

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 2587 of 1991 and
T. No. 2473 of 1990

IN THE MATTER OF applications by
the Tasmanian Prison Officers
Association and the Tasmanian
Public Service Association (now
the State Public Services
Federation Tasmania) to vary the
Prison Officers Award

COMMISSIONER IMLACH

HOBART, 17 February 1994
continued from 27/1/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: Any changes in appearances?

MR NIELSON: Not from the TPOA, Mr Commissioner.

MR K. GREY: Sir, there may be for the SPSFT. I don't think I have appeared here on this matter before - KERRYL GREY for the SPSFT.

COMMISSIONER IMLACH: Thanks, Mr Grey.

MR C. WILLINGHAM: Good morning, Mr Commissioner. CLIVE WILLINGHAM, together with MR BEN MARRIS, as previously were our appearances, and also for the purposes of those days which will take up our submissions, MR GEORGE LAWLER who is superintendent of the prison at Risdon.

COMMISSIONER IMLACH: Thanks, Mr Willingham. Now who is first off today?

MR NIELSON: Mr Commissioner, I did desire, and have spoken to one of my colleagues in regard to what we would like to do is to submit some further exhibits in regards to those that we have previously presented last time we were before you, and that's in regard to the copies of the award. I think they support TPOA.91, a previous document, and if I could hand those up, Mr Commissioner.

COMMISSIONER IMLACH: I'm very much in your hands as to that - 92, I think it would be, Mr Nielsen, because I've got a 91 here.

MR NIELSON: And it will show on that page the rates on - actually page 8 - which I don't wish to take the time of the commission up. That's the Queensland Government Gazette, Mr Commissioner.

The next one, if I may, Mr Commissioner, move on.

COMMISSIONER IMLACH: TPOA.93.

MR NIELSON: I'd just like the one point of clarification there, that that's a document that can be identified there, 13 January 1989. Attached to the document is the wage rates that have been given us to from New South Wales. They are not part of this original document of the Department of Industrial Relations and Employment.

I am aware that in '88-89 that there was an inquiry by Justice Bouer - b-o-u-e-r - and I have been given information and will certainly follow it through further, that that's how that last page of the document expresses the difference in salary, which is actually about \$3000 on the figures shown on that document I think on page - it's about the fourth page over on the New South Wales document.

There is a \$3000 difference for instance in the probation figures.

As I have said previously, in discussions with New South Wales made last night there was an inquiry by that particular justice and I hope, Mr Commissioner, if I may, to forward further evidence to support those salary rates on the back page.

COMMISSIONER IMLACH: I see just an item of interest at the bottom of the back page there, Mr Nielsen:

For further information please contact Mr J. Scullion or Mr D. Palmer or any prison officer in New South Wales.

They must be all up with it up there.

MR NIELSON: Yes. It is very interesting up there. They even tell me salaries are moving in January of this year. But, anyhow, perhaps -

If I may present another document, Mr Commissioner, and that's in regards to Victoria, and this is very late off the Press last night.

COMMISSIONER IMLACH: TPOA.94.

MR NIELSON: That document speaks for itself and supports the figures that we originally presented to you.

It's from the Department of Justice, and actually if I may go - 1,2,3,4,5 - it's the 6th page, and you'll see down there in the left-hand corner the prison officers' figures, and again they are the ones we have promoted in our graph earlier in proceedings, and as I said that document is from the Department of Justice.

The next document, if I may, Mr Commissioner, is from South Australia.

COMMISSIONER IMLACH: TPOA.95.

MR NIELSON: Forgive me, Mr Commissioner, but these pages are not numbered, but my quick count is if you go to page 20 it will give you the rates of pay that we - page 20 was my quick - well, I assume I have got the right page.

COMMISSIONER IMLACH: It doesn't work for me.

MR NIELSON: I beg your pardon?

COMMISSIONER IMLACH: It doesn't work for me.

MR NIELSON: Oh, well, I will just do my count again: 1,2,3,4,5,6,7,8,9 - 19, page 20 on the count. There is an 'Operational Services South Australia Public Interim Award' and it gives you details of salaries there. I might just hold it up to you.

COMMISSIONER IMLACH: Yes, I think on my count it is page 19, but I see the one you mean.

MR NIELSON: I'm sorry, I wouldn't challenge that, Mr Commissioner.

COMMISSIONER IMLACH: That's alright.

MR NIELSON: The next item, Mr Commissioner, is Western Australia.

COMMISSIONER IMLACH: Just that TPOA.95 - I'm writing on the top 'South Australia'.

MR NIELSON: Thank you, Mr Commissioner.

COMMISSIONER IMLACH: Yes.

MR NIELSON: I would like to hand up another exhibit.

COMMISSIONER IMLACH: TPOA.96.

MR NIELSON: Now I appreciate the opportunity of presenting them, Mr Commissioner. The only other before I sit down, if I may, you did say on page 443 of transcript where Mr Hughes was making a submission in regard to qualifications - clause 15 - and you did ask Mr Hughes at that time:

Will you be submitting a draft of that?

And a couple of more lines down you responded, Mr Commissioner:

It will help me if you did draw up one, anyway.

And without embarrassing the commission what we have done is just drawn up draft proposals in support of our submissions. But I don't wish to -

COMMISSIONER IMLACH: Well, let's have a look at it. TPOA.97.

MR NIELSON: And that document refers to those submissions of Mr Hughes when he went through that award restructuring document where we suggested that we delete the Clause 8 - Salaries and present other classifications there.

And then the qualifications over on page 5 of that document, and the proposal which I think is on page 7 and page 8 and page 9.

COMMISSIONER IMLACH: Would I be saying too much if I said that this is a proposed draft order to change the award? Is that correct?

MR NIELSON: Yes, Mr Commissioner.

COMMISSIONER IMLACH: That doesn't embarrass me, Mr Nielsen, does it embarrass you?

MR NIELSON: Well I have a very good business relationship with my other advocates and I wouldn't ever like to appear to take advantage of the proceedings, and I do appreciate quite sincerely the opportunity of putting these exhibits this morning at this such late stage.

So that is my final position, Mr Commissioner.

COMMISSIONER IMLACH: Yes, well I mean, Mr Nielsen, as far as I am concerned the union has put its case. This document I trust encapsulates the whole story and puts it before the commission, and it is now up to the minister to respond, whichever way he thinks fit.

Of course - it is probably not necessary to make this point - but normally these things are either done by agreement or the employer puts up a proposal which is then sought to be amended by the employees.

It is not unusual for employees to put up a complete proposal, but on the other hand it is not generally done. Merely comments, Mr Nielsen.

MR NIELSON: Thank you, Mr Commissioner.

COMMISSIONER IMLACH: Good. Mr Willingham?

MR WILLINGHAM: Excuse me, Mr Commissioner, did you mark that last exhibit?

COMMISSIONER IMLACH: I am sorry - TPOA.97.

MR WILLINGHAM: Thank you.

COMMISSIONER IMLACH: Thanks for that. No doubt it reflects the straitened circumstances in which you find yourself placed, Mr Nielsen.

MR NIELSON: Yes, Mr Commissioner.

MR GREY: Sir, if I may take up the commission's time just briefly in response to submissions put by the government at the last hearing. We would like to clarify our position on where we stand in relation to this special case.

Sir, if I could tender -

COMMISSIONER IMLACH: Now is that the first exhibit, Mr Grey? I believe it might be.

MR GREY: It could be, sir, yes. I'll leave that to your discretion.

COMMISSIONER IMLACH: SPSFT.1. Yes, Mr Grey.

MR GREY: Sir, as you'll see in that letter written on 14th of December we have written to the Secretary of the Department of Justice to seek to progress matters so that we could be a party.

That our members at the prison employed under this Prison Officers Award could be party to the state service wages arrangement agreement, and on that basis we would withdraw from these proceedings.

This letter, as you can see, is 2 months old. We have yet to hear any response whatsoever from government, so in the absence of that response we have initiated discussions with the public sector management office this afternoon in an attempt to draw up an agreement that could satisfy the requirements of all the parties.

And that has been our clear intention for some time. Not being able to get much progress, we decided to formalise it, formalise our position, and as I have mentioned we have heard no response whatsoever.

So in the absence of that, we have decided to pursue this in the hope that it could resolve our position in this matter.

COMMISSIONER IMLACH: To pursue what exactly, Mr Grey?

MR GREY: Withdraw - withdrawing from this special case, from these proceedings, in return for our members being able to access the provisions under the state service wages arrangements agreement.

COMMISSIONER IMLACH: Yes. You understand I can only deal with the first part of it, your application to withdraw?

MR GREY: Oh, yes, sir, I understand. I am tabling this for your information because the government has put its position that they don't know where we are, what we are doing, and that they haven't been able to determine their position without

knowing what we are doing, and I must admit that I am slightly surprised that the government doesn't know our position.

However, that's not anything I can do much about.

COMMISSIONER IMLACH: No. But, as I understand it, Mr Grey, you are now applying to withdraw the SPSFT's application -

MR GREY: No, sir. What I am doing is notifying that we are entering into discussions with a view to that being the object of the exercise.

If we can get an assurance from the government that our members employed under this award could get access to the state service wages arrangement agreement we would withdraw from this case.

And we're seeking to draw up an appropriate arrangement, or agreement, today to enable that to happen.

If that can't happen, we reserve our right to state our position in these hearings in this special case proceedings.

This has been our clear intention for some time. We've had various discussions; it is not new; we have made this clear before to all the parties for a considerable period of time.

In the absence of any significant movement from any party enabling anything like this to occur we finally put it on paper and, as I said, it didn't have any effect at all, so we pursued discussions more directly with the public sector management office, and the first available meeting date is of this afternoon.

COMMISSIONER IMLACH: Yes, well subject to what the other parties say, Mr Grey, my comment only is that the sands of time are running out, are they not?

MR GREY: Oh, possibly so, sir, possibly so.

COMMISSIONER IMLACH: Yes. Alright. Thanks, Mr Grey.

MR GREY: It's just to clarify where we are.

COMMISSIONER IMLACH: Yes. Thank you.

MR GREY: Thank you.

COMMISSIONER IMLACH: What do you say to that, Mr Nielsen?

MR NIELSON: Well, Mr Commissioner, first of all the TPOA has been endeavouring, as you are only too well aware, to try to finalise a special case for all employees at the - or at least, to try to be part of, to seek an increase in salaries

for all employees covered under the Corrective Services as far as prison officers are concerned. Point one.

Point two: we find the letter a little bit confusing as to whether - what the previous advocate has said is practical or not.

In my limited knowledge of the government's offer, the position is that we have the Prison Officers Award before you, it is the special case that is operating in that area - one - that, two, that to attempt to become part of the government's offer or to access that, two, as I said, I am unable to answer that, I suppose. That's another area.

But our position is to see - and our members which are quite a big majority out there - desire to see the finalisation of these proceedings before you and ultimately see some success.

Now, if our brother union is able to assist in that regard, we'd certainly appreciate it.

We are a little bit confused as to whether one action is to withdraw and in another action it is a desire to continue on.

COMMISSIONER IMLACH: So, I don't want to put words into your mouth, Mr Nielsen, but I understand as far as you're concerned you wish to proceed.

MR NIELSON: We certainly do, Mr Commissioner.

COMMISSIONER IMLACH: Thanks, Mr Nielsen. Mr Willingham?

MR WILLINGHAM: I really don't know where that leaves us, Mr Commissioner. I was aware of the letter of the 14th of December which is SPSFT.1.

It's almost 3 years, Mr Commissioner, since the Anomalies Conference designated the two applications before you as arguable special cases, and it is more than 6 months since the state service wages arrangements were agreed between the union movement generally and the minister.

And in all that period of time that's elapsed today is the first day, for reasons of its own choosing, the SPSFT - or in its previous life the TPSA - have brought any indication of anything in relation to its application before the commission and the parties.

It is not a question of the SPSFT running out of patience in respect of no response to a letter dated 14 December 1993, what happened to the 14 December 1992 and 14 December 1991, Mr Commissioner?

The situation is the commission and the parties - and by parties I mean particularly the minister and particularly the Tasmanian Prison Officers' Association - would be faced with something of a dilemma, and that dilemma would have a number of complexities if the application of the SPSFT is sought to be withdrawn and that withdrawal is granted by the commission.

As things stand before you today, Mr Commissioner, the SPSFT puts you on notice that it intends to pursue a particular course of action.

If that course of action results in the outcome which the SPSFT desires it puts you on notice that it will come back before the commission as constituted and seek withdrawal of its application.

As of today there is no such application to withdraw.

Now, on that basis, Mr Commissioner, for my part I'd be seeking to proceed along the lines that I previously outlined to you which is that I intend to spend today putting a response to the witness evidence that has been adduced by the TPOA.

If I could just generally talk to the implications which flow with the position foreshadowed by the SPSFT. The complications that would materialise as a result of the SPSFT signing the State Wages Arrangements in relation to their members at the prison are not insurmountable in terms of technical and practical application, but this commission makes an award in relation to those classifications in the award for which the SPSFT claims coverage, it leads to a number of very obviously begged questions and in the event that SPSFT does seek leave to withdraw its application, we will be reserving a right to make extensive submissions to you in the light of the circumstances that then present themselves.

But for today, with the commission's leave, I intend to proceed as foreshadowed on the last day of hearing.

COMMISSIONER IMLACH: Thanks, Mr Willingham. That being the case, we'll take note of the SPSFT's advice and exhibit and proceed as intended.

MR WILLINGHAM: Commissioner.

COMMISSIONER IMLACH: Mr Willingham?

MR WILLINGHAM: Also say, Mr Commissioner, while I'm getting my papers in some sort of sequence that I hope you will give leave to my friend and colleague Mr Nielsen to tender some more exhibits. I'd hate to think of him being 97 not out. That's a - in cricketing I think that's a batsman retired hurt. Can that be deleted from the record, Mr Commissioner?

COMMISSIONER IMLACH: I think we've had worse things than that on the record, Mr Willingham.

MR WILLINGHAM: I'm sure I have and if I'm spare to do so, I'm sure there will be some more to come too, Mr Commissioner.

Mr Commissioner, by way of a lead into our submissions, I should explain that it is our intention to first deal with the evidence taken from the witnesses that were brought before the commission by the TPOA.

Following that we will address the summaries of that evidence provided by Mr Shirley on the 24th of June 1993 and by Mr Nielsen on the 27th of January this year, and for the commission's convenience, Mr Shirley's summary is at page 386 of transcript to page 413 and Mr Nielsen's summing up of the evidence is contained in pages 418 to 421.

If I could take the commission now to the witness evidence which was taken at Hayes Prison Farm. Mr Commissioner, to first make a couple of points in relation to the so-called witness statements that were produced as a feature - continuing feature of the association's case throughout the calling of evidence.

The first of those statements is that Officer Kraemers and that's identified as Exhibit TPOA.5. Now additionally, Mr Commissioner, there are a number of after the event documents which purport to be summaries of evidence provided by witnesses called by the TPOA.

Now, in our submission, the so-called witness statements are nothing of the sort. They are not signed by or prepared by the respective witnesses. They do not give any details whatsoever of alleged changes, apart from basic headings and they certainly give no details in respect of any of assertion of increased work value or the work value component claimed by the association. And at the very best, Mr Commissioner, we would submit that they are aide-memoires for the TPOA's advocate and their respective witnesses.

Mr Commissioner, my views in relation to these so-called witness statements and evidence summaries is recorded at pages 53 to 55 of transcript and the transcript will show, Mr Commissioner, that in effect you held my views to be valid.

It is our strong submission that the commission, as constituted, should disregard those documents and test only that material which emanates from the process of the adducing of evidence and evidentiary documentation which can be tested for accuracy and validity and was.

Mr Commissioner, our submission on this particular issue is equally applicable to all similar statements from Launceston and Risdon Prisons. Now our submissions in relation to the witness evidence itself, Mr Commissioner, proceeds on that basis.

Now if I could take the commission to the evidence adduced by Prison Officer Wilhelm Kraemers which is exhibit TPOA.5 and the relevant evidence is to be found at pages 34 through to 52 of transcript and it was taken on the 20th of November 1992 at Hayes Prison Farm.

I'd first ask you to note, Mr Commissioner, that Officer Kraemers suggests that the average inmate numbers at Hayes Prison Farm has risen slightly since 1984. He said in evidence that he thought it was about 48 or less then, but that it was now roundabout 55, possibly 60.

Although nothing greatly turns on it, commissioner, so that we can assist your consideration of the matters, the average number of inmates for 1993, as sourced from my colleagues at the Department of - Division, I beg your pardon, of Corrective Services, is 54. In 1983, 1984 and 1985, the figures were 34, 32 and 36 respectively.

Mr Commissioner, there is a reason that I have given you three dates, 1983, 1984 and 1985, and that is because later in our submission we will be talking about what we believe is the appropriate datum point and since it is open to you to find a number of dates, depending on whose submissions you find most compelling, I use those figures for your broader information.

Now at page 35 of Officer Kraemers' evidence, Mr Commissioner, he said that the staffing compliment in 1984 was a superintendent, a chief prison officer, two senior prison officers and, quote:

- eight or 10 prison officers.

The figures or the staffing establishment now, Mr Commissioner, is a chief - a superintendent, a chief prison officer, one senior prison officer and 10 prison officers. So the current staffing establishment is 13. Now apart from a marginal mix of classifications, the conclusion to be drawn, Mr Commissioner, is that the staffing establishment is essentially unchanged.

Officer Kraemers' evidence at page 35 also contains a reference to the range of prisoners, that is, the mix of offences for which they are incarcerated and Mr Kraemers' suggested that there had not been any change to that mix during the period under review.

Again on page 35, Mr Commissioner, Officer Kraemers', in talking to the duties of a prison officer prior to 1984, said that they were, quote:

Well, more or less security only.

But interestingly enough, Mr Commissioner, on page 36 in talking of the interaction between officers and inmates, Prison Officer Kraemers said, and I quote:

I think there was more interaction at that time than there is at present.

At that time, Mr Commissioner, meaning prior to 1984. However, I have to say that the witness's evidence is contradictory with his previous comments and he changes his mind yet again during questioning by the commission and in the face of, what I'll kindly say, was some blatant prompting by Mr Shirley during re-examination and we'll come back to that subject as we go through the transcript, Mr Commissioner.

On page 36, Officer Kraemers is talking about the introduction of two-way radios and in does so doing, he attests to the improved - the enhanced communication facility and his evidence clearly shows that he'd obviously approves of the greater and responsiveness of the two-way radio system compared with a system that was either not in place or that it did replace.

He does not at any stage suggest, Mr Commissioner, that any particular skill or additional skill is required to operate the two-way radios and there is, as I say, a clear implication - a clear implication that the job is made easier by the use of those two-way radios.

At page 37 Officer Kraemers discusses inmates' telephone calls. Now it is not clear from the evidence, Mr Commissioner, whether permitting inmates to both receive and make incoming phone calls is a feature which was introduced since 1984 or whether it was in existence in 1984, but in our submission, nothing much turns on that.

In essence, what happens, is that the officer dials a number, ensures in the case of dialling a number that the person at the other end of the line is the person required to be at the other end of the line, or in the case of an incoming call does the procedure associated with that, he connects the call to the prisoner, times the call, which is allegedly a maximum of 5 minutes and records the call - or the details of the call into a book.

The calls are rarely supervised, Mr Commissioner, and Officer Kraemers in his evidence said, and I quote: That used to be the case, but there is no need to monitor it now unless you've

got some reason for doing so. And in evidence in chief no such reason was forthcoming.

And I should add, commissioner, on an incidental basis that the - that the evidence of the next witness who was Officer Greg Chaplin, at page 57, strongly suggests that officers can and do exercise considerable discretion in relation to inmates' telephone calls.

If I could take you now to page 38, Mr Commissioner, when Officer Kraemers discusses the operation of VCRs, and he said in his evidence that prisoners used to have a film 'once or twice a week'. That's unclear to me, Mr Commissioner, how that film used to be projected. I'm not certain whether it was a conventional projector type of operation or what, but it doesn't really matter. It's certainly a matter of fact that for the purpose of your consideration VCRs are in use and they are in use pretty well every evening.

And certainly Officer Kraemers said that the videos were shown every evening. Further evidence of course goes to the fact that prisoners were even allowed into New Norfolk under escort to - to select their choice of film. It's a pity - and I didn't do it at the time - I should have inquired as to what sort of ranges they might have chosen, but - and indeed what sort of scrutiny or censorship might have been exercised by the officers in the choice of video by inmates, but that's past now so we won't raise it.

