



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. 9129 of 2000

IN THE MATTER OF an application by
the Australian Liquor, Hospitality and
Miscellaneous Workers Union -
Tasmanian Branch to vary the Security
Industry Award

Re: to vary Clause 7 - Definitions

COMMISSIONER ABEY

HOBART, 11 October 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING COMMENCED 11.19am

COMMISSIONER: If I could take appearances, please.

MR P. TULLGREN: If the commission please, my name is TULLGREN, and I appear for the Australian Liquor, Hospitality and
5 Miscellaneous Workers Union.

COMMISSIONER: Thank you, Mr Tullgren.

MR P. MAZENGARB: If it pleases the commission, PAUL MAZENGARB, representing the Tasmanian Chamber of Commerce and Industry and on my right I have Mr D. Milling who is the Acting
10 Manager of Chubb Protective Services for Tasmania. If it pleases the commission.

COMMISSIONER: Thank you, Mr Mazengarb. Mr Tullgren, it's your application?

MR TULLGREN: Thank you, commissioner. I thought at this stage it
15 might, if the commission is agreeable, be easier if I sought to call the evidence and then to make submissions.

COMMISSIONER: Certainly, Mr Tullgren. Just a procedural issue, can you give me an indication of the time frame you will be using today? The reason I ask that is because, through circumstances that
20 arose yesterday, I've had to list another matter for four o'clock.

MR TULLGREN: Commissioner, with respect to whatever submissions my friend might make, if we're still here at four o'clock, I'll be very surprised, although I notice there's silence from my friend, so I'm not sure whether that's consent or not.

25 COMMISSIONER: Don't let it be a barrier, we'll proceed.

MR TULLGREN: Commissioner, I'd seek to call Mr William Archer.

WILLIAM HENRY RAYMOND ARCHER, sworn:

MR TULLGREN: Mr Archer, could you give your full name, please?..... William Henry Raymond Archer.

30 Your address?..... Unit 1, 7 Donald Court, Glenorchy.

Who is your current employer?..... Chubb Protective Services.

Where are you currently employed?..... At the Magistrates Court.

That's here in Hobart?..... Yes, Liverpool Street.

How long have you worked at the courts?..... Nine years now.

Who were you employed by, prior to Chubb?..... Wormald Security.

Was Wormalds taken over by Chubb?..... That's my understanding, yes.

5 In total, how long have you worked as a security officer?..... I think it's about 13 years now.

What level are you currently classified at?..... Level 1.

How long have you been a special constable?..... Since we started in the courts nine years ago.

10 Since you've started working for Chubb, how many training sessions have you attended?..... From memory, I think we've had about - probably five or six.

How many of those related specifically to matters to deal with being a special constable?..... Probably most of those, I think.

15 Prior to working at the courts what type of security work did you do?..... Mostly patrol work, some static guard and control room work.

You say you did static guard work. Could you indicate what that work was and where it was performed?..... It could be anywhere. If
20 premises have been broken into and couldn't be resecured or something like that, we'd just have to stay there and make sure it was secure.

Was that the major part of your work?..... No. The major part would have been patrols.

25 What sort of patrol?..... Mobile patrols.

While you were employed as a mobile patrolman do you recall what classification you were?..... Level 2.

In general, can you tell the commission what your duties were as a mobile patrolman?..... Depending on which patrol you were doing -
30 it would be lock up premises at certain times, check other premises, make sure they're secure, attend alarms.

You said that you were required to lock up some premises. Can you give us an example of what was required?..... Normally, just start
35 at the top floor, work your way down and make sure there's nobody left on the premises, check doors, windows and secure the premises and turn the alarm on, on the way out.

You'd do that by driving to those premises?..... Yes, normally.

After you'd finished checking, what would you then do?..... Put the alarm on and go to the next premises.

5 You also indicated that you would attend premises and what work did you perform when you attended premises?..... In respect to an alarm situation?

No, we'll deal with alarms later, but in your mobile patrol if you weren't locking up premises, what work would you be expected to do?..... Check the premises for broken windows, windows left open, doors left open, lights left on.

10 Were you expected to check the perimeters of facilities you visited?..... It depends what they wanted. They might only require an external check. In that case, you'd check the perimeter but some places required internal checks as well.

15 Could you describe what you mean by an external check?..... that's normally all the external doors, gates, windows.

And you checked them to what end?..... To make sure they're secure.

20 You said that in some cases you were required to check other than the perimeter? Is that right?..... They might want an internal check done.

Can you describe what an internal check is?..... Enter the premises, turn the alarm off if necessary, check all floors, any safes, make sure the lights are turned off, no water running, any dangerous situation - fire hazards, that sort of thing.

25 How much of your work would have been simply doing perimeter checks or checking the outer doors and windows of buildings?..... In those days it was probably 75 per cent external and 25 per cent internal.

30 You said you might be required to respond to alarms. Can you explain what you mean by that?..... If a burglar alarm had been activated in a premises, we'd get a radio call to go there. We would go to the premises, check it out. If there hadn't been a break-in or you couldn't see obvious signs of a break-in, you'd go inside, check the alarm panel, see what section was in alarm and go and have a look at that. If
35 everything was okay, you'd leave a report, seal it back up and go.

Were you required to disable or turn the alarm off?..... Yes.

How would you have done that?..... Usually with a code supplied by the control room.

If, as part of your check, you came across what looked like a forced entry of a building or premises, what were your instructions?.....
The only instruction was to go back to the vehicle, call the police and just observe.

5 When you went back to your vehicle, did you call the police directly?..... We'd call the control room and tell them that it looks like there's been a break-in.

You'd call the control room and then you'd wait for the police?.....
That's correct.

10 Were you aware of any instruction that you were to seek and apprehend the intruders if they were in the building, or you believed they were there?..... No. Our instructions are to observe and wait for the police to arrive.

15 When the police arrived, what would you have been expected to do?..... Take them in. If you knew the building you'd show them around or show them where the point of entry was, just generally assist them.

Were you expected to pursue intruders either on foot or in your vehicle?..... No, not as far as I'm aware.

20 Would you agree with me that the work you're involved in as a mobile patrolman was basic checking of premises?..... That's correct.

What level of skill did that job entail compared to your current job?..... Nowhere near as much, I personally think.

25 In your view could they be compared, the two different jobs?.....
Not really. They're worlds apart.

As a mobile patrolman, did you do some - what I'll describe as a round?..... Yes, we'd have a round to do.

30 How long did it take you to learn your rounds?..... Generally, I think when I started we got two days. If you weren't real sure of it, you might have got a third - night I should say, not a day.

How did you learn your rounds?..... By going out with another patrolman.

He'd show you what to do?..... Yes.

35 Would he show you how to physically check the perimeters and so on?..... Yes.

Who dictated your level of work?..... Sorry, I don't understand.

I'll approach it another way. Were there different levels of security expectation from different clients, as you understood it?..... Yes, there was.

5 Would that expectation of the level of security affect the job you did at a particular site?..... It would. Some would only require an external check where others required internal checks. We had other things to check as well. At the Antarctic Base, we'd have to check the freezers and make sure they were still operating.

10 The amount of work on a particular premise was dictated by the client's demand for a level of security?..... That's correct.

Compared to your current job, what was the level of responsibility being a mobile patrolman?..... Compared with the courts, a lot less.

15 Compared to your current job, what was the security risk involved in being a mobile patrolman?..... There was a risk there but nowhere near as much as at the courts.

Were you ever in any physical danger while you were a mobile patrolman?..... I can't remember any situation where I was fearful for my safety.

20 How would that compare to the work you currently do?..... There's no comparison at all really.

There have been times in your current job where you have feared for your safety?..... Yes, quite often.

