

TRANSCRIPT OF PROCEEDINGS

O/N 67612

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 13022 of 2007

**TASMANIAN FIRE FIGHTING INDUSTRY
EMPLOYEES AWARD**

Application pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 lodged by the United Firefighters Union of Tasmania to vary the above award re work value review in accordance with Principle 9 of the Wage Fixing Principles

HOBART

9.33 AM, WEDNESDAY, 7 NOVEMBER 2007

Continued from 10.10.07

DAY FOUR

MR R. WARWICK appears for the United Firefighters Union of Tasmania and the United Firefighters Union of Australia (Tasmanian Branch)

MR P. BAKER appears with MS J. FITTON and MR D. KILLALEA for the Minister administering the State Service Act

MS R. PEARCE appears for the Tasmania Fire Service

THE COMMISSIONER: Good morning.

MR P. BAKER: Good morning.

5 MS R. PEARCE: Good morning.

MR R. WARWICK: Good morning.

10 MR BAKER: Just advise a change in appearance today, Commissioner. I'm joined today by Jane Fitton

THE COMMISSIONER: Yes, thank you, Mr Baker. Mr Warwick?

15 MR WARWICK: I'd seek to call Mr Damien Killalea, Commissioner.

THE COMMISSIONER: Yes, thank you.

20 <DAMIEN JOHN KILLALEA, AFFIRMED [9.34 am]

<EXAMINATION-IN-CHIEF BY MR WARWICK

25 THE COMMISSIONER: Yes, thank you, Mr Warwick.

MR WARWICK: Good morning, Mr Killalea?---Mr Warwick.

30 Could you please tell the commissioner your occupation?---Director of Community Fire Safety, Tas Fire Service.

And how long have you been the director?---Nine or ten years.

35 Nine or ten years. And your previous occupation prior to that?---Brigade chief, Hobart Fire Brigade.

Yes. Thank you. Could you give the commission an outline of your role as a director of community fire safety?---It's to give direction to a number of strategies to improve safety across the Tasmanian community in regards to fire. And in particular, give direction to people who deliver training to business on a fee-for-service basis, to give direction to people who deliver free community education programs, of various types, to give direction to those who prepare legislation, oversee compliance with legislation dealing with safety in buildings across the state, and give direction to those who sell, service and maintain fire protection equipment across the state. They are my in-service duties, if you like, but I also play roles in the Australian Fire Authorities Council on a couple of national committees, and in relation to the bushfire co-operative research centre on the user leader for one of the research programs.

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45

Yes. So that means – does that mean that you're the manager – or the director, in fact, of the Building Safety Unit, the TasFire Training unit, the community education unit and the TasFire Equipment Unit as set out in exhibit A1, that was tables on 3 October?---Yes.

5

Yes. And just so I can help the commission to understand where your position sits in the scheme of things, who do you report to?---Chief officer.

Is there anyone in between?---No.

10

Okay. So apart from – well, what are – how many other directors are there in the fire service?---There are essentially four directors. There's a director of operations, director of community fire safety, director of human services and director of corporate services.

15

Yes, I see. And that's – those positions are all – they all report directly to the chief?---Yes.

20

Yes, okay. So in your capacity as the director, how many people would you say are employed under the Tasmanian Fire Fighting Industry employees award and who are subject to your management, roughly speaking?---Forty..

25

Yes. And obviously the five employees in question are part of those people?---They are part of those, yes.

And would you say that you are well aware of what they do for a living?---Yes.

30

Would you say that you are a hands-on manager?---I'm not sure what you mean by that. I've got a pretty good understanding of what my people do, but I leave the day-to-day management of each of the four units to the managers.

Yes?---But I converse with them on pretty well a daily basis.

35

Yes. Well, you can imagine of course, that someone in a different industry might sit in a director's chair and not actually know what some of the employees in their organisation do?---That could be the case.

40

Can I put it to you that that's not the case in your instance. That you really do know what they do?---Look, there will be some elements, Richard, of their work, Mr Warwick, that I don't understand or that I don't know. Not that I don't understand, that I'm not aware of perhaps, but we'll see how this line of questioning goes.

45

I'm simply trying to - - -?---I'm saying pretty well across what they do.

Yes, yes. And for the record, I would agree with that. I'm not trying to ask a difficult question in that regard. I'd like to table a document, if I may, Commissioner.

THE COMMISSIONER: These are all the same. We'll just need one. That will be A38.

MR WARWICK: I'm sorry that it does already have a number on it, sir but - - -

5

THE COMMISSIONER: That's all right. Job analysis questionnaire.

EXHIBIT #A38 JOB ANALYSIS QUESTIONNAIRE

10

MR WARWICK: Mr Killalea, is it true to say that you have attended all of the hearing days in respect to this case so far?---Yes.

15 And I noticed that you took copious notes along the way?---To aid my memory, sure.

Yes, yes. Well, to some extent, you will be familiar with this exhibit and what it contains. In fact what it is, is a compilation of exhibit A1, exhibit A7 and exhibit A31. So that is the consultant building safety, the senior consultant TasFire Training and instructor TasFire Training. These are the job analysis questionnaires that were prepared in relation to those three jobs, in fact. So in each case I've included, after the covering page, the primary objectives. And the first one is in relation to the consultant building safety. And I'd like to ask you, Mr Killalea, whether you agree that the primary objectives set out in relation to the consultant building safety are accurate?---Without going through them in detail right now, I'm satisfied that these are accurate. I was closely involved in reviewing these after the manager and his staff prepared them, or – yes, Daniel Gregg in this case. And I'm satisfied that this represents the job.

30 That Daniel Gregg does?---Yes.

THE COMMISSIONER: Before you go on, Mr Warwick, I'll retitle this exhibit as job analysis questionnaire, consultant building safety.

35 MR WARWICK: Do you wish to separate these out, sir.

THE COMMISSIONER: Well, I've only got one. I see, there's three. All right. I'll retract that. I'll retitle it job analysis questionnaire times three. Sorry.

40

**EXHIBIT #A38 JOB ANALYSIS QUESTIONNAIRE TIMES THREE
(RETITLED)**

45 THE WITNESS: I'll add there, Richard, if I may, that all jobs are a bit of a moveable feast and there might have been some changes since this was prepared, several months ago now, July - - -

MR WARWICK: '06?---'06, yes.

Mr Killalea, I'd ask you to put aside for the time being, in answering your questions, all of those issues that have been discussed with respect to pay rates being set for
5 some people because they have the capacity to become a fire – or go back working as
a fire fighter. Just put those issues aside. So we're really talking about what
community fire safety officers do, on a day-to-day basis. Are there differences
between the work performed by Mr Daniel Gregg and the other consultants in
building safety, on a day-to-day basis?---It's – I'm not sure it's accurate to use the
10 expression day-to-day basis because the work that Daniel Gregg is required to do on
a day-to-day basis may be different to the work that station officers from a career
brigade who work in building safety do from time to time. Because they, from time
to time, to do other work that Daniel is not required to do.

15 To do? Elaborate?---They're required to be able to respond to emergencies from
time to time.

No, but I've asked you to set that aside, Mr Killalea?---Well, you asked me to set
aside the question of wage rates and so on.

20 No. I asked you to set aside the question of the fact that they are able – or that you
require them to attend to emergencies?---Okay. Apart from the fact that they are
required to attend to emergencies from time to time.

25 Yes?---They do essentially the same work.

That's where I'm seeking to get to. So you would say then, that this outline of the
primary objectives of building safety consultant would be the same for Mr Gregg as
it is for the station officers who come across to building safety to do that
30 job?---While they're doing building safety work?

While they're doing building safety work, yes?---Yes.

35 Yes. If I could turn the page, you'll see there that this – the second part of this
exhibit relates to the senior consultant TasFire Training and we heard from Mr
Mackrell, who occupies one of those positions. There are to others, are there
not?---Yes.

40 On a regional basis, is it not?---Yes, there are, one in the north-west, one in the south.

Yes, that's Mr Ockerby on the north-west and Mr Valance from the south.?---Yes.

45 So turning the page, we see at the second half of that page, the role of the senior
consultant?---Yes.

Leaving aside again the question of the fact that Mr – that the other two gentlemen
may be required to go on operational fire fighting, leaving that issue aside, can you
identify the differences between the work that Mr Mackrell does, as set out?---Okay.

In relation to this job analysis questionnaire and the following one, there's some question about which one we're working to. And I know that, when we last met here, you tabled two job analysis questionnaires which weren't the ones, weren't the finals, they were early drafts. And I think that I'm working now off your – off the
5 earlier drafts.

Okay?---So I need to qualify the answer by saying that this is, in this instance, Phil Mackrell's view of the world, which has been modified to some extent by me in discussion with his manager, so it's not the final job analysis questionnaire that we
10 relied upon to classify this position.

So leaving aside also, the question of whether you agree that this is accurate?---Yes.

What I'm interested in hearing from you about is, whether you see Mr Mackrell's
15 role, his level of skill and responsibility as being either the same of different from the other two regional managers?---Apart from the fact that the other two regional managers may be required to respond to emergencies from time to time, the work they are required to do is essentially identical.

20 Yes. Thank you, Mr Killalea. And turning the page again, you will see that there is an instructor TasFire Training. And we heard from Mr Webster and Mr Francombe in evidence. Over the page you will see another set of dot points in relation to the role of the TasFire Training instructor. I assume again, that from your earlier
25 comments, that there is some doubt about whether the organisation views these as an accurate representation of their work, but that's not important and I would ask you to set that aside again. The question is, it relates to the comparison between the two lots of work. Now, we have three instructors in the south, in TasFire Training; is that right?---Yes.

30 Would that be Mr Brown, Mr Reid and Mr Braithwaite?---Indeed.

And I believe there's also someone recently been put on from the career side in the north, or been seconded; is that right?---There has been.

35 I'm not sure who that is, though?---Shane Streets.

Mr Streets, that's quite right. So the question is essentially the same. Mr Webster and Mr Francombe are TasFire Training instructors, as are Mr Streets, Mr Braithwaite, Mr Brown and Mr Reid. In terms of the work they perform, leaving
40 aside the question of them returning to operations on short notice, leaving aside that issue, do they do the same job or do they do a different job, all of those, do you know?---Leaving aside that issue, and given to my qualification made earlier, they do essentially the same job.

45 Okay. That's all I wanted to ask you about that issue. And I should indicate to you now, that it is appropriate for your answering questions with that questions of those people returning to operations in mind. I'd like to table a document.

THE COMMISSIONER: We'll have to put a frame around this one, Mr Warwick.

MR WARWICK: Sorry, sir?

5 THE COMMISSIONER: We'll have to put a frame around this one. This will be A39, Tasmanian Branch report.

EXHIBIT #A39 TASMANIAN BRANCH REPORT

10

MR WARWICK: I apologise to you, Mr Killalea?---For the photograph?

15 I apologise to you for having to - not only having to look at me across the bar table, but also having to look at me in the exhibit?---I'll turn the page.