We say, commissioner, that picking up a - a VCR cassette and shoving it in the opening in a VCR recorder and ensuring that the concomitant picture is appearing on the screen at a level of sound and vision satisfactory for viewing by the people who are assembled for that purpose is a matter of total insignificance in terms of skill required, additional skills required or indeed any intrinsic notion of enhancement of work value. It is no more than virtually every officer would be doing in the privacy of their own home.

At page 38, Officer Kraemers talks about prisoners' medication and pharmaceuticals. Again, Officer Kraemers doesn't actually state what, if anything, has changed in respect of the procedures, but even so we submit that giving an inmate an aspirin or collecting a prescription from the chemist in New York - in New Norfolk, Mr Commissioner, is not a new duty for prison officers and it requires no additional training or skills whatsoever.

Furthermore, as we will say at various intervals throughout this case, the degree of first aid skills required of officers nowadays is substantially less than it was in previous years and in those previous years most officers were compensated for the requirement to exercise a level of skill in first aid administration equivalent to the standards set by the St John

Ambulance certificate course. Before holding those requirements they were paid an allowance. As we will go into in greater detail, commissioner, that allowance is still paid. That allowance is still paid, commissioner, for all material purposes, but the level of first aid administration required of officers is not commensurate with what it was at the time the monetary compensation was established.

At page 38 and 39, Mr Commissioner, Officer Kraemers talked about the prisoners' files and he attested that these were previously kept in the superintendent's office but were now held in the duty office. As I recall it, Mr Commissioner, the superintendent's office was upstairs and the duty office was downstairs so to speak.

Now the files according to the evidence were moved primarily to ensure that ready access to them was available in case the superintendent was away.

And in terms of change, that is all it is. It is a physical relocation of files from one floor to another. The degree of responsibility and skill is infinitesimal. It's practically nonexistent.

Officer Kraemers at page 39, Mr Commissioner, talks yet again about first aid courses, but he does concede that there is no longer a requirement for officers to have passed the certificate course and he did concede, Commissioner that officers still receive payment of it through consolidation of that particular allowance into salaries which took place some time ago, and I will explain all of that to you in much greater detail later in our submission.

I should also point out just at this time of our submission because these will be lengthy hours and perhaps boring hours too, Mr Commissioner, I should point out that basic training for prison officers does now include a set basic first aid component requirement.

At page 39 through to 40, Mr Commissioner, Officer Kraemers talks about prisoners' privileges and officers' reports. After the exchanges what we eventually learn is that nothing at all has altered. For instance, the question to Officer Kraemers was: And did you undertake that activity before 1984? And the response was: Oh, yes, that activity, you always had to submit reports and they're usually acted on.

As with quite a number of aspects of the evidence adduced by witnesses, Mr Commissioner, we won't reinforce the self-evident facts which fall from the witnesses themselves.

On page 40, Officer Kraemers goes to the family house visits. You'll recall that area, Mr Commissioner, down - down in the garden area. Now there's no argument from us, commissioner,

that that is a comparatively recent innovation but we do say that officers are required to exercise no more than stock standard supervision and - and that is of the area where the gardens and the house is located.

Now they already have to exercise supervision of the garden area for visits - that's not new. And the function that they're performing are the primary, elementary functions of security and surveillance. It matters not whether you're exercising those in relation to a family house or a garden or a cell or a yard or a fence or any other area of any prison complex; the elementary functions of an officer which are unchanged since time immemorial are of security and surveillance. It is true that the house itself or its function is new but the role the prison officer carries out in relation to it is not.

And can I just say that on that note, Mr Commissioner, it's interesting that Officer Kraemers himself seems to suggest quite strongly that the standing order requiring supervision of the area is honoured more in the breach than in its observance. Now this is not a criticism of Officer Kraemers by the way, it's just a fact deduced from his evidence. He says, and I quote: You're supposed to check them once in the morning and once in the afternoon to see that everything is alright. That's on the standing order but it hasn't been done lately. And the witness also says the same applies to the requirement for an officer to always be in the garden area during house visits.

In any event, Mr Commissioner, I would have to submit to you that from the evidence and from the facts, it seems reasonable to presume that supervisors of the family house and gardens area and visits to them is, to say the least, far less demanding than any other area of Hayes or any other prison in Tasmania.

Excuse me, Mr Commissioner, I've just gone off. I used to have it in my -

COMMISSIONER IMLACH: You should have left it at home, Mr Willingham.

MR WILLINGHAM: - top pocket but I thought I was having a heart attack when it went off, so now I put it down here and it's a nice feeling but -

COMMISSIONER IMLACH: I thought you would have left it back in the office -

MR WILLINGHAM: Well -

COMMISSIONER IMLACH: - on this important occasion.

MR WILLINGHAM: - it's actually a sort of prop, commissioner. If you get people who ring periodically, you can take breaks and it gives you time to collect your thoughts and all that sort of thing, otherwise I end up drinking too much water or asking for too many adjournments.

If I could continue with Officer Kraemers, on page 40 to 41, he talks about muster books. I'm at a loss to understand why this particular aspect was introduced because the witness says right off that there has been no change to muster book procedure and that's in answer to a question from Mr Shirley, not from me.

So having drawn a blank on the muster book, Mr Shirley developed the subject of half hourly checks and that was exhibit TPOA.6, Mr Commissioner, and the evidence on that is to be found on page 42 of transcript.

Now filling out of this form, Mr Commissioner, requires no greater skill than the ability to write and the ability to record what has been observed in the muster routine. As with this, Mr Commissioner, and with so many other forms presented as exhibits to you during the course of this case, we saw lots of blank forms, and I might add none of them have been - none of which have been tendered as completed so that we can see how they look when they've served their intended purpose.

That's not the point. The point is we didn't see what the forms replaced. Each form that was put before you we never saw the form that was previously in existence or the methodology that was previously in existence. The evidence strongly suggests that in relation to this particular form that's all it is. It's just a form. It's a piece of paper on which in the course of their duties officers observe and note certain activities and they then transpose that mental data to the written form of the master sheet, and do - do have a look at the exhibit, Mr Commissioner - TPOA.6.

It's a fairly basic form, is it not? And you could play noughts and crosses on it, you could play battleships on it, you could play anagrams on it, and you could probably play Scrabble on it, and you can also record a prisoner's name, and a time, and the prisoner's location.

Now, Mr Commissioner, we note that whilst the frequency of any particular function has nothing to do necessarily with work value, it is worth noting that Officer Kraemers says that frequency of these visits has decreased from half-hourly to 'hourly or even greater intervals'.

In fact, what Officer Kraemers eventually said was, 'It is now more or less at the discretion of the officer'.

I take you to pages 42 and 43 of transcript, Mr Commissioner, where Officer Kraemers talks about prisoners' daily work sheets, and also there is an exhibit associated with that - TPOA.7.

The comments that we make in relation to this particular form are identical with those that we made in relation to TPOA.6, except that you probably can't play battleships and Scrabble with this one, but what you can do is record the daily work sheet details, as is intended by the form.

The completion of the form requires no skill other than the ability to record in writing what has been observed in the course of carrying out the elementary and integral duties of a prison officer's job, which is surveillance, supervision, monitoring and security.

And Mr Kraemers himself concedes that, because in the transcript he says:

If you're on patrol down the front you should know how many blokes are working in the garden. You should know who is working, say for instance, on maintenance, who is in the glasshouses, and such forth.

So he doesn't have a problem with it. He regards it as a very unextraordinary aspect of his duties, and he wasn't claiming that it was particularly extraordinary that he had to record it.

And I would have to say that in relation to that comment that I just quoted of Officer Kraemers' we would say that that is equally applicable to the duties of officers at Launceston and Risdon.

But we'll deal with that in more detail later.

Page 43 and page 44, Mr Commissioner, Officer Kraemers talks about the status of shifts, and the focus of this part of the evidence is on the responsibilities assumed by the duty officer - typically afternoon and night shifts - in the absence of the superintendent and/or the chief prison officer.

Now, because this is a feature of other jails I am going to refer to officer-in-charge, I think, because otherwise there is confusion between senior with a capital 'S' and senior officer which is a prison officer having responsibility but not being a senior officer.

So Officer Kraemers there is discussing what I regard as the officer-in-charge. That is, where there is no-one above the

rank of prison officer - capital P capital O - but at least one of them has to assume responsibility - he is the officer-in-charge when no other officer of a rank above that is on the complex.

Now I make this point first, Mr Commissioner, that it is not a change since 1984.

Even on Officer Kraemers' evidence the staffing complement and its mix is essentially the same, and it's a matter of record that the staffing status on those shifts was the same prior to 1984 as it is now.

But, Mr Commissioner, I make the first of a number of concessions here - a pregnant pause, I'll just wait to get everyone's attention.

It may be of interest to the commission to know that a few years ago - I will come to the explicit details much later in my submission - following an agreement by the Prison Officers' Association and the then management of the prison, an allowance was struck - it has never appeared in the award - for the prison officer - capital P capital O - who was designated as being officer-in-charge at Hayes on those late shifts.

It is a very small allowance, it's a little more than \$2.00 per shift.

Now there is some uncertainty, and I haven't yet checked as to whether that is still applied rigorously or on a random basis, or at all, but it links up with the evidence of the witness I shall come to one from now, Mr Commissioner, in the Launceston Prison where you may recall that Officer Virieux discussed an allowance that he received for being officer-in-charge at Launceston but was fairly certain that it wasn't equivalent to that amount which is the difference between prison officer's salary and senior prison officer's salary, and this in fact is the amount that he was talking about because it was lifted from the figure that had been established by agreement at Hayes Prison Farm.

We have a view, Mr Commissioner, that the question of compensation for capital 'P', prison, capital 'O', officer who is assuming the responsibility for the prison in the absence of any other senior rank is an area that requires attention.

I don't think that the allowance which was struck some years ago in respect of Hayes and which is now being applied also at Launceston properly recognises and, therefore is appropriate, in the context of this case and the matters that are being debated.

We will come to you later on, Mr Commissioner, with proposals as to how we believe that ought to be dealt with, but let me now say that that is not a matter of work value. It should properly be a matter of nothing more and nothing less - to use the public sector parlance - of a higher duty allowance, or a more responsible duties allowance, and should be paid when and only when an officer is required to act in that position.

It should not be confused with those components which would normally go to an aggregated work-value enhancement.

I want to be perfectly clear on this. My view is that where an officer is required to assume a role which implicitly encompasses duties that would otherwise have been the responsibility of a senior officer.

For instance, if an officer is on a 10.00 pm to 6.00 am shift at Hayes and is effectively in control of the prison or responsible for the operation of the prison during those hours and that function would normally be carried out by a higher rank it is appropriate for us to consider at least whether an allowance should be struck to the equivalent of the senior prison officer's rate.

But it will only be paid for the occupant of that particular shift, or any other similar shift where those responsibilities are added to, and it would be paid by way of an allowance.

That is not only logical, Mr Commissioner, it is also consistent with the wage fixing principles, and particularly the principles relating to allowances and work value.

And when we come towards the conclusion of our submission, Mr Commissioner, which will be many days hence, I expect, then we'll formulate a proposal that hopefully might attract your interest and I hope that of my colleagues from the TPOA.

So, there, that is progress, Mr Commissioner, isn't it?

COMMISSIONER IMLACH: If it leads to something positive, Mr Willingham.

MR WILLINGHAM: At this rate I will give the farm away.

By the by, Mr Commissioner, while it just occurs to me, I noticed on the Cause Lists that you're listed - or you were yesterday - for two matters on the 15th of March - the Ides of March - and I understand my colleague may have spoken with you in relation to us vacating the 15th of March date.

COMMISSIONER IMLACH: If I remember correctly, that's right.

MR WILLINGHAM: I just wanted to confirm that that was the case and that after the 25th of February our next sitting day will be the 17th of March.

COMMISSIONER IMLACH: I confirm that, yes.

MR WILLINGHAM: That is correct? Thank you.

Which does get over my problem with latter day Julius Caesar and Brutus and Cassius, doesn't it?

COMMISSIONER IMLACH: It's verging on superstition, Mr Willingham.

MR WILLINGHAM: Well, life is full of superstitions. I mean, yesterday morning, Mr Commissioner, the front page of the 'Mercury' contained the horoscopes of four prominent public officials and they tell me it is a best seller, so there must be a lot of other people out there who are interested in those sorts of things.

COMMISSIONER IMLACH: Well, let us press on, Mr Willingham.

MR WILLINGHAM: I am going to have to break this up for you as we go through, Mr Commissioner, because it is a tiring exercise not only for me but I am sure for those who have to listen to it and follow it, so we have got to take it over into bite size fragments.

COMMISSIONER IMLACH: Yes, well I'll certainly appreciate that. I was going to go on and expand on the subject of that myself, but I thought, no, no, we must press on. But I will leave it to your discretion.

MR WILLINGHAM: Thank you, commissioner, I will endeavour to be as easy on the ears as I can be.

If we can go to page 44 and 46 - 44 to 46 - and also to page 48 of the transcript which deals with Officer Kraemers' evidence.

He talks about the inspection of the outbuildings on the farm. I'm not sure what my friend and colleague Mr Shirley was trying to bring to the commission's attention here, because essentially the evidence goes to locks and keys, whether they are on or off and whether they are locked or whether they are not, on certain buildings of which I won't go into detail, situated on the farm complex.

Now, how anyone could claim that anything to do with locks and keys and prison officers' duties in relation to them, is something new is totally beyond me - totally beyond me.

I mean, locks and keys are to prison officers what wheels are to automobiles.

Indeed, Mr Nielsen my colleague in his summing up quite explicitly uses the expression 'turnkey'.

I must say I disassociate myself with that expression and I argue with the conclusions he drew.

But it is such a fundamental aspect of a prison officer's duties. It doesn't matter what the locks are or where they are, how many keys you need to operate them, it is just part of the duty.

They haven't yet converted the prison into an institution which doesn't require keys, and an awful lot of keys, Mr Commissioner. Sometimes it amazes me how they manage to find the right one on the big bunches that they carry around with them, but they do it pretty well.

Now, to boil it down, what Officer Kraemers was saying is that some new locks had been installed on some of the farm outbuildings, and also Officer Kraemers then went on to say that many of the locks no longer exist. In his words he said, 'Don't worry about it'.

And I reckon that pretty well sums up the weight of that particular topic.

He then goes on to detail the random patrols which occur on afternoon and night shifts.

But, again, Mr Commissioner, it turns out that those first patrols don't take place until around 10.00 o'clock after the inmates have been secured in their cells, and it also transpires that the patrols are conducted from a vehicle from which the officer is under instructions not to alight, and the monitoring is entirely visual under the light of a lamp secured to the car - or the vehicle.

Again, we're talking about the essential functions of monitoring, surveillance and security.

At pages 46 and 47 Officer Kraemers discusses the handling of money.

But, again, the evidence indicates, Mr Commissioner, that the handling of money has always occurred.

For instance, by the evidence of Officer Kraemers upon the receipt and discharge of prisoners.

The new practices, as the evidence reveals, are essentially those where the handling of the money is very much a

peripheral or transient thing, such as accompanying inmates into New Norfolk - or whatever the reference to 'town' means - I assume that's New Norfolk, where the inmates purchase goods under the escort of an officer; where they have got authority to give money to relatives.

And, in any event, the sum involved is very small, according to the evidence. But, it isn't new.

On page 48 there was a brief reference to driving lessons.

I raise, incidentally, Mr Commissioner, these matters not because I think they are of any intrinsic value whatsoever, but because they were raised as individual components in the evidence led by Mr Shirley and the association generally.

I ordinarily would not take up the commission's time to go into such minutia but the standard rule for all advocates in a matter of this kind is that witness evidence which is unchallenged is prima facie held to be valid.

And, until you tell me differently, commissioner, I must proceed on this somewhat painstaking path.

Officer Kraemers at page 48 in talking about driving lessons produced, in my view, another non-event.

He said in his evidence that what driving lessons actually meant was an officer taking an inmate - again I think into New Norfolk - to either obtain a licence or a driving test, a driving examination.

There as some vague reference to inmates occasionally letting an inmate drive around in one of the farm vehicles prior to going for the driving test, but then of course inmates drive around both as passengers and as drivers of farm vehicles quite often.

And that has been the case for a very long time, commissioner.

On page 48 and 49 Officer Kraemers deals with the administration - or the administering - of first aid.

And he made mention of a medical officer, although I am not certain that any such person was employed during the period under review, or not as designated, anyway, but it matters not.

And we have already spoken to the question of first aid, but just so we tidy up those unanswered parts of Officer Kraemers' evidence we would say this: although the possession of a St. John Ambulance Certificate is no longer a requirement of prison officers in order for them to be paid a compensatory amount of money, it is, nevertheless, an integral

function of an officer that they have basic first aid skills. That's now incorporated within the probationary and training program.

Furthermore, Mr Commissioner, at the time the first aid certificate allowance was in force it was the subject of something of a dispute, because in around about 1983-1984 any number of the certificates had not been renewed and were therefore not current and were therefore not under the terms of the award validly going to attract the payment of the allowance, because it referred to a 'current St. John certificate' allowance.

Now I can't remember the exact numbers, Mr Commissioner, but of the total number of officers then on hand in the prison complex - bear in mind Launceston wasn't open then - there were about 100 officers in receipt of the first aid certificate allowance. About 100 in rough figures. And of those about 10 at the most were current. That is, the certificates were current.

When there was a move in the mid '80s - mid to late '80s - to look at the question of the allowances that were paid, and there were quite a number of them, Mr Commissioner, other than the first aid certificate allowance. In fact, you will be interested to know there were two first aid allowances, but I will talk about that later.

The first aid certificate allowance was, in fact, incorporated into salary, and one of the penalties we paid for this aggregation and absorption of allowances and salaries was that those officers who previously hadn't received the first aid certificate allowance got a bonus, because we couldn't single out a compounded rate and say, well it only applies to certain people, it had to apply obviously to all officers. So some officers picked up a bit of a bonus. They got an increase in their salary to reflect the absorption of the allowance, but in some cases - quite a lot - that was an allowance to which they had previously not had an entitlement and, indeed, which they had not previously been paid.

The point of going to some detail on that both now and later on, Mr Commissioner, is to say to you quite explicitly and clearly that officers are paid in their salary an identifiable component for the rendering of basic first aid. The fact that they then render it is nothing of itself remarkable and we say, you've already been paid and well and truly paid for it. And unless evidence can show that the requirements of administering first aid have increased, then there should be no adjustment on those grounds.

And later on, Mr Commissioner, do not let me forget - do not let me forget, please - to tell you about the other first aid allowance that officers used to receive.

On page 49 and 50, Mr Commissioner, Officer Kraemers talks of the rehabilitation programs and in his definition of that he identified school teachers, church people, the Salvation Army, and Alcoholics Anonymous within that group, and Officer Kraemers said that officers were responsible if some incident occurred. He didn't elaborate on that, and even though we don't quite know what he meant by incident, there was no evidence that whatever an incident means, any had occurred anyway.

But it is true, and I would be the very last person to deny it, but an officer must be ever vigilant in relation to the behaviour of inmates. An officer must be ever alert, not only to protect him or herself but fellow officers, visitors, civilians and of course the inmates themselves - it's an essential part of the job - a very demanding one.

But it is - it is an essential ingredient of a prison officer's duties to ensure the safety of inmates, staff and visitors. It just simply isn't new. It isn't something which has been added to the functions of a prison officer; it is something which has been in place and been a feature, a major feature, of a prison officer's role since there have been gaols and prison officers.

And just to conclude on that note, we would have to say, Mr Commissioner, that Officer Kraemers' evidence didn't suggest that the obligations resulting from these rehabilitation programs were even new or that they were more or less onerous than before and we would submit of course that neither do the facts reveal that either.

If we go to page 50, commissioner, where Officer Kraemers deals with prisoners' mail - m-a-i-l. He points to the fact, Mr Commissioner, that inmates are nowadays permitted virtually unlimited quantities of incoming mail and outgoing mail and he says that that incoming and outgoing mail has to be censored or scrutinised by the officers. But we say officers, prison officers, have always had to perform the task of censoring mail. We think that what Officer Kraemers was talking about in this particular passage of evidence was not the work function itself but the volume of it. We think that what Officer Kraemers was saying to the commission was that because of - because of the fact that inmates are now permitted to have virtually unlimited mail, the amount of scrutiny and the amount of censorship that the officer must exercise in relation to it increases. And to the extent that Officer Kraemers suggests that that is a fact, we don't quarrel with it.

The subject of censoring mail, Mr Commissioner, was also raised by Officer Brassington-Bell of the Risdon complex and

for ease of reference, his reference to it is to be found on page 169 of transcript.