25 Why is that?..... It's just the people we have to deal with. They could be violent criminals. They can have mental problems. They don't want to be there, basically.

30 When you were working as a mobile patrolman, who set the pace at which you did your work?..... You more or less set it yourself. If you wanted to go flat-out half the night - there was a full round. You had to get it all done but you could probably take it a little bit easier later on in the night if you worked very hard the first half.

How does that compare to your current job?..... You've got no say in it. At the moment the workload's there and it's dictated by the courts.

35 So your workload is dictated by the courts and their requirement for people to appear and so on?..... That's correct.

During the inspection that we did this morning that you were involved in, it was shown that you do prisoner escorts. Can you just explain what this means?..... Basically, you take the prisoner from the

cell, take them up to the appropriate court, wait with them there while they're dealt with and then, depending what's happened to them, bring them back down to the cells.

5 Do you escort prisoners singularly or in groups?..... We've had up to - I think six prisoners with one guard.

You said earlier that you can be required to deal with all sorts of prisoners. Are you required to escort all types of prisoners or persons that have been convicted?..... Yes, all types.

10 And they cover the full range of crimes and offences?..... Yes. Anything from urinating in the street to murder, basically.

There's no bar on who you're required to escort to a court?..... No.

You indicated this morning that you are expected to take convicted persons to the holding cells?..... That's correct.

15 When you escort a convicted person down to the cells, what do you do when you arrive at the cells with them?..... If they've just come from court and received a sentence or been remanded in custody, we have to search them. All their property is put in a book. The top copy goes into a bag with their personal possessions and it is put away in a locker.

20 Are you required to search the person?..... Yes. I generally get them to turn out their pockets but jeans pockets and things like that they can't turn out. You've physically got to put your hand in there because they won't tell you if they've got drugs or anything secreted in there.

25 You have got to physically search them?..... Yes.

In your experience, what's the reaction of people when you seek to search them?..... Most of them aren't too bad. We get the occasional one that doesn't like the idea much.

30 Do you have situations where people resist being searched?..... I haven't, personally, so far.

When the search is completed, then what happens?..... Like I say, their property is bagged and put into a locker and they are put into a cell.

35 When people are convicted by a magistrate, have you ever experienced a change in their personality or behaviour?..... Quite often they can turn quite nasty and violent.

That comes unexpectedly?..... Yes. It comes on quite quickly.

What's the court's expectation about removal of persons who have been convicted - from the court?..... Generally, get them out as fast as possible.

They don't like you to dally?..... No.

- 5 The removal of a person who has been convicted, is that always an easy situation?..... Not always, no.

Why not?..... They don't want to go. I've had people hanging onto the dock. I've had a child that I've physically had to pick up and carry down to the cells, screaming and kicking all the way.

- 10 So you can run into a fair degree of resistance?..... You can, yes.

Turning to the actual provision of security in the court rooms, we looked at two court rooms this morning. Turning to the court room used for the children's court, can you describe what security you're expected to provide?..... Court 9, we generally sit on the door if there's nobody in custody and call the children in and their parents or guardians, make sure that there is nobody in there who doesn't belong in there, being a closed court; go downstairs and bring up the children in custody and stay in the dock with them and take them back down if necessary or make sure they go to the bail room.

- 20 If, during the proceedings in the children's court, the child in question becomes noisy or abusive or threatening, what's your role?..... We'd normally try and calm them and depending on the magistrate, he might put them in custody for contempt of court. We wouldn't take them out unless the magistrate directed us to do so.

- 25 If you were in a situation where you had someone who was being noisy or abusive and they weren't directed to be removed, what is your understanding of what is expected of you?..... Like I say, we wouldn't take them out unless the magistrate said so. We'd probably move a bit closer and just keep an eye on them and monitor the situation.

30 What's the situation if a person in the gallery became noisy or abusive?..... In that situation, we'd ask them to quieten down and if they didn't we'd remove them.

- 35 How would you remove them?..... Ask them to go outside. If they didn't we'd possibly have to do it physically.

You have the ability to physically remove someone from the court?..... Yes.

Do you carry any form of restraint devices?..... No.

If you were having to remove someone, it would be physically taken without the assistance of any form of restraint like handcuffs, for instance?..... That's right.

5 What is your responsibility, again in relation to the children's court, a child seeks to flee from the court?..... We had that situation just recently. We take chase and hopefully catch them.

But you're expected to give chase?..... Yes.

If at all possible, to apprehend them?..... That's correct, yes.

10 What is the expectation if you apprehend them?..... Return them to the cells.

If they resist apprehension, what are you expected to do?..... Use all force necessary to make sure they comply.

Do you carry any means of self defence?..... No.

You've said you're a special constable?..... That's correct.

15 Is that where you understand you have the power to arrest people?..... Yes, we have.

20 If you seek to arrest a person, can you describe what you understand happens?..... We place a hand on them and tell them they're under arrest and then we escort them to the police station to be charged there.

If they don't accept your invitation to go to the police station, what do you do?..... Put them in some sort of restraint hold and take them down there physically.

25 As far as you know, in carrying out that duty, you act no differently than a member of the Tasmania Police Force?..... That's correct.

We also had a look in a court which is known as the bail court?..... The lock-up court?

30 The lock-up court, I'm sorry. You've described the security that you provide in the children's court. Is the security you provide in the lock-up court any different than that that you provide in the children's court?..... It is. In so much, there's two officers in the lock-up court. One basically calls the defendants in and the other officer gets the defendants from the cells and takes them to the bail room, if necessary.

35 Excluding that, if for instance someone was abusive or difficult, are you expected to act in any different manner than you would in relation to the children's court?..... No, it would be the same.

Similarly, if a member of the public in the public gallery was abusive or difficult, the same would apply as in the children's court?..... That's correct.

5 Do particular magistrates have particular views about how the security should be provided in their court?..... They all seem to have their own ideas of how they like the courts to run.

Are you expected to comply with the requirements of that particular magistrate?..... Yes.

10 How do you become aware of the requirements of the magistrate?..... I've just learnt their ways over the years. Some magistrates won't have children in the court, others don't mind. It's just their own little foibles, and we learnt them.

15 Would you agree with me that it would be fair to say that the level of responsibility you have can be dictated in part by a particular magistrate and their likes and dislikes?..... Yes, to a certain degree.

In your view, does that increase the level of judgment and discretion you're got to exercise?..... Yes, it does.

20 Have you ever been faced with situations where members of the public have been difficult to court staff?..... Yes, quite often.

Have you ever dealt with persons who have been subject to restraint orders?..... Yes, quite often.

25 Can you explain the type of situations that you've been involved in?..... In restraint orders, you've generally got both parties in the court. Obviously, they don't like each other to start with. Just recently, there was a fight between two females outside one of the courts because of restraint orders.

30 How are you expected to deal with such situations?..... Keep them separate, calm them down. Generally, they've got to have papers served on them so we don't like to throw them out unless we have to.

35 Does that expectation about calming them down and keeping people apart apply in other situations such as if there's a disturbance generally in a public area in the court buildings?..... Yes. In the front counter, or anything like that. We try and diffuse the situation as much as possible.

In diffusing that situation you rely on your own judgment and discretion?..... That's correct.

Would it be fair to say that the expectation of the courts is that you, as security officers, will maintain a peaceful and orderly environment?..... That's our job, yes.

5 If there are any security problems or threats that you'll have to attend to them?..... Yes.

Do you have a role in checking which prisoners are to be released from custody?..... Yes. We quite often - when we get a list from the remand centre, it has on the list whether the prisoner is to be returned to Risdon or they're clear to go. It's happened a few times now that
10 they've been marked as being clear, whereas we know from previous dealings that they're actually serving a sentence and are not clear to go.