You will recall, Mr Killalea, that in 1998 we had, that is collectively we, the fire service and the UFU, had a working party to deal with community fire safety career paths and other matters?---I do.

20

And we collectively issued a report?---Yes.

25 And also, as part of that process, the working party asked the chief officer to answer a question that, at that time was unanswered, relating to skills maintenance, for operational staff working in community fire safety. Do you recall?---I do.

30 Now, if I could just explain that I couldn't find the copy of the actual memorandum, but it was reproduced in the union's national magazine and I'd like to take you through it and discuss, and in fact I should say at the time, it's to deal with some consternation, that the report in the National Union magazine started out with a memorandum from the chief officer, which was an editorial blunder, I guess, made by some people in Melbourne, but nonetheless.

35 Now, am I mistaken, or am I not mistaken, Mr Killalea, that at the time there was some mirth about the fact that you may have been involved, in fact, in drafting this memorandum to some degree?---I'm not aware of any mirth, Richard.

40 I think we collectively thought that it may have had your hand upon it, at the time, Mr Killalea? In any event, that's not important. If I could read you the first paragraph, Mr Killalea:

45 *I refer to your memo of 24 June seeking details of operational competencies that staff working in the community fire safety division and employed under the Tasmanian fire fighting industry employees award may be required to maintain.*

To your recollection, was that the question that the committee or the working party wanted the chief to answer?---I guess so.

If I could go down to the third paragraph and the last sentence, the document says:

5 *In all but the most unusual circumstances such as those existing on 17, 18
January this year, Tasmania Fire Service does not require staff working in
non-operational areas to take on an operational role.*

10 So do you recall the circumstances relating to 17 and 18 January '98?---I don't, but I
imagine they had something to do with a significant bushfire that was burning at the
time.

15 The Ridgeway fires, if I recall, which blocked the road between Hobart and Kingston
at the time – threatened Kingston? So the chief there is talking about major bushfire
events; would you say?---Yes, or things like major bushfire events; things that –
incidents where there was insufficient on-duty capacity to meet the needs of the
organisation.

20 Yes. But in that case, he's talking about bushfires, isn't he?---Yes, but you might
recall some more recent events that didn't include bushfires, for example, the Myer
fire.

25 I want to ask you some questions about that later too. Thank you. And the next
paragraph says:

30 *Also to be considered is the time required to see if there's staff to maintain the
same degree of operational competence as on-shift fire fighters is likely to be
significant and would have a severe impact on the productivity of the
community fire safety division.*

35 Do you recall that consideration at the time?---I do.

40 And is it still an issue for you?---Well, it's still an issue in the sense that the
maintenance of operational competencies by people in community fire safety does
take them away from their normal duties, but since this memo was written nine years
– a little over nine years ago, the organisation has had a rethink on the value of those
people maintaining operational competencies so that we can call upon them as needs
must to respond to significant incidents. And I might add not such significant
incidents these days because we've more recently taken on, for example, a road-
accident rescue role and an urban search and rescue role, an anti-terrorism role, I'm
not sure what we call it? CBR role? Can anyone help me, please?

45 CBRIE?---Right. Biological, radiological - - -

MS PEARCE: Chemical, Biological, Radiological and Incendiary - - -

MR WARWICK: And incendiary?---Right. So there are smaller incidents where
the organisation might call upon operational people in community fire safety to assist
with response as well and even simple single-vehicle incidents – we've recently had
a truck crash into Eastlands, for example, and the fire service played a role in

extracting a person from the truck and the truck from the building and there was every likelihood that some of my staff who have skills in responding to those sorts of incidents may have been called upon.

5 You are talking about structural collapse?---In this instance, yes.

Which is commonly known as urban search and rescue?---Thank you.

So who would that be?---Steve Davidson was one that comes to mind.

10

Steve Davidson?---Yes.

He is a consultant, building and safety?---He is.

15 Yes?---And has some expertise in.

Indeed he does. You mentioned road-accident rescue, Mr Killalea. The transition from that service being provided by the Tasmanian Ambulance Service, the transition occurred either side of 1 December 2006 and you are aware that all of the operational fire – the shift worker operational fire fighters and officers were trained over a three-month period in the lead up to that date or 90 per cent of them were and they have all subsequently been done?---I understand that's happened, yes.

20

And how many employees in community fire safety have been trained in road-accident rescue?---In all honesty, Richard, I don't know, but I do know the intention is to pick – is to have them pick up that training. Some may have done already.

25

None have, Mr Killalea, I can assure you. And what would you say if I told you that very few have done urban search and rescue?---Well, that might be the case, very few have – very few may have done urban search and rescue, but - - -

30

And it's also the case, is it not, Mr Killalea, that very few have done chemical, biological, radiological, and incendiary training?---Again that could be the case, but we're currently working through a process of making sure that we provide opportunities for them to pick up those skills because the growing list of functions that operations have to perform and their increasing reliance on people in non-operational parts of the organisation with appropriate operational background to back them up from time to time.

35

Mr Killalea, you have been involved extensively in negotiating certified agreements and section 55 agreements with the united fire fighters union over the years; is that true?---I'm not sure what section 55s are?

40

Well, that's the agreement we're seeking to make now because we're in the jurisdiction of this Commission. And you are involved, are you not, in the current bargaining?---Indeed.

45

And you have been previously?---Mm.

You would therefore be aware, would you not, of the claims we've lodged on each occasion since – certainly since my time in '97?---Look, I can't recall all of the details of those claims, but I'm familiar with – there have been four and I've worked on three of them. I'm certainly familiar – pretty familiar with those, you might need to jog my memory.

Has the union made claims about this issue of skills maintenance in those documents?---It has.

10 Would you say that the union has done it once or twice or - - -?---Again, I can't recall. It's a matter of record how often it's done.

Well, I put it to you that we've done it every time. And you're currently working on the current claim?---I am.

15 Is there a claim in there about skills maintenance for community fire safety officers?---Again, I'm not sure. It's a matter of record. I imagine there is. Would that be fair?

20 Yes?---Okay.

And also about training in these areas that we've just been discussing?---Sure.

25 That's in there?---Sure. Should we also note the enormous amount of effort and resources the fire service puts into skills maintenance for operational people?

Sure?---And the efforts it's currently making to review and improve those efforts?

30 Well, I wouldn't contest that at all, Mr Killalea, if you're talking about on-shift fire fighters, but the reason we have a complaint – and I'm sorry we're getting out of question mode here, but the reason you have a claim before you about community fire safety officers is because the members are not happy with their level of skills maintenance and competency acquisition in relation to these new areas of emergency response. Is that not - - -?---That's probably so.

35 THE COMMISSIONER: Mr Baker?

40 MR BAKER: Thank you. Commissioner, look, I understand this is sort of a difficult examination, but I think it's degenerated almost into a chit chat across the room. The line of questioning is disappearing into an exchange. It's almost becoming a cross-examination rather than the leading of evidence and I simply ask Mr Warwick if he could contain himself to leading evidence from the witness rather than embarking upon a cross-examination and also this barter across the bar table.

45 THE COMMISSIONER: Well, I don't know if there's an objection there, but the last few minutes have – well, I won't say “degenerated”, it's not the right word, but there's been, in essence, the witness asking Mr Warwick questions and that's not the

way we operate. So perhaps if you could continue, Mr Warwick, and let's keep on the track.

5 MR WARWICK: Certainly. I acknowledge Mr Baker's comments. I guess the difficulty is that Mr Killalea and I have these discussions all the time about these sorts of issues, so it's not hard to slip into a different mode I guess.

10 Mr Killalea, if I could take you back to exhibit A39, you will see after the paragraph I've just quoted, the chief officer goes on to say:

Given the above, my view is the following.

And the first is that:

15 *That arrangements be made so that operational fire staff transferred to the community fire safety division for periods of up to 12 months continue to receive training necessary to maintain their operational competence and (2)*
20 *that operational staff selected to a permanent position in the community fire service division or temporarily transferred for a period exceeding 12 months not be required to maintain the full range of operational competencies commensurate with their rank.*

25 Is that an accurate recollection of your understanding of the chief officer's memorandum at the time?---Yes.

The next paragraph says:

30 *However, to maintain preparedness for emergencies of an extraordinary nature, Tasmania Fire Service may require certain officers to maintain selected competencies and undertake limited operational roles commensurate with their level of competence.*

And over the page, Mr Killalea, in the second sentence of that paragraph, it says:

35 *On the other hand, there may be long-term employees in the community fire safety division who have chosen to complete their fire service career delivering community education and training or applying building safety legislation who have elected not to maintain any operational competencies. For these staff, a requirement to maintain selected operational competencies may be*
40 *inappropriate. I encourage your community to identify the Australian fire competencies that are appropriate for CFS staff to maintain in readiness for significant, long duration, and resource hungry emergencies. In doing so, you may consider the time required on an annual basis to maintain these*
45 *competencies, how the training should best be delivered, and the impact of this training on the work of the division.*

So are those comments consistent with your understanding of the chief's view at the time?---Yes.

And, lastly, if I could take you to the second-last paragraph, Mr Killalea, and the document says:

5 *Staff in the community fire safety division may choose for their own purposes to maintain levels of operational competence in excess of that required for involvement in significant emergencies. To minimise the impact of these decisions on the productivity of the community fire safety division, staff exercising this choice will be expected to do the training in their own time.*

10 Is that also an accurate recollection of your understanding of the chief officer's memorandum at the time or not?---Yes.

15 Mr Killalea, I would like to go back to the second paragraph on that page, where the chief talks about significant long duration and resource hungry emergencies. He would be talking again about campaign bushfires there?---Yes.

And also, say, a terrorist attack of some significant proportions?---He wouldn't have been at the time.

20 No, I guess not, but certainly a major chemical incident?---Look, what was in his head when he drafted this – or wrote this, Richard, I'm not sure, but I guess he was alluding essentially to bushfires at that time. You know, he wouldn't have been anticipating long duration chemical emergencies, for example, they don't traditionally last very long.

25 But he may have been contemplating, may he not, something like the Myers fire?---Look, I guess any incident that was of long duration and resource hungry where the on-duty staff would've been stretched.

30 Yes. So at the time this was the employer's policy, this document, on these issues and it was also – am I correct in saying it was also therefore government policy?---Whether government adopted this policy I'm not sure, I don't know what the mechanisms there are.

35 Well, wouldn't the chief - - - I guess one could argue that, yes.

Wouldn't the chief have delegated to him the power to make employment policies of this sort?---Yes.

40 Yes. So therefore it would be government policy?---I guess so.

45 Now, Mr Killalea, has this document been revoked, amended, or otherwise supplanted in the period since 31 August 1998?---I guess it's been otherwise supplanted by subsequent discussions the chief officer has had with his executive management team from time to time and it would've been several years ago that those discussions were held. I mean, bearing in mind that this is over nine years old, this document, and this was the belief at the time and given the range of incidents the

fire service responded to at the time. But, as I said earlier, the range of incidents increased markedly and - - -

5 Sorry, the rate of incidents - - -?---The range of incidents. And also in anticipation of the effects of climate change and the effects of the current drought and the increase in bushfire activity over the last couple of years, the EMT, at the behest of the chief, has discussed on a number of occasions change in this position and, in fact, has changed it.