Now we say for the purposes of the record, Mr Commissioner, so that our position can't be misunderstood, it is a fact that censoring and scrutinisation of mail took place prior to the period under review before you. Now there are a number of features which will emerge during my subsequent submissions, Mr Commissioner, which go to matters of fact, particularly the timing of introduction certain aspects and components of a prison officer's work. And where it is asserted that a particular thing happened or first occurred during the period under review and as a matter of fact it emerges that we believe the evidence has been mistakenly - unintentionally - but mistakenly given, we will seek to authenticate the correct dates. And in doing so in many instances we will refer to the 1984 case conducted before Commissioner King, that is, matter T.16 of 1984 which has an associated catalogue number of 'P' - for Peter - 272 - which of course was the old Public Service Board numerology, and that was an application for the renewal of a principal award being the Prison Officers Award, was collapsed into T.16 of 1984.

And where, and only where, it is a matter of record and a matter of fact, we will draw the commission to salient passages of the record of those proceedings in order to demonstrate, where necessary, when things have occurred when they have not.

We will not be challenging the evidence of any witness in that case; we will only be taking established facts for the assistance of the commissioner.

In relation to the question of censoring mail, I refer the commissioner to the evidence of Prison Officer Tebb - T-E-B-B - at page 57 of the transcript of matter of T.16 - and Senior Prison Officer Perkins, at page 69 of transcript. And a brief reading of those pages will demonstrate beyond any argument that the function of censoring mail was being undertaken by prison officers prior to the period under review before the commission as constituted.

If I could take you to page 50 and 51, Mr Commissioner, and we're nearly at the end of Officer Kraemers, he talks about the interaction between officers and inmates, and this is another subject which is a continuing theme throughout the evidence and we'll deal with it substantially after we've finished with the witness evidence, commissioner, but it will be necessary for me to touch upon it from time to time as it appears in the itemised response to evidence. But in this particular instance, despite my admirable colleague Mr Shirley's attempt to lead the witness, Officer Kraemers points to no more than any reasonably minded person would deduce, and that is, that in the prison environment the inmates first

point of contact for matters of concern or advice is prison officers. It could not be otherwise.

Now a number of other witnesses make the same sort of comment; that prison officers are approached by inmates for a variety of things which were perhaps categorised as welfare, domestic or interactive type nature. We just say this; if an officer gets a request from an inmate for a telephone call to a sick wife perhaps, or a sick husband, who does the prisoner go to to make that request if not a prison officer?

If the logic of that is flawless - and I've tried very hard to make it so - then if a prison inmate in 1974 wanted permission to make a telephone call to a sick wife or husband, what could have changed?

Now Officer Kraemers also in that particular part of his evidence suggests that there is a distinction to be drawn between Risdon and Hayes. That was a feature also of the witnesses from the Launceston Prison. Now I ask you to note that, commissioner, because where a witness says that either his or her functions or the functions of the geographical location in which that person is centred are different from another, albeit that the classifications themselves are of a like nature, then there may be some argument for a non aggregated outcome. That is, that the application of any increase that the commission found appropriate would not be uniformly applied across all classifications or even to all officers within a classification. This is clearly comprehended by the wage fixing principles and we will of course deal with those in much greater detail at a later stage.

But the interesting point that I ask the commission to notice is that this officer said that he thought in his view that circumstances were different from, say, Risdon by comparison with Hayes. And as you will hear later, Launceston Prison say the same thing about the other two centres. And as you will hear later, some people within Risdon say the same thing about other areas within Risdon.

However, fortunately, Mr Commissioner, Mr Nielson takes that by the scruff of the neck and puts it all into a proper perspective when we get to page 418, which is a long way away from here.

We conclude with Mr - Officer Kraemers' evidence, Mr Commissioner, when he's still talking about the interactive phase and he's a bit ambivalent about it; he says that in one way it's a good thing and in another way it's a bad thing. And he says that the - the increase in interaction or the increase that he claims has taken place - an interaction between inmates and officers 'brings the inmates and the officers closer together'.

But, the reverse side of that is he believes from his personal perspective that it imposes a greater stress - a greater consequential stress on officers.

Now, Mr Commissioner, that concludes the evidence of Officer Kraemers. The only other witness from Hayes was Prison Officer Greg Chaplain. It would take me about three or 4 minutes to cover his evidence, and if it was then appropriate we could perhaps seek a 10 minute adjournment for everyone to rest and resume with the Launceston evidence.

COMMISSIONER IMLACH: I'll go along with that, Mr Willingham.

MR WILLINGHAM: Thank you, commissioner.

Prison Officer Greg Chaplain's evidence, Mr Commissioner, is to be found at pages 56 to 59 at transcript, and that was similarly taken on 20th November 1992 at Hayes Prison Farm. There is no associated exhibit, Mr Commissioner, and most, if not all of what Officer Chaplain talks to was previously covered by Officer Kraemers and certainly to the extent that we would want to respond, and if my responses can be read where appropriate in relation to both, which helps cuts down the amount of time on paperwork, commissioner.

There are just two matters deriving from Officer Chaplain's evidence that we want to touch upon, and I will be very brief with that.

First of all, I would note that Officer Chaplain had been in the service for 6 years and had not served in an operational sense anywhere other than at Hayes Prison.

And the only reason we mention this is that the conclusion to be drawn is that to the extent that he makes any comparisons between the duties of officers at other geographical locations and those of Hayes we would submit that he is not appropriately versed so to do.

Now at pages 56 and 57, Mr Commissioner, Officer Chaplain talked about interaction, and he talked generally about the increase both in the amount and the friendliness of the relationship between inmates and officers at Hayes Prison Farm.

He talked about the welfare-orientated aspect of that relationship.

He illustrated the welfare orientation by references to telephone calls, chats of a domestic nature between prisoner and officer.

And further examples were given, Mr Commissioner, such as fishing at the dam with the prisoners, going into town when needs arose, buying a radio, choosing videos, doing some banking, cashing a cheque, filling the utility with petrol. He even instanced that as an occasion where as an example of the greater degree of relationship, the closeness of the relationship between officer and inmates. Sometimes an officer would just - I guess it boiled down virtually - he'd say, do you want a ride into town? I am going to go and fill the ute up.

And I thought that Officer Chaplain's evidence was useful by way of those examples in illustrating both for the commission and for other parties what he meant by this closer interaction.

And to the extent that he puts it, I don't quarrel with it at all.

And Officer Chaplain then commented about the results, or the consequences, of this claimed change in interaction, and he said that it makes things easier, it produces a better environment, and he says, it makes them - the prisoners - happier, and if they are happy the camp runs better.

Interesting use of the word 'camp' I thought.

On the other hand, Officer Chaplain said, Mr Commissioner, that officers have more to do and that they have to be more careful about what they do and what they say and what they think.

And these are the two aspects of the claimed increases in interaction, and we'll go through them with other witnesses, Mr Commissioner, but on the one hand there is generally fairly overwhelming consensus that environment, management, behavioural control, and a whole raft of other features are improved but there are consequential effects upon the officer which have to be taken into account.

And we will deal with those at some considerable length.

But as to the extent of Officer Chaplain's evidence that's all I wish to touch upon, Mr Commissioner.

And if it is an appropriate time, perhaps we could take a break now before going to the evidence taken from officers at Launceston Prison?

COMMISSIONER IMLACH: Yes, alright. Thanks, Mr Willingham. We will resume soon after quarter past.

SHORT ADJOURNMENT

COMMISSIONER IMLACH: After that lengthy break, Mr Willingham, we'll have to press on all the harder.

MR WILLINGHAM: I'm pleased to hear that, Mr Commissioner. I was going to ask if we could go right up until 1.00 o'clock just so that we can endeavour to get this part of the case out of the way today and keep to our timetable.

Mr Commissioner, I indicated to you that we would now proceed to deal with the evidence of the two witnesses from the Launceston Prison.

And the first of those is Prison Officer Gary Virienz - I think it is pronounced - the exhibit TPOA.8, and the evidence of that officer is to be found on pages 63 through to 92 of transcript, and the evidence was taken on the 27 November 1992 at Launceston.

Now there are quite a number of exhibits also associated with this witness's evidence, Mr Commissioner, and I will deal with them in turn as they occur in the course of our submission.

I'd also ask the commission to note that in respect of Officer Virieux at the time of taking the evidence his experiences as custodial officer was 4 years at the Hayes Prison Farm and then a year in the Launceston complex, and of course I assume that year meant that he had been there pretty well since it started up in late 1991.

And he'd previously, commissioner, been a cook at Hayes between 1979 and 1988.

And, as I have just alluded to, Mr Commissioner, at the time the evidence of these witnesses was taken the Launceston Prison had been operating for a little less than a year.

There are two aspects to that. Evidence adduced suggests that in December 1991 through to January 1992 there was a conjoint responsibility with the Corrective Services Division and the police and that responsibility passed entirely to Corrective Services late in January or early in February 1992.

At pages 63 and 64 of Officer Virieux's evidence, he attested that the average number of inmates in the Launceston Prison is around 15 and that the staffing establishment was 13. Now the staffing establishment, Mr Commissioner, is indeed 13, or it was as at December 1993, however the average number of inmates for both 1992 and 1993 was 10. And can I say to you, Mr Commissioner, when I quote numbers of inmates periodically through the course of my submissions, the actual numbers - because of statistically derived - actually end up in

point something or another, but for purposes of commonsense I've rounded them to the nearest whole figure.

Now Officer Virieux said that the period of custody at Launceston was short-term, and in his quote: there is a fairly quick turnover as they have escorts 3 days a week. He claimed that in respect of Launceston, the officers had to handle, quote: the whole area from go to woe, as distinct from, say, Hayes, where he claimed it was, quote: a finishing off sort of thing; the pick of the other institutions. I raise that in the context of the comments of the officer from Hayes who claimed differences between Hayes Farm and Risdon and here we have an officer from Launceston claiming a difference between Launceston and Hayes.

At page 65, Officer Virieux talked about the fact that prison officers were sworn in as special constables and that is for the purpose of giving them authority to deal with prisoners held in the police lockups.

In cross-examination on this aspect, at page 85, commissioner, Mrs Burgess establishes that police officers are on duty at all times when a prisoner is the police lockup.

Then at pages 65 and 66, Mr Commissioner, Officer Virieux goes through standing orders which is Exhibit TPOA.10, and that deals with the general responsibility of officers. Now dealing with that particular exhibit, we say this, Mr Commissioner, the standing order does no more than specify the general responsibility of prison officers and although it relates directly to Launceston, it could apply equally to Hayes or Risdon. There is certainly nothing contained in that standing order which could, in any way, be held to be an alteration or change to the basic functions and responsibilities of custodial work.

Certainly, Officer Virieux states that there is a greater interaction between officers and inmates than was previously the case, but in this instance, Mr Commissioner, it must be assumed that his view was predicated on his experience at Hayes compared with his present position.

Officer Virieux claims or perhaps he thinks that the interaction of officers being the first port of call for inmates' approaches, requests, complaints, concerns was not previously a requirement of prison officers, however, a little later on Officer Virieux's evidence seems to be in conflict with that statement and I'll come to that in a moment.

At 66, Officer Virieux talks about the responsibility for keys and again, my dear friend, Mr Shirley - and I just realised from rereading the evidence, Mr Commissioner, how much he got away with your extraordinary frame of mind with him. It's outrageous the way he put the words in the witnesses mouth,

and in this case he did it by asking if this was a specialist activity not undertaken elsewhere, that is, the responsibility for keys and the answer he elicited was that that it was more so because Launceston is a smaller institution and from that, Mr Commissioner, I infer that what was meant was that each officer may carry or have charge of more keys on a proportional basis than, say, an officer at Risdon, but that's not clear. That's only my inference.

Now there's two things we say in relation to that and as we've already indicated in submissions relating to Hayes, it cannot, by definition, be a change to the practices at Launceston because Launceston only commenced operation December 1991. Everything about the place was new. Every single duty there was, so to speak, a new function at that prison. The whole prison is new. The thing the commission, with respect in our strongest submission, has to consider is whether the nature of those duties in a new prison was remarkable compared with the ordinary and customary duties of a prison officer elsewhere.

We would also say, Mr Commissioner, that one of the most fundamental aspect of custodial work is the handling and responsibility of and for keys. The actual number of keys is completely irrelevant in work value terms.

Now, there's another point that spins from this, Mr Commissioner. Even if you were disinclined to accept our view, specifically on responsibility of keys, but other matters that this witness attests to, even in the unlikely event that you favour his view rather than mine, one of the things you would then have to consider is whether those changes are only applicable to Launceston and now to officers engaged in other prison complexes.

If it is indeed true that there are functions which are unique to the officers serving at Launceston Prison, by definition, in our submission, you could not then find that to be a work value component which would have uniform application to officers employed other than in Launceston. But we will, Mr Commissioner, deal with that in far greater detail in our general submissions.

Now on pages 66 through to 69, again on standing orders, Mr Commissioner, and we now refer to Exhibit TPOA.11 which is Standing Order No.3 and it's headed 'Prison Daily Routine', and we just say this, very simply, it is nothing more than a procedural routine and timetable. As a matter of factual information; as a description of record, I offer no objection to it, but I do say this that there is nothing which can be found within that, in my respectful submission, the commission could find is evidenced of either change or enhanced work value.

There was one thing that emerged from that, Mr Commissioner, and that involved an interchange between yourself and the witness and that was the reference to officer-in-charge and you will recall that we have discussed this when covering our responses to the witness evidence adduced at Hayes, so to the extent that my comments in relation of the nominated officer-in-charge and what, if any, compensation should be given to that person when there is no officer of senior or above rank present, will apply equally to this aspect of Officer Virieux's evidence, that is, we will consider this question of officer-in-charge - designated officer-in-charge as being applicable both to Launceston and Hayes, and where it exists, at Risdon.

But again we make the point, Mr Commissioner, that the practice of a prison officer - capital 'P', capital 'O' - being in charge of an institution in the wee small hours is not new. It is now new. What we have conceded is that it may be appropriate to reconsider the form of remuneration or compensation, if any, that ought to be attracted to such people, so where, to the extent in pages 66 and 69 that Officer Virieux raises, our comments in relation to the Hayes situation is identical.

But as I have said, otherwise, Mr Commissioner, Standing Order No.3, Exhibit TPOA.11 is nothing more than a description of routine and doesn't a further comment from it.

On page 69 we go to standing order, Exhibit TPOA.12, which deals with the showering of inmates. And again we would say, Mr Commissioner, that this is just a routine. It is a description that does nothing in terms of work value. There are no changes.

Mr Shirley puts words in Mr Virieux's mouth by asking if there is some difficulty in adhering to the 3-minute showering time limit. The witness suggests not, but quote: if anything goes amok it might be a different ball game. Now there's no evidence of anything going amok, and in any case, what does it matter. If the prisoner has a shower for 3 minutes, 3 minutes, an hour and 10 minutes, where's the work value? Where's the change? It is the officer's discretion. The function of supervising the showering of inmates has, thankfully, been going on for a great deal longer than the period under review before you, sir. Elements such as a change of duration of the shower itself and any other peripheral matter is not, in our respectful submission, an essential consideration that you need to detain yourself with.

If we go to pages 70 and 71, Mr Commissioner, and this goes to Standing Order No.7 and that's contained on Exhibit TPOA.13. Now that is headed 'The Prison Diary and Prison Daily Muster Sheet', and again it's another fairly straightforward

document. It's just one more routine which the witness takes us through.

And Mr Shirley, taking evidence-in-chief, attempted to have the witness say that this was a specialist function, but even the witness can't assist Mr Shirley on this occasion and it's just as well, because the Hayes evidence revealed the same thing and it's a matter of fact that diaries and muster sheets are a feature, were a feature, naturally and obviously, at Risdon. And then Mr Shirley goes onto highlight the fact from the witness that the officer must ensure the accuracy of the muster sheet.

Well, you know, I suppose if you're responsible for the muster it's implicit that you're responsible as best you can be for the accuracy of it and I'd have to make this point, Mr Commissioner Imlach: with a staff to inmate ratio of better than one to one, it can't be advanced as a particularly demanding clerical or mathematical task because confirming the accuracy means getting the numbers right. Average of 10 inmates, thirteen staff.

Page 71 to 73 deals with exhibit TPOA.14 - that's Standing Order No.12, Mr Commissioner, headed 'Procedure on Admission' - again, a routine procedure that has been in place since the year dot.

Mr Shirley in leading evidence attempts to infer that property recording is carried out by senior officers at Risdon but the evidence reveals that Prison Officers - capital 'P' capital 'O' - can and do carry out the task at the Risdon complex.

And I just note for your information, Mr Commissioner, that at page 86 in cross-examination, the witness was not surprised to learn that there are two prison officers and a clerk working in Risdon reception, and to be frank I'm not surprised that he wasn't surprised.

Now if we go to page 73 and 75, this is exhibit TPOA.15, it is Standing Order No.13 and it is headed 'Transfer - Launceston to Hobart'. Now quite clearly this is a - in a material sense is a new standing order, Mr Commissioner. It could not by definition have existed before the Launceston complex was opened.

The actual duties - the functions of escorts, security, surveillance, transportation - are not new. They're not new. Escort duties, that is, inmates travelling in the custody of officers is not new. It happens all the time. And there is nothing in that standing order which suggests a change in the fundamental practice, but to the extent that it is a fact that this is a new standing order we concede it. And while he's on this particular standing order, Mr Shirley has another reference to property recording and he briefly touches on

polaroid photography, and we'll deal with those just a little later, Mr Commissioner. But I just raise those because I wouldn't want you to think that I'd overlooked them if you'd been following the transcript.

At page 17 - I'm sorry - on page 75 and 76 we deal with exhibit TPOA.16 which is Standing Order No.14 - 'Discharge of Inmates' - and we say, yes, it's a new standing order in that it relates to Launceston but the function of discharging of inmates - release of inmates - is as old we've been incarcerating prisoners. Certainly the duties in relation to the period under review are unchanged from what they were prior to that period.

If we go to pages 76 and 78, Mr Commissioner, and deal with exhibit TPOA.17, which is Standing Order No.15 headed 'Inmates' Property Officer' - and again this is just another piece of routine. It is a fact, Mr Commissioner, that all of the institutions have to check in and account for inmates' property. All institutions have some form of secure storage for that property and in all institutions the work is carried out by prison officers. And - and there was a little bit of reference on the junior and senior safes, and you, commissioner, were moved to ask whether you were going to be addressed on the significance of the junior and senior safe. And I have to say in my reading of the evidence is that you must be disappointed.

Page 78 and 79, Mr Commissioner, deals with exhibit TPOA.18, that is Standing Order No.16 headed 'Escapes'. And apart from the fact that the witness acknowledged that he had to be familiar with the procedure, there is nothing in this apart from the obvious that it is a new standing order as it relates to Launceston.

But the function certainly isn't new. It's another one of those essential and fundamental components of a prison officer's work. The custodial process, the secure custodial process, that cannot be - and - and to be fair there isn't any suggestion that this is related to increased work value or increased skills or increased work load. It is just merely descriptive of the officer's duties and requirements.

Now on page 79 and 80, Officer Virieux deals with TPOA.19, which is Standing Order No.17, and that's headed 'Fire Emergencies Procedure'.

And just the same comments as for the previous standing orders; there is no suggestion, Mr Commissioner, that the existence of fire procedures and familiarity with them is new or is a new aspect in relation to the work value. Every officer in every institution has to be familiar with emergency procedures - fire procedures. So yes, new standing order, new prison, same function, same skills, same knowledge, same

drill. And that's the story for all of these standing orders thus far.

12 We go to page 80 and it's exhibit TPOA.20. It's the Standing Order No.19 and it's headed 'Defects Book'. Now I haven't had time to check but nothing turns on it, whether in fact a similar standing order applies at Hayes and/or Risdon, but the purpose of this standing order, Mr Commissioner, is to bring to the notice of the superintendent any defect or repair that may be required to prison effects or fittings. And effectively what that means is that an officer on his or her rounds who notices something which requires maintenance or replacement or what have you, brings it to the attention of the appropriate area by recording it in the defects book. That's just plainly a monitoring, recording function. The light globe was not working in the evening; that, one assumes, would be recorded in the defects book. It's not a challenge to the skills and responsibilities of an officer, it's just a routine undemanding function.

However, I do say this in relation to the Launceston Prison and to those who work in it; it could not by definition have been a new function because it's been in place ever since the prison opened as of course is the case with all of the other standing orders, Mr Commissioner.