What happens in those situations?..... A couple of times the person has got bail on the charges they came up on and we've taken
15 them from the bail room and returned them to the cells.

If you hadn't have done that, what would have happened?..... They would have been released.

Again, in performing that role, you are reliant upon your own knowledge and exercise of discretion?..... Yes, to a certain degree.
20 We will double check or either ring records and ask them to look it up or ring Risdon and get them to double check their records, just to make sure that we're correct.

This morning we inspected the holding cells. Do you know how long those holding cells have been there?..... Since the place was built.
25 I think it's about four or five years.

How many persons can each cell hold?..... It depends on the day, but four or five, probably six at a squeeze.

We noticed this morning that the cell doors don't have any form of slot or aperture in them, so if a prisoner for instance wanted a drink, how
30 would you go about getting the drink to the prisoner?..... We have to open the door.

Do you have to open the door even if the cell has got three or four or more persons in it?..... That's right, yes.

Do you consider that there's a potential security risk there in doing that?..... There is, if they have it in their minds that they want to
35 plan an escape. That would be a good way of doing it.

Have you noticed the behaviour of some prisoners change when they're in the cells?..... Yes. They get bored. They don't like being there. They get unruly, noisy.

So there can be a lot of noise and yelling and so on in the cells?..... There normally is, yes.

5 Have you ever been the subject of abuse from prisoners in the cells?..... Quite often. It's nothing unusual when you're working down there.

We heard this morning that from time to time prisoners will attempt to damage themselves while in cells and there was one instance of a particular prisoner jumping from the bench against the door. Have you seen that happen?..... I have, yes.

10 Does it go on regularly?..... Yes. It's something that's not regularly, but it happens from time to time.

15 What is your understanding of how you're supposed to respond to that situation?..... Well, we've never had anything written down, what we have to do, but what we try and do is calm the person down - try and calm them down.

But that comes down to a matter of your judgment, discretion about whether you do that?..... That's correct.

We also heard this morning that from time to time the sprinklers, the fire sprinklers are set off in cells?..... That's correct.

20 Have you experienced that happening?..... It's happened to me twice recently.

25 Can you explain what happened in the first of those instances?..... In both cases it was children from Ashley. I think they threw a shirt or something over the sprinkler head and physically ripped it off. The sprinkler head goes off, an alarm sounds and water just rushes out of the cells. We had to remove the children from the cells, ring next door to the remand centre and ask them to come over and take them over there until we sorted the matter out.

30 In the situations that you're referring to, how many prisoners were in the cell?..... I think there were four the first time and I think there were about five or six the next time.

35 Can you describe what happens from when you open the cell door?..... There's a lot of yelling and screaming. The prisoners in the other cells are a bit worried because the water is rushing under the doors in their cells as well. The ones that were in the cell, they're all absolutely soaked to the skin. You get them out. If we've got another cell to put them into, we'll do that but last time it was chock a block full, so we just had to stand them in the area there and wait for the remand centre to arrive.

Do you have a way of turning the sprinkler system off?..... No, we don't.

5 How is the sprinkler system turned off?..... They ring the sprinkler people who are in Mornington and it takes them about twenty minutes to come over and turn it off.

Until they arrive, what happens to the water?..... The water is rushing out and running under the door, into the other cells and out under our main door.

10 Does that create security problems, in your view?..... It does. If there's enough room next door, the remand centre will take the lot so we have to get all the prisoners out. There's a lot of people coming and going.

This is while there's water flowing across the whole of the holding cells?..... Yes.

15 The situations you've described about prisoners trying to damage themselves and setting off sprinklers and being loud and noisy, are they situations you experienced as a mobile patrolman?..... No, nothing like that.

20 In your view, Mr Archer, can you compare the work you do now with that of being a mobile patrolman?..... No, there's no comparison at all, I don't think.

25 How would you describe the environment that exists in the courts?..... Most of the time the people don't want to be there. They're not coming there of their own free will and at times it can be very tense.

Is it a different environment to that you experienced being a mobile patrolman?..... Yes. I was much more relaxed being a patrolman. You did have your moments of course but it wasn't all the time like it is in the courts.

30 How would you describe the environment in the courts?..... It can be very stressful at times.

35 You've said that your understanding is that the court has an expectation that you'll provide a calm, quiet, controlled environment and deal with any security problems. How does that compare to the expectations that were upon you when you were a mobile patrolman?..... Well, we had none of that sort of responsibility. Our responsibility was to check a premise was secure and go onto the next one.

40 Have you had cause to have dealings with barristers or solicitors representing their clients in the courts?..... Yes, quite often.

Can you describe some of the situations?..... In the courts or in the cells?

5 First, in the courts?..... We don't have a lot to do with them in the courts. Mainly, we have dealings with the barristers when they come downstairs to see their clients in the cells. We do let them into the bail room and let them speak to their clients there and let them out again.

We saw the bail room this morning and we saw that that has seating for a reasonable number of persons. You'd agree with that?..... Yes.

10 Can that bail room be full on a regular basis?..... Yes, depending on which magistrate you have in the lock-up court, we can have standing room only in there.

15 Does that create a security problem, in your view?..... It can when you have a lot of people coming and going because someone could slip out of there and just walk away without receiving their papers.

Do solicitors and barristers seek to gain entry to that room?..... They do. They wish to talk to their clients quite often.

So you're required to be opening and closing the door to the bail room?..... Yes, that's right.

20 That, in your view, can be a security risk?..... Yes, in as much as somebody could walk away without getting the proper paperwork.

Do you have to be alert to the possibility that someone will try to leave the room without authorisation?..... Yes, you do.

25 That alertness is not something that you would have experienced as a mobile patrolman?..... A different sort of alertness. You still have to be alert to be a patrolman of course.

We also saw that in the bail room, that out the front of it there is a counter and reception area. You pointed out to us that there were a number of monitors?..... That's correct.

30 Can you explain what the monitors are for?..... The monitors cover all the courts, various other places around the court confines. We just check on that and make sure there's nothing going on that shouldn't be.

35 If you, in the process of observing the monitors, detected something that you thought was untoward, what are you expected to do?..... We'd have to deal with the situation. Hopefully, there would be a rover, a person that goes from court to court, and you'd alert him to it and you'd go and deal with the situation, whatever it might be.

That person would have the power to detain someone?..... If necessary.

You said you're required to escort prisoners to and from cells, you can be required to take people to the police station?..... That's correct.

5 Do you know of any other requirements you have for escorting persons or property?..... We do a money run. We take money to the bank. We take files to the DPP and the Supreme Court, tapes to the Supreme Court.

10 So the money is money taken from the Magistrates Court?..... That's correct.

The documents you say you take to the DPP, the DPP is the Director of Public Prosecutions?..... That's correct.

What do you understand those documents are?..... Files for cases to be heard in the Supreme Court.

15 That is a responsible task?..... Yes, I think so.

You said that you've worked as a mobile patrolman and you've worked in the courts. Have you worked anywhere else?..... I've also done static guard and control room work.

Whereabouts?..... All for Chubb or Wormald.

20 At any particular sites?..... Sites all over the place. The Reserve Bank was one.

25 Can you tell us what your work was in the Reserve Bank?..... Basically we sat behind a bullet proof glass screen and observed people coming into the bank. We did that on a rotating basis, then you'd go downstairs and sit behind a control panel and open doors to let people into the basement area.

You said you sat behind a bullet proof glass and observed people coming into the bank?..... That's correct.

30 Where were you positioned when you were doing this?..... Next to where the tellers were.

This was here at the Reserve Bank in Hobart?..... It was until it closed down.