10 In writing?---Not that I'm aware, but I mean, it would be perhaps minuted in executive management team minutes. I'm not sure of the nature of discussions that would've been held with you in this regard, but there would've been some I'm sure about the fact that it has – the position the chief has taken has, in effect, changed what he said in this document.

15 Has the chief's position changed in relation to the two dot points on the first page?---Well, in relation to - - -

20 In the fifth paragraph?---Yes. In relation to the first dot point, operational staff transferred for less than 12 months do continue to receive training necessary to maintain their operational competencies. Now, again that's a bit of a movable feast. What staff tend to do is make arrangements with the shift that they've just left to return to that shift from time to time and I don't mean all staff, it's not a routine thing. Some staff choose to do that because they know they're going back inside 12
25 months. There are many other competencies that people have that don't lapse. Some don't lapse within 12 months, others don't lapse, period. You know, many competencies that people gain - like learning to ride a bike, it's a skill that you don't forget. In regard to the second dot point, those temporarily transferred for a period exceeding 12 months or indeed those who apply for a promotion and therefore it's
30 not a temporary transfer but a permanent appointment subject to moving on to another job, then the position is that we – the position now is that we want those people to be capable of responding to a range of emergencies as the need arises.

35 Which s in contrast to the position we're taking. Now, again, we haven't - we - - -

What range of emergencies, Mr Killalea?---Well, the ones we've already outlined. Now, again - - -

40 Well, they don't though, do they?---Well, but they do from time to time.

Mr Davidson has some skill in urban search and rescue?---We've - - -

Name another, Mr Killalea?---We've - - -

45 Name another?---Sorry?

Name another?---Another person? Reid, Brown, Valance, Braithwaite.

They have skills in urban search and rescue?---No, I'm not talking about - - -

Road accident rescue?---I'm not talking about urban search and rescue, I'm talking about the range of incidents the fire service responds to.

5

Well, let's narrow the range of incidents down. What are they competent to go to?---I didn't know.

Well, I put it to you that the only thing they would be competent to go to is a campaign bushfire?---Well, they could be competent to go to the Myers fire, Richard. In fact, they would be competent to go to a Myers fire in the sense that - - -

10

Why weren't they called?---In the - - -

We are going to come to that?---Well, I don't know. I don't know, but in the sense that they've got a long history of working in a career brigade and have picked up a wide range of skills to enable them to respond to fires, from small fires to large fires including the Myer fire, those fellows would be – despite that they may not have had recent experience in those fires, they are competent to respond to those fires and we have responded them to fires.

20

I put it to you, Mr Killalea, that they are not currently competent. Do you know a man named Mr Ian McLachlan?---Mm.

Where does he work?---Ian works as a senior station officer in the Launceston Fire Brigade.

25

Where did he work before that?---In TasFire Training as – essentially doing the work that Phillip Mackrell is now doing.

30

That's right. And he elected to go back to shift after a period of eight or nine years, did he not?---Mm.

And are you aware of the current competence process that he had to go through before he could become operational and ride the trucks?---I'm aware that there were a number of competencies that had been identified for senior station officers working in a career brigade that Ian didn't have because when Ian transferred to TasFire Training into a senior consultant role at the same pay point as a senior station officer, we didn't require him to have those competencies but now we do. Things have changed. Now we want people to be – who transfer into community fire safety to be operationally competent so - - -

35

40

Well, my information is that he had to acquire 25 competencies; what do you say about that?---Well - - -

45

And also it took him six months to do it?---Well, it may have been 25, I'm not sure, I suspect that some of those competencies were competencies he needed to demonstrate currency in, that is he needed to - - -

No, he had to – no, my information, Mr Killalea, is he had to acquire 25 competencies. What do you say about that?---Well, I know that a number of them he had to acquire, yes, I'm not sure how many.

5 And the period of time?---Right, well - - -

It took him six months; what do you say about that?---Well, I'm not going to argue with you, it may have been six months. I've got no reason to doubt you.

10 But, you see, you are saying that Mr Valance, Mr Brown and Mr Reid could respond to a fire now?---Absolutely. Responding to a fire - - -

Well, I put it to you, Mr Killalea, that that would not be acceptable to the operational side of the organisation at all?---I guess, Richard, there's a difference between
15 responding to a fire on a non-routine basis as a member of a crew and under close supervision, compared to taking on the role of a senior station officer in a career brigade where one is responsible for the management of several crews, not only at fires but on a day-to-day basis and all the attendant duties one has.

20 How can that possibly be true, Mr Killalea? Station officers are the supervisors, they have to manage the incidents. The only difference between a station officer and a senior station officer under the current training scheme is that essentially senior station officers are able to be incident controllers at campaign fires. Is that not the case?---I don't know, I can't answer that question.

25 The only difference, Mr Killalea, between station officers and senior station officers, is the scale of the incident that they are required to control. What do you say about that?---Once again I don't know, but I'd be surprised if that's the case.

30 But I put it to you that Mr Brown and Mr Reid and so on, at station officer level, would have to go through the same process of competency acquisition that Mr McLachlan did?---If they were going to go back to a career brigade, you know, senior station officer role, yes, they would.

35 And a station officer role?---Or a station officer role.

Yes?---Yes.

40 And they couldn't just go back on one day's notice and be the incident controller. I mean, it's a nonsense?---Well, again, I'm not sure about that. I'm not sure – I won't argue with the fact that Ian may have taken six months to gain all of the competencies he needed at senior station officer level in a career brigade, but I'd be very surprised if it was six months before he was able to take command of a crew in a truck, a crew of three men in a truck, at a fire. I'd be very surprised.

45 No, it wasn't – I'm not suggesting that it was, but it wasn't overnight, either? What do you say about that?---Well, again, I don't know - - -

Well, generally speaking, when people return to operations they spend at least a fortnight on familiarisations?---Yes. I'm not the best person to be asking these questions, I don't think, because I don't know how operations are managed at brigades.

5

So returning to exhibit A39, Mr Killalea, you say that some people these days are expected to maintain operational competencies beyond 12 months?---Yes.

Are they shift work - - -?---Well - - -

10

Are they shift work structural fire fighting and chemical incident competencies?---I need to qualify that. We – the award allows us to bring them back onto shift work at essentially a moment's notice, so that if we need them to - - -

15

A day's notice?---A day's notice, so that if we need them - in fact sometimes we do it sooner than that because we need them. So that if we need them to support the rostered shift workers we can. It would be prudent for the organisation to ensure that they are fully competent in the broadest range of competencies that they are required to have, and given that we have changed our view, that is we want these people available, we're taking steps to make sure that they have the competencies that we might want them to have.

20

Well, that comes as news to me, Mr Killalea. Could you outline one of those steps?---Well, in recent years we've put on a new manager organisational learning, that's a current – that's her title. We've more recently – in fact, in just the last six months or so undertaken a comprehensive review of the way we manage the delivery of in-service training with a view to making sure that we deliver it better to career brigades, to volunteer brigades, to non-rostered shift workers in community fire safety and indeed, to clerical staff in the organisation. The focus has been very much on delivering training to rostered shift workers but we recognise that we've got a need to deliver it to non-rostered shift workers and a need to deliver – that is operational competencies to non-rostered shift workers, and also competencies to the organisation as a whole.

25

30

35

So what structured program of skills maintenance have you implemented for non-rostered shift workers who come from a career fire fighting background in community fire service?---We haven't implemented one yet.

No So you've changed your view about dot point 2?---Mm.

40

But am I right in saying you haven't done anything about it?---Well, not in the sense that we haven't put in place a structured competency maintenance program yet, but we have done other things. Like I said, there are a number of competencies that people gain that they never forget and we are using non-rostered shift workers in operational roles from time to time when we need to.

45

We will come to that. And over the page, Mr Killalea, the document says essentially that if the non-rostered shift workers want to maintain their competencies beyond 12

months they do it on their own time. Now, you've changed your mind about that, have you?---Yes.

5 Okay, so the same question applies, well, have you changed your mind, I should say?---Well, as I said earlier, there are a number of staff that when they come to community fire safety and they know they're here for in excess of 12 months and they know that the organisation has changed its view, they make arrangements with the shift that they've left to participate in training from time to time. Chris Tomes would be an example, Steve Davidson would be an example.

10 Well, we're not worried about Chris Tomes because he's not – he works in a different area. How long has Steve Davidson been in building safety?---Oh, I'm guessing four years.

15 So he regularly goes back and does training?---Well, again, you know, I'm not sure what you mean. Some people get the words regularly and frequently confused. I'd say regularly he goes back, yes, but I could be wrong. I don't manage him, Richard, on a – I don't know how often he goes back.

20 No. You're talking about these skills that people never forget. You would concede, wouldn't you, that there would have to be some sort of process of ensuring that people are currently competent in relation to all of the competencies?---There is a general. I guess, strategy to ensure that our fire fighters are currently competent, yes.

25 There is a process, this is when they go back to shiftwork operations, there is a process?---Oh yes, absolutely, yes.

And it covers all of the competencies, it doesn't just take some for granted?---I would imagine it - - -

30 It might take computer skills for granted perhaps?---I would imagine it takes a number for granted.

35 But it doesn't take any of the operational skills, the actual emergency response skills for granted, Mr Killalea, surely you would concede that?---I won't concede that, I don't know the answer to that question. I would imagine - - -

Well, this is about emergency response - - - ?---Yes.- - -

40 - - - Mr Killalea, this is about people's lives. Surely you would concede that there is a process?---Well, again, Richard, I don't know. There are some very simple skills like – I mean, I haven't held a fire hose in probably 15 years, but you ask me to hold one I could do it. You know, there are a number of things that I can do. I can – I can put on and use a breathing apparatus set. I haven't done that in probably 12 years. I
45 can start a pump.

You can put one on but you have to know – you have to do - - -?---But again, you know, I'm not saying breathing apparatus isn't one that we might require people to

demonstrate current competency in, but there are a number of skills, fire fighting skills, that you never forget.

But - - -?---And again, I'm not - - -

5

But then surely, Mr Killalea, you would agree that they are now encompassed in units of competence and you have to demonstrate competence in respect to the unit, not just one element of it which might be putting on a BA set?---Indeed, at some point you have to demonstrate competence at it.

10

You have to demonstrate competence in relation to the whole unit?---Well, I would imagine so, but again I'm not the best person to be asking. But I'm not - - -

15 And that – surely you would concede that process has to occur before there is a sign off on someone returning to shiftwork operations?---Well, again, in – say, in Ian McLachlan's case for example, Ian took six months, you said, to regain the full suite of competencies needed for senior station officer, I've got no reason to doubt that, but we wouldn't have sat Ian in a corner studying for six months while he regained those. There would have been a number of duties that Ian could undertake in the
20 intervening period.