13 Pages 80 and 82 we deal with TPOA.21 and that is Standing Order No.20 headed 'Inmates' Visits - or, I'm sorry, it's headed 'Inmate Visits'. Now there's really nothing in this; it's another description of routine and procedures to be followed in this aspect of the prison environment. There is nothing abnormal in these procedures, nothing at all to distinguish this function as it relates to the duties and responsibilities from the routines which apply at the other prisons and which have been applying for ages, Mr Commissioner.

Officer Virieux did draw to the fact that in some circumstances that the authorisation of visits may be made by prison officers in the absence of senior officers but we would say that there's nothing unusual or indeed changed about that particular aspect and in cross-examination, Mr Commissioner, at page 86, Mrs Burgess points to the fact that the standing order itself authorises visits by persons such as chaplains, police, legal practitioners, welfare, probation and parole officers. These are not decisions the responsibility for which rests with prison officers.

14 On pages 82 and 83, Mr Commissioner, we deal with exhibit TPOA.22. I can't find a standing order - in fact it's not a standing order, it's a memorandum or an instruction from John Howland, Superintendent, Launceston Prison, it's dated August 1992, it's headed 'Escort Routine'. All we say about that particular exhibit, Mr Commissioner is that there is nothing

in this to distinguish all other longstanding escort procedures and neither is it claimed otherwise.

15. Now, we then take you, commissioner to pages 83 and 84 to exhibit TPOA.23. This is a handwritten memorandum - document - 4 pages - and it's dated 5th March 1992 under the signature of John Howland and it starts off: Staff members.

Now I have to confess to being a bit perplexed by not only why this was introduced but what it actually does especially since the witness that there have been changes to the standing orders as a result of this memorandum, but nothing was tendered to support the assertion that there had been changes to the standing orders. So we are unable to confirm that one way or the other. And neither does the - neither does the witness tell us what the changes were that he believed were made to changing orders - to standing orders - as a result of this document, so we don't even know the nature of the subject let alone what the changes were.

But the evidence relating to the exhibit may indicate some marginal changes to practices and procedures, but certainly nothing of work value related significance. For instance - and it's not my instance, it was the ones provided by the witness and Mr Shirley - one aspect highlighted by them was not accepting various articles from visitors for inmates. And for - as a matter of interest, I can't readily find that bit - it's on page - the second page, Mr Commissioner, and it - of the exhibit - and it's roughly speaking the second paragraph and it says: Staff - underlined - will not accept the following from visitors for inmates: newspapers, magazines, books. And that was highlighted by Mr Shirley and his witness as an evidence of change. Well, if that's a change it's a change, but it doesn't add to the work does it? It's a duty that's been deleted.

So as I say - said at the start - Mr Commissioner, I'm a bit perplexed about what was being attempted by way of demonstration with that exhibit and I'm no wiser for reading through it several times and there I'm going to have to leave it other than to say that there is no evidence that any alteration to the previously existed standing orders has occurred, or if they have, they weren't brought forward by the witness.

On pages 84 and 85, Mr Commissioner, we have some other general changes which are attested to by Officer Virieux. He claims that Launceston is very unpredictable compared to the other institutions which, in his view, caused more pressure from time to time. However, a little later in that particular passage of evidence he concedes, and I quote: It has actually settled down now to what it was - end quote - and by that, Mr Commissioner, we must assume that what the witness meant was that it had settled down at the time of him giving his

evidence compared with the early months starting up of the operation of the Launceston Prison.

That's totally to be expected - totally predictable. He talked about the unpredictability of inmate behaviour and said that that was especially the case because many of them were first - first timers. Well unpredictability of inmate behaviour is a feature that all officers have to face as has recently been demonstrated yet again at the Risdon complex. It's an ever present feature for officers.

And while it may be true that firsttimers represent a slightly different problem in that their behavioural patterns have not been established and therefore are not readily known by officers it may make it marginally difficult. But, as in Launceston, at Risdon they have firsttimers, so there is no difference between the unpredictability of firsttimers behavioural patterns for those officers who work at Launceston than there is for those who work at Risdon. The circumstances are identical. There is nothing to distinguish the two.

Now at page 85, the first paragraph - and thereafter - and thereafter, Mr Commissioner, there's an interesting part of this officer's witness and he was going to the question of interaction. Now in this particular case he says that there is virtually no interaction between officer and inmate other than in the most formal sense. Now he contrasts the situation at Launceston with that at Hayes Prison Farm and he draws a comparison between his experience at Hayes and his service in Launceston. So here he says there is virtually no interaction between officer and inmate, but his comments are in stark contrast with his earlier evidence, indeed you'd have be forced to the conclusion that his evidence in his latter part is diametrically opposed to his evidence earlier on.

But if one takes his evidence as a whole, Mr Commissioner, where he speaks of the high turnover of inmates through the Launceston Prison it is far more likely that his latter comments - that there is little or no interaction between officer and inmates - and inmate - are more likely to be correct.

That concludes Officer Virieux's evidence, Mr Commissioner, and I'd ask you now to turn to exhibit TPOA.9, which is the witness statement of Probationary Prison Officer Elizabeth Barrett. Her evidence is taken between pages 93 and 110 and was led on 27th November 1992 at Launceston Prison. Of course Officer Barrett is not a probationary officer now, but at the time of giving her evidence she was and also at the time of giving her evidence she had served a little less than a year in the prison system of Tasmania.

Now a good deal of Mr Shirley's initial questioning went to inviting comparisons of the witness between the Launceston Prison environment and that of the witness's previous limited experience in Victoria. We were not told when this Victorian service took place so its relevance for purposes of comparison is fairly obscure, but we do say this, Mr Commissioner, that the relevance of that service is minimal if not nonexistent in the context of these proceedings. The work value assessment before you, sir, is being conducted in the Tasmanian Prison Service to evaluate changes in that service from a fixed point of time to another fixed point of time. It is to measure the nature, the quantum and the worth of changes which can be demonstrated to have occurred over the past 10 years within the Tasmanian corrective institutions.

And while it may be of passing interest to some to compare Tasmanian prison life and operations with other states such comparisons can, in our submission, have no value or weight insofar as the instant exercise is concerned. And the reason we say this, Mr Commissioner, is that because add nothing, nothing at all, to eliciting information about the process and change within this state.

Ms Barrett herself agreed when this same proposition was put to her in cross-examination by Mrs Burgess - and you'll find that, Mr Commissioner, at page 109.

And we would say this also, Mr Commissioner, and we believe it's significant, that Ms Barrett is simply not qualified or versed to give any sort of meaningful evidence relating to change in Tasmanian prison practices and procedures which might have occurred over the past 10 years. At best she could appropriately attest to changes which have occurred at the Launceston Prison over the preceding period of time which was a little less than 12 months.

Now to the extent that Ms Barrett's evidence was of a descriptive nature, which essentially went to explaining the routines and the general operational role of an officer employed in the Launceston Prison, we offer no objection to it.

And, Mr Commissioner, I'll very briefly take you to exhibits TPOA.24, exhibit TPOA.25, exhibit TPOA.26, exhibit TPOA.27 and exhibit TPOA.28 and respectively they deal with suicide attempts and risks, night shift roster duties, escort duties, issue of medication and use of tear gas. All of these standing orders were issued in December of 1991 or of January 1992 - perfectly understandable, commissioner, bearing in mind yet again that that's when the prison opened, and the standing orders themselves are not especially remarkable. The duties specified within them are demonstrably those expected of a person employed within the prison service. And it should also be borne in mind - I'm hammering this subject, Mr

Commissioner, I know - but it should be borne in mind also that the standing orders tendered, and indeed a number that haven't been, both by Officer Virieux and by Officer Barrett, they form part of the very start-up of Launceston Prison, and absolutely necessarily that they do, because it would be hard to imagine - in fact it would impossible to imagine the prison starting operation without them.

So what the evidence of the witnesses both appears to be doing is certainly being informative in that the commission has a better understanding if indeed one was needed of the routines and the operations and responsibilities of prison officers within the Launceston Prison, but there's no evidence within those standing orders themselves in terms of their substance and content that anything has altered except where I've specifically drawn your attention to it, commissioner. And in some of those cases in fact the alteration is in a negative not a plus sense. And the prison commenced less than 12 months before this evidence was taken, commissioner, less than 12 months before the evidence was taken.

The commission must determine its decision in relation to Launceston Prison based on what the witnesses themselves put - that they were talking to changes at Launceston. They did not and could not attest to changes at Risdon neither having served there, except perhaps in a probationary sense - in a training sense. They were talking to you, commissioner, bringing evidence before you about change at Launceston, and the reveals there is none.

The sum total of the evidence is a collection of new standing orders with old duties, old customs, old routines, old requirements, headed up 'Launceston Prison Standing Order'.

Some of the changes that Ms Barrett attested to in those standing orders was in the times of the shift roster. Without taking you to it, Mr Commissioner, something was on the standing order to start at 7.00, now it's 9.00, or hours of that ilk. It matters not. It's not a change in work value.

She talks about the tear gas procedures in relation to exhibit 28, but as soon as you get to talk to her about it, she says it's not only the procedure has never been used, they don't even have tear gas at the Launceston Prison.

If we go then to exhibit TPOA.29, Mr Commissioner, it's a resume - I think it can be described as - the evidence of Officer Barrett, and it was prepared before the evidence was actually taken so accordingly our comments are the same as we have put to you previously: we urge you to consider and rely upon the evidence adduced in the proceedings not some ex post facto documentation which asserts to be - alleges to be - a summary of evidence taken 33 seconds before.

And we note with some comfort, Mr Commissioner, your remarks at page 108 in relation to that document. We note that you accepted it - quote - as one recording matters that occur at this prison, that's all.

When it - if I can just take you to page 109, Mr Commissioner, when asked to quantify what changes of significance had occurred during her less than 12 months at Launceston - and again I ask you, commissioner, to bear in mind we're talking about the opening and starting up of a brand new institution - Ms Barrett said - quote - it was hard to put a finger on it. Put a finger on it - that is, the changes that have occurred in that less than 12 months. And she was pretty right there, too.

And she went on to say - quote - it's mainly the responsibility of the paper work, I think that would cover it.

And what we say in response to that, Mr Commissioner, is that it is another example where increased volume, if that's a fact, must not be confused with increased work value. And we also say, Mr Commissioner, that paper work of the kind referred to by the witness is simply not new. It was and it is a feature of custodial work.

Now just in general terms, Mr Commissioner, because it was a feature of the evidence of both witnesses, we just make this brief comment: the Risdon complex is quite unlike the Launceston Prison. Any attempt to compare the geographical location of any particular function is largely meaningless for the purposes of your consideration. There's not a lot of point in drawing to whether the work is performed by a senior prison officer or a prison officer at one complex as distinct from the other, especially when evidence has already been established that prison officers acting as officers in charge are paid an allowance, even though we concede that allowance may be in need of review.

Now another thing you should recall, Mr Commissioner, and we will develop this in our subsequent submissions, is that officers who act up can only be officers who have passed the senior prison officers examination for which they receive an allowance. Now that isn't held out to be a compensatory payment for higher duties. In fact I don't think the aspect has ever been thoroughly discussed so I intend to rectify that later in my submissions.

But I - let me just say this briefly so that I give my colleagues as much advance notice as I can of the sorts of things we'll be raising. We would say this to you, commissioner, that if a person sits for an examination, passes it, and is qualified to and will be called to act as a senior prison officer, and will in turn be paid the appropriate rate of pay for that by way of higher duty allowance, we say that

the very fact you receive on a routine basis the compensatory allowance having passed the examination means that we're entitled to expect that you will carry out just a little bit more than the routine duties of a prison officer.

COMMISSIONER IMLACH: Are you getting in early with that, are you, Mr Willingham?

MR WILLINGHAM: I just try to be as fair as I can and say this is going to be a feature of our submission. Mr Commissioner, I'll give you - through you, Mr Commissioner, I'll inform my colleagues that this is the line that both they and we have developed in relation to the proposed rank of Prison Officer 1st Class. We differ on the rates. There is no classification standard currently present by which we could have a disagreement upon, but I'm quite happy to flag right now that my definition of Officer 1st Class is just that, a prison officer who has successfully passed the senior prison officer examination and who has had more than 5 years service within the prison and the rate of pay should be that of prison officer plus the amount currently in force for the examination allowance.

And if officers believe that as a mark of - if officers believe that as a mark of that particular ranking - that new rank - that it requires some form of insignia, whether it be by pip or stripe, I don't have a quarrel with that, it's a matter I would leave to the management of the prison to discuss with the officers.

So I just flag that with you now but it will come up again, Mr Commissioner. And let me also flag for the benefit of my colleagues, because I know that they will want to address it, is that at no stage have they attempted to tell us what the difference is in relation to the duties between Prison Officer 1, Prison Officer 2, Prison Officer 1st Class and Senior Prison Officer. There's four ranks there. Four ranks - and that's not counting probation. At best - at best - we get differentiation by classification and by salary, not by the range of duties which is required of each of those officers.

We're talking here, commissioner, about the structural efficiency principle. This work value case is conducted under its guidance and under its strictures and you would be only too well aware, Mr Commissioner, that the essence of structural efficiency is bringing a modern rationalised approach to award structures, classifications and standards, and here we have an example of two classifications growing into five and not one jot of support for that proposition has been advanced in the evidence, even the submissions of my colleagues from the association.

If I could just recapitulate, Mr Commissioner. In my submission, an officer in receipt of the senior's examination allowance is a person upon whom we are entitled to call and perform duties of some degree above those that would normally be expected of that of a base prison officer - capital 'P', capital 'O'.

Mr Commissioner, that concludes my response to the evidence of the witnesses at Launceston and we can now turn to Risdon. With some good fortune, Mr Commissioner, and a soft wind, I would hope to be finished this afternoon. It might just require us sitting a bit close to 5.00, if that pleases the commission - or if the commission will permit it; I'm sure it won't please the commission.

COMMISSIONER IMLACH: We'll pursue it I think as long as we can today, Mr Willingham.

MR WILLINGHAM: Yes. I'd like to, if it's possible, to get this disposed of today so that we can get into the main body of our submission in the following days of hearing, commissioner.

Now the first witness from the Risdon Prison was Prison Officer George Tims. That is Exhibit TPOA.30. The evidence is found at pages 113 to 148 of transcript and was taken on the 4th of December 1992 at Risdon Prison.

Now Mr Tims' evidence was accompanied by a substantial number of exhibits, Mr Commissioner, and I note in a fit of pique that none of those had been provided to us in advance of examination of the witness, so it became a bit of a mad scramble to try and get through so many pages and make sense of our cross-examination of the witness, but we soldiered through too much complaint.

The raft of papers, Mr Commissioner, included Exhibit TPOA.34, 35, 36, 37, 38, 39, 40, 41, and 42, and you may recall, Mr Commissioner, that I did put up a mild protest at this avalanche of paper and suggested at the time that we may have to ask the indulgence of the commission to seek to recall the witness following an opportunity to give it more extensive coverage than we possibly could at that time.

However, we struck it lucky because in sort of general conversation with Officer Tims, it transpired that Exhibit TPOA.43 in fact contains the total information relating to the nature and the extent of change as claimed by the witness to have occurred in the reception area. If you have a look at pages 136 to 137 of transcript and particularly I draw you to the top paragraphs of page 137, Mr Commissioner, you will find that I frame the question in an explicit way and get an explicit answer from the officer that all we need to do to find the entire extent of changes which he alleges to have

occurred for the review period are contained in Exhibit TPOA.43.

And it was on that basis that we proceeded and it is on that basis that I say that there is no need for me to deal with Exhibits TPOA.34 through to 42.

So, accordingly, Mr Commissioner, our submission in relation to Officer Tims dwells upon and most entirely focused upon Exhibit TPOA.43, so I take you to that, and go to page 128 and 129 where Officer Tims is talking about recording of information and the fact that it's recorded on computer as well as manually.

And the evidence clearly reveals that no change in substance has occurred at all, because the manual records are in fact still maintained and compiled in the time honoured tradition, but additionally the self same information is also transposed to the MAPPER System.

And we would say to you, and it was clear from the evidence of the witness, Mr Commissioner, that the only skill that is required is actually entering the information on the MAPPER keyboard, and since that's a 'qwerty' keyboard it requires no more skill than for instance the operation of a typewriter, a function which I'm personally aware a number of officers were previously experienced with.

On page 133, the witness talks about the prisoners personal data form, and yet again, Mr Commissioner, we're talking about a situation where that information has always had to be recorded in some form or another. All we're talking about here is a new form to record details which have always been collected. And it's not to say that there might not be a couple of extra questions on it, Mr Commissioner. You might delete a question, you might not ask now for instance what a person's religion is, or you might not ask what their hobbies are and you might add a few questions, but essentially the data relating to the prisoner has always been collected and it's always been recorded. The fact that you record that information, once you've elicited it, on a new form is - is just not here or there.

I notice going through the case, Mr Commissioner, the commission has changed its transcription format, but your officers I don't think have yet hit you with a work value claim because the format has altered.

Page 133 of the - I'm sorry - page 130, and later, Mr Commissioner, on page 148, the first time we get mention of prisoners' radios. Now in the normal course of events I wouldn't dwell on this because I just don't think the commission would pay it any mind, but on the old rule that it was raised as a change and it was raised in the context of

seeking to influence you to award wage increases - and I'm just having another sensation on my hip here, Mr Commissioner - it's really off-putting - on that basis I have to cover it. So let's talk about prisoners' radios once and for all. What it has to do with work value is just anyone's guess because the function at the very best can be the receipt, the recording and the - either the storage or the issue of the article. And all four of those functions are things which have occurred ever since prisoners and their property were coming into gaols.

There may be additional functions related for instance to search, where if a thorough search of a cell is made it is not beyond the realms of possibility that an officer would open a radio and search it for contraband or prohibited substances, items, but again, that's not new either, that's what they do with the search in all cases, so the essential functions of receiving, recording, issuing are the same. It doesn't matter whether it's a gym shoe, a pair of pants, a radio, there's no extra skill in it. There's no extra work per se involved in it.

We'll talk about that at a much later stage also, but this is what we're talking about with radios. That for the record, Mr Tims would not concede in discussing it with me that radios had been permitted in the gaol prior to 1984 - he would not concede that. And yet in his own exhibit, Mr Commissioner, exhibit TPOA.43, contains the reference to personal radios March 1983. And because there's some doubt about when you're eventually going - or which date you're eventually going to decide as the datum point for this particular matter, I thought I'd better do a bit more than '83, Mr Commissioner, and I don't want to labour the point, but it is incorrect to say that inmates' radios were first permitted after 1984 or even in March 1983.

I refer you back to the evidence in T.16 of 1984 which is quite conclusive on this issue. If any corroboration is required it may be found in the evidence of Officer Tebb at page 56 of transcript, or Officer Hallett at page 174, and additionally the employer's substantive submission at page 325 discloses without rebuttal and without argument that radios have been permitted in the prison since 1979.

Now similarly, TPOA.43, Mr Commissioner, lists such items as electric razors and computer games for inmates as something new, but again we say what on earth has this got to do with the skills required of an officer to perform his or her duties, even in reception, it completely escapes my comprehension. The prisoners' property is prisoners' property. The procedures for recording, storage and issue have not changed. The articles making up the property are largely irrelevant and certainly so in these instances. And it's to be borne in mind, Mr Commissioner, that when a radio

comes in it doesn't stay there it goes in and out to the prisoner, like a TV, and we'll come to TVs later on, too.

It's not as though it's a permanent encumbrance to the officer, it's a one-off duty. There may be circumstances; if for instance the article is withdrawn as punishment, as a withdrawal of privilege, that it may have to be repeated, but in general terms - in general terms - it's a one-off operation and would occur at the time often when the prisoner comes in so it's all done at once with all of the other property that the prisoner brings in - wristwatch, money, wallet - that sort of thing.

It could be that the radio comes in separately. Same function, same responsibility, same skill, same procedure.

4. Now at pages 132 and 133 and later at pages 146 and 147, the witness - again through TPOA.43 - lists photographs of inmates as something new. And this got a large run from a number of witnesses - this question of photograph, both the photography of inmates for official purposes and photography of inmates for the inmates' personal use.

Now it was claimed as something new by the very definition of the - the statement and the exhibit, but the facts are as they were presented by Officer Tims himself at page 132 where in response to my question, Mr Commissioner, is it a fact that prison officers have been taking photographs of inmates prior to 1984, Mr Tims replied, 'It is'. And Mr Tims went on to make the point that the photographs were not taken by officers in reception but that is simply not relevant.

The fact is that prison officers were taking photographs. The fact that some did and some didn't has nothing to do with it. It was a function that was performed by like classification. It wouldn't be held even by the association that all of the duties required of a prison officer are performed by all the prison officers. All that we can assert is that it is a legitimate function - a legitimate requirement - of a prison officer - some will do it, some won't. It depends where they are, what their particular function is at any given time.