35 What were your instructions if there was a disturbance on the banking floor at the Reserve Bank?..... Our instructions - we weren't to leave the booth. We had to activate the cameras and the duress alarm.

You said you also performed access control, sitting at a panel and allowing people - ?..... That's correct.

That was access in and out of the bank?..... Not the banking chamber, but downstairs where the vaults were.

5 At what level were you paid at when you were performing that work?..... Level 3.

How did that work compare to what you are doing now?..... I didn't feel as stressed there. It was a much easier post.

10 Mr Archer, if it was to be put to you that really the work you do is effectively the same, on a par with that of a mobile patrolman, would you accept that as a fair assessment?..... No, I wouldn't.

Would you say that there is any valid comparison between the work you do now at the courts and that that you did as a mobile patrolman?..... No, they're worlds apart.

15 Thank you. I have no further questions at this stage.

COMMISSIONER: Thank you, Mr Tullgren. Mr Mazengarb?

MR MAZENGARB: Thank you, Mr Commissioner. Mr Archer, you were saying that the work as a patrolman was a lot more relaxed, and you're referring to that being a level 2. You're also referring to the Reserve Bank position being a level 3. Can I ask you a question - why are you now working at the classification that you are and you have been working that classification as a level 1 for nine years?..... I don't know.

25 Why would you want to drop in salary and leave a job which you found very relaxed - ?..... I wasn't asked, I was told. The Reserve Bank - I was only a relief there and that shut down in Hobart.

30 You were told by your employer to take this position on?..... Yes. When the court position came up, the manager at the time just gathered X amount of people up and said, be at the court at nine o'clock Monday morning.

35 I'm talking about the Reserve Bank and I'm going to go in reverse in relation to the answers you've given to the questions that have been asked by your representative. In relation to the Reserve Bank, do you know why that position would have been a level 3 and I presume you're saying level 3 under the award? Do you know why it would be a level 3?..... I think that was the agreement with the Reserve Bank, with Chubb when they took over.

Could it be, the Reserve Bank had actually agreed to pay that as part of a contractual arrangement with Chubb?..... They could have, yes. I wasn't privy to any of that so I wouldn't know for sure.

5 You indicated also that it could be stressful in the courts at times, doing the work you're doing. I'm actually not going to argue with you on that but I will put it to you, could it also be stressful in relation to other positions that you've held over the past, for instance, a mobile patrolman. Could they be stressful at times also?..... At times, yes, but not as much.

10 In relation to questions put by Mr Tullgren, you indicated that you were expected to diffuse the situation, deal with threats. Would that be the case, for instance, say, for other security officers at level 1 in other areas? For instance, I'm aware that Chubb Security also operate down at Parliament House and I understand from my observations, having
15 been in that area and sometimes being in there when there's been some interesting things going on, the expectation of those people is to diffuse those situations. Is that the case?..... Yes, that'd be the case as well.

20 In relation to your comment that you have the power to make arrests, can another security officer, who is not designated as a special constable, also make arrests? Have they the power of arrest?..... They have the power of arrest, the same as every citizen on the street.

25 In relation to the observations you were making following a question from Mr Tullgren, you indicated that you'd be expected to apprehend a person if they were running away from the court or if they were causing problems. Do you have the power to go outside the court precincts and continue chasing that person with a view to apprehending them or is the expectation that that apprehension be done within that controlled environment?..... Hopefully, we could stop them before they got to
30 the door. I wouldn't run to the door, just about to grab him and he goes through the door and say, sorry, that's it, my responsibility ends here. I'd keep going.

35 The question was, are you expected to do that or do you see that as your expectation? It's not a trick question. Is the expectation from the courts that you chase the person outside the court environment?..... That's my expectation.

What is the court's expectation, do you know?..... I would think they'd expect that as well but I don't think it's ever been put down in black and white.

40 In relation to your comment that you are expected and you do have the authority and you do physically remove people from other areas - from the area that you work in - are you aware security officers at level 1 also have that responsibility in other areas. For instance, like again, Parliament House?..... I would think they would, yes.

In relation to the rather relaxed patrol work you did, were you armed when you did that? Did you have a pistol?..... Yes, most of the time.

5 Why? If the situation was that the expectation was that if you noticed something wrong with a building or you thought that there could have been an intruder in the building, as I think your evidence indicated, your responsibility was to get into the vehicle, get in contact with your control room, then get in contact with the police and in effect sit there, wait for the police to arrive and possibly go in with the police to show
10 them where to go et cetera. If that was the case, why would you require a pistol?..... I suppose you couldn't always see the break-in before you actually went into the building. By that time it might be too late, the person might be there.

15 If you went to a building and there had been a break-in how would you be aware if there was a person in the building or not? How would you know if there was still an intruder in the building if you saw a broken window or the alarm was still going off?..... You wouldn't unless you saw them or heard them. That's probably the simplest way.

20 If you didn't know, would you go into the building or would you go back and call the control room and the police?..... That's probably a judgment I'd make at the time, depending on what the premises was, whether there was multiple alarms received, probably how long it's taken me to get to the alarm once I've been told about it.

25 The situation could arise where you believe that an intruder, or someone who is trying to break into the building, in actual fact could be in the building and you've gone in and you've been confronted by them. Could that have eventuated in this rather relaxed position as a patrolman?..... Yes. I'm not saying that the position was entirely relaxed. I'm just saying, it's a lot more relaxed than in the current
30 position.

A lot more relaxed. Sorry, that was my termination. I apologise for that. I'll withdraw that statement, but you did indicate it was a lot more relaxed. Could you have been in that situation where you went into a building and was confronted by an intruder?..... Yes, it could
35 happen.

At the beginning of your evidence in relation to a question put by Mr Tullgren, you indicated that you believed you'd attended about five or six training sessions and that most of those were dealing with special constable related training. Could you just tell me what those training
40 sessions were?..... They were generally on a Saturday and we'd have someone in a particular field of expertise and they'd come and have a talk to us and tell us what our rights were. I think the last one showed us a few restraint holds and things like that.

The last one being - have you any idea when? It doesn't matter if it was in the last couple of years or last few months?..... I can't put a date on it.

5 Going back the other way, when you went to the courts, about nine years ago I think your evidence said, were you then shown these restraint holds and any other special training you believe was appropriate at that time?..... Not for a while. We were actually in the courts for some time before we actually had a training session.

10 Is my assumption correct, you actually didn't receive any specific training upon appointment into the courts?..... No, that's right.

I'll come back to that in a moment. Now you'll have to forgive me for this, Mr Archer. I mean I'm relatively new to this area. Security work is not something I know a lot about.

MR TULLGREN: Yet.

15 MR MAZENGARB: Sorry.

MR TULLGREN: Yet.

MR MAZENGARB: Yes. Oh, but as my dear departed father used to say, if you don't learn something in a day, son, it's a wasted day. And I'll tell you what, I'm learning a lot today thanks to you, Mr Tullgren.

20 Mr Archer, would it be true from my perspective as a lay person having watched and observed what happened today in the inspections - which I found very interesting - would it be true to say that you could encapsulate your duties in a number of ways. One would be to watch/guard persons on the premises of the Magistrates Court. Would
25 that be correct?..... That's not all we do, that's one part of it.

Yes. Would it be also true to say that one of the expectations of the position of security officer down there is to protect the premises of the court?..... Premises and people, yes.

30 I noticed this, but for the record I want to clarify it, are you required to control the movement of persons and goods in and out of the courts; so the goods being those by even - if someone comes in with a knife - I think Mary was giving evidence to say that that would be put away for the person when they come back out?..... That's correct. They all have to go through a metal detector to come through the front door.

35 Are you required to respond to fire and security alarms? I wasn't quite sure on that?..... Security as in duress alarms, yes. Fire alarms we are the fire wardens.