Yes, we've agreed on that, we've agreed on that?---Yes, okay. Including responding to fires.

25 Yes?---From, I suspect, day one.

Well, I put it to you that he wasn't responding to fires from day one in charge, I certainly put that to you. So this question of people – so you say that you've changed your view about people having to do the training in their own time, right;
30 what have you actually implemented by way of a program that reflects your changed view?---Well, again, I've already said that we haven't yet implemented a formal program. We've appointed a manager and we're well into a comprehensive review of how we deliver training in the organisation with a view to improving our capacity to provide training to non-rostered shift workers in operational competencies.

35

Yes, so coming back to your earlier responses, would it be reasonable then for me to say that – and I asked you whether this document, exhibit A39, had been supplanted or revised or revoked, so in summarising your answer would I be right in saying that you have gone past it in theory but not in practice?---Gosh, that's an interesting one.
40 No, we've gone past it, I guess, in practice to the extent that we're now responding to a broader range of incidents than just long duration resource hungry emergencies to include short duration ones, and we have people in community fire safety who have been trained to respond to those newer types of emergencies that the organisation is now responsible for, and are competent and ready to assist or respond.

45

No you don't. You have Mr Davidson?---Well, he's an example.

And you have Mr Tomes who is not relevant to this discussion?---Well, he's a community fire safety employee, he's a non-rostered shift worker.

5 Yes?---So I think he's – you know, if you're talking about – if you're talking about what strategies were to be put in place well, then I think he is relevant or what capacity do we have, then he is relevant. They're two examples.

That's two?---Well, they're two examples, I'm not sure if there are more.

10 Well, I put it to you that there are?---So while I'm – while I'm familiar with the work my staff do I'm not familiar with what training they do and who does what training in order to maintain operational competency, that's a matter for the managers.

15 So coming back to the case of Mr McLachlan, would you agree that it is true – and by all means disagree – would you agree that it is true that the longer a person has been away from shift work operations the greater the scrutiny they come under when they return in terms of their current competence and the more work they'll have to do to attain competencies that have been introduced into the system since they left?---That's likely to be true.

20 So would you put Mr Davidson and Mr Tomes in the class of short-term employees in community fire safety, or long-term employees?---Well, each of them have been in community fire safety for around four years, that puts them, I guess, around the middle.

25 But there are other employees who have been there long term?---Longer, yes.

Much longer?---Up to perhaps 12 years.

30 Yes. And if they - - ?---Who would – sorry.

Pardon. If they were to return to shift work operations the task of becoming currently competent would be far more significant for those long term employees in community fire safety?---Probably similar to Ian. Probably six months. Ian had
35 been out for about that length of time.

I would like to table a document if I may, Commissioner.

40 THE COMMISSIONER: That will be A40, Tasmanian Fire Fighting Industry Employees Award extract.

**EXHIBIT #A40 TASMANIAN FIRE FIGHTING INDUSTRY AWARD
EXTRACT**

45

MR WARWICK: Mr Killalea, it would be my proposition that you have a sound working knowledge of the Fire Fighters Award. I don't want to embarrass you, but

that would be my observation. How would you reflect on that?---I don't want to be difficult, but I familiarise myself with bits that are relevant at the time, and I often thumb through the relevant bits, but I'm not thoroughly familiar with it.

5 Well, one of those bits would be, would it not, the working hours provisions in relation to non-rostered shift workers, given that a great many of the people who report to you, and report to your managers, work under that system?---If you were to ask me to quote them I wouldn't be able to do it. I would refer to them. Because they – things change.

10 Well I would refer you to them, Mr Killalea. They're contained in four sub-clauses in this exhibit. The first one relates to the eight week three 20 hour cycle. You would agree, would you, that that provision is in there because it allows the employer to request a non-rostered shift worker to work the same number of hours, weekend
15 days and nights as a rostered shift worker?---Yes.

That's correct?---Yes.

20 And the next clause, the employees to manage their own time during each eight week cycle?---Mm.

25 Could I ask you a few questions about that, Mr Killalea? Could you tell the commission the hours that are worked on a weekly basis by Mr Gregg, who we heard evidence from, and the other building safety employees?---I believe they worked a set eight hourly week.

Yes. The daily hours?---Oh, seven hours and 26 minutes.

30 But what time are they worked?---You mean, what's the spread of hours?

No. When do they come to work and when do they leave?---I don't know, but I'm guessing they start at about 8 and finish at about 5.

35 And they do that five days a week?---Mm.

Do they vary it?---They would from time to time.

I put it to you that it's very rarely that they change?---Oh, that could be the case, yes.

40 In fact they work 8 until - - -?---So we're talking about – we're talking about who in particular?

All of the people who work in building safety?---Yes, that's generally true.

45 They work 8 to 5 Monday to Friday?---Yes, they generally do, because that's when their clients work - - -

Yes?--- - - - when their clients' businesses are open.

Yes, and they don't – they don't do night work or weekend work, except perhaps if they're fighting a fire?---It would be rare.

5 It would be less rare for the people who work in TasFire Training?---Marginally less rare. That is, that TasFire Training staff may – well, would occasionally do weekend and evening work, to suit the needs of their clients. For example, it's in order to train hospital nurses for example. It's not unusual to do it for some shifts during the evening.

10 Well, Mr Killalea, I put it to you that they do it regularly, particularly with respect to training in the mines, regularly, the instructors in particular regularly work weekends, they regularly work long days, and take day time off. They do that regularly, I put that to you?---I'm not going to argue with you.

15 Okay. The next clause in this exhibit relates to overtime, and it says that:

Overtime is to be paid for all time spent fire fighting if it is not practical to take time off during the respective eight weeks cycle.

20 Now, the executive management team has decided a policy about this, haven't they, as a result of last fire season?---Mm.

Could you outline that to the commission?---No, I'm sorry.

25 Well, if I do - - -?---I'm not thoroughly familiar with it, and I don't have it in front of me.

If I do you can tell me if I'm right or wrong?---Well, I may be able to.

30 I think the current position of the employer is that they're not going to bother with taking time off in respect to time spent in fighting fires during the eight weeks cycle. In fact they'll pay overtime for work in excess of eight hours in a day, and for work on weekends and public holidays, and that's the rule of thumb that will be observed; is that right?---I don't know.

35 Well, perhaps we can come back to that in - - -?---Can I - - -

- - - the government's submissions, sir.

40 THE COMMISSIONER: Yes?---I'm not trying to be difficult, Richard, I just don't – you know there's a lot of stuff I've got to try and keep up here - - -

MR WARWICK: Sure?--- - - - and that sort of stuff I don't. I refer to it when I need to.

45 Well, I apologise. I assumed that you would have been part of those discussions and the making of that decision, since it primarily affects the people that you're working with. Apparently not, so I apologise for that. And the last clause is the one about

sending the non-rostered shift workers back to shift work on one day's notice, and you indicated earlier that it can in fact be soon by agreement?---It certainly has been, sir.

5 And it can be by agreement, but if there is no agreement the employer has the right to instruct an employee to return to shift work on one day's notice; is that right?---Again, I'm not sure, but I imagine they have - - -

10 But isn't that what the document says, clause 4?---Yes, they have – yes:

In the absence of agreement the employer is to give one day's notice.

15 And yet there are occasions where we don't give a day's notice, we want people to respond immediately. This is non-rostered shift workers, and I don't think we've had people say no.

But that's by agreement surely?---I guess so, yes. Yes.

20 Because they would have the right to say no, you have to give me a day's notice?---Yes.

Isn't what that document says?---Yes, I guess – yes. Yes, that would be fair.

25 So, Mr Killalea, when was the last time you instructed someone to return to shift work on one day's notice?---Well, it depends what you mean by shift work, and I don't know what the definition is, but we haven't put somebody back on a roster, but we have instructed people to go back to operational duty at one day's notice or less.

30 The question, Mr Killalea, is you have, on one day's notice or less?---Instructed people to go and fight fires, yes, which is - - -

That's not the question?---Which is - - -

35 That's not the question?---That's why it's a difficult question to answer, because I'm not sure what the definition of - - -

40 Well, the significance of it is that in another part of the award, in fact the agreement, for them to be instructed to return to non-rostered shift work you have to give 21 day's notice, all right. So if you instruct someone to go to shift work operations you can't get them back for 21 days; is that right?---I guess so, without - - -

When you're ordering people to do things I'm talking about?---Yes, okay, without agreeing on this.

45 That's the way the system works?---Yes, I understand that, yes.

Okay. So the question is, when did you last instruct someone to return from non-rostered shift work to shift work operations?---Instruct someone? I can't recall.

I put it to you - - -?---Then we may not have done.

I put it to you you never have, not in my time, not in my time in the last 11 years?---Well, but again I'm not going to argue the point.

5

Mr Killalea, do you know a man named Peter Ockerby?---Yes.

What job does he do?---He's senior consultant for TasFire Training based in Burnie.

10 What level is he employed at?---Pay point 9.

He's a senior station officer under the Fire Fighting Industry Employees Award?---No. He's paid at the rate of a senior station officer. In his case he's - - -

15 And he's classified as such?---He is.

Okay. And he, as you said earlier, just to clarify the point beyond doubt, does the same work as Phil Mackrell?---Except when we want him to respond to emergencies, yes.

20

How long has he been employed there would you say, roughly speaking?---Six years.

Six years?---It might be four or five.

25 Okay. Is it true to say the Mr Ockerby was formally a career fire fighter prior to a period of time away from the job?---Yes.

So he did a recruit course and went through the system?---Mm.

30 What rank did he reach?---Senior fire fighter.

He reached the rank of senior fire fighter?---Yes.

And he didn't obtain any fire fighting competencies in an operational setting?---No.

35

And they're the same as a station officer?---Yes.

And he hasn't obtained operational senior station officer competencies?---No.

40 He's obtained - - -?---Not the full suite.

But he's paid as a senior station officer?---Yes.

45 Notwithstanding the fact that the highest rank he ever achieved in operations was senior fire fighter?---Yes.

Why is that?---He's doing the work of a senior consultant, the same work that Phil Mackrell does, and Rod Valance does, other than when Rod responds to

emergencies, and we have the capacity to re-call him to rostered shift work, or to re-call him to participate in fire fighting operations on a needs basis.

As a senior fire fighter?---Because that's the level he's competent to.

5

How long has he actually been away from the job?---Oh, when he was working for the Australian Maritime College, training in fire fighting, I'm guessing four or five years.

10 So upwards of 10 years since he's filled a shift work position long?---Give or take a few years, yes.

15 So it would take in a significant period of time? You couldn't send him back on a day's notice, Mr Killalea?---Well, in his case I'm not so sure, Richard, because again he had many years experience as an operational fire fighter, and when he left us he could - - -

20 If he was filling a shift line, Mr Killalea - - -?---I'm sorry, do you want me to answer the question?

Well - - -

25 THE COMMISSIONER: Yes. Yes. Please allow the witness to answer the questions.

30 MR WARWICK: Sorry, Commissioner?---And when he left us he went to work for the Australian Maritime College, instructing Australian and overseas seamen in fire fighting, and he's come back to us to manage a group of people who instruct the private sector in fire fighting, and I'm not convinced that in any way, shape or form that he's lost all of his fire fighting knowledge and skills.