Now have a look at the photographic equipment; a Polaroid automatic instant camera, and Mr Tims said that he'd received no training in its use and furthermore, Mr Commissioner, he didn't think any such training was necessary.

Now the approval can be given by prison authorities for prisoners to have additional photographs taken for their own purposes, and it is certainly true, Mr Commissioner, that that will mean more photographs and someone's got to take them but that's all it does mean. It means more - more photographs, it doesn't mean additional skill and additional work value, but even that - even that, Mr Commissioner, is not new - it's not

new - either as a function or in terms of the volume - a photograph is taken.

If you again go to matter T.16 of 1984, clearly reveals that this self same function was well and truly in place at that time. Commissioner King in fact makes reference to it in his decision on page 8, Mr Commissioner. But if you require further corroborative support for that, you can find it in the evidence of Officer Tebb at pages 57 and 58 or the submissions of the association's representative, Mrs Herbert, at page 266.

And oddly enough in Officer Tebb's evidence in that case, Mr Commissioner, the number of additional - or the number of photographs taken for inmates' private use was listed at around about 1200 and that's the figure that was used in the instant case. So everything seems to be on all fours.

Now I won't detain the commission with an exhaustive and perhaps exhausting submission in relation - relating - to the - the remaining forms, save to say that they are entirely clerical in nature and do no more than record information which has always been recorded in one form or another. That if there is any change to the requirement of information to be recorded, it is at the very best of a marginal nature and of a kind that I exemplified a short while ago in relation to the prisoners' personal data form.

The only difference, Mr Commissioner, is a rejigged form. Absolutely no new skills are required. And we go to page 139 to 140 dealing with release and discharge and as it turned out, these - these terms were synonymous with one another although they are in fact separately listed on exhibit 43 at page 139 we attempt to clarify that, but in cross-examination Officer Tims concedes that the processes and procedures relating to discharge have remained basically the same. Page 139, Mr Commissioner. And then again later at page 140 he agrees that they are unchanged.

If we go to page 140, Mr Commissioner, which deals with weekend work, notwithstanding what was stated in exhibit 43, the cross-examination which occurs at page 140 establishes the pertinent facts. The question was - quote: What sort of duties would you or you fellow officers in reception carry out on weekends that you would not carry out Monday through to Friday - end quote. Officer Times replied - quote: We carry out the same duties.

Page 137, Mr Commissioner, the travel expenses float, and you may remember, Mr Commissioner, this is the float that's used to give released inmates or inmates travelling, a bit of a kick start until they get to their travel warranted destination and pick up the bus or whatever it is, and on the evidence the travel expenses float is \$40 issued in amounts of four, six or \$8 at a time, depending on the destination of the

inmate and issued maybe once a week, once a month. As a matter of fact we acknowledge that to be the case.

Page 137, 138, Mr Commissioner - showering of prisoners - and, Mr Commissioner, I've got to say, if there is one aspect of prison life which has been established beyond any possible shadow of doubt during this case it is the common ground that prisoners are showered more regularly than in the past, and it probably follows that they also change their clothes more often than in the past.

Now I would have thought that the fact that they shower more often than in the past and change their clothes more often than in the past would be demonstrably nothing to do with work value. Observation and surveillance of inmates while performing their ablutions in the shower blocks has been going on ever since washing of inmates was allowed. The fact that they wash more often doesn't add to an individual prison officer's work load. If the prison officer is observing showering, he or she is not doing something else. To be observing showering 7 days a week 8 hours a day, they would then not be doing any other duties.

Now I don't personally subscribe, Mr Commissioner, to the old maxim that cleanliness is next to godliness, but it does seem to me in passing that I ought to mention the fairly obvious advantages to inmates and officers that this increased frequency of showering ought to provide. I mean it must also be a consequence of this alleged change - or this actual change - because it is a change - they do shower more regularly - that it is helping to create a better environment at Risdon. Cleaner, more hygienic circumstances for the inmates themselves and for the officers who have to supervise them. And none of that is achieved by an increase in training, work value or the exercise of greater skills - it is achieved merely by dint of doing the same thing more often.

The only other spin-off that comes from that, Mr Commissioner, is that there will more dirty linen, dirty clothing, and that's something the laundry might like to address you on, Mr Commissioner, because it's scarcely something for reception to worry about because the inmates themselves do most of the washing.

Now that concludes my comments in relation to that witness, Mr Commissioner. I could probably get through the second witness who had been called from Risdon, who was Prison Officer Graeme Brassington-Bell in about five or 10 minutes perhaps and if it was inconvenient to you we could call the luncheon adjournment.

COMMISSIONER IMLACH: It sounds good to me, Mr Willingham.

MR WILLINGHAM: Thank you. Now Prison Officer Graeme Brassington-Bell is exhibit TPOA.31 - we have to go backtracking a bit I'm afraid, Mr Commissioner, there.

His evidence is to be found at pages 148 to 180 - it's taken on 4th December 1992 at Risdon Prison.

COMMISSIONER IMLACH: It seems like aeons ago.

MR WILLINGHAM: Well as we said to the TPSA this morning, Mr Commissioner, it is.

Now first off, Mr Commissioner, this witness conceded in cross-examination on page 165, that he was not in a position to accurately inform the commission of changes in the hospital prior to his actual service there. Now the transcript reveals the officer claimed that was 1986, but in fact that date is when he entered the prison service. He worked for 2.1/2 years in the general complex before going fully into the hospital, and if you refer to exhibit 31 that confirms that. So by a rough estimation we would submit that his personal experience working full time in the hospital dates from around 1989 not 1986. And indeed later in cross-examination, Mr Commissioner, the witness says he's unable to make a comparison as he was unable to recall the procedures which were in place anyway in 1986.

Now it's not always an easy task to respond to evidence and sometimes the responses can sound a bit harsh, but I'd be failing in my duty if I didn't say to the commission that with some reluctance and with some regret I submit to you, Mr Commissioner, that Officer Brassington-Bell was very far from the compelling witness. Under cross-examination he contradicted himself, he very often declined to offer views or answer questions and on too many occasions he would not or could not authenticate the assertions he was advancing.

Accordingly, Mr Commissioner, I do not intend to deal at any length with this witness's evidence, instead I invite the commission to study the transcript and make its own judgment. There are just one or two aspects we wish to cover: the bed occupancy rate which is to be found at pages 165 and 168. This was not my term, Mr Commissioner, and I never did get to discover what it actually means and it is quite clear that the witness did not either.

I just want to make the point that after the witness blandly claimed a 25% increase between 1991 and 1992 based on a graph prepared by someone else and to which he was not prepared to speak, he offered his own assessment that the rate over the 2 years was, in his estimate, much the same.

So the witness's evidence - personal evidence - was that the bed occupancy rate, whatever that means, was much the same for

the 2 years that he himself chose to introduce for comparative purposes. What we draw from that, Mr Commissioner, I don't know.

2 On page 167 we found another example of this witness's evasion in his refusal to comment on whether or not the primary function of a prison officer was custodial. Nothing much turned on the answer, Mr Commissioner, but one was surely entitled to expect from an officer with 6 years service that he would reply to such a fundamentally simple question.

On page 169, the witness claimed that censoring of mail is a function new to prison officers in respect of the period under review. He said that formally this function was carried out by administration staff although he concedes that he didn't know if prison officers might have done it as well. Now in that regard, Mr Commissioner, I refer you to the comments that I made and the supporting information when dealing with the evidence of Officer Kraemers.

Now at page 169 and following, the witness was unable or unwilling to offer a view as to whether the extent of change he asserts has occurred in the prison hospital is commensurate with the extent of change alleged to have occurred elsewhere in the prison complex. And in fact it's a passing interest to note, Mr Commissioner, his statement - quote: That he had 2.1/2 years all over the gaol - or in his 2.1/2 years all over the gaol - and you find that at page 170 - he saw no evidence of nor did he experience any marked changes to the duties of prison officers generally.

I can't have my cake and eat it, Mr Imlach. If I'm submitting to you that you should essentially disregard the evidence of this witness, then it stands to logic that I can't ask you to accept the bits that I like and disregard the bits that I don't. I just raised that last matter with you to highlight the contradictions that - and the evasion and the essential meaninglessness of the evidence that fell from him and I wouldn't ask you to rely on that last part that I drew your attention to.

At page 170 the witness says that it is difficult for him to recall the procedures which were in place in 1986 compared to now, and that was context of meaning December 1992. Never at any stage did we get a definitive answer to a definitive question and the longer we went, Mr Commissioner, the worse it got, and I'm sure you'll recall that eventually I just put up my hands and said, that's - that's it, we'll call it quits.

I still retain the view that I advanced to you at the start of this, Mr Commissioner: I invite you to study the evidence that was led, what was elicited, the cross-examination and I invite you to draw the obvious conclusions which is that the evidence adduced was of minimal value to the association's

case and of even less worth in relation to the commission's deliberations.

Now that concludes my comments in relation to Officer Brassington-Bell. Our next response will be to Prison Officer Graeme (Bob) Gourlay, exhibit TPOA.49 and 51, transcript pages 182 to 207 - evidence taken on 11th December 1992 at Risdon. And if it pleases the commission, perhaps now would be an appropriate time and I'll resume our response to the witness evidence on exhibits TPOA.49 and 51 after lunch.

COMMISSIONER IMLACH: At 2.15.

MR WILLINGHAM: Thank you, commissioner.

MR NIELSEN: Mr Commissioner, may I just interrupt? I'd like to seek leave for one of my delegates - colleagues here - that has to have - Mr Masters - has a medical doctor's appointment after lunch and I seek leave for him not to appear.

COMMISSIONER IMLACH: Yes, thanks, Mr Nielsen.

LUNCHEON ADJOURNMENT

MR WILLINGHAM: Right, Mr Commissioner, if we may proceed to review the evidence of Prison Officer Gourlay.

Mr Commissioner, initially the evidence of this witness went to the changes in the configuration of the main gate areas and you'll find that should you need to on pages 183 to 184 of the evidence.

Now the witness was then asked in that passage if following the reconfiguration there were any special requirements of officers appointed to the main gates areas - you'll see that at page 184. The witness was unable to say what management took into account in selecting officers for duty in those areas but does say that there were no specified criteria relating to qualifications or experience to his knowledge.

We then go to the changes which the witness alleged to have occurred during the period under review - and I ask you to go to pages 184 through to 186, Mr Commissioner, and we start with the distribution and security of keys.

Now this particular part of the evidence was a little confusing to follow, however what emerged eventually was that in reality these functions were and are the same as before except that perhaps a different officer, albeit of the same rank now carries out this task but that the geographical

location has altered and the environment in which the work is conducted has altered.

And if you refer to Mrs Burgess' cross-examination at page 202, she manages to simplify the facts in abbreviated and descriptive form. And if you deal then with this continuation of this particular subject at pages 186 to 190, you'll find that the confusion gradually emerges as the fact that nothing has altered except the configuration which is what we started with.

The same functions are being carried out by the same people and the same classifications but the locations have altered somewhat.

And I might add - put on record - Mr Commissioner, my appreciation to the TPOA and Mr Law and a couple of officers for yesterday afternoon when they assisted me by letting me have a look at that area so that I could clearly bring to mind exactly what was being spoken of, and of course it makes the task of dealing with the evidence that was led so much easier when one can identify in a physical sense what it is that they're talking about when they're talking about main gates 1, 2 and 3 and so forth.

Now the remaining evidence of this witness, Mr Commissioner, is - is for the most part again descriptive and in our submission contains nothing of substantial value. The facts, we would submit, are probably best elucidated from the cross-examination and we would ask you to turn to, and we certainly rely upon Mrs Burgess' efforts at simplifying the - the substance of the changes that were alleged to have occurred, and that commences at page 201 through to 206.

Now Mrs Burgess gets to the crux of this confusing - or confusing to me - area of the main gates as a whole, and she asks if the changes have resulted in a more pleasant and safer environment. And the witness agrees that it is now a more pleasant and safer environment.

Mrs Burgess goes on to suggest that extra staff are doing the same basic functions in an improved environment and the witness agrees that it is better, yes. You find that at page 202 to 203.

The personal alarms get their first mention, Mr Commissioner, at page 203 and we will deal with these more fully later in our submission when responding to the evidence of other witnesses. But in this particular instance the witness agrees that the alarms are handed out and recorded in the same manner as applies to the keys, that is, an officer coming on duty and requiring one of the alarms, receives it from that particular area and at the conclusion of the shift hands it back in.

Now, on the same page, that is, page 203, the witness varies his statement to the extent that the perimeter towers are no longer in operation in the way claimed in the statement and adds that there was no significant change in that area anyway. And of course that would be true because in fact the only change in the perimeter towers is that there is now less manning of them than there was before, so nothing has been added to that, and in fact, Mr Commissioner, you'd be well aware of that because you dealt with a dispute in relation to the installation of other methods of surveillance a couple of years back.

Now, of course, that leads to a question that we'll develop more fully in our general submissions, but there is a change, in fact, notwithstanding what the witness said, because the change is that operations of the towers, two of them haven't been manned now for many years, and of the remaining two, manning of the towers is substantially diminished. So a function whose particular characteristics were recognised as sufficiently onerous to justify additional payment had disappeared, but not the monetary compensation.

Now, we can target that quite specifically, Mr Commissioner, that statement of mine and it's a fairly important concept overall and because of it we will, as I said, talk to it later in our submission.

And, aside of those remarks, Mr Commissioner, those are the submissions we'd make in respect of that particular witness.

Now, we then turn, if we may, to the fourth witness from Risdon Prison who was Prison Officer Jan Shaw and initially you will find her statement at Exhibit TPOA.33, but it does in fact extend to Exhibit TPOA.57. Her evidence is on - who is contained on pages 207 through to 221 and it was taken on the 11th of December 1992.

And just for your information, Mr Commissioner, the average number of inmates in the Women's Prison has, by and large, remained fairly static. For instance, the figure was 8 in 1984 and it is just under 9 in 1993. In between those years, the figure has been as high as 11 which occurred in 1987, and as low as just under 6, which occurred both in 1985 and 1989.

The current staffing establishment is 13 - a superintendent, deputy superintendent, and the remaining officers are prison officers - capital 'P', capital 'O'.

Now, as I said, Mr Commissioner, there are two primary exhibits going to this witness's statement of alleged changes in the work value period and they're Exhibit TPOA.33 and TPOA.57. TPOA.33 is just a statement which contains the mere heading and no other detail, and TPOA.57 provides elaboration

of those headings, so for the purposes of our submission, we've worked from TPOA.57.

Now, oddly enough, Mr Commissioner, it's the two introductory paragraphs on TPOA.57 that give rise to our greatest concern because the witness says, and I quote:

Before the time of this work value case, the role of a prison officer was purely to turn keys.

Now it is manifestly wrong to claim that before the time of this work value period the role of the prison officer was purely to turn keys, as even the preceding evidence has disclosed to you. And it's much more than an incorrect assertion, Mr Commissioner, it borders on the preposterous and frankly, mildly concerned that such glib and misleading statements are put forward by anyone let alone an officer of this witness's experience.

Now it is equally incorrect, in our view, to assert - as the witness does in those paragraphs - that there was no interaction between officer and inmate before the time of this work value case.

As I said repeatedly, commissioner, we intend to deal with the issue of so-called interaction later in our submission so we won't dwell in it here other than to indicate our strong disagreement with the witness's comments and the obvious implications arising from it.

Another aspect I draw to your attention is that the environment is still one of, quote: 'restrictive supervision all the time'. Now we're saying that it is still one of restrictive supervision all of the time. The witness's evidence was to suggest that that was the case in the past, but implication is not so now. We say that contrary to the implication which could be drawn from the witness's evidence, activities of the inmates are highly regimented.

Now we then turn to the heading of daily reporting and we say in this respect, Mr Commissioner, the witness's comments are not challenged in as much as they accurately describe a part of the functions and responsibilities of a prison officer in the women's prison. However, it is impossible for us to accept that the task of observing inmates, including their behavioural patterns and any other unusual characteristics they might display, did not occur prior to 1984. Leaving aside the fact that constant and vigilant surveillance of inmates is just about the most fundamental aspect of a prison officer's work, we say this, in the relatively confined and restricted area of the women's prison and given the very small number of inmates, combined with the better than one to one staffing ratio, it is difficult to imagine how the officers could do other than observe the inmates or could avoid

observing the inmates and notifying their demeanour and behavioural idiosyncrasies.

Now, to suggest those who do the observing are doing something special, let alone new or additional, is farcical. As to the claim that officers pass on and discuss one another's observations amongst themselves, well, yes - it can't be seriously advanced that that's something new as well. We're asked to believe that there was no interaction between inmates and officers. This, by extension, suggests that there was no interaction between officer and officer and that is clearly not the case, as we hope to show you later.

The witness then goes on to talk about the special institution status of the women's prison, and it is correct, Mr Commissioner that the women's prison was designated a special institution for the purposes of the Mental Health Act. And we do ask the commission to note, however, that this was originally done to cope with a short-term problem which related to a single inmate and the witness confirms, at page 218, that she is only aware of one person having been held in the women's prison under the provisions of the Mental Health Services Act - Mental Health Act and that person, Mr Commissioner, who has long gone from the system, remains the only person to have been incarcerated under those provisions.

And while I'm on that subject, Mr Commissioner, and nothing much turns upon it, the director - the general manager asks me to point out that the expression 'criminally insane' is inaccurate and could be misleading to the commission. What we think the witness means - in fact we're fairly certain she means is to describe people who have been found by the courts to be unfit to plea by reason of insanity, and as I said, there has only been one person incarcerated in the women's prison who falls into that category.

Now the witness makes reference also to prisoners who may be suffering from all sorts of mental, emotional, and intellectual or psychological disorders. And she also refers to inmates with severe personality and behavioural disorders or problems, although I would have thought that it was pretty well implicit that a large number of inmates in prisons are inmates just because of those very reasons.

The witness then goes on to say that the prison population usually includes life imprisonment inmates to short-term inmates.

So in respect to all of those three aspects we say, yes, that's quite true, but there is absolutely nothing new about those mixes - those patterns - absolutely nothing has changed.

What witness describes by way of the types and the range of sentences in the women's prison is no different from what has

been the case since people have been in prison and it cannot possibly, in our submission, be advanced as a change and if it is, we ask the simple question: a change to what?

However, we do concede, Mr Commissioner, that the supervision of inmates with babies is unique to the women's prison and is of a comparatively recent nature.

The witness then goes on to talk about training and claims that no special training is provided to cope with the allegedly changed environment and that may be factual and it may be in need of attention, but it does not - as listed in TPOA.33 - represent a change. Quite the reverse, it represents the status quo. The fact that nothing has occurred is itself evidence of no change.

I then take you to page 211 and Exhibits TPOA.58 and 59 which talks about the work and conduct assessments. And first of all we say that the women's prison is not the only area of the complex which uses the points assessment system and further more, Mr Commissioner, assessment for the purposes of determining inmates' visiting privileges is not a new function. The points system is just a method - the point system is just a method, admittedly quite recent, by which the assessment is made. So at the very best we're talking about a slightly different methodology and some forms, but we're not talking about a new basic concept.

We then go onto the movement book and we say that it may well be true that the book as introduced in 1991. To that extent it's new, Mr Commissioner, but what is most definitely not new is the requirement for prison officers to monitor inmates as they move around the prison, and indeed the evidence and inspections will demonstrate clearly that in fact within the women's prison there is relative freedom of movement without the need for extensive scrutiny.

The witness then goes on talk about telephone calls for inmates and we've dealt with this already, briefly, in talking to the evidence of earlier witnesses.

I'll also be speaking to it a little later on, Mr Commissioner, and in particular at the time when we cover the evidence of Officer Van Kastell, so to avoid repetition, we will say here that our comments later, in respect of inmates' telephone calls are equally applicable to the women's prison.

Moving onto the shift report which you find on page 213, Mr Commissioner, and the main change here appears that these reports are now written instead of oral, although muster numbers in writing are not new, and again, when we say they're not new, they may be new in terms of being written in the women's prison, but written muster reports are not new to the prison, per se, and they are not new to prison officers.

As the witness says, at page 213: this report might be only a couple of words on each prisoner. And in considering the witness's evidence in relation to this subject, I ask the commission to bear in mind the number of inmates we are talking about - an average of 8, Mr Commissioner - and the number of officers on duty and available to perform this particular task.