All of you are fire wardens, are you?..... Well, we have designated roles. We're not the floor warden but like the cell person has to do certain things, the bail room person has to do certain things.

5 And we observed this. But I understand you are required to use hand-held scanners and operate closed circuit television systems that we saw in the bail room?..... That's correct, yes.

And part of that as we also saw, you are expected to respond to alarm systems or alarm signals?..... That's correct.

10 I think - I wasn't quite sure, are you expected to monitor and respond to electronic intrusion detection or access control equipment?..... Yes. There's a computer there that as well as the magistrates duress alarms also monitors some doors. If they're opened we're expected to respond to that as well.

15 Going back to this training aspect, I put the scenario that I get along pretty well with Mr Milling and I'm not enjoying my current employment. If I want to get a job at the Magistrates Court, I've seen what I've seen today and I've thought yes, this is something I wouldn't mind doing; if I get a clearance in relation to security, could I start as a special constable in the courts tomorrow - this is on the assumption
20 Mr Milling wants to employ me. Is there anything restricting my employment as a special constable?..... I'm not really sure about that but I think you have to be checked out - the police will have to check you out.

25 Oh, yes, no, I understand that - they've got to do a check on me to make sure I've got no criminal background but having done that I suppose the specific question is, do I need any specific training to start work in the courts, for instance sake, tomorrow?..... Well, yes, you wouldn't be able - we couldn't just put you down there and throw you - we'd probably put you on the front door first off which is about the
30 easiest one to learn straight away but the actual running of the court and things like that you wouldn't be able to do that.

So there would be an expectation. There'd be a sort of training program with me in relation to how the courts are run, possibly expectations of the magistrates in that?..... Yes.

35 Would there be any specific training in relation to the expectations of me as a special constable?..... You'd be given instructions on what your powers are and what you can and can't do - all part of the ongoing training we'd have to give someone who started in the court.

40 Change the scenario. I'm now getting a job as a patrolman at level 2 for Chubb; would the expectation be the same that they would go through the procedures, the powers that I have as a patrolman, would that be the same?..... I should imagine so.

Mr Archer, do you think a person naturally should receive specific training in special constable work before they are appointed as a special constable?..... Yes, I think it would be a good idea.

5 Mr Archer, because of your experience, this is an appropriate question for you: can security guards at, say, level 1 or level 2 of the award remove individuals from buildings, not allow their admittance?..... Yes, I think so.

10 Require a person entering a building to leave certain things at the entrance, as we were talking about before in relation to the evidence given this morning or information provided in relation to knives, et cetera? Can they actually seek the name and addresses of people entering the building?..... That I'm not really sure about. We can in the courts; I know we're under the *Admission to Courts Act*.

Yes?..... But other buildings I couldn't say.

15 But in relation to a security officer in another building, for instance sake, at Parliament House you can refuse admittance as a security officer at level 1 and level 2 for that matter?..... I believe so.

20 Not many more. And a security officer at level 1 or level 2 security guard can exercise the powers of arrest - you've already indicated that's correct?..... As a citizens arrest, yes.

25 Mr Archer, are you aware that the court administration has a weekly meeting with representatives of the security staff at the courts for the purpose of, in effect, going over what is anticipated will be the court proceedings for the forthcoming week so that in conjunction with the security guards - the special constables - there is an arrangement whereby administration will agree with security guards as to how many security guards are on the premises at the time? For instance sake, I noticed this morning there were a lot more there than I actually thought there would be, but does it vary from day to day and is that
30 done in conjunction with the guards or is it a static arrangement of how many staff would be on duty each day?..... That's not really my area but I know it does happen. It quite often happens that on the day we'll get courts that require security that for some reason or another we haven't been told about at all till the day.

35 In relation to that instance - and I'll get back to the other thing in a moment - in relation to that scenario where something is flaring up on that day, is there an opportunity or is there ability to call in police officers virtually at a moment's notice?..... They have done that, I believe, yes.

40 My understanding is there is a standing arrangement with the police force that police officers will attend in those circumstances - in those rare circumstances where something has happened which is out of the

ordinary and not foreseen?..... You'd have to ask the court administration about that. I'm not really sure.

5 But going to back to the question I put on the weekly meetings, you're not in a position to be able to give much advice on that?..... No, I don't attend those.

10 I understand there's also a monthly meeting along similar lines to examine not necessarily what's happening in the forthcoming weeks but what's happened over the last four weeks with regard to any problems with regard to potential security risks and all that where Chubb security officers have an opportunity to have direct input with various people maintaining the building and those sort of things?..... I believe there is, yes.

15 In relation to some comments that were made this morning in relation to the procedures that are followed with prisoners coming in, people being remanded and that, are there procedures that are generally adopted and applied within the court administration? Have those procedures ever been developed by security guards themselves or by the court administration?..... Yes, we've sort of developed this over the years since we've taken over because we do a lot more than the police officers ever did in the courts. We liaise with the court staff. If someone comes into the cells we have to make sure that their paper work has been lodged and if they've got specific needs, like they might be on medication, we try and get them through a little bit quicker or something like that so they can be released and get their medication or whatever.

25 The hand-held scanners and the scanning machine on the way in, how long has that been in operation?..... A little over 12 months. I think it was August last year from memory.

30 You were talking before about the tense or potentially tense situation in the court rooms. In your opinion has the use of that scanning equipment reduced the possible tension in there in relation to individuals coming in with weapons for the purpose of attacking individuals including yourself?..... Not a great deal. Any tension that's been replaced in the court room we get downstairs on the scanner when we make these people give up their knives and things which they don't always want to do.

All right. Thank you very much, Mr Archer, I appreciate your candid response.

I have no further questions at this stage thank you, Mr Commissioner.

40 COMMISSIONER: Thank you, Mr Mazengarb. Mr Tullgren, do you have anything by way of re-examination?

MR TULLGREN: Just a few questions.

Mr Archer, my friend put to you or asked you whether you'd agree that you were involved in watching, guarding and protecting the premises, whether you were stationed at the entrance to control access, whether you responded to fire and security alarms and monitored electronic intrusion detection devices - do you recall all of those?..... Yes.

Now all except the last one of those - the duties performed by a level 1 security officer, just so we're clear, you've operated as a static guard, you've said, which was a level 1?..... That's correct.

And you're currently paid as a level 1 security officer?..... Correct.

In your opinion, is there any comparison between work as a level 1 security officer that you've done and for which you're paid now and for the work that you actually do?..... No, I think if a patrolman is a level 2, I reckon the courts are a level 5, personally.

And in relation to the last of those duties responding to electronic intrusion detection devices which is a level 2 job, you wouldn't agree that that might be an appropriate level for payment?..... No, I wouldn't.

Now I put to you and on a number of occasions and I put this morning during the inspection that significant parts of your job were based on the exercise of discretion and judgment by yourself as a security officer?..... That's correct.

And you agree with that?..... Yes.

Would you agree with me that that defines and sets apart the work you do from the work of a mobile patrolman that you experienced when you were a mobile patrolman?..... Yes. Mobile patrolman - it's all fairly black and white. You have your standing instructions; you do this, you do that, whereas in the courts you have to rely on your own judgment.

And the same would be true of being a static guard that you also worked at?..... Up to a degree, yes.

Now you said that when you commenced at the courts you weren't given any specific training?..... Not to start with, no.

In relation to the training that you've been given, have you been given any training specifically about how you exercise your judgment, how you make a call about whether - how you remove someone or what you do in a particular situation?..... I suppose it's been touched upon. A few of the training sessions we would sort of be role playing and things like that and that would come out in that.