I'm not suggesting that he has, Mr Killalea?---So I'm - - -

35 What I'm suggesting to you is that it is preposterous to say that he could go and fill a shift line position on one day's notice. Now, I ask you this, has he been trained in road accident rescue?---No.

40 Has he been trained in urban search and rescue?---No. Well, not to my knowledge, in any of these, no.

Has he been trained in chemical, biological, radiological - - -?---Not to my knowledge.

45 Well, I put it to you that he hasn't, and that if he were filling a shift line position he would be expected to be able to respond as part of a team to those incidents, and he couldn't possibly do it until he had been trained in them, and that would take months, Mr Killalea?---There's a question there, I gather, because that's what I'm here to answer, and the answer would be that there are a number of operational functions

that Peter could fulfil at a day's notice, because of the competencies he picked up many years ago that he won't have forgotten, and it's why we confidently - - -

But, Mr - - -

5

THE COMMISSIONER: Please?---It's why we confidently respond people like Nigel Reid, and Rod Valance, and Eric Braithwaite, and Chris Brown, and Steve Davidson, and even Peter Ockerby, if necessary, to fires, to fires that they do have competencies to participate in. We do that with confidence, and we've done it, and we'll continue to do it.

10

MR WARWICK: Well, I'm not talking about that, Mr Killalea. I'm trying to focus on filling a shift line position in, for example, Burnie, and it's true, is it not, that there is only one career crew in Burnie?---Yes.

15

And most of the time it runs onward, that is, one and three?---Yes.

Very rarely that there are additional numbers? Mr Ockerby could not, on one days' notice, fill a shift line in that crew. He does not have the competence to do so?---We wouldn't put him into a crew on that basis.

20

He could not do it, could he, Mr Killalea?---Well, we wouldn't test it, Richard.

Now, I understand what you're saying. At a big fire you wouldn't – sorry, you said you wouldn't test him, you wouldn't test him?---Well, we don't need to put him in a crew - - -

25

Surely, Mr Killalea, you would be negligent to put him on a shift line in that crew?---Which is why we don't – yes, one of the reasons I guess we wouldn't test it, we don't need to. We have others ways of dealing with that, but - - -

30

So when there's a big fire it's all hands on deck. I mean everyone knows that. That's the case, isn't it?---Well, yes, that's a reasonable – yes – statement, yes.

35

And it would be that sort of circumstance that you would send Mr Ockerby, Mr Reid, those sorts of people?---Yes, to respond to incidents that they are confident to respond to, and in some cases under very close supervision.

But it's the same, isn't it, for all of those gentlemen who come from a career – fire fighting background, none of them could fill a shift line position on a crew that was on board on a day's notice?---No, that's not true. Some could, because they've maintained - - -

40

Well, I put it to you that there are two that could in there, Mr Davidson and Mr Tomes?---Well, Richard there may be others, I don't know.

45

Well, I put it to you that there are not?---But the fact is that there are some. You asked me if there are some, and yes, there are.

There are two – I put it to you, Mr Killalea, that there are two and there are no others?---And we're putting in place measures to extend it beyond those.

5 Yes. Well, I'll look forward to seeing that, and I'll look forward to the discussions with the union that you no doubt are planning to hold on that issue; is that right, or not?

THE COMMISSIONER: Sorry, was that addressed to the witness?

10 MR WARWICK: Yes.

THE COMMISSIONER: I'm sorry, I thought you were looking at Mr Baker then.

15 MR WARWICK: No.

MR BAKER: We won't be having them.

MR WARWICK: Do you know a man named Greg Williams?---Mm.

20 What job does he do?---Greg works in our community education room, teaching – predominantly teaching school kids about fire safety in the home.

25 And what – how is he paid?---How's he paid? At what level is he paid? I understand he's paid at pay point 6, which is senior fire fighter.

And how long has he been there?---Pre-dates my time as director. I'm guessing 12, 14 years.

30 Yes. And does he come from a career fire fighting background?---My understanding, Richard, and I'm a bit hazy here, is that he was a career fire fighter with the airport fire rescue service and a volunteer with the Devonport Fire Brigade, but I could be corrected there.

35 Well, I'm not too sure about the airport fire fighting service?---I'm not either.

I've not heard that before. In any event, are there other people who work as school fire ed instructors?---Three others.

40 And two of those at least – well, all three of them come from a career fire fighting background - - -?---Pardon me?

- - - do they not?---Yes.

45 And they are paid as senior fire fighters?---I'm not sure. I'm not sure exactly.

Well, the ones who come - - -?---We normally pay them pay point six, some times lower.

The ones who have come off shift get paid at their current rate, don't they?---Yes, yes.

Yes?---Yes.

5

So – well, why is Mr Williams paid as a senior fire fighter?---You are testing my memory here a bit, but – and again, I'm not the best person to ask. There are other people in the room that can answer this. We would have advertised - well, Greg was in the position on a temporary basis for - I understand, for many years and again I could be corrected here, and soon after I took on the role. One of the things I wanted to give him was some certainty in employment and so I sought to have the position made permanent and the – I don't know what arrangements existed at the time for changing temporary positions to permanent positions, but we determined that the appropriate rate to pay Greg was at pay point six, equivalent to a senior fire fighter, and despite the fact that he hadn't been one with us and that's what's happened since.

15

So here's a – there's a core question, why is it appropriate to pay Mr Ockerby and Mr Williams in accordance with the career fire fighting stream or rates relevant to them and classified as such and not the five people the subject of this work value exercise?---Essentially because those people can't be put onto rostered shift work and respond to fires. In fact, in their paid capacity they are not competent to respond to fires.

20

And Mr Williams and Mr Ockerby are?---Well, M Ockerby is. Mr Williams, look, it - - -

25

So - - -

THE COMMISSIONER: Well, please, yes, just allow the witness to answer the question. You are talking about Mr Williams?---Yes. You know, Greg has got a volunteer background, so in that sense he wouldn't have the skills necessary to – we wouldn't put him onto shift work, we won't, we don't plan to because he's not competent, we don't plan to make him competent to do that.

30

MR WARWICK: And then the case of Mr Ockerby, you'd have to fill the shift line as a senior fire fighter because that's the level of his competence, but you'd have to pay him as a senior station officer. You can't transfer people in the public service and cut their pay, isn't that right?---Look, again I am not sure of the answer to that question.

40

Well, you couldn't put him in on a shift line position as a senior station officer, could you?---No.

45

Because he doesn't have those competencies?---No.

Or as a station officer?---No.

Or as a leading fire fighter?---No.

No. Do you know a man named Eric Braithwaite?---Yes.

What job does he do?---Eric's an instructor with TasFire Training.

5 And how long would you say he's been in the job?---Instructing? Eight years.

And when did he last work shift work operations?---I'd be guessing, up until he left us in – because of ill health, in the late eighties, might have been early nineties.

10 So he'd probably have a tougher time than Mr McLachlan would, going back to shift work operations?---Well, I'm not sure, Eric's got enormous capacity.

Yes. But it would be a rigorous process for him, you would agree?---He'd need to demonstrate competence, the full suite of competencies, yes.

15

How long has Mr Brown been away from – Mr Chris Brown been away from shift work operations?---Eight years.

20 How long has Mr Nigel Reid been away from shift work operations?---Six, seven, eight.

How long has Mr Rod Valance been away from shift work operations?---Twelve or thirteen.

25 He does the same job, by your earlier evidence, as Mr Mackrell?---Yes.

And Mr Brown, Mr Braithwaite, Mr Reid do the same job as Mr Webster and Mr Frankcombe?---Yes.

30 So would they find it easy to – Well, now the first question is would you be able to send any of them back to shift work operations on one day's notice?---Well, again - - -

35 And manage a crew that's on wood?---We wouldn't expect them to do that, I don't think, Richard, but again I'm not the best person to be asking.

Well, have they been trained in road action rescue?---No.

40 USAR?---No.

CBRIE?---No.

So they couldn't, could they?---I guess now.

45 Mr Geoff Knight is a district officer in building safety, is he not? When did he last work shift work operations?---Geoff, it would be twelve years, it might be longer, it could be fifteen years.

And what is his role in – what is his job in – he’s not the manager in building safety, is he?---No.

That’s Mr Oakley?---Yes.

5

So what is Mr Knight’s title in there?---Well, he’s district officer, building safety.

Yes. Mr Knight came from the country side of the service, didn’t he, before the amalgamation?---Mm.

10

So he would have extensive bush fire fighting competencies?---He does.

And you could send him off to do that, no doubt?---Well, he has extensive bush fire fighting competence. Whether he’s been assessed against the – you know, the national competencies, I can’t answer, Richard, I doubt whether he has because he’s been out of the field long, but that doesn’t preclude us from using him at fires from time to time in an operational capacity.

15

No. So Leon Carr, he works in building safety as a consultant?---Mm.

20

The same as Daniel Gregg?---Mm.

By your earlier evidence?---Mm.

25

How long has he been away from shift work operations?---I’m guessing, twelve, fifteen years.

It’s very unlikely that Leon Carr would want to go back. I think it was comprehended by the chief’s letter, really, isn’t that right that when he talks about some employees who have probably chosen to end their career in that vein of work?---We are not planning to send him back but again we do use him from time to time to exercise his competence at fires.

30

Yes. But you couldn’t put him on a shift line, could you?---Not without significant training.

35

Okay. And the last two, Mr Hayden Fletcher and Mr Steve Davidson, how long have they been away from shift work operations?---Steve, around four years. Hayden around, I’m guessing, six.

40

So it would be less difficult for them to make that transition back to shift work operations, would you say?---Than - - -

Than the others who we’ve just talked about?---Yes.

45

They could probably pick it up a lot more quickly because of the fact that they haven’t been away as long?---Mm.

Yes.

THE COMMISSIONER: Mr Warwick, would this be a convenient opportunity for a ten minute break?

5

MR WARWICK: Yes, absolutely, sir.

ADJOURNED

[10.56 am]

10

RESUMED

[11.12 am]

15 THE COMMISSIONER: Yes, Mr Warwick?

MR WARWICK: Thank you, Commissioner, just a few more questions.

20 Mr Killalea, you referred to the recent fire at the Myer business in the CBD of Hobart, could you give the Commissioner an indication in your view of the size and significance of this fire?---In terms of fires in the building environment it was the most significant one we've handled, certainly in my memory.

25 In living memory, would you say?---Yes, that could be the case.

There were reports in the newspapers of the damage to the stock on hand. I think I heard around \$50 million?---Building and stock, I think.

30 Building and stock. And then on top of that there would have been the loss of trade?---Yes.

Okay. The newspapers at the time said there ninety fire fighters attended?---Mm.

