMISSIONER GOZZI: Yes - yes, that's right.

MR MURRAY: - to the untrained junior which hadn't been changed which hadn't been changed any....

MS SHELLEY: It's only a matter of deleting three words in that and - that's fine.

COMMISSIONER GOZZI: Well that - well, would you like to come back - I think I prefer to do that - for you to come back with the proper documentation to run through and would you be available to do that early next week?

I've got you - the union anyway, Ms Shelley, on Tuesday 28th at 10.30.

MR FITZGERALD: You've got them on the 29th. TASSCOSS.

MS SHELLEY: I'm sorry, what, you've got me for -

COMMISSIONER GOZZI: Well there's - I'm not sure whether it's you, but there's a matter with the Australian Liquor, Hospitality and Miscellaneous Workers Union on 28th September.

MS SHELLEY: No, I don't think that's involving - involving me.

COMMISSIONER GOZZI: Anyway, I'm prepared to sit early one morning to get it -

MS SHELLEY: Yes.

COMMISSIONER GOZZI: - out of the way.

MS SHELLEY: I'm actually not available early one morning next week at all.

COMMISSIONER GOZZI: Monday, 4th October?

MS SHELLEY: Yes.

MR FITZGERALD: That's alright with me.

COMMISSIONER GOZZI: Alright, 10.30.

MS SHELLEY: Is it possible - is it possible for it to be earlier?

COMMISSIONER GOZZI: Oh well, you know -

MS SHELLEY: Sorry, Bill.

MR FITZGERALD: No, it doesn't worry me.

COMMISSIONER GOZZI: Well, look, yes I've - I'm - 9.30?

MS SHELLEY: Yes.

COMMISSIONER GOZZI: I'm trying to fit in -

MR FITZGERALD: Well we're happy to - commissioner, are we on record or not? I just want to -

COMMISSIONER GOZZI: Yes, yes we are. We'll go off the record for a minute.

OFF THE RECORD

LUNCHEON ADJOURNMENT

COMMISSIONER GOZZI: Ms Shelley?

MS SHELLEY: Mr Commissioner, I believe that you have in front of you the draft order with some corrections made to it.

COMMISSIONER GOZZI: We'll mark that exhibit S.2.

MS SHELLEY: What I propose to do is to go through that exhibit pointing out where the differences are between that and the first document.

COMMISSIONER GOZZI: Right.

MS SHELLEY: On the first page there are no changes. On page 2 referring to the first document the section which relates to - under 3, the section which relates to actual money amounts for junior wage rates is no longer there. Instead we have a new 3 which reads:

Amend clause 8 'Wage Rates' by inserting after Junior Rates (Children's Services Worker) and before Child Care Support Worker Level 1, the following:

And the reason for inserting it at that point within the wage rates clause is that that keeps all of the childrens services

worker rates together because what follows after that, the child care support workers, are in fact, ancillary workers, not childrens services workers.

COMMISSIONER GOZZI: Yes, fine.

MS SHELLEY: So following straight after that the heading 'Trainee Child Care (as defined)', the reference to (a), I think it was, has been deleted there. The rest is really principally numbering. Do you want me to go through each of the changes to the numbering or just refer to changes in wording?

COMMISSIONER GOZZI: Oh, no, that's fine. I just wonder do we need the word 'Junior' after 'Trainee Child Care (as defined)'?

MS SHELLEY: Yes, we do.

COMMISSIONER GOZZI: Oh, that's for the junior and then you've got existing employees.

MS SHELLEY: Yes, that's right, because -

COMMISSIONER GOZZI: Well shouldn't the junior be - Trainees Engaged as Such - Junior?

MS SHELLEY: I'm sorry?

COMMISSIONER GOZZI: Shouldn't the junior be after (a)?

MR FITZGERALD: No.

COMMISSIONER GOZZI: (a) refers to the rate

MS SHELLEY: There are two sections, one is Trainee - Child Care (as defined) - Junior, and that is a heading because further on we have Trainee Child Care (as defined) - 20 - 24 years. So there are two headings.