6. The witness then goes on to talk about integrated activities and we accept that integrated activities of the kind referred to by the witness are relatively new. Nevertheless, the duties of the officer in relation to those integrated duties is essentially supervisory and I suppose for the purposes of the record, we ought to say that in this day and age, Mr Commissioner, the issue of segregation or integration by gender is a long way distant from what it use to be as witness the fact that we now have women officers doing duty in the male prison and all manner of other demonstrations of society's changing attitudes to the traditional male/female stereo types.

The witness then goes on to talk about assaults, Mr Commissioner, and it is a matter of record and it's certainly common ground between us that prison officers are exposed daily to the risk of verbal and physical assault and that cannot and is not advanced by the witness to be anything new. It has been a feature of the custodial role ever since prisons were first built and first housed prisoners, and indeed to be fair to the witness - to be fair to the witness, she at no stage says anything to the contrary and indeed she says that she has personally never been subject to a physical assault.

However, the witness then claims the increase has been in the incidents of psychological pressure and threats. I'm certainly not in a position and certainly not qualified to categorise the degrees of verbal assault and how they might be described as just slanging off or psychological pressure or whatever, Mr Commissioner, but Officer Shaw gave examples at page 215 of the kind of verbal assault situation she encountered and how she dealt with them, and I must say this, Mr Commissioner, I readily concede that no-one reading that particular passage of transcript could be other than most favourably impressed with her approach and her competency and the way in which she dealt with those particular situations.

And that concludes our remarks in relation to Officer Shaw, Mr Commissioner, and I think you'd be pleased to know that I can indicate to you, I think we'd just about get through the witnesses this afternoon.

COMMISSIONER IMLACH: Press on, Mr Willingham, press on.

MR WILLINGHAM: We might even have time for a cup of coffee, Mr Commissioner.

If we go now to the fifth witness from risdon which was Prison Officer Geoff Cox, Exhibit TPOA.50, and the relevant evidence is found at page 221 to 229 and the evidence was taken on the 11th of December 1992.

It's very, very difficult to say very much, Mr Commissioner, in respect of the evidence of this witness. His statement sets out what he believes to be a factual description of the duties, but neither his statement nor his evidence reveal any particular aspect of change nor do they reveal that he claims any particular aspect of change, so there is very little for us to make submissions upon.

Officer Cox's experience was suicides which was starkly described, were obviously a great source of distress to him and that continues to be the case - that much is clear, and I have no doubt, Mr Commissioner, that any other officer involved with either that or similar instances would most likely be affected on a continuing basis to some degree.

However, we have to again say that attempted and actual suicides are and have a most unpleasant fact of prison life for far longer than the period applicable to this case and it is not, in the evidence of this witness, suggested otherwise. And that is all I wish to say in respect to the evidence of Officer Cox.

The next witness, Mr Commissioner, was witness number 6 from Risdon Prison was Prison Officer Lesley Norris. His exhibit is TPOA.61. The evidence found on pages 231 to 255 and taken on the 5th of March 1993. there is in fact quite a lot of that - quite a number of pages to that particular exhibit, Mr Commissioner, but don't concern yourself. I intend to take you to very little of it indeed. It's actually 31 pages which again we got to see about the same time as the witness was sworn in or a little after, so I didn't have a chance to review it very carefully at the time, but happily most of the documentation goes to standard forms and menus and the like which are normal and necessary adjunct to running a catering service.

Now the witness has been in this area for almost 20 years and between 1974 and 1988 he was the prison officer providing security in the kitchen area and on the cook's days off he filled in as the cook. It appears from his evidence that in 1988, following the retirement of the then civilian cook, Mr Norris assumed that position and he was appointed acting senior prison officer, a position he still held at the time of giving his evidence.

I'm sorry, just - although it's not material to your consideration, Mr Commissioner, he is now confirmed as the senior officer. You may remember he had a little complaint about the fact he was the longest serving acting senior officer in the prison at that time.

COMMISSIONER IMLACH: Yes. I was going to say, from what I remember, he'd be very pleased to be finally confirmed.

MR WILLINGHAM: Yes, I think that was the case, and we did say that we'd have a little chat to Mr Marris about it, as I recall it.

MR MARRIS: I think he's withdrawn his membership from Actors Equity.

MR WILLINGHAM: Right. Excellent. So if we look at the first three pages of exhibit 61, Mr Commissioner, the first three pages, that is, the page where it just lists by word the items, without detail, and then the next two pages, you will note that the claim changes and the increased responsibilities all occur at the time or subsequent to the departure of the cook in 1988, and that was, of course, the point that Officer Norris took over those duties for which he was elevated to the rank of senior prison officer.

Now there's no inference from the evidence, Mr Commissioner, that Officer Norris' duties prior to 1988 had altered. So in his capacity as prison officer in the kitchen, there is nothing of note to which we draw your attention. Certainly his load and his responsibilities increased when he assumed the duties of the cook, but then so did his rank and pay.

We are unable to deduce from the evidence, Mr Commissioner, whether or not Mr Norris' duties and responsibilities are lesser or greater than those of the person from whom he took over in 1988, but having said that, we'd also comment that the duties after 1988 which Mr Norris describes do not appear to us to be remarkable, especially when set in the context of the job's functions and the incumbent roles.

Now remaining with those first three pages, Mr Commissioner, the specific items detailed there are all directly part of the overall function which would be normally and should be reasonably expected to be associated with a catering function and the person heading it up. And just saying that again, that's the specific items detailed in the second and third page of the first three pages of Exhibit TPOA.61.

That is, Mr Commissioner, I'll read them briefly: operation, cooking duties, rostering duties, teaching responsibilities, budget preparations, forward estimates, catering goods supply form.

I just repeat the comment that I made, we say that they are all directly part of the overall function which would normally and should be reasonably expected to be associated with a catering function and the person heading it up. More than that we need not say, Mr Commissioner, other than to reinforce the fact that when this officer assumed those roles in 1988 and those responsibilities, his rank, his classification, and his salary were all increased.

If I could take you now, Mr Commissioner, to the seventh witness.

COMMISSIONER IMLACH: Just to get it clear, Mr Willingham, if you don't mind, that last witness, Prison Officer Norris, did I hear you say that he received an increase - an increase - when he first took over the cook's duties and he has recently received another one?

MR WILLINGHAM: No. In 1988 the evidence deposed by Mr Norris said that upon the retirement of the then civilian cook, Mr Commissioner, he was given - or he assumed the roles of the civilian cook which clearly carries an extra burden in terms of duties and responsibility. Prima facie there is evidence of great change. As a matter of fact that person in recognition of those increased duties and responsibilities was elevated from the rank of prison officer - capital 'P' capital 'O' - to senior prison officer to reflect the change.

COMMISSIONER IMLACH: When was that done?

MR WILLINGHAM: 1988. The man's evidence reveals that, Mr Commissioner.

COMMISSIONER IMLACH: Oh, I'm sorry, I - I mean I'm just trying to get it clear in my mind, I was under the impression that he'd only recently been -

MR WILLINGHAM: No - only recently his acting senior rank was confirmed. Since 1988 and to some time beyond when he gave his evidence in 1993, he was not confirmed in the position as a permanent appointment to the rank of senior officer - senior prison officer - he was merely acting senior officer. The only difference that means in terms of the extra payment is that the position hadn't been confirmed. Mr Marris says now that it has, but it makes no difference, he was still being paid a greater amount of money and had been given a higher classification in recognition for the duties that he assumed in 1988.

COMMISSIONER IMLACH: So to some extent it was a Pyrrhic victory on his part.

MR WILLINGHAM: Oh, I wouldn't think he'd think it was pyrrhic, I gained the impression that he was very happy in his

work and the only thing he really had a beef about was that he was the longest serving acting senior prison officer. He made quite a lament about that. My colleague has fixed that - I would have thought he was as happy as the proverbial now. I certainly hope he is.

COMMISSIONER IMLACH: Thanks for that, Mr Willingham.

MR WILLINGHAM: The - the seventh witness from Risdon Prison was Senior Officer - Senior Prison Officer Kevin Salter. His evidence is to be found at pages 256 to 317. There is no personal statement by way of exhibit for this witness at this stage, Mr Commissioner, but as you will recall we come back to him later on when he gives evidence on a range of different matters.

The main purpose of Mr Salter's evidence at this stage of the proceedings was to talk to changes in standing orders if you recall, Mr Commissioner, and that's exhibit TPOA.62, and you designated those various documents as 62A through to 62M for mother.

Do you have those, commissioner?

COMMISSIONER IMLACH: I do, Mr Willingham.

MR WILLINGHAM: Right.

COMMISSIONER IMLACH: I just looked at 62I and I thought - I took it to be one and I was confused, but, no, I've got them, yes.

MR WILLINGHAM: Yes, I think we did some late renumbering there following the withdrawal of one of the standing orders too, Mr Commissioner, but 62I is one of the components of that exhibit.

COMMISSIONER IMLACH: Yes.

MR WILLINGHAM: Now by way of illustration, Officer Salter - Senior Prison Officer Salter - gave evidence in relation to standing orders which had been introduced since 1984 or standing orders which had been amended since 1984. Now although we didn't ask him to authenticate because there was no need, the witness thought there might be perhaps 70 standing orders all told and nothing turns on that, I can assure you, Mr Commissioner. But only to say that of those perhaps 70 standing orders 13 are included in the exhibit for you as - marked 62.

In cross-examination at page 281 of transcript, the witness conceded - quote: That in many instances the exhibits would only build on existing standing orders. And indeed, Mr Commissioner, in a number of instances which we will shortly

go to, he said there was in fact no change at all which sort of begs the question as to why they were up there cluttering up the exhibits but I understand my friend and colleague Mr Hughes is really anxious to get to three figures, so he missed the boat with this one. If the commissioner had marked these separately we'd be over the hundred by now, but the commissioner is too wily to fall for that one, Craig, you're going to have to work a bit harder.

Page 259 to 265, Mr Salter talks about Standing Order R7 which is exhibit 62A and deals with 'N' Division, Maximum Security and separate treatment.

Now the only aspect of the evidence led from this particular exhibit, Mr Commissioner, is that apart from a couple of changed times and the prohibition of transistor radios in cells, it shows no - absolutely no changes whatsoever and the witness, much to his credit, claimed nothing of any material consequence arose from it.

And I make this point also at this stage, commissioner; it's interesting to contrast the evidence from Officer Salter with that of other witnesses in relation to 'N' Division, and as to the differences we submit that the commission should prefer and rely upon the evidence of Officer Salter.

I take you then, Mr Commissioner, to pages 265 and 266; we are then dealing with exhibit 62B which is Standing Order R8 headed 'Criminal Courts Holding Centre'. Now Officer Salter states that the only new practices contained in this standing order go to the items 13, 14 and 15, and without taking you directly to them, Mr Commissioner, those three paragraphs deal with inmates suffering from designated medical conditions.

We say, Mr Commissioner, the only people directly affected by the requirements of those three items are the Chief Prison Officer (Reception), and the Director of Nursing which is clearly revealed from the most cursory reading of items 13, 14 and 15. The standing order requires that a particular holding cell at the Supreme Court is for the purposes of hygiene and prevention of the spread of infectious diseases to be appropriately cleaned after each occupancy. The only requirement of a prison officer, Mr Commissioner, is to be satisfied that the cleansing procedure has taken place.

I then take you, Mr Commissioner, to pages 266 and 277; this deals with your exhibits 62C, 62D and 62E, Standing Order R15, R15A and R16 respectively, all relating to suicide attempts and suicides.

We'll be brief, Mr Commissioner. We say what is new is the standing orders. The occurrence of suicides and suicide attempts is not new as we've previously submitted. These

standing orders do no more than to endeavour to establish a codified set of procedures for dealing with such matters.

I then take you to page 270 to 271; exhibit 62F, Standing Order A4 -

COMMISSIONER IMLACH: What page was that again please, Mr Willingham?

MR WILLINGHAM: The transcript page, Mr Commissioner, is page 270 to 271.

COMMISSIONER IMLACH: Thank you.

MR WILLINGHAM: 62F, Standing Order A4, headed 'Prisoners' Visits'. As we read the document, Mr Commissioner, the only alteration is the frequency of visits permitted and that a diary is now kept in the visiting box and relevant details of each visit must be recorded by the officer supervising the visit.

Nevertheless, we make the point that the requirement to record such information is not new, and that's a fact that's confirmed by the witness himself at page 292. The only change, Mr Commissioner, is that the details are now recorded in a diary completed by the officer in the visiting box.

I then take you, Mr Commissioner, please to pages 271 through 274, exhibit 62G, Standing Order A21, headed 'Disciplinary Reports on Prisoners'. Now not only does the evidence reveal no new practices or requirements whatsoever, Mr Commissioner, the witness acknowledges that. Then staying with page 274, Mr Commissioner, exhibit 62H, Standing Order No. A31, headed 'Classification Standards', and I fancy, Mr Commissioner, you would already be aware that these are not the sort of classification standards that you and I are more customarily used to dealing with.

I just refer you to one sentence, Mr Commissioner; Officer Salter says - I quote: 'As far as I see that standing order it's the same, that is an existing practice'. The only comment we make, Mr Commissioner, is that Officer Salter's remarks could accurately sum up all of the standing orders presented as exhibits under the general title of TPOA.62. The standing orders may have been reworded and they may have perhaps been brought up to date, they may even include some variation to procedures and practices, but the actual functions which the standing orders cover remain essentially and effectively the same.

Mr Commissioner, we take you to that illusive 62I. It's covered in pages 274 to 277 of transcript. This deals with Standing Order A32 headed up 'The Classification and Allocation of Prisoners', and again, to be scrupulously fair

to Officer Salter, he was unable to comment because, as he put it: of his lack of involvement in this area.

The one aspect which did emerge, Mr Commissioner, is that prison officers might be called upon to provide their views to the classification committee, and I did stay to research whether that in fact was something new the period under review or whether it occurred prior to that because it seemed to me that the opportunity for an officer to make a relevant contribution to those determined in these matters was an entirely sensible thing to expect, and I also thought that it would probably be in the officers' interests that they were in a position to make such a comment where invited. Certainly it never occurred to me that it was a requirement which imposed demands or required extra skills in the carrying out of the function.

And finally, on that particular aspect, Officer Salter does not indicate - in fact quite to the contrary - that this is a regular or frequent occurrence.

If we then go to pages 277 to 278, the exhibit 62J, Standing Order A33, headed 'Personal alarms'. As I've said a little earlier in my submission, we don't argue that personal alarms or their introduction is new to the period under review. Officer Salter attests to the fact that there was, prior to the introduction of these personalised alarms, another form of personal alarm involving two-way radios relayed to the surveillance room.

And incidentally, Mr Commissioner, there's anecdotal evidence that way, way back warders used to carry whistles as a form of personal alarm and unfortunately I ran out of time before I was able to locate the piece of documentation relating to that, and I was going to give you a little brief excursion to break up the monotony of listening to this otherwise fairly turgent submission, but I'll have to leave -

COMMISSIONER IMLACH: You were going to blow the whistle?

MR WILLINGHAM: Blow the whistle on it, I was, commissioner.

COMMISSIONER IMLACH: Well I think Mr Nielsen's hoping to do that on you later.

MR WILLINGHAM: I suppose the point of raising it, Mr Commissioner, is that some method of alarm raising has always been in place. It's not new and neither is it an additional duty. In fact, I think every officer would be thankful that not only is a method of alarm raising available, but the more immediate and the more response of it is, the better it is for their personal welfare and safety and indeed for that of the inmates.

The personal alarms currently in use, Mr Commissioner, require no training for their use. No additional skills. They pose no extra burden of any kind. In fact, we might even argue that the degree of difficulty, in relation to officers dealing with the personal alarms, is less than all of the previous systems which they now replace. As for the witness himself, he thought the personal alarms were much better than the system previously in use.

If we could then go to Exhibit 62K. It's to be found at page 278. It deals with Standing Order H1, 'Admissions to Prison Security Hospital'. Now, if Officer Salter gets to read this transcript, I don't want him to take this the wrong way but as with so many of the exhibits in 62 tendered by the association, the point of 62K is completely lost on me. It is put before the commission. The witness says there is nothing new; no changes, so therefore, Mr Commissioner, we go to the next exhibit which happens to be 62L, Standing Order E8, entitled, 'Medical Emergencies and Infection Control Procedures', to be found at pages 278 and 279 of transcript.

Now Officer Salter says, quote:

Contact with blood and stuff has always been the same regardless of whether it was 1984 or what - you were to be careful with it, yes.

He says the emergency kit is new and this item you might recall, Mr Commissioner, got quite a run during re-examination and cross-examination, and if I'd had sufficient time to read this voluminous exhibit prior to it being tendered and prior to questioning of the witness, I could have probably saved an awful lot of transcript and confusion. But since that evidence was taken I've had time to read the standing order and it's interesting to have a look at what it actually says.

It reinforces what Officer Salter said in evidence, that care must be exercised to avoid the risk of contracting infectious diseases by the careless handling of blood and body fluids.

So to assist with that preventative process the standing order sets out, Mr Commissioner, that officers are to be issued with protective gloves and an apron which is to be housed in a pouch to be worn on the belt at all times when the officer is on duty.

Additionally, the standing order says than an emergency kit will be situated at strategic locations throughout the prison complex - they're my words 'strategic locations', rather than enumerate all that are mentioned. Now the contents of this kit, says the standing order, Mr Commissioner, are for use in emergency situations only and where there is a significant risk of contact with blood and body fluids. The standing order emphasises that the kit is not to be used as first aid

equipment for minor injuries. So it is quite clear, Mr Commissioner, that I mistakenly took Officer Salter down the wrong track. This is truly an emergency kit. It has little or in fact nothing to do with rendering first aid in the generally accepted sense.

And since it got such a mention, Mr Commissioner, and that was my fault, let me explain that the plastic reviver tube airway in which you'd shown some passing interest, is a medium by which mouth-to-mouth resuscitation can be affected without the officer's mouth coming into direct contact with that of the person to be revived, thus avoiding the possibility of transmitting fluids one to the other.

The knife contained in the emergency kit is not for performing tracheotomies and the like. The standing order says that it is to be used only for cutting away clothing in emergency situations or for cut down situations such as suicide attempts.

In summary, Mr Commissioner, there is nothing which is fundamentally new. It could be argued that all the emergency kits do is to assist in providing a safer and more responsive procedure in respect of functions which themselves are anything but new.

And the last of the exhibits of 62, Mr Commissioner, is 62M dealt with at pages 279 and 280. It is Standing Order E9 and is headed, 'Procedure for Emergency Contact of Nursing Staff', and what the standing order deals with, Mr Commissioner, is simply the procedure to be used for making emergency contact with the nursing staff in the Prison Hospital. There's very little upon which to comment other than the fact perhaps that in the almost 2 years that the standing order had been in force at the time Officer Salter's evidence was taken, he had not had occasion to use it.

And that, Mr Commissioner, apart from the fact that I'm vibrating again, is the sum total of the alleged changes to the standing orders. It is the sum total of the alleged changes to the standing orders, and I hope you will agree with our submission, Mr Commissioner. While I valued the evidence of Officer Salter as being accurate and forthright, the sum total of the changes that has been revealed before you is of very insignificant proportion.

Certainly, in our submission, Mr Commissioner, not enough to trouble you in your consideration of whether work value enhancement is evident in the submissions of my colleagues from the TPOA.

COMMISSIONER IMLACH: Yes. If we were to stop now, Mr Willingham, would be over the hump for the afternoon, or should we keep going a bit longer?

MR WILLINGHAM: Mr Commissioner, I - because - I'm actually used to operating before some commissioners who think it's not good for advocates to talk for more than 5 minutes before they throw them off track, so because you've been so patient and tolerant, I reckon I've got about an hour to go, if that pleases the commission, so if it further pleases you to take a break, I'm quite happy to do so.

COMMISSIONER IMLACH: Right. And what do you think, 10 or 15 minutes?

MR WILLINGHAM: I think - I'm in the hands of the parties, Mr Commissioner, but it's been a long day for everyone and 15 might be more appropriate than 10, do you think? Say, 3.30?

COMMISSIONER IMLACH: Well that's what I say, it appears that me may be over the hump, to the great relief of all. We'll take 15.

MR WILLINGHAM: Commissioner.

SHORT ADJOURNMENT

MR WILLINGHAM: Mr Commissioner, before proceeding with our review of the evidence, could I just take you to the next day of hearing which is scheduled for the 25th of February, Friday of next week. My colleagues have asked me if we could forego the afternoon session of that particular day which presents me with no particular difficulties, bearing in mind that I will, in any case, be concluding the minister's submissions on the 17th of March.