35 Would you say that that was about right?---I don't know, Richard.

Do you have any reason to doubt what the newspapers said?---No.

The newspapers said there were twenty volunteers attended?---Right.

40 Would you have any reason to doubt that?---No, except I'm not sure what – in what capacity they were volunteers.

45 Can you explain?---Well, I'm not sure if they were volunteer members of brigades or if they were career fire fighters who were off duty or on leave or working in non-rostered shift work positions who volunteered their services on that day; I don't know.

But they would have got paid, surely?---Yes. But again I don't know the context of the newspaper.

5 I don't know either, but the clear inference or the clear statement in the newspapers there were fire fighters from volunteer brigades attended?---Right, and that could have been the case, I don't know.

So you were formerly the go chief in the HFB?---Mm.

10 You'd therefore know the shift strength?---Mm.

Leaving aside the day work crew at - Monday to Friday day work crew at Rokeby, could you outline the number of people who'd normally be on shift?---There would have been I think four crews, one from Bridgewater, Glenorchy and two from
15 Hobart, which would be sixteen people.

Are you forgetting Clarence?---Clarence, yes, twenty people.

20 So twenty. So if ninety fire fighters attended, twenty of those would have been the crews on shift?---Mm.

That's seventy. Twenty volunteers, if the paper was right, that's another twenty off, that's about fifty, so there would have been fifty career fire fighters one way or another recalled to duty; does that seem reasonable?---Yes.
25

Are you aware of who attended from Community Fire Safety?---I'm aware that there were some from Community Fire Safety who attended. I'm not sure how many, I couldn't name them. I can name one.

30 Who's that?---Chris Tomes.

And he did the media, did he not, on the night?---He did, yes.

35 And a very good job of it too, I might add?---Indeed.

Geoff Knight attended and I believe one other; I'm not too sure who that was. But my information is that Steve Davidson attended, he was the only one who actually participated in the fire fighting operations?---Right.

40 Mr Knight didn't and the other person who attended from building safety didn't.

THE COMMISSIONER: Would you please answer yes or no, because it's being recorded?---I've got no reason to doubt that, Richard.

45 MR WARWICK: Yes. Would you contest me if I said that no one from TasFire Training was called, so Mr Valance, Mr Braithwaite, Mr Reid, Mr Brown were not called; would you contest that?---No.

How would you respond if I said to you that they have indicated to me that they were very upset that they weren't called?---I'm not surprised. I wouldn't be surprised.

5 So there were twenty volunteers called instead of people who work in TasFire Training or before?

MR BAKER: Commissioner, I must object, that's supposition. As has been indicated there's been no substantiation that volunteers were called or weren't called and we don't know who they were or anything, so I think it is - - -

10 THE COMMISSIONER: Well, it's a relevant line of questioning and the witness has not disagreed. He may not be in a position to positively one way or the other to say yes or no, but Mr Killalea's responded by saying, "Well, I don't contest that, I'll not argue with it," so it's a reasonable line of questioning?---Sorry, what was the
15 question, Richard?

MR WARWICK: My proposition is that there were volunteers called to that fire – the most significant structural fire in living memory, before consideration was given to calling people who work in TasFire Training, that's my proposition?---Mm.

20 And I'm asking you whether you believe that that's true or not?---Well, I don't know if it's true, it could be true.

25 What would you – if it were true, Mr Killalea, what would you think about that?---Well, I'd think about the sorts of tasks that any volunteers that had responded were given and I'm confident that they wouldn't have been given tasks that they weren't competent to perform.

30 I'm not questioning the competence of the volunteers at all, in any fashion, Mr Killalea. I'm questioning the fact that the Fire Service didn't call the very people who, in your evidence, you maintain are available to be called. I mean, it seems odd to me that that course of action was taken given what you have put to us about the changed philosophy of the Fire Service in respect to these people?---I guess, Richard,
35 there was a need for a speedy response in this instance and all voluntary brigade members are equipped with pagers, so those people could be contacted within seconds. We can literally contact thousands of people – volunteer fire fighters within seconds. My staff aren't equipped with pagers and therefore we wouldn't be able to contact them anywhere as quickly as we could contact volunteers. So you know, the
40 – when we need to contact my staff we generally have – for significant fires, we have got more lead time to play. In the case of Myer fire they needed people quickly. I suspect that's what was going through people's heads when they contacted the volunteers.

45 But don't you need people quickly in relation to any fire, any structural fire?---Structural fires, yes, as a rule. Unless it's planning for the next shift which may be six or eight hours way, where there is some lead time but in the case of the Myer fire I guess they needed people in large numbers very, very quickly.

So why haven't they got pagers if you want them to be ready and available to fight structural fires, why haven't they got pagers? Everyone in Fire Com has got a pager for overtime. The shift work fire fighters can take a pager home for overtime, why can't they?---Because the frequency with which we want those people doesn't warrant them carrying a pager around all the time and we'd use them generally where – in circumstances where there's lead time.

10 What are you talking about there?---Well, say for a bush fire, for example, it's usually not critical that you get people respond literally within seconds.

Well, am I to deduce from that or conclude from that that you really are not going to use these people for structure fires?---No. We didn't in the case of the Myer fire but you know, had the Myer fire extended beyond the boundaries of the Myer building and involved the city block and the fire would have been of significantly extended duration then in all likelihood we would have called upon those people.

20 Well, surely for a significant period of time, it looked like that was going to happen?---It might have done to the lay person, but not to somebody who understands the boundary construction requirements of buildings. It's rare for, you know, a building in the city to extend beyond its boundaries, and in fact, that's been the case since the great fire of London, when, you know, the building requirements that exist today were first developed.

25 Well, you mentioned the word "frequency", Mr Killalea. It would seem, would it not, that the frequency with you require an un-rostered shift worker working in community fire safety to attend structure fires is extremely infrequent?---Yes, that's right.

30 In fact, can you give us another example of when that happened?---Again, we need to go to organisational capacity. And the organisation doesn't rely on the non-rostered shift workers in community fire safety to be routinely available to respond to fires. But there are times, for example, when we get long duration resource hungry fires, to be able to access them.

35 So?---But in the case of structural fires that would be rare.

If ever?---I won't say if ever, because I've just given a ?---

40 Well, can I put it to you that I can't remember it ever happening in the last 11 years? What would you say to that?---That you can't remember? I can't remember it happening either, Richard.

45 Well, it's important because it would have been a matter that would have been brought to the attention of the committee of management. A matter seriously discussed by the membership of the union, I can assure you?---If what would have been, sorry?

If a non-rostered shift worker, who is not currently competent, had attended a structure fire?---Right, okay.

5 It hasn't happened in the last 11 years. I put that to you, Mr Killalea, okay. Well, are you agreeing, disagreeing, or you don't know?---Well, I have no reason to doubt that what you say - - -

10 So overall then, you would say that, or would you not, that you do use non-rostered shift workers who work in community fire safety, but it's really restricted to campaign bushfires?---At the moment it is.

15 That's I think that's an answer to the question, Mr Killalea. I'm – you've made indications about the future but we've read your notes on that. I have no further questions, Commissioner.

THE COMMISSIONER: Yes, Mr Baker?

20 MR BAKER: Just before we commence, Commissioner, I request that we just have five minutes, because this has been a most peculiar situation this morning, where we have had evidence not led, but in effect we've seen a cross-examination of the witness, rather than a - - -

25 THE COMMISSIONER: Yes, well, I hear what you say. I'm interested in the information, rather than necessarily the niceties of examination-in-chief and cross-examination.

30 MR BAKER: Well, that's right and clearly we've allowed that to continue this morning. I mean it was – I mean we could have raised, you know, literally countless objections, but we chose not to.

THE COMMISSIONER: But if you're asking for a five minute adjournment, that will be agreed to, Mr Baker.

35 MR BAKER: Thank you.

ADJOURNED [11.25 am]

40 **RESUMED** [11.39 am]

THE COMMISSIONER: Mr Baker?

45 MR BAKER: Before we commence, Commissioner, I think I should point out that, first of all, Mr Killalea has an obligation to leave the commission by one.

THE COMMISSIONER: Yes.

MR BAKER: Secondly, it will also be out intention to recall him at a later stage, because, clearly, we want the opportunity to be able to lead evidence, so I'll just put that on notice.

5 THE COMMISSIONER: Yes.

MR BAKER: And I'd ask my colleague to commence the cross-examination.

MS PEARCE: Thank you, Commissioner.

10

THE COMMISSIONER: Yes, Ms Pearce.

<CROSS-EXAMINATION BY MS PEARCE

[11.40 am]

15

MS PEARCE: Mr Killalea, just in relation to the Myer fire, were you at that incident?---No.

20 Did you have any involvement in the management of that incident?---No.

Did you have any involvement in the reasons and decision relating to that incident?---No.

25 Do you have any idea at all whether there were volunteers on there, from your personal knowledge?---No.

30 Okay. Were you involved in any questions about which community fire safety staff may or may not attend and why they may be called and why they would not be called?---Only some of my building safety staff who were looking at the way the systems performed during the fire.

35 So that was post-incident? That was towards the latter end of when the fire was - - -?---Actually it was within a couple of hours, I think, of the brigade's first response.

Right. Okay. But as to whether or not they were required in any operational capacity?---No, they weren't.

40 Okay. And you weren't involved in any resource decisions?---No.

45 Okay. So is it fair to say then, that the only information we have about volunteers were there is – just been presented to you so far, is that there was information in the media?---Yes.

Be that right, wrong or indifferent, and I'm sure as one knows, it's not always the case that they're accurate?---Absolutely.

Okay. I'd just like to take you to some questions, and there was a fair bit of discussion about a number of different officers from operational background who have spent time in community fire safety. You spoke about – Mr Warwick spoke to you about Mr Ian McLachlan?---Yes.

5

Do you recall what classification Mr McLachlan was at when he first came over into the senior consultant role?---I recollect that he was at station officer level.

10 The station officer level. And what classification level was he when he worked at community safety?---Senior station officer.

So how was he able to progress from station officer to senior station officer?---At the time he joined us, in order to progress, we required him to gain competencies that related only to community fire safety.

15

So he would have had competencies relating to station officer work?---Yes.

At an operational level?---Yes.

20 But he would not have had any operational senior station officer competencies when he returned to operations?---No.

25 When he returned to operations, would it have been reasonable for us to return him to a station officer classification?---Given that it would have, I imagine, resulted in a drop in pay, it wouldn't have been reasonable, in that sense.

30 Thank you. So is it fair to say that Mr McLachlan, when he returned to operations, would have needed some refreshing in relation to his underpinning knowledge at station officer level?---Yes.

And that he may have had some small skill gaps at station officer level to gain?---There would have been some gaps.

35 And yet there's more than likely would have been a number of senior station officer competencies he would have gained that we facilitated, so that he wasn't disadvantaged from a salary perspective?---Yes.