COMMISSIONER GOZZI: Okay, so -

MS SHELLEY: So the reference to junior needs to be contained within the heading to differentiate it from the subsequent heading which is for 20 - 24 years.

COMMISSIONER GOZZI: Right, okay. Now the Trainee - Child Care (as defined) - Junior, is in the definitions.

MS SHELLEY: Yes. That is - well the definitions refer to Trainee Child Care, as a generic classification that encompasses both juniors and the adult grouping.

COMMISSIONER GOZZI: Yes, I'm just really asking does the word 'Junior' have to appear in the heading of Trainee - Child Care (as defined)?

MS SHELLEY: I think it does, Mr Commissioner, as I said, to define it - sorry, to differentiate it from a subsequent heading which refers to trainees of an older age group. I think for ease of access and ease of understanding for the people who have to use these awards in the workplaces, it clarifies the situation and points them in the right direction much more easily.

The other change to wording on page 2 is in the new document 3(a), which was - in the old document it was 3(a)(i).

COMMISSIONER GOZZI: 3(d)(1) - 3(a)(i), sorry.

MS SHELLEY: In the third line we have deleted the word 'above' and we have inserted instead 'of junior rates (Children's Services Workers).

COMMISSIONER GOZZI: Right.

MS SHELLEY: Now the only other changes in the rest of that page just relate to numbering so that all the clauses and subclauses are appropriately numbered.

COMMISSIONER GOZZI: Okay.

MS SHELLEY: Now on page 3, apart from numbering the only change is that a reference - some wording has been deleted that was in the first document.

COMMISSIONER GOZZI: Right.

MS SHELLEY: And that was where it said:

3.1 Further amend clause 8 'Wage Rates' by inserting the following:

That's all deleted, including the 3.1. So 3.1 and the words are all deleted. The rest of the document is as was apart from numbering changes.

COMMISSIONER GOZZI: All right, thank you, Ms Shelley. Actually on page 6, item 5, it probably should be 'Delete clause 32 'Leave Reserved' and insert in lieu thereof the following:

Leave reserved the parties -'

So we'll just insert 'Leave Reserved' as the heading.

All right, thanks, Ms Shelley. Mr Fitzgerald?

MS SHELLEY: Certainly.

MR FITZGERALD: I'll be very brief in response given the amended document, thank you, commissioner. Firstly, I formally indicate our consent to the amendment made to the document S.1 and the document we're, in fact, consenting to now is S.2.

Commissioner, I really do not believe I need to say much in support. The traineeship provisions under the Australian Traineeship system have been regularly inserted into awards of this commission and also awards of the federal counterpart. And it's something which has been readily agreed to the union movement and employers.

In this instance, commissioner, I can indicate that we have had a number of meetings which have proceeded very amicably with the union. There's also been the involvement of Mr Murray who's the TCCI's training liaison officer and he has not only taken part in those discussions, but also vetted the documents.

Also can I say, commissioner - although there's not a representative of one of our members here today, I can indicate on record that it has been vetted by our membership and there is an indication of consent by our membership in that regard.

So for all those reasons - and I don't think it's necessary to repeat the submissions of Ms Shelley because I think it more than adequately supports the document before you. It is a consent document in every respect. It does, in my submission before, as you're probably aware under section 34 - my act is not with me, the public interest provisions in any event.

COMMISSIONER GOZZI: Thirty six.

MR FITZGERALD: Thirty six, thank you, section 36. It is in the public interest, I'd submit, to ratify this document before you. Traineeships are obviously, from a community perspective, another opportunity to provide worthwhile experience and we would submit that it is in the public interest or does not offend the public interest for this document to be endorsed by the commission.

So for all those reasons, Mr Commissioner, we would seek the commission's endorsement of the document, S.2, before you today. If it pleases.

COMMISSIONER GOZZI: Yes, thank you, Mr Fitzgerald. Ms Shelley, anything else?

MS SHELLEY: I have nothing further to add, Mr Commissioner.

COMMISSIONER GOZZI: All right, thank you. All right, well subject to my further checking of exhibit S.2 as to the detail, the variation requested is endorsed operative from today's date and a decision and order will issue in due course. These proceedings are concluded.

HEARING CONCLUDED