And that's helped you in exercising your own judgment and so on?..... The courts are fairly unique in we took over when the

police went on strike, as it were, and we walked in off the street knowing absolutely nothing about the courts and we've developed these procedures over the years.

5 Now these procedures that you've developed, a lot of those have been developed by security officers, haven't they?..... Yes, the majority of them.

They haven't been developed by the company, they've been developed by you folks on the job?..... Yes, because we just hadn't done that before.

10 And there's never been a problem with the company about you implementing those procedures or making those suggestions or indicating - ?..... Not that I've been aware of.

15 Do you know of any senior management of the company that have ever worked down in the courts?..... I think Mr Milling worked in the old courts a few times, from memory.

But do you know of any of the managers who have worked in the new courts - the current courts where you are?..... No.

20 Do you know of any of the management of Chubb that have ever experienced the day-to-day activities, that you've explained to us, down in those courts?..... Only when they come to visit.

Do they visit often?..... Not a great deal. As long as everything is going okay.

Basically you said that - or you agreed with me that the responsibility is yours to make sure everything goes okay?..... Yes.

25 And that's a big responsibility in your view?..... In my view it is, yes.

30 And where does that fit in relation to the responsibility you would have had as a mobile patrolman?..... Like I said, it's more black and white; as a mobile patrolman you do this, this, this, and move onto the next job. Every situation in the courts can be different. You've just got to play it by ear and use your best judgment at the time.

So your understanding is that as a special constable you have all the powers of a police officer of the Tasmanian Police?..... That's correct.

35 Is that your understanding of your citizens arrest power if you were a special constable?..... No. A citizens arrest can't - you can't arrest somebody under suspicion - on suspicion - you have to actually see them committing the crime.

5 But you've arrested people that you've suspected in the courts or detained them?..... Someone can come up to say I've just been assaulted by that gentleman over there and we can arrest them in that circumstance, whereas a citizen couldn't because they didn't see that actually happen.

So in your view there's no comparison at all between a citizens arrest power and that of a special constable, as you understand it?..... No, I don't believe so.

10 And your understanding is that if a prisoner gets to the front door of the court and then heads out that you've got the right to follow in what's called hot pursuit?..... Yes, I believe so.

And that's no different than a police officer, as you understand it?..... Correct.

I have no further questions, Mr Commissioner.

15 COMMISSIONER: Thank you, Mr Tullgren. I have no questions. Mr Archer, you're excused.

WITNESS WITHDRAWN

MR TULLGREN: Commissioner, I'm happy to proceed if you are.

20 COMMISSIONER: Yes. We'll break at about a quarter to one. How long are you going to go?

MR TULLGREN: Probably I think close to - or perhaps half, three-quarters of an hour, depending on how fast I talk, I think. For my submission I've got some exhibits as well. It might be a little longer. I'm in your hands.

25 COMMISSIONER: Mr Mazengarb, are you calling evidence?

MR MAZENGARB: No, I won't be calling any witnesses, Mr Commissioner, but like my colleague, Mr Tullgren, I will be presenting one piece of evidence in relation to an exhibit but I won't be calling any witnesses.

30 COMMISSIONER: Well, Mr Tullgren, if you proceed and at a convenient moment for yourself at around a quarter to if you could, we'll adjourn.

35 MR TULLGREN: Thank you, commissioner. The matter before the commission is an application made under section 23 of the *Industrial Relations Act 1984* to vary the Security Industry Award so as to provide for the recognition of special constables.

The terms of the proposed variation are contained in a draft order which was provided to the commission and to the employer on 25

August 2000.

5 In order to make the matter clear because there have been a couple of changes, I'd seek to again tender a copy of the order which has been updated for the relevant dates and I apologise for the misspelling of the commissioner's name in the original order - I've also fixed that. I do feel somewhat remorseful as I've described myself, because of my Swedish surname, as the walking spelling error. I do feel very concerned when I misspell other people's names. So for that I apologise and I have made that correction. So I'd seek to tender a revised copy of the order.

COMMISSIONER: Thank you, Mr Tullgren.

MR TULLGREN: We say the claim can be argued under principle 8 of the current state wage principles and this will be addressed in greater detail in the future.

15 Turning to the proposed variation we say that our proposal is to amend the definition of Security Officer Level 3 to provide that any person appointed as a special constable will be paid not less than this level.

20 Under the extant state wage principles, varying the award classification is possible because the work is not restricted to one group or area but has and does apply to a variety of sites. The common thread which we say supports the bearing of the definition is that the use of special constables arises out of the contracting out of work formally performed in-house or provided by the police. And it is the police in relation to the
25 Magistrates Court. This is a growing trend and because the award applies as a common rule, it is appropriate for the actual classification definitions to be varied.

30 Now turning to the history of security employees being special constables, it has, due to the unique needs and operations of some areas of government been the practice to have members of the Tasmania Police or directly employed security staff to provide security with the directly employed staff appointed as special constables. Such appointments have been to invest such staff with the powers of constables of the Tasmanian police force.

35 Over time all of the work where that has occurred has been contracted out. In doing so, the requirements of the work have not altered and there has been a need for the contract employees to perform the same special constable role or, in the case of police constables, perform the role of those constables. However, until this point there has not been
40 an examination of the relevant award to ensure that the significant changes with these additional tasks have been reflected.

Now I would at this stage seek to tender a copy of a number of the appointments of special constables of persons at the Magistrates Court. I don't say that it's all of them but it's a selection.

5 COMMISSIONER: This document is headed up, *Police Regulation Act 1898*, and we'll mark that **EXHIBIT A.1.**

MR TULLGREN: If the commission please. Now special constables are created by virtue of section 22 of the *Police Regulation Act 1898* and at this stage I'd seek to tender copies of sections 22, 23, 24, 25, 26, 27, 28 and 29 of the *Police Regulation Act*.

10 COMMISSIONER: Thank you. We'll mark that **EXHIBIT A.2.**

MR TULLGREN: Looking at each section we find that section 22 covers the appointment of persons to the office of special constable. Section 23 deals with the oath to be taken. Section 24 is a provision prescribing the penalty for refusing to take the oath prescribed in section 23. Section 25 is also a penalty provision dealing with special constables refusing to serve or disobeying orders. Section 26 deals with the powers of special constables. Section 27 deals with the payment and section 28 with the exemption from serving provision.

20 Turning to section 22 we see the grounds or circumstances for which appointments can be made and they are:

If it appears to the Commissioner, or to any officer of police of or above the rank of inspector, that -

25 (a) *any tumult, riot, serious crime, or breach of the peace has taken place, or may reasonably be likely to take place within any district; or*

(b) *the ordinary police force is not sufficient for the preservation of the public peace within, and for the protection of the inhabitants of, and the security of property within, any district -*

30 *the Commissioner or the officer of police, as the case may be, may, by precept in writing under his hand, appoint so many as he thinks fit of the persons residing within that district who are not legally exempt from serving the office of special constable to act as special constables in and for that district for such time and in such*
35 *manner as he thinks necessary.*

I end the quote there. I won't deal with the rest of the section.

Further, subsection (2) provides for the actual appointment and subsection 22(3) allows the commissioner, with the approval of the

Minister to appoint three other categories of persons as special constables which we say are not relevantly applicable in this case.

Any of the above provisions could and in some cases presently apply to union members employed under the Security Industry Award.

5 As for section 23, a copy of the oath prescribed as set out in Schedule 2, is the last page of the exhibit, and it's an oath which is not dissimilar to the oath that's required to be taken by members of the Tasmanian police force.