40 And Mr Warwick has alleged that that took some six months in varying capacities for him to gain all of those?---Yes.

If we were to ask Mr Phillip Mackrell, who is the current senior consultant, to move into a senior station officer ranked position operationally, what level of underpinning knowledge would he have to be able to do that job?---Next to none.

45 Next to none. So what length of time would you imagine it may take for him to be able to gain that. What process would he have to go through, to be able to gain the underpinning knowledge and competencies to be able to do the job, either at station officer or senior station officer?---A number of years.

A number of years. How would he have to start off?---I imagine that he would have to go through a recruit process.

5 A recruit process. And what does recruit process involve?---It involves three months of intensive training.

10 Yes?---And at the end of that, they then become a fire fighter transferred to a career brigade and go through a number of steps over a number of years to gain the competencies, the full set of competencies necessary to be a competent fire fighter. And that includes gaining a broad experience as well. And then through leading fire fighter step, station officer and then senior station officer.

15 Thank you. And to become a recruit fire fighter is a competitive process on merit-based appointment, isn't it?---it's very competitive.

Okay. So all of those officers that we have at the moment who are operational qualified would have applied for and been selected on merit for a training fire fighter position?---They would have done.

20 Thank you. So it's fair to say then, that the vast majority of people who are in community fire safety from an operational background have a level of underpinning knowledge up to the classification level that they left operations?---Absolutely.

25 Okay. And that, if they were to return to operations, there may be some refreshing of competencies that's required?---Yes.

But they don't need to get the underpinning, just refreshing?---Indeed.

30 And there may be some skill gaps because of either new responsibilities, changes to work, changes to work area, equipment, that they need to - - -?---Yes.

Thank you. Mr Killalea, can you tell me who is the currently appointed safety consultant on the north-west coast?---Wayne Viney.

35 Wayne Viney. Can you tell me what Mr Viney's background is?---Wayne started as a recruit fire fighter and progressed up through the ranks to his current rank.

40 Okay. And was he appointed as, promoted in fact, to the position of a station officer in community fire safety?---I'm sorry, I'm not sure.

Do you recall how long Mr Viney has been in that position, we've heard some evidence?---In building safety?

45 Yes?---18 months.

About 18 months. So he would have a high level of current competence in most of the areas that have been done operational?---Yes.

And would be able to return to operations at short notice?---Yes.

Have there been other operational officers who have been appointed to either building safety or training officer positions within community fire safety who have
5 returned to operations?---There have been quite a few.

Quite a few. So if I was to mention Mark Klop?---Yes, he is one.

He is one. What position did he undertake in community fire safety?---Mark was a
10 consultant.

He was a consultant in - - -?---Building safety.

Building safety. And did Mr Klop, whilst he was in building safety, also provide
15 overtime relief on rostered shift work?---Yes, he did.

He did. David Homan? Are you aware of Davie Homan?---David was a consultant
in building safety in Burnie. And David also returned to rostered shift work from
20 time to time while he was in building safety.

While he was in building safety. Thank you. Darren Berry?---Darren was an
instructor in TasFire Training.

An instructor in TasFire Training. And he would have been currently confident to
25 return to shift at any time?---Yes.

And what about Dean Graue?---Dean was another one. Dean was in Burnie, as, I
understand, as an instructor in TasFire Training, and again was current, sorry, was
30 competent to return and indeed, did return. Both Dean and – Graue and Berry would
have returned to operations and been on the trucks, I imagine, from day one.

Okay. Thank you. So whilst there may be a pocket of people who have been
community plus safety for a long period of time who have not undertaken frequent
35 return to operational duties, there are other employees who are there for short periods
of time?---Yes.

Have undertaken operational duties - - -?---During that period, yes.

- - - during that period, and were able to return to operations reasonably
40 quickly?---Yes.

Thank you. Is it fair to say then, that, regardless of whether or not you recall officers
in community plus safety to operational frequently, regularly, sometimes or never,
45 we have the capacity to require them to be able to return to operations with either no
refreshing, some refreshing and some skill gap closure, or even some larger skill gap
closure if we want to be able to return them at the level that they are currently within
community plus safety?---We do have that capacity.

We do have that capacity. Can we require any of the individuals who are the subject of this work value case to undertake a rostered shift work position?---No.

No. Why is that?---They don't have the competence to.

5

MR WARWICK: Thank you.

THE COMMISSIONER: Mr Baker?

10

<CROSS-EXAMINATION BY MR BAKER

[11.48 am]

MR BAKER: Thank you.

15

There are just a couple of issues I want to ask Mr Killalea. This case is being conducted under the auspices of principle 9 of the work value principle of the Tasmanian Industrial Commission's wage fixing guidelines, and that talks about a significant net addition to the value of the work. And I'll just pause there for a second. As I understand it, prior to around 2002, 2003, these positions were filled by -- wholly and solely by career fire fighters; is that correct?---Yes.

20

In 2002 - - -?---Sorry, with the exception, I guess, of Gregory.

25

Yes, of one, yes. Since then there have been a number of persons who have been appointed, who are the subject of this dispute. In that period of time, has the nature of the work undertaken by the individuals concerned with this application changed significantly?---No.

30

Has there been any alteration at all in the nature of style of the work?---No. Look, I should qualify that. In TasFire Training, for example, we have extended the range of courses in that period, I recall, to include height safety training and confined space training.

35

But the nature of the work itself hasn't changed?---No.

So there may be a wider range of training undertaken, but the nature of the training is consistent with - - -?---The nature of the job to deliver training hasn't changed.

40

Yes, thank you very much. The Tasmanian Fire Fighting Industry Employees' Award, of which you indicated you were familiar, the classification structure is based on competencies achieved; is it not?---Yes.

45

So that an officer can progress automatically through to a certain level and then must complete for promotion?---Yes.

So just in relation to the question that my colleague asked of you, a career fire fighter who moves from an operational role to a non-operational role, has in fact spent a number of years building up those competencies?---Yes.

5 And just to reiterate, the range of competencies that a non-operational employee would hold would be significantly different?---Yes.

Thank you. And finally, just in relation to exhibit A40 which was tabled earlier this morning, which was the extract of the award, at page 27, which went to non-rostered shift employees, the comments that were raised in relation to point 4 in particular:

The employer and a non-rostered shift employee may agree that the employee will undertake rostered shift work.

15 And then it goes on to say:

In the absence of an agreement, the employer is to give one day's notice of the requirement to undertake rostered shift work. In fact -

20 The final sentence goes on to say:

In fact you could ask the employee to resume shift work now.

If the employee was to be returned to shift work, that is an operational role, although the clause doesn't say that, but if the employee was to return to an operational role, what role would they be allocated?---It would depend on their competency.

So it's on the issue of competence they would be returned to a certain function?---Yes.

30 And those competencies would be measured against the award structure?---Yes.

So just as long as - I might reiterate that question. The employee would be returned to an operational level at the level of competence that he is deemed to hold?---Yes.

35 Thank you. I think I will leave it there, Commissioner.

THE COMMISSIONER: Yes. Mr Warwick, do you wish to re-examine?

40 MR WARWICK: Thank you, Commissioner.

<RE-EXAMINATION BY MR WARWICK

[11.54 am]

45 MR WARWICK: Mr Killalea, Mr Baker asked you about Mr Valance and Mr Ockerby, who hold - - -

MR BAKER: Objection, I never raised – I never spoke about anyone.

MR WARWICK: I'm sorry. He didn't use names but he talked about senior station officers returning to operational duty.

5

MR BAKER: No, I never raised that point either.

THE COMMISSIONER: Well, there was reference to - - -

10 MR BAKER: I raised the issue about operational fire fighters returning.

MR WARWICK: Well, in the context of the issue that Mr Baker raised, can I take you to Mr Valance and Mr Ockerby? They are currently employed as senior station officers?---Yes.

15

And if they were to return to – well, let's take each one in order. Mr Valance was a senior – was a station officer when he left to go to work in community fire safety, he would have to obtain operational competencies in the same way that Mr McLachlan would?---Mm, he would.

20

And in fact he's been away longer than Mr McLachlan was?---Yes.

And we did touch on this earlier but those competencies that he would have to obtain are largely to step from station officer to senior station officer to do with incident control in respect to major incidents, that is campaigning for bush fires?---No, it's broader than that.

25

But it's largely to do with that?---Well - - -

30 Well, that's certainly where you get those competencies, surely?---I guess it's largely to do with that, Richard, yes. Well, not just larger incidents, the full range of operational competencies for senior station officer which relates not just to larger incidents but to small incidents as well. A car crash, road accident rescue is not a large incident.

35

But station officers have those competencies, Mr Killalea?---Yes, they do, yes. The competencies for senior station officer are over and above those of a station officer?---Yes, okay, yes. So the differences probably relate – and again I'm not an expert on this, not the best person to ask – probably relate to larger operational incidents.

40

Well, it's my understanding that a station officer couldn't be an incident management – incident management controller for a large campaign bush fire, they don't have the competencies?---Well, again, I don't know, Richard.

45

Now, Ms Pearce asked you about refreshers when going back to shiftwork operations. Do you still – notwithstanding the response you gave, do you still agree that it would take substantially longer for someone to be refreshed based on the fact

that they'd been away from shiftwork operations for a longer period of time?---Well, I don't think I said substantially longer, it would take longer, assuming that everybody is of the same – I don't know, intellectual capacity, but some are – some people are brighter than others, some people remember better. It will vary
5 significantly from person to person and there have been incidences where people have returned to operations and they've picked up the job within literally a couple of days.

Well, I would agree with you in respect to the questions that Ms Pearce asked you in
10 respect to Mr Berry, Mr Homan, Mr Klop, Mr Wirrewa and there was one other, I didn't catch his name, it wouldn't take them long because they hadn't been away long though?---Mm.

But in the case of Mr Valance, for example, surely the organisation could not
15 possibly place him in a position of being in charge of a crew of fire fighters without a comprehensive assessment of the currency of his competence?---I'd say that it would take Mr Valance of a similar – you know, a similar time to regain the full suite of senior station officer competencies as Ian McLachlan.

20 It wouldn't be a couple of days, would it, Mr Killalea?---No, but it's the full suite, and again we wouldn't be sitting him in a corner for that six months.

No, of course not, but he would have to be supernumerary to the crew for weeks, surely?---Well, again I'm not sure, I can't comment on that.
25

He would have to be I put it to you, Mr Killalea?---Well, again, Richard, I can't answer that. I have no responsibility for operational brigades and I have no knowledge of how they manage the return to work programs of their staff.

30 You aid in response to a question from Mr Baker that the nature of the work hasn't changed since 2002?---Mm.

Mr Francombe and Mr Webster and Mr Mackrell I think said that it had; do you disagree with them?---Substantially I do disagree, yes. As I said to you earlier, when
35 I read their job analysis questionnaires that they prepared I don't think that they had a realistic view of what their job was about.

I don't think you said that earlier?---Well, I did say that I had to change it in consultation with their manager.
40

Yes. Sorry, didn't say that?---Yes. They tend to overstate things, Richard.