If it meets with the convenience of the commission, could I propose that we convene at 10 o'clock on the 25th, conclude the morning session and then the proceedings would be adjourned to the 17th of March?

COMMISSIONER IMLACH: Yes. What's proposed to happen on the 25th, Mr Willingham?

MR WILLINGHAM: The 25th will be when we commence our major general submissions.

COMMISSIONER IMLACH: When you say 'we', do you mean your side?

MR WILLINGHAM: I mean the minister's representatives.

COMMISSIONER IMLACH: Yes. Yes. Well that's all right with me, subject to Mr Nielsen.

MR WILLINGHAM: It's Mr Nielsen's request, commissioner.

MR NIELSEN: If I may, I have a branch committee of management of another organisation in the afternoon, Mr Commissioner, that I'm committed to, if I can.

COMMISSIONER IMLACH: Is see. Well, look, I'm in your hands. I'm not objecting. We'll make it 10 o'clock, but I just warn you I have a hearing at 9.30 that should be quick, but you never know about these things - it's an \$8.00 one, so -

MR NIELSEN: Well I think - I don't - we'll go to the 10.30, if Mr Willingham's - if that's a bit of a problem.

MR WILLINGHAM: I really don't mind, in fact, I think to be on the safe side, 10.30.

COMMISSIONER IMLACH: Yes. I mean, it didn't worry me. I was ready to start straight after that, whenever it finished, that's all, but if we make it 10.30, I can -

MR WILLINGHAM: Very well.

COMMISSIONER IMLACH: All right. Thanks, Mr Willingham.

MR WILLINGHAM: Thank you, commissioner. If we could now take the commission to the eighth witness from Risdon Prison. This was Prison Officer Tony Jones. You will find his evidence, Mr Commissioner, at page 318 to 337. The witness statement is Exhibit TPOA.63 and the evidence was taken on the 5th of March 1993. And I'd also ask you, for the purposes of the record, Mr Commissioner, to note the alterations which were made to the statement and if you refer to page 318 of transcript, you will find those set down there.

Let me take you to page 319 firstly, Mr Commissioner, where the witness deals with surveillance by means of television monitor. Now we say in respect of this is that surveillance by means of television monitors is most certainly not a new function for prison officers although it may be true that its use has been extended in recent years.

Now, again, only to establish the factual situation, for the information of the commission, we refer you back to the transcript of Matter T.16 of 1984 and if you then check Mrs Herbert's evidence - submission I should say, at page 265 that of Officer Gourlay at page 134 or my own submissions of page 161, you will discover that television surveillance was introduced into the Risdon complex first in March of 1978.

Now this form of surveillance, Mr Commissioner, cannot be described as anything other than surveillance and that, we submit, and have previously submitted, is a fundamental and integral component of any prison officer's duties. As to the

skills required, we say they are no more, in fact, than watching a household television.

At page 319, Officer Jones refers to patrols as part of his passage of evidence which deals with the surveillance and electronics associated with the bakery. And it's not completely clear from the evidence whether or not the patrols to which Officer Jones referred were new, but they are not. The patrols themselves are as old as the hills and the skill and the responsibility required to carry them out are the same as ever, and the evidence offers no suggestion to the contrary, and in that regard, Mr Commissioner, I refer you to Mr Jones' evidence at pages 320 and 321.

Similarly, at page 319, in talking about the bakery and the electronic doors which have been installed, we say simply this, the function is not demanding, that is, the operation of the electronic doors. It is not demanding either at a physical or an intellectual sense. The commission, in our respectful submission, merely has to ask and answer the question: what extra skills are required to press the mechanism or operate the mechanism which opens and closes those doors?

Still on page 319, where the witness refers to the TV surveillance monitoring of the bakery and kitchen. Again the witness claims this is a new duty, and again we respond by saying that a more correct statement is that surveillance by television monitor in these areas is new, not television surveillance itself.

We've already said, Mr Commissioner, it could not be suggested that surveillance of these areas did not take place previously because the evidence at pages 303 - 121 of Officer Jones says that is exactly what always happened. The only alteration is that the TV monitors have been installed and that subject, Mr Commissioner, was placed in its correct perspective during cross-examination which occurred at page 328.

Furthermore, Mr Commissioner, we say there is a clear inference to be drawn that the changes shown on the second page of this exhibit, that is, Exhibit 63, headed, 'Television Ledger, Electronic Doors, Monitors', have reduced the physical demands on officers and for instance, to take again a passage of Mr Jones' evidence, they're not required to, quote: just patrol up and down the gallery as much as previously.

We say, Mr Commissioner, that the changes make it easier for the officer and we also say it is reasonable for you to conclude from the evidence that it is safer and we refer you to Mr Jones' evidence at page 321 where he says, quote: we can signify our problems quicker so we can deal with the problem quicker. There is no way, Mr Commissioner, that we can accept that the changes have imposed a greater burden on

the officers concerned or that any additional skills have been required to cope with the changes.

Page 321, Mr Commissioner, the witness deals with maximum security 'A' to 'F' Divisions, and we don't have a lot to say about that because as far as we read it it's mostly factual and more importantly, it's entirely consistent with the functions which we say are integral to a prison officer's role.

There's one small passage of the evidence there that I'm not quite sure of and that's when Officer Jones states, quote: these divisions are subject to a greater number of movements due to the higher traffic volume of inmates through this division. Now if he means higher traffic volume compared with other areas of the prison complex, it doesn't mean very much at all other than as information for the commission's benefit. The witness certainly doesn't claim that any change has occurred.

On the other hand, if he means the number of movements has increased during the review period in that area, he offers no supporting evidence and the facts indicate such an assertion, if it was intended, would have been incorrect.

At pages 321 and 322 the officer talks about 'green passes' and yet again, Mr Commissioner, we say this is another change where nothing affecting work value exists. As the witness testifies inmate movement previously occurred through means of authorisation obtained by telephone. Now, it is a movement pass completed by the officer instead of a telephone call and we again make the point, Mr Commissioner, that officers are always required to query any unauthorised movements. That is in fact one of their primary responsibilities.

At page 322, the officer briefly touches upon inmates' visits and says that they have been increased from one per fortnight to one per week. I think we've previously said to you, Mr Commissioner, that it is certain that this doesn't affect the work value component of the job and as far as I can tell I'm not even certain that it increases the workload. I refer you back to my previous submission where I said what is an irrefutable fact, that if an officer is supervising a visit that is all he or she is doing at that particular moment.

Page 322 still, Mr Commissioner, the witness talked about welfare and this is a topic that's raised by a number of witnesses, both prior to and subsequent to this particular witness. It's a confusing term. I understand what the witness has meant by it, but for the sake of brevity I will say this, Mr Commissioner, Officer Jones' evidence is essentially the same as that of other witnesses and so we'll deal with the subject a little later in one hit, but ask you to bear in mind that our comments will apply equally to all of

those evidences - all of those witnesses who gave evidence on this subject.

Just in passing, however, let me note, Mr Commissioner, that at pages 328 to 329 under cross-examination, Officer Jones says - or he seems to be saying that it is, quote: the welfare ladies, end quote, who bear the brunt of the, quote: increased welfare.

At page 322, Officer Jones deals with canteen issues and you'd be aware, Mr Commissioner, that the general subject of issues of the canteen and related matters was another aspect that got a decent sort of a run throughout the giving of evidence and I'm not certain why.

Officer Jones brought a slightly different slant to the subject so I'll deal with that aspect of it as we go through his evidence now.

COMMISSIONER IMLACH: What page was that on, Mr Willingham?

MR WILLINGHAM: 322, commissioner.

COMMISSIONER IMLACH: Thank you.

TAPE MALFUNCTION

MR WILLINGHAM: and then again in cross-examination at pages 330 and 331.

Sorry, commissioner, I'll just recapitulate on that. Officer Jones was giving as an example where an inmate might get a bag of items and he instanced that that bag might contain an item that's broken or leaking and the bag gets - the bottom of it, or if the order is wrong in the bag, the prisoners go crook at him. I don't know what we can say about that, but if he's the nearest person when the inmate discovers that there's a wrong order or something is broken I suppose it's more or less predictable that he's going to be the first port of call for reception of the grievance. It's certainly common ground - and I don't argue it - that prison officers are the first port of call when prisoners want to vent their spleen.

I suppose we'd say how often is the order wrong or how often are the items broken. I'm not sure it really is significant, but one comment that did fall from Officer Jones and you find that on pages 330 to 331, is that he does actually concede that he personally has fewer instances of prisoners verbally abusing him nowadays than was the case in years gone by. I don't attach much weight to that, Mr Commissioner, because that's the experience of one officer. He might be an old hand

whose earned his stripes so to speak in the prison. They don't take as many liberties with him as they might with a newer officer. There may be whole range of factors that affect that. I just ask you to note his comments regarding his personal experience in relation to the evidence he gave about prisoners going crook at him.

Now a related issue, Mr Commissioner, is raised at page 325 where the witness attests that prisoners can now purchase a wider variety of items from the canteen and he instanced amongst that wider variety such things as chips, cordials, biscuits, lollies, and Mr Commissioner, I imagine to the great relief of pretty everyone at the prison, deodorants. I'm reliably informed that in some instances that doesn't make a difference either which reminds me of an extremely funny story relating to one of your ex colleagues, Mr Commissioner, in Mr Swallow, but I won't relate that here, but when I do my retirement dinner that is the one story I'm going to relate. It's the most hilarious anecdote I've ever heard in industrial relations. I'll tell you about it afterwards if you wish, sir.

MR: We look forward to your retirement.

MR WILLINGHAM: Mr Commissioner, as to the diversity of items which are available from the prison canteen for inmates, I again ask you, if you believe it's necessary to corroborate my submission, to refer to Matter T.16 of 1984, particularly the evidence of Mrs Herbert in submission at page 263, Officer Gourlay at page 135, Officer Tebb at page 57, and myself, Mr Commissioner, at page 334. If you were to examine the transcript references that I have made you would find that it was a matter of common ground that a wide range of items was then available, which included sweets, lighters, toiletries, tobacco, pens, writing materials, et cetera, and for further information, Mr Commissioner, you will find unrefuted evidence that the canteen in fact opened in 1978.

Now there's another aspect of this particular passage of evidence, Mr Commissioner, where Officer Jones said that sometimes things go missing from the cells even though the cells are locked and the prisoners complain to the officers about the missing articles. Now, again, I don't think a great deal turns on this, but I just do ask the question in the rhetorical sense: who is the inmate suppose to complain to? Or indeed, who else could he complain to. The cell is locked. He thinks one of his prize possessions has taken an unauthorised walk, what else is he suppose to do but to bring it to the attention of the officer on duty. It's fairly understandable that the inmate might be a bit testy, but then again, Mr Commissioner, anyone would be in those sorts of circumstances.

At page 322, Mr commissioner, we had a chat about gas lighters - butane gas lighters of the disposable variety and Officer Jones says: inmates may now possess butane gas lighters whereas they were previously allowed matches. And whilst he doesn't specifically state it in his evidence, his statement says that the introduction of butane gas lighters is something new to the period under review. Now I just refer you back to the references I just made T.16 of 1984, Mr Commissioner, where you will find clearly that the evidence - unrefuted evidence from the association itself said that the available of butane gas lighters was freely available at the time that evidence was given.

Now Officer Jones does say that butane gas lighters could, under certain circumstances, with malicious intent by the possessors or such lighters, be converted fairly easily into some sort of explosive or incendiary device and whilst my advice on that particular matter was that if not impossible that was extremely unlikely, I just say this, that the sensible thing to do if the officer or officers have concerns about the potential misuse of butane lighters is to bring the matter to the attention of the prison management who I am sure would not hesitate to ban them, if examination or assessment proves that there is any possibility of potential risk as was suggested by the witness. That's the sensible thing to do there, Mr Commissioner, it is not to leave the potential risk there and then claim it to be a component of enhanced work value. If there is any possibility of risk you remove the risk, you don't compensate someone for it.

Just a matter of interest, Mr Commissioner, following up those references in relation to butane lighters, witness Gourlay testified that such items had been available to inmates since the opening of the canteen, and as I've already indicated to you that was 1978.

Page 323, Mr Commissioner, the witness talks about access to cells. I don't think it's quite correct to say - and I know what the - I think I know what the witness meant - but he actually says the prisoners are allowed back into their cells as and when they like. Now I think that's probably a misleading statement. I think they're allowed to go back subject to the convenience of the officer and that was the point that Officer Jones was trying to make - was that sometimes the convenience of the officer isn't quick enough or prompt enough for the prisoner's convenience and the prisoners get a bit testy - agitated.

Now as you would remember, Mr Commissioner, the cells are locked for security reasons during the day, so if an inmate requests access to any of these yards in - through 'A' to 'F', the officer has to provide that access at his or her convenience and priority. So if the officer is slow to respond, but not necessarily to ignore the request, as with

life generally I suppose it's reasonably predictable that even an inmate might sooner or later become a little peeved. I don't see that as evidence of change per se or of any particularly increased responsibility. It's just an example I think of the sorts of circumstances of agitation which present themselves to an officer on a daily basis.

At page 32 also, the witness talks about the prisoners in yards and cells and by that he said that because of a downturn in the requirement of inmates to work this had resulted in prisoners spending a greater amount of time lolling around the yards or their cells. He then went on to say that that caused increased boredom which in term was manifested by fighting and other unspecified problems which the prison officer had to sort out.

Now as we took the witness to and the commission to during cross-examination there is absolutely no evidence of an increase in the incidence of fighting, in fact the reverse is true, and in cross-examination when this was put to him, Mr Commissioner, and you find that at pages 33 to 334, Officer Jones says, well perhaps so, but now the inmates take their frustrations out on the punching bag or they might go and run a few dozen laps of the yard and use the physical exercise as an outlet for their frustrations.

Now I'd have to observe, Mr Commissioner, that an inmate working out his frustration on a punching bag or doing a few laps of the yard is infinitely more preferable than any of the other options available. And I can't comment on the 'other associated problems' to which Officer Jones referred because he simply doesn't specify them.

Page 323 still, Mr Commissioner, the officer refers to the weights room and certainly this was recently introduced or under the period of review. It doesn't amount to anything more, Mr Commissioner, than the supervision of inmates' exercise, a function which has been required of prison officers since time immemorial - they were doing it at Port Arthur. They had a bit more metal to carry around but they still supervised the exercise.

At page 323 - packed a lot into page 323 didn't he, Officer Jones - he talks about debating nights and - and to be scrupulously fair, the witness doesn't - doesn't suggest that debating as such is new to the period under review. He seems in fact more to be saying that he thinks security is inadequate when the debating teams come in and there are a lot of visitors around and they go out for a smoke break and - he doesn't at any stage suggest that the workload has increased or that the work value is enhanced - he seems to be saying, I think the security could be improved, it's an unsatisfactory situation.

In essence he seems to be saying that it's a bit sloppy security wise and for the first time, commissioner, at that particular passage, the smokers get a bit of a bashing, because they're not allowed to smoke in the education centre, they have to go outside to have their smoke, and I don't know whether Officer Jones is a smoker or not, but I judge him not to be by his comments about the smokers who are associated with the debating teams.

Nevertheless at pages 334 and 335 under cross-examination, the witness identifies the extent of change, Mr Commissioner, as being one of location from the mess rooms which is where the debating activities used to take place to the education centre and this was reinforced in fact by answers to questions from yourself, Mr Commissioner, and they're to be found at page 336.

At page 324 we get reference to outside sporting teams. We say, Mr Commissioner, that visiting teams are by no means new to the period under review as a reading of the 1984 case will demonstrate. And in fact the proceedings at T.16 of 1984, the whole subject of visiting teams, sporting or recreational teams, receives a lot of coverage and indeed is included in - there is reference to it included in Commissioner Kings reasons for decision. But if I could refer you to the submissions of Mrs Herbert at pages 50 to 51, Officer Gourlay at pages 131 to 132 and Officer - I think that may be Senior Officer Hallett - page 173, you'll find repeated references, Mr Commissioner, to such things as music, debating teams, chess, cricket, touch football, basketball, even rock concerts - even rock concerts, Mr Commissioner.

Now Officer Jones says in relation to these sporting teams - and it's all he says about it, is that it is a problem for officers because a lot more civilians are roaming around the gaol and on a lighter note, I must say - make mention of the fact that he suggests that because of today's society, if things get out of hand - like watching a tennis match is a very, very risky business indeed - watching a tennis match. Now there's not one single shred of evidence to support that proposition, Mr Commissioner, and prisoners and visitors alike, but particularly the prisoners, they know that a single transgression on their part and the whole deal is off - that is the end of the story - privilege withdrawn.

So to a very large extent these types of activities have their own inbuilt self-regulation discipline. And it's not to say, Mr Commissioner, that things don't get tense or animated during a contest of these kinds, even in a verbal contest such as a debating contest. I will say this, commissioner, if Officer Jones thinks that the prisoners versus visitors tennis matches are a bit risky you ought to come and watch some of mine sometime and then you'd find out what real risk is all about. But the final aspect of that of course is that under

cross-examination Officer Jones concedes that the responsibility for visiting sporting teams rests with the chief prison officer.

We now ask you to turn, Mr Commissioner, to witness number nine at Risdon Prison; he was Senior Prison Officer Tony Van Kastell - K-A-S-T-E-L-L - exhibit TPOA.64, the evidence to be found on pages 339 to 345 of transcript, and that was taken - that was taken on 7th May 1993 at Risdon.

Now we didn't cross-examine this particular witness, Mr Commissioner. There was no need because in large measure I assessed that what he was putting to the commission was of a factual nature and needed no particular rebuttal. Just a couple of aspects that we'd want to deal with. At page 340 he refers to inmates' telephone calls and in particular the - this aspect dealt with the introduction of telephone calls being permitted for inmates in the remand centre.

Now the witness said that this had been introduced over the past 1.1/2 years in his view, so that makes it roughly the beginning of 1992, commissioner. Nothing turns on it - certainly in the period under review by yourself.

Now the assumption that I make on that, Mr Commissioner, is that what the witness does is claim it as a function new for the officers in the remand centre. In other words, prior to 1992 or whatever the date was, phone calls weren't allowed to prisoners in the remand centre and therefore the officers who worked in there didn't have to process them. And I think if you later refer to the evidence of Officer Sly my proposition tends to be reinforced - I'll come to that a little later.

Now there's two stands to it, Mr Commissioner, the first that this is not a new function for prison officers - maybe new to some of them but it is not a new function to prison officers, and whilst it might be new to the remand centre, it is clearly not new to corrective institutions generally as previous evidence we've discussed today reinforces. And the second point is that in any case as we've previously submitted to you, the function requires no additional skills. No-one, I think, would sensibly claim that making or receiving a telephone call of the kind explained in evidence involves an increase in any kind of skill, let alone increased work value.

Pages 340 to 341, Officer Van Kastell talked about inmates television sets and for some reason I'm not absolutely sure, and I give Officer Van Kastell the benefit of the doubt, his statement, Mr Commissioner, if I could take you to it on page 2.

We just - just go back a little bit, Mr Commissioner. What Officer Van Kastell's says or it implies is that in 1990 televisions were permitted for the first time for inmates.

Now obviously the assumption - the only assumption - we can make is that Officer Van Kastell was referring to 'H' Division, the remand centre, which is implied from his statement.

So again we have this situation where it may be true - and I don't state a quarrel whether it is or isn't - that in 1990 or thereabouts in that particular part of the prison, inmates were first permitted TV sets in the cells, but it is not new and certainly not a through the period under review, Mr Commissioner, that TV sets were first permitted in cells - not by a long chalk. We take you back to evidence adduced in matter T.16 of 1984 contains innumerable references to the fact that inmates were permitted to have televisions in their cells.

If I could just give you a couple of quick references: Officer Tebb at page 56, Senior Officer Hallett at page 174, and Officer Tebb again at page 58, Mr Commissioner, actually says that as far as he could recall at the time he gave his evidence in December of 1984 there were about '40 or 50 televisions in cells at that time'. So again, we have this - this situation where some officers may, for the first time in some locations be exposed to a function which is new to them personally but which is not new to officers generally or the prison generally. Those duties are encompassed within the range of duties - responsibilities expected of that particular classification. The fact that any given officer hasn't been exposed to them cannot be held out and claimed as something new. We are talking here about a classification of officers. We are talking about a work-value case which seeks to uniformly apply the increases sought by the association. That's fair enough and I don't have any difficulty with that at all, but you cannot then particularise on a personal basis those things which are new to the individual merely by dint of the fact that individual goes around the prison in various posts and encounters something which he previously hasn't encountered but which his fellow officers have.