10 Section 26 provides that the powers, authorities and privileges of special constables are the same as those for constables. That is significant in that my friend has alluded to, in his cross-examination, of the citizens arrest power. It is, we say, quantitatively and statutorily quite different, that a special constable - in this case Mr Archer and the others - do have all of the authorities and privileges and powers of
15 members of the Tasmania Police. Now that is different than an ordinary citizen such as you or I, commissioner, who may see someone breaking into a house or a motor vehicle and seeking to apprehend them. We do not act as a police constable or with the powers.

20 Section 27 deals with payment and we do not take the commission to that or to section 28.

Section 15 of the Act deals with the authority of police officers and it's at the top of the first page of the exhibit, and it says - the section is contained in the first page of the extract from the *Police Regulation Act* and it says that:

25 *Every police officer appointed under the authority of this Act shall have such powers and privileges and be liable to all such duties as any constable duly appointed now has or hereafter may have either by the common law or by virtue of any Act.*

30 And I end the quote there. And that provision clearly applies to special constables because of their form of appointment and also their powers which are called up under the provisions of section 26, so that sections 26 and 15 have to be read together.

They clearly identify then the powers, authorities and privileges of special constables.

35 Part II of the Act deals with duties and discipline of the police and for our purposes section 29 is relevant and in particular subparagraph (d) - or the whole of the section in fact which deals with discipline but also covers the issue of regulations to be made.

40 Now we also say that regulations have been made under the Act and at this stage I'd seek to tender extracts from the Police Regulations 1974.

COMMISSIONER: **EXHIBIT A.3.**

MR TULLGREN: Now the relevant parts that have been tendered are Parts II, V and VIII. Turning to them you'll see that Part II deals with the constitution of the police force.

5 Force is defined in regulation (2)(1) as meaning the police force and regulation 3(1)(i) -

COMMISSIONER: Sorry, I can't find that.

MR TULLGREN: I'm sorry.

10 COMMISSIONER: The front page of my exhibit starts with "proclaimed district".

MR TULLGREN: If I can just have a moment, commissioner. I may have - yes - and I've confused myself. If I could just have a moment.

15 Yes. The regulation that has been tendered which is 3(1)(i) provides that a special constable is a rank in the police force and they appear as sub-item (i). And while I haven't tendered it, Part I - the preliminary part of the regulations has at subsection 2 a series of definitions. And 'force' means the police force. So in regulation 3 it says: *The force shall be divided* - the 'force' in there means the police force.

20 Sub-regulation (2) of regulation 3 provides that a person holding any rank is vested with the authority and the responsibility of that rank and so special constables who hold a rank within the police force have the powers of that rank and reading the *Police Regulation Act*, which we've done, that invests constables - special constables - with all the powers and responsibilities of a constable. So they hold a rank within
25 the police force - so they're a recognised rank, and special constables have the powers of a police constable which is also a rank within the Tasmanian police force.

30 Part V of the regulations which is page 6 of the regulations - and I think the second or third page of the exhibit sets out the duties of police officers and in fact regulation 21 provides for the duties of constables which include, at sub-regulation (3), dealing with matters that affect the public peace or safety or anything that will cause danger.

At regulation 23 which is also part of Division V it says, and I quote:

35 *A special constable shall observe the provisions of regulation 21, with the necessary adaptations and modifications.*

So that special constables are required, the same as a constable, to discharge their proper functions and responsibilities.

5 Now Part VIII of the regulations which is headed, Discipline, deals with discipline and these provisions apply to special constables because of the operation of regulation 3 which I've taken the commission to because regulation 47 under Discipline says: *A member of the force* - and as I've indicated and the regulation shows, that a special constable is a member of the force so that they're subject to the discipline provisions.

10 Returning now to section 15 of the *Police Regulation Act*, we see that in addition to any of the common law powers the constables have by virtue of the operations of section 26, special constables exercise duties prescribed by virtue of any other Act.

It's now necessary to consider the provisions of the *Police Offences Act 1935* and I seek to tender a copy of extracts.

COMMISSIONER: **EXHIBIT A.4.**

15 MR TULLGREN: I might, commissioner, just deal with this and then it being a quarter to one. Now the relevant provisions are contained in Part VII which is entitled, Powers of Police Officers and Other Persons. Section 55 provides:

20 (1) *Any police officer may arrest, without warrant, any person found offending against any of the provisions of -*

(a) *Division I of Part II;*

(b) *Parts III to V; or*

(c) *any section of this or any other Act in respect of which it is specially provided that he may do so.*

25 (2) *Where a police officer is empowered to arrest any such person, it is the duty of such officer to exercise such power unless he has reasonable grounds for believing that the purposes of this Act, or of the Act conferring such power, as the case may be, will be adequately served by proceeding*
30 *against the offender by summons.*

And the rest of this section also deals with the particular powers.

Now subsection [2C] deals with the powers of arrest - relates to specific powers including in other legislation and a matter we'll turn to shortly.

35 We need to pause to remember that this provision must be read in conjunction with sections 15 and 26 of the *Police Regulation Act* which vests special constables with the same powers as are possessed by an ordinary police constable - if police constables are ordinary in that sense.

Currently, LHMU members are special constables at the Hobart Magistrates Court and any other courts as determined by the chief magistrate and referred to in the appointment from the Commissioner of Police.

5 It is important to note that in that appointment which is exhibit A.1:

- *for the purpose of providing security services for the Hobart Magistrates Court and such other Courts as directed by the Chief Magistrate and duties associated with the custody, care and control of prisoners.*

10 And that is again quite significant because nowhere can it be shown by viewing the award for a level 1 or level 2 that a security officer has duties associated with the custody, control and care of prisoners which sets these employees apart.

15 That might be an appropriate time, commissioner, to break because I wanted to go on to some other matters.

COMMISSIONER: Thank you, Mr Tullgren. The commission will adjourn until 2.15.

LUNCHEON ADJOURNMENT 12.49pm

HEARING RESUMED 2.17pm

20 COMMISSIONER: Thank you, Mr Tullgren?

MR TULLGREN: Thank you, commissioner. Before the luncheon adjournment, I'd finished addressing the commission in relation to the *Police Regulation Act* and I was saying that that legislation confers special constables with the same powers as those of constables and makes reference to provisions that, or powers that, are provided for in any other legislation.

I'd now seek to tender a copy of an extract of the *Magistrates Court Act 1987*.

COMMISSIONER: **EXHIBIT A.5.**

30 MR TULLGREN: Section 15 of the *Magistrates Act* deals with effectively the management of business of the courts and administrative matters, as it says in the heading.

35 The section empowers the chief magistrate to determine places where courts may be held in the state for each year. This is significant in view of the fact that the appointments of special constables apply in relation to all courts so established by the chief magistrate, so that special constables and the security officers involved exercise their powers while principally at the Magistrates Court in Hobart can be required to

required to exercise those powers at any venue throughout Tasmania that the chief magistrate so determines. I will come to that later.

In particular, subsection 6 deals with ensuring the 'orderly' discharge of business in the courts.

5 Section 17A - which is part of the exhibit - deals with the issue of contempt of court and relevantly subsection (1) says, and I quote:

If a person -

10 (a) *wilfully misbehaves himself before the Magistrates Court sitting in exercise of its jurisdiction under this or any other Act;*

(b) *wilfully interrupts or obstructs any proceedings before the Court; or*

(c) *is guilty of wilful prevarication in giving evidence before the Court -*

15 *that person shall be deemed to be guilty of contempt of court, and the magistrate sitting in the Court may, by oral order, direct that person to be removed from the Court or other place, and to be taken into custody and may, by warrant, commit that person to imprisonment -*

20 I'll end the quote there - they go on to the penalty.

And subparagraph (2) provides effectively - empowers a magistrate to have removed from a court or other place and taken into custody any person in contempt of court.