Yes. So the nature of the way in which senior consultants and instructors deal with clients and establish contextualised training isn't new?---In the last five years I
45 wouldn't think so.

But Mr Mackrell said it had and in fact that it didn't happen before?---Well, my understanding, and I think it is pertinent, that you know, I've been in those positions

and I've managed TasFire – did I manage it, when I was manager of the training division I had very close association with the establishment of the unit, it's always been necessary to contextualise training for clients, always.

5 Yes. But it didn't happen in the north, that was Mr Mackrell's evidence?---Well, I don't accept it. Can I say we've never been in the business of developing canned training. We contextualise and we're allowed to contextualise training for clients and that's why consultants and trainers go on site when necessary to make sure that they understand the training needs of their clients and contextualise the training to
10 suit.

Yes. Mr Baker asked you about the award classification structure and the competencies therein and people having to be able to meet those competencies to be classified at those levels, and while I agree that the community fire safety five, the
15 people that are the subject of this case, cannot go back and fill shift lines in career brigades – I agree with that proposition, but does that – the evidence that you've given change the fact that you agreed earlier that indeed you can't send the career fire fighters who aren't currently competent back to fill those shift line positions on short notice?---But we can get them to go back.

20 No, no, but you agreed earlier that you can't send them back on short notice, on one days' notice?---Well, I'm not sure if we're splitting straws here but we do send them to fires. Now, whether they – whether we assign them to rostered shift work or just send them to fires, doesn't matter, the fact is that were sending them to fires, working
25 in – doing tasks they've got competence to do and - - -

It is – sorry, it is very important in the context of this case. You agreed earlier that you can't go and send them to structure fires, generally speaking, on the spot, all of those people we discussed?---Well, again, it depends on the people - - -
30

You can't send them to road accident rescue?---Again, it depends on the people. We've had a number of people where we would quite confidently send back onto a shift where it's an officer and three fire fighters, knowing that they've got the competence to perform as part of that small and very inter-dependent crew, okay?
35

Yes. Well, that's Mr Berry and Mr Honan and Mr Klop, Mr Graue, those people that you were asked about?---Mr Davidson, Mr Tomes, and there may be others.

40 And not all of those people that we discussed earlier, you agreed, that you couldn't do that with them? You would not on one days' notice send them to a shift line in the career crew and go to road accident rescues, you say, at times?---Yes. What I said was we wouldn't test that. Look, again, not my decision, Richard, I don't manage the brigades, but I would imagine the organisation wouldn't test that and doesn't need to test it because we have alternative arrangements.

45 I'm just trying to establish whether your evidence has changed as a result of the questions you've been asked?---No.

So you still agree that there would have to be a process of refreshers that could take a longer period of time based on the fact that people have been away for a long period of time and they may have to have obtained significant numbers of competencies in some circumstances?---In some circumstances, yes.

5

And in fact, it's only the people who have been away for a short time who would not have to gain additional competencies that have been introduced since they left?---That's likely, yes.

10 Yes. Thank you, Mr Killalea. No further questions, thank y you.

THE COMMISSIONER: Thank you, Mr Killalea, you're excused?---Thank you.

15 <THE WITNESS WITHDREW

[12.05 pm]

THE COMMISSIONER: I have a note that you are going to submissions today, Mr Warwick; is that right?

20

MR WARWICK: I'm planning to close, sir.

THE COMMISSIONER: You plan to close?

25 MR WARWICK: Yes. Yes. It won't take long.

THE COMMISSIONER: Do you want to do that now or do you want to do it – break for lunch?

30 MR WARWICK: I think we can wrap it up.

THE COMMISSIONER: Well, what sort of time frame are you talking about?

MR WARWICK: Five or 10 minutes.

35

THE COMMISSIONER: Oh, okay. Very well.

MR WARWICK: Five or 10 minutes, sir. There is one matter that I would like to mention and that is – and I have had discussions with the other party. I'm still waiting on some evidence in respect to comparisons on wages and responsibilities and the like, for Mr Manton, the auditor, and I would like to have an opportunity when next we meet, simply to introduce that, but subject, of course, to all of the scrutiny that the other side is entitled to, but I am simply not in a position to do it today.

45

THE COMMISSIONER: No, but you want to go to closing submissions now?

MR WARWICK: Yes.

THE COMMISSIONER: Yes, very well. In your hands.

MR WARWICK: Commissioner, in his opening statements Mr Baker described this case and he used the words “comparative wage justice” and unfortunately I think he
5 did so in a somewhat pejorative sense. Comparative wage justice to my mind recalls the time when there were national wage case rises, not the minimum wage increases that we know today, but across the board wage increases. Obviously it was more complicated than that but that’s the era from which that expression “comparative
10 wage justice” comes, and I think that that’s a very serious mistake in terms of representing what this case is about.

This is a work value case. The commission has long since had the capacity to assess work, and in the practical sense the only limitation on the commission’s capacity to
15 do so has been the extent to which it has already been done. Well, our submission is that in this context it has never been done and that’s purely because of some employment decisions that the fire services either made or had to make in respect to filling some positions that normally would be occupied by career fire fighters and indeed my members. The commission has had in its almost 25 years, a consistent
20 view that work value assessments should be made on a like-with-like basis.

That is as far as possible the skill, the level of responsibility and the circumstances under which the work is preformed should be as closely compared as is possible. We
would say in this case that there is an obvious unmistakable and clear comparison to be made and I said in my original opening submission that there is a uniqueness in
25 this case that the people do do the same work and the evidence shows that they do the same work and indeed the only difference between the two species of employee, if you like, is that there is this matter we have discussed this morning, the question of a certain group being able to go back and do fire fighting duties at a certain level under certain circumstances, and I think we have established this morning that in
30 large measure those circumstances are far more circumscribed than the TFD might have you believe.

The commission in its almost 25 years of operation has also has held a very strong principle that when it comes to the public sector comparisons should be with other
35 public sector employees rather than the private sector. The public sector is unique in terms of the way it operates. There are different values in respect to why people occupy positions in the government employment. Historically one of those has been job security. Wages have been set differently for very different reasons in the public sector relative to the private sector and this commission has always held the view, n
40 my experience, that when making comparisons in respect to government employees, one to another, that comparison should be with other government employees.

Commissioner, we believe the evidence speaks for itself. I don’t suggest for a moment that the employer’s position about career fire fighters being able to go back
45 and do other work is unimportant. I don’t say that that’s unimportant, it is important. But it’s important to the operational capacity of the fire service. It’s important to the safety of the community. But in our submission, it ought not be important in respect of fixing rates of pay for the work people do on a day-to-day basis. There is actually

very limited circumstance when the people in question go and fight fires. It happens very, very rarely. The people that Ms Pearce raised earlier, and they're the group of people that over recent years have only stayed in community fire safety for a short period of time, have – the practice have been that they have fuelled shift lines. That
5 doesn't necessarily mean they go to fire, you know. A crew usually gets a couple of alarms on a shift, you know.

An actual fire doesn't happen that often. You read about them every day in the paper, but only one of the dozen crews around the state has probably gone to that
10 fire. The other crews haven't and have probably just gone to a couple of alarms. The real issue in question here I think is the long-term employees in community fire safety don't go to structure fires; that was Mr Killalea's evidence. They really don't, and his evidence in respect to the Myer fire, the most significant structural fire event in living memory, it was only very limited participation by these people at that event.
15 And that I think has to – you would have to say that that speaks volumes about what really is going on here.

Commissioner, the witnesses I think convincingly gave evidence that they have high levels of autonomy in all cases. They had the same levels of autonomy as other
20 employees who do this work, at least the same level of autonomy, in at least one case I think more. They have at least the same level of responsibility in all cases. I don't think really there can be evidence shown to the contrary. The same goes for skill. The same goes for the circumstances under which the work is performed. These people work at the same level, at least at the same level. In respect to this question
25 of career firefighters who work in community fire safety are being paid a lot more money, and it is a lot more money, that people who don't come from that background, our submission is that the position of the government is an artifice.

THE COMMISSIONER: Is a sorry?
30

MR WARWICK: An artifice, a pretence. It is simply a means to avoid paying wages to employees who do the same work. It's a mere artifice. If it were a consistently applied rule that the career firefighters had to go back and maintain all of their competencies on a regular basis and respond on a regular basis, and that was
35 an obligation on them, then we would see the world probably very differently, but that doesn't happen. It only happens to a degree with respect to the people who stay in community fire safety for a short period of time, usually two years, and then it happens on a limited basis.

40 And the evidence in respect to the Myer fire shows that in large measure, these people do not – or they are not required by the employer in the real world to use the competencies which no doubt they possess on a non-current basis, they're not currently competent, and they would be the first to tell you that. Certainly they have the capacity to become currently competent, but the reality is the Tasmanian Fire
45 Service doesn't want them to go back on shift. They actually want these people to stay where they are and do the jobs they're doing. So in conclusion, sir, I would put to you that the whole argument about the value and worth of the career firefighters'

residual competencies, if I can put it that way, is a fabrication and ought to be dismissed by the commission. If the commission pleases.

5 THE COMMISSIONER: Yes, thank you, Mr Warwick. That concludes the matter for today.

MR BAKER: Commissioner, can I just – a couple of points that I'd like to sort of raise?

10 THE COMMISSIONER: Yes.

MR BAKER: And I'm not going to respond to Mr Warwick's submission.

15 THE COMMISSIONER: No.

MR BAKER: I understand this matter has been listed for – there's another three days of hearings.

20 THE COMMISSIONER: Yes.

MR BAKER: I was going to make the submission this morning in relation to perhaps bringing it to an end, because I'm not sure where the matter is going under the wage-fixing principles. I mean, it started off as a work value, and regardless – and I don't believe that it is a work value matter. I think that the substance of the case has changed. But if Mr Warwick has now concluded his submission, as I suppose it then behoves – well, it doesn't suppose – now behoves us to respond in an appropriate matter, and accordingly for the first day of hearing, and I think it's set down for – was it the 20th?

30 THE COMMISSIONER: 20th.

MR BAKER: - - - 20th, I would seek to have the matter reconvened in Launceston to re-examine the witnesses who gave evidence on that occasion, because I think it is important, if Mr Warwick – or as Mr Warwick has pressed the issue of like duties, like responsibilities and a like rate of pay, if that argument is to be sustained then we'd need to test that with those witnesses in relation to that question. And I tested that with the two witnesses that gave evidence in Hobart, as Mr Warwick had changed the nature of the application that's before the commission. I would want the opportunity to re-examine those – was it three or four? Four? I can't recall. Three – those three witnesses.

45 THE COMMISSIONER: Yes, I don't have a problem with that. The application was amended after they had given their evidence. Can we just go off the record for a moment?

OFF THE RECORD

[12.19 pm]

RESUMED

[12.24 pm]

5 THE COMMISSIONER: The commission stands adjourned until 10.30 on
20 November in Launceston.

**MATTER ADJOURNED at 12.24 pm UNTIL
TUESDAY, 20 NOVEMBER 2007**

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