Now the witness also said, Mr Commissioner, that officers are required to check that contraband is not concealed in the sets prior to the prisoners being permitted to have them in their cells. I am advised, Mr Commissioner, that the officers themselves don't do the dismantling of the TV. They may be in attendance - in fact I'm sure they are - and they supervise that, but in fact the actual dismantling and checking of the TV sets in the cells is done by people other than prison officers - by maintenance officers in fact, Mr Commissioner.

Now for reasons which are unexplained by reference to the evidence, officers are also required to check the sets daily for damage and if they find damage they must report upon it.

I'm advised, Mr Commissioner, that occurs only in the remand area. Even so, I would say that they are scarcely issues of great moment. Officers are required to check for so-called contraband in all sorts of goods, so checking the televisions is just an extension of an existing function and skill and we'll come to that a bit later when we reacquaint ourselves with Officer Salter.

I'm not sure about the checking for damage routine, Mr Commissioner, I've just got to confess that escapes my comprehension and if it's a matter of any significance to you I'll ask my colleagues who can tell you the reason that that requirement is in place, but nevertheless I offer the lay person's comment that if the set's gone bung I would have thought the inmate would be the first person to bring the matter to the officer's attention - I wouldn't have thought the officer would have had to been the one to bring it to the inmate's attention, or anyone else's.

But it is - leaving that aside - that aspect, it was, I thought, worth noting that in pages, or at page 345 the witness conceded that innovations, such as inmates being allowed to have televisions in cells, improves the prisoner's demeanour and manageability. The witness's words, Mr Commissioner, were, and I quote: We don't have as many people cutting their wrists and doing themselves damage at night in the cells because they are occupied, so from that standpoint it's a lot better for the officer on duty that night. End quote.

Page 341 we get to discuss movement passes. These are synonymous with the earlier mentioned green passes, Mr Commissioner, and you'll recall that we talked about that when dealing with Officer Jones' evidence. In brief we say it is a slip of paper filled in by one officer to be read by another, and would you please in your considerations refer back to the comments we made in respect of Officer Jones.

Page 341, we touched upon the daily diary, and again I see we're getting into the realms of the fanciful, Mr Commissioner, because the only thing that is new is the diary. Everything else is unchanged. Information to be recorded has to be recorded. What it is recorded in or on is a matter of no import. I mean just for example, Mr Commissioner, the witness surely was not suggesting - surely was not suggesting - that it isn't a prison officer's job to 'ensure that inmates are presented to court on the day their warrant requests'. Of course he wasn't suggesting that. And of course such information has to be recorded and always has been, Mr Commissioner.

And if it's of interest to you and if you have any reason to doubt my assertion, may I, I think for the last time, refer you to the transcript of matter T.16 of 1984, where Senior

Prison Officer Perkins gave very detailed evidence of these duties and that is to be found at page 69. And he makes - I just note in this in passing - he makes reference to these very court books, diaries, hospital transfers, muster books, visitors

Now at page 341 to 340-do - 342 - it's getting late in the day - there's a general discussion on officers' duties and the witness statement says prison officers are responsible for inmates from 5.00 pm to 9.00 am - that's prison officers - capital 'P' capital 'O', Mr Commissioner. They're responsible for inmates from 5.00 pm to 9.00 am. And Officer Van Kastell quite properly rectifies that statement in the last sentence on page 341, and we just do no more than ask the commission to note the correction.

Officer Van Kastell says that on occasion he reads - or officers read letters to inmates, that is, inmates' letters - and one assumes obviously from that they are illiterate or close enough to illiterate - can't do it themselves. No-one, Mr Commissioner, no-one is going to convince me that an officer has never read a letter to an inmate prior to 1984 and much the same comment would apply to the following piece of that evidence where the officer says that sometimes officers are required to assist inmates with spelling.

Now, the officer then goes on to talk about the requirement to defuse situations as and when they occur and indeed to try to anticipate them happening. And it just seems a bit trite to say it, Mr Commissioner, but to defuse situations as and when they occur and to try to prevent them happening in the first place - to try to help to prevent them happening in the first place is one of the fundamental elements of a prison officer's training and duties. So to the extent that the officer's evidence is taken by me as a statement of fact we don't depart at all. To suggest that it is something new to the period under review of course is simply unsustainable.

The - talking with inmates, and the welfare orientation gets a bit of a run here also by Officer Van Kastells, Mr Commissioner, and I don't doubt it and I don't challenge it; it is clearly not, Mr Commissioner, a phenomenon of the past 9 years because it was noted by Commissioner King in his decision in T.16 of 1984 - you can find reference to that consideration on page 8 of the decision, I think we will certainly have a great deal more to say about whether the process of interaction and so-called welfare has continued to expand, to increase, during the period under review. The only point I stay to make here, is that it was not new - it did not commence as such in the period under review. Whether it has been an evolving and refining process since that time is a matter we will talk to you about later, Mr Commissioner.

Now there's mention of the cleaning of the cells and the supervision of that, and the witness attests that ward men clean the cells no more than five at a time - I assume that means no more than five cells perhaps or it may mean five ward men.

MR: Five cells.

MR WILLINGHAM: Five cells, Mr Commissioner - and that officers observe the process. Well I don't know what more I can say. It's a - there is little I can add to it. It stands by itself.

The officer then goes on to touch upon hangings and the statement says quite factually, that it is usually the officer who responds first and usually the officer who removes the towel from the prisoner's neck and the officer who attempts first to revive the inmate.

Now, unpleasant an aspect of the prison officers duties though that may be, it is not something new and neither does the witness claim it to be.

So, as a statement of fact, Mr Commissioner, we don't quarrel with it.

Now let me go to page 343, Mr Commissioner - N, for Noeline Division.

In the third paragraph on page 343 is contained the statement, 'In 1986 'N' Division was reintroduced as an isolation and protection division.

Now there are two possibilities here, Mr Commissioner: either the witness is patently wrong with that date, or the isolation and protection division was closed down some time subsequent to 1984 and was reintroduced in 1986.

Either way, either way it is not new to the period under review, because if it was in existence in 1984 and it is in existence in 1994, then it is not a change.

The fact that it opens and shuts and opens and shuts is of no great moment.

However, for the purpose of the record - I thought I had made the last reference to T.16 of 1984 but I haven't.

If I can refer the commission to in particular Mr Halett's evidence at pages 177 and especially at 193 to 195, Officer Gourlay at pages 141 and 142, a Mrs Herbert at pages 49 and 266, and myself at page 332 where it demonstrates beyond any shadow of contradiction, Mr Commissioner, that 'N' Division

was well and truly alive for the purpose of which it currently serves.

I can only say that I think perhaps in this particular case the officer has maybe mistaken the date, but if he is in fact correct that it was closed down subsequent to '84 and reintroduced in 1986 it doesn't affect one jot our submission, since at both ends of the datum point 'N' Division is clearly and was clearly in existence.

And I just note for the purpose of the record, Mr Commissioner, that 'N' Division is a non-smoking area.

I'm not going well, Mr Commissioner; we'll pull up stumps in time.

We now turn to the evidence, for the second time, of Senior Prison Officer Kevin Salter, to be found this time, Mr Commissioner, at TPOA.65, pages 346 to 352 of transcript; evidence taken on 7 May 1993 at Risdon.

Now, as you already know, Mr Commissioner, this witness was recalled by the TPOA, and Officer Salter's evidence is encapsulated in the summary contained on the first page of the exhibit under 'Work Headings'.

Now his evidence, Mr Commissioner, takes up five pages of transcript, one of which deals with retractions of the asserted changes detailed in the statement on its front page.

I would submit to the commission about the only matters which might invite your consideration were a discussion on the incidents of suicides and suicide attempts over the past 10 years, the searching of cells, and the nexus - if any - between inmate comforts and privileges and behavioural control patterns.

In relation to suicides and suicide attempts, Officer Salter thought there might have been ten, perhaps twelve, instances over the past 10 years.

That's to be found at page 349 to 350, Mr Commissioner.

And then in talking about the introduction of the suicide forms the witness volunteered, 'The incidents of it probably have been reduced because they are a very good form, an excellent form' - page 350.

So, here we have a situation where at least in the view of one officer the introduction of a form has assisted in a procedure whereby there is a more responsive attitude towards these kinds of incidents and the form itself may have assisted officers in managing to act in a pre-emptive manner so as to avoid the actual incidence occurring.

That's the implication that one can draw from the comments of Officer Salter there.

Certainly he does not say anything in relation to that form for the suicides which suggested they are on the increase or the form itself imposes undue or any other kind of burden upon the officers.

When we go to the searching of cells at page 351, the officer indicates first of all that that takes place on a random basis, or as the witness himself put it, 'when we get the opportunity', and Officer Salter then testified that during these searches officers, 'search everything possible - TV's, radios, you name it. Where something can be hidden, we'll search it.'

So, the searching of cells for unlawful or prohibited items, Mr Commissioner, or contraband as it is sometimes referred to, has been part of a prison officer's duties for as long as there has been prisons.

The fact that televisions now are a reasonably common feature in cells does not impose a greater skill requirement upon officers conducting a search, because as we have already told you it is not the officers who search the tiffs, anyway.

The basics are exactly the same.

As Officer Salter puts it, they search everything possible. Where something can be hidden it will be searched.

One of the interesting - any it may be more than interesting, it may be a salient feature, Mr Commissioner - to emerge from Officer Salter's evidence relating to televisions and searching is this theme of same work but more of it.

And that theme is liberally sprinkled throughout the evidence and the submissions of the TPOA.

I want to briefly comment on this because it will feature very significantly in our later submissions, but I want to comment on it now as it relates to searches and the tiffs as it was raised by Officer Salter.

We don't argue that if televisions and radios and computer games, and the like, are allowed into prisoners' cells, Mr Commissioner, then a function such as a random search of a cell will, or should in theory, take longer.

In practice, Mr Commissioner, what will happen is one of three things: in a given period of time less cells will be searched, or the same number of cells will be searched but other duties will not be carried out for the time being, or

the search itself will not be as intense or as thorough due to the restricted time available.

There is a further possibility, Mr Commissioner, there is a further possibility: officers will increase their work output so as to perform the alleged additional functions in the same period of time that was previously the case.

Now that doesn't mean they are overworked. It could mean, and I put it no higher than this, Mr Commissioner, I put it no higher than this, it could mean that there was some unproductive time in their duty shifts, and that better organisation and better time management has been able to utilise that unproductive time more effectively.

Now there are a number of other valid conclusions which can be drawn from this small example of a search, and that's why I raised it briefly there, Mr Commissioner, but we will later speak to it in far more detail.

If I can take you to Exhibit TPOA.66, please, Mr Commissioner. This is the eleventh - in terms of people it is the tenth witness called from Risdon Prison. Pages 352 to 369, 7 May 1993, Chief Prison Officer Basil Masters.

Chief Officer Master's exhibit comprises ten pages, Mr Commissioner. There is a cover sheet summary of the type that you would be well familiar with now; there are two pages prepared and signed by the witness; and there are seven pages prepared and signed by someone else.

Now, Officer Masters I would expect gave evidence in a forthright and accurate way, and there isn't very much for me to comment upon.

I will just go through a couple of the matters that I wanted to raise to your attention.

At page 354 in dealing with the sick parade ledger, Officer Masters - Chief Officer Masters - commented on the fact that these duties were previously performed by the principal prison officer.

Now, the principal prison officer's position, Mr Commissioner, was abolished finally approximately 2 years ago. I'm advised more accurately 18 months ago, Mr Commissioner, and we do not argue, we do not argue, Mr Commissioner, that to the extent that the principal prison officer's position has been abolished most, if not all of the responsibilities of that position have devoluted down to chief officers.

The extent to which we believe you should weight those duties will be a matter of our subsequent submission, Mr Commissioner.

And there is no doubt that if duties which were previously carried out by the principal prison officer are now being carried out by chief prison officers there is no question of doubt that those functions are near to the rank of chief prison officer.

Mind you, it is worth noting that the second-last sentence in the third paragraph on page 354, Mr Commissioner, the words, 'and, in fact, all he needs to do is usually verify with the superintendent the level of classification of the inmate, therefore the amount of escorting officers required'.

At page 354 it deals with the chief officer in charge from 5.00 pm to 10.00 pm, and this is factual, but I don't believe, Mr Commissioner, that any officer above the rank of CPO - Chief Prison Officer - has ever worked those hours. So I am not sure what was new.

At page 354 and 355 in dealing with chief prison officer's general duties I say it is factual. I don't stay to argue it, but our submission is that there is from those descriptions on pages 354, 355, no evidence of change, and obviously, therefore, no evidence of work value.

At page 355 the matter of the so-called prisoners requests is made, and whilst I don't argue that as a fact, either, I would like to add the note that it is just another very minor administrative function. Someone has to do it, and it is performed traditionally, or customarily, by a ranking officer.

The remainder of the evidence, Mr Commissioner, and that is at pages 355 through to 366, goes through someone's documents, or documents prepared specifically by someone else, although I generally accept the accuracy of what's contained in that document.

In his evidence, Mr Masters often conceded that there had been no change or minor change, and elsewhere he concedes that changes were of a very marginal character, and certainly not such as to require - these are my words, not Officer Masters - certainly not such as to require additional skills or training which lifts the work value.

I do make one point that it is perhaps a pity that the TPOA didn't call the author of those seven pages of documents to give evidence in respect of them. It might have been a better way to go.

But, having said that, I accept them as accurate records of the duties of the officer. So perhaps we wouldn't have been any more enlightened.

Now, at pages 366 to 367 the question of increased welfare is raised yet again. This recurring theme of officers taking a greater role in assisting inmates with welfare-related problems.

Now, to be fair, as indeed Mr Masters was in his evidence, he acknowledges that this is probably a good thing, this increased welfare, as he sees it.

He also acknowledges that whilst officers may be asked about these problems, they are not necessarily expected to resolve them, Mr Commissioner.

Not necessarily expected to resolve them, is what Mr Masters said. What I say is, Mr Commissioner, they are not required to resolve them either.

So, what are these welfare problems, Mr Commissioner? We asked Mr Masters to give us a couple of examples, and you'll find that on page 367 in my cross-examination of Mr Masters at the fourth paragraph and the following.

Mr Masters gave as an example an occurrence of the death of an inmate's relative, and the prisoner asked if he could attend the funeral and Mr Masters suggested in his evidence that in those sorts of circumstances what would happen is that request would be passed by the receiving officer to the appropriate people where necessary, including the chief superintendent.

Now I don't think Officer Masters - Chief Officer Masters - is asking us to believe that prior to 1984 no inmate ever requested permission to attend the funeral of a relative, and I don't think Chief Officer Masters is asking us to believe that any inmate prior to 1984 ever initially directed such a request to a prison officer.

Now, again to be fair to Chief Officer Masters, I don't think he was suggesting that, but if he wasn't suggesting that the value of his example is by way of illustration as to what is meant in the generic sense welfare problems.

It doesn't disclose, Mr Commissioner, evidence of change. Neither does it disclose evidence of increased skill necessary to deal with such problems.

Another example provided by Chief Officer Masters was where an inmate requested permission for a contact visit to see his pregnant girlfriend.

And I notice Mr Masters himself put it that the first contact is through the officer. I accept that, Mr Commissioner, but it wouldn't occur to me that first contact would be anywhere other than the officer.

So, that's really all we needed to comment upon in relation to Chief Officer Masters' evidence, other than to say, as I have already done, that for the remainder of it we accept it as a factual record.

And, you will bear in mind, Mr Commissioner, my earlier comments that to that extent we see no changes. We acknowledge no changes other than those that we have alluded to.

Now, Mr Commissioner, 3 or 4 minutes and this onerous task is over.

We deal with the eleventh witness from Risdon Prison, Prison Officer Roger Sly, whose exhibit is TPOA.67, and his evidence is to be found at pages 370 to 384, and since I have got a minute to spare I will just make this comment: that one feature which did emerge as I was reviewing the evidence, Mr Commissioner, is that as the witnesses paraded before the commission if you took it from the first to the last witness the pages of transcript that they took up in their evidence was ever diminishing.

So I think it was because my friends probably got it pretty streamlined towards the finish, and perhaps they ran out of things to say. I don't know.

So, Mr Commissioner, particularly referring to pages 380 to 391 of Officer Sly's evidence, and that particular part is where he is under cross-examination, and the witness says that none of the duties detailed in his statement have changed since he was in this division - which is the Medium Security Division.

None of the duties detailed in his statement have changed since he was in this division.

He says, Mr Commissioner, that medium security is different to maximum security, but that really isn't much more than stating the blindingly obvious.

And there really isn't much more for us to say, but there are a couple of points we just want to cover for clarification.

One of them is at page 381 where he refers to 'inmate visits', and there the witness in contrary distinction from previous witnesses concedes that all officers have to deal with the processing of visitors, although in some areas the processing of visitors is different from other areas, and it always has been.

Pages 381 to 382 the discussion centres around the dispensing of medication, and the witness agrees, finally, that other

officers have to perform this task, although it is not done in maximum security.

Again we have no evidence of change for officers generally, other than this particular officer had not done it before, and the witness conceded, Mr Commissioner, that it did not require any particular skill.

At pages 382 to 383, just going back to inmates' telephone calls, the witness said, with great candour, and putting it right where it belongs in its proper perspective, he says, 'It is not necessarily an extra skill, it is something I've been asked to do that I was never asked to do before', which is what we have been saying throughout the day, Mr Commissioner.

The task does require him to be methodical, a point that he raises in that particular passage of cross-examination. He places great store on his expertise in being methodical, and rightly so.

All we say is that being methodical is an attribute that the witness acknowledged was a prerequisite for being a prison officer.

Mr Commissioner, we will be dealing with matters such as the dates of introduction of the womens' prison at Risdon, of Launceston, of Medium Security - not just when it reopened in the 80's but when it first opened and when it closed, to give you a better understanding of what has occurred with prison institutions in this State over the last 50 years, or any other period that we think is material to your best consideration.

Nothing hands on it, Mr Commissioner, we will just be going through, drawing it together, giving you details of inmate population, staffing ratios, and the like.

So should you have any questions in respect of that we will be coming to it, and we can, hopefully, address any matter that you raise.

Now, Mr Commissioner, that concludes my review of the evidence of the witnesses themselves.

At the next day of hearing, Mr Commissioner, I intend to briefly touch upon the summaries of evidence of Mr Shirley and Mr Nielsen. As I have indicated to you, that shouldn't take very long.

And then we will go into our general submissions and we will be addressing you on Friday of next week on such matters as the work-value principle, the structural efficiency principle, the operative date that we believe ought to apply, given that

my colleague, Mr Nielsen, has argued I think the date of the first hearing.

We will be talking to you, Mr Commissioner, if time permits, about the datum point, and that becomes more confused the more I read it, but let me say at this point in time, as I have said in the past, Mr Commissioner, I don't think a great deal turns on it.

And that is particular the case because the association has always attempted to adduce evidence from 1984.

So, it will probably be that as the case has transpired, that's probably a sensible place to start from. But I will talk to you on that later.

We will talk to you, if time permits, Mr Commissioner, on the scope and the extent of the case. That is the scope that these applications can touch and the extent to which the submissions and evidence, in our respectful submission, permits you to evaluate any enhanced work value.

We'll then talk about the extent of the claim itself and whether there are some parallels with the 1984 case that the association ought to be mindful of. We do this, Mr Commissioner, not - because we don't ambush. We give our colleagues plenty of opportunity to listen to what we say and to give them adequate - more than adequate opportunity to deal with those matters subsequent to our primary submissions.

We're not - let me emphasise, Mr Commissioner, we are not going to close off options - any options even if it were in our power to do so - to the TPOA making a thorough case as it wishes to present to you, and I have already indicated that to Mr Nielsen, even to the extent of saying that if he wishes to produce fresh exhibits or witnesses, subject to what only you say about that, Mr Commissioner, I won't be raising any objections. We're not here to prevent a proper airing, a proper ventilation of the association's case.

I don't think, on Friday of next week, Mr Commissioner, we will get past those topics that I have discussed and then on the following day of hearing, the 17th of March, we will go into further aspects which I will detail for you next week and we will certainly conclude our substantive submission to you. If the commission pleases.

If, in the meantime, Mr Commissioner, there are any aspects of information that you require, I'd be greatly obliged if you or your associate can let me know and I will arrange with Mr Marris and Mr to have those available to you at your convenience.

COMMISSIONER IMLACH: Thanks, Mr Willingham. Is there anything else before we adjourn till next week?

MR NIELSEN: I don't think so, Mr Commissioner.

COMMISSIONER IMLACH: Well we'll adjourn till next Friday.

HEARING ADJOURNED