25 Now these are powers which are exercised by magistrates but will be aimed at and aimed at special constables because the evidence shown and the inspection showed that persons who do misbehave themselves - whether that's wilfully or wilfully interrupts or obstructs a court - can be removed from the court and the evidence is beyond any doubt; that that is an expectation of the special constables and that would be
30 exercising a power under the provisions of the *Magistrates Act*.

We turn next to the *Justices Act* and I seek to tender an extract.

COMMISSIONER: **EXHIBIT A.6.**

35 MR TULLGREN: Section 25 of the *Justices Act* also deals with contempt and the power to have persons removed and/or arrested and is in relevantly the same or similar terms to the provisions under the *Magistrates Act* so I don't read those, but they are similar powers.

Bearing in mind that the fine definition is perhaps that the *Magistrates Act* deals with the Magistrates Courts and that's principally in relation to the criminal jurisdiction. The *Justices Act* applies to magistrates in the exercise of their civil jurisdiction because magistrates can deal with criminal and civil matters and proceedings are brought under different legislation and operate differently.

But to all intents and purposes in the one building before the one magistrate he has powers under the two pieces of legislation and effectively we say that the security officers can exercise those powers based on the direction of the magistrate.

In order to give the commission some knowledge of the exercise of these functions, I'm instructed that in the past 12 months that there are at least eight occasions when persons have been removed from a court at the direction of a magistrate and at least a further six occasions when persons have been taken into custody either at the direction of a magistrate or as the result of the exercise of the constables' powers.

So that deals with the legislative base, we say, for special constables, save to sum it up to say that the special constables are, to all intents and purposes, and have, to all intents and purposes, the same powers and responsibilities as a uniformed member of Tasmania Police. There is no difference.

The one significant observation to be made is that is not the case with a security officer employed by Chubb as a static guard or a mobile patrolman. Those powers that we are talking about can only be exercised by a person holding a commission as a special constable and that's made by the Commissioner of Police or another officer.

Now there's at least one other site in Hobart, that of the Royal Hobart Hospital, which has and had the security staff who are contracted performing the role of special constables. This was in evidence before Deputy President Johnson, as he then was, in matter T7515 and T7516 of 1998. The same case also showed that the special constables were used at coroners' inquiries, so that the work has not been in the past limited to simply the courts in Hobart.

Now turning to the actual work involved, in order to assist the commission in this, we'd seek to tender a document which has been prepared by Justice Tasmania.

COMMISSIONER: It's headed up, Justice Tasmania, and we'll mark that **EXHIBIT A.7.**

MR TULLGREN: It's prepared by Justice Tasmania which sets out the security service requirements for the Magistrates Courts. The document details at pages 1 to 4 the security requirements. The dot points at the bottom of page 1 set out the major duties. It's to be noted

that it is mandatory that all security officers be special constables and it says that in a paragraph.

5 Now looking briefly at those dot points - *maintain public order in courtrooms and precincts* - is a specific task and we say it's clear from the evidence of Mr Archer this morning that the maintenance of public order is not a matter that is required of a level 1 or level 2 security officer in the normal course of their activities if they were not special constables.

10 *Escort defendants to bail room and ensure they remain there until documentation is completed and signed* - also was the subject of evidence and inspections and again not a task normally involved by security officers. Neither is the escorting of prisoners to and from cells or for that matter the escorting of people anywhere.

15 *Custody and transport of prisoners as required* - again is a specific duty and not one that normally accrues to level 1 or level 2 employees under the award.

Escort prisoners between Courts of Petty Sessions to the Supreme Court of Tasmania - again not a task normally performed and not encompassed by the award.

20 *Carry out the directions of Magistrates in Court* - again that comes back to the legislative base.

25 But again, it is not the normal situation that a security officer operating as a static guard or as a mobile patrolman would be carrying out the directions of a client in relation to security matters or associated issues.

30 At the top of page 2 it sets out the court duties. Pages 3 and 4 set out in more detail the duties in relation to other courts and it's to be noted that there are requirements under the heading of, Lock-up Court, and, Children's Court, and, Bail Room, and we've seen each of those courts and rooms this morning.

At the bottom of page 4 and the remaining pages cover security at the other courts throughout Tasmania and I alluded to this earlier when referring to the *Magistrates Act* about the power of the chief magistrate to establish other courts.

35 You can see that not only at the bottom of page 4 are there requirements for Hobart, but there are also, over the pages, requirements for courts at Gagebrook, Huonville, New Norfolk, Swansea/Triabunna and that there are also at pages 6 and 7 responsibilities for courts at Campbell Town, Fingal, George Town,
40 Oatlands, Scottsdale, St Helens, Westbury, Whitemark and then at Burnie and Devonport.

Now the fact that security officers may not currently operate in any or all of those courts is not material, we say, because the appointment as a special constable can require the employees to serve at any court so determined by the chief magistrate, so that it is not beyond the realms
5 of possibility that Mr Archer, for instance, could find himself in the next couple of days standing perhaps in the dubious surroundings of a court at Gagebrook and providing responsibility or perhaps the far more exotic surroundings of Whitemark with the Magistrates Court. I would presume that anywhere after you've been to Gagebrook is exotic,
10 with the greatest respect. But the fact is that they are able to be worked in any of those areas.

And we say, as can be seen, the duties performed are not those of security officers as comprehended by the current award classifications. The duties and responsibilities of special constables involve actual
15 danger and are attended by a substantial security risk factor which has been attested to by Mr Archer. And this morning in the inspections also spoken about by Ms Moles.

To assist the commission in perhaps further understanding that, we seek to tender a number of statements.

20 COMMISSIONER: Are these all to be marked together?

MR TULLGREN: Yes, they're a bundle of statements. I seek to have them marked as one exhibit.

COMMISSIONER: **EXHIBIT A.8.**

MR TULLGREN: This bundle of statements has been prepared by
25 some of the special constables. It should be noted that they are on Tasmania Police statement forms which is the standard piece of stationery used by police officers when recording statements.

We'll take the commission to them in a moment but we say that duties included in dealing with prisoners detained in holding cells and
30 escorting them to various courts are a significant part of the work. Some of these prisoners are of international or national renown including persons on trial for or convicted of offences such as murder, kidnapping and rape.

In some cases as many as six prisoners are escorted to the dock at one
35 time, mainly where they are multiply accused. Some prisoners who are handled are under the influence of drugs, some have profound psychological illness such as schizophrenia. Some become agitated when locked in holding cells and/or are taken into a court room.

Further, some of the prisoners carry or are suspected of carrying
40 diseases such as HIV-Aids and Hepatitis C. The handling of all these types of prisoners requires discretion, tact and judgment. In every case there is a possibility of assault on a security officer. Such assaults

5 apart from the more traditional kind can involve being spat at, have human waste thrown at them, being attacked with needles or running the risk of contracting something, if, during the restraining of a prisoner or defending oneself against attack there are open wounds or exchanges of bodily fluids. Further, the cleaning of human waste from cells is a further risk.

10 Turning to the public, including members of the legal profession, special constables are required to deal with members of the public who are agitated over matters such as fines, apprehended violence orders and similar with such agitation taking the form in some cases of scuffles.

Family members of accused persons and members of families of those who are accused of harming can also cause difficulties in courts and need to be removed or calmed down.

15 Members of the legal profession late for hearings or representing particular clients can cause difficulties such as being refused to being searched or face threats from the families of friends of a person who is alleged to have harmed a client.

20 Now turning to the statements, we can see - and I won't take the commission in any detail, but to draw the commission's attention to a number of examples, including one of the statements which refers to potential threats or threats made against a solicitor - a well-known Hobart criminal lawyer by members of the family of someone who had been attacked by the client he was representing and the statement deals with and addresses how that matter was to be dealt with to secure the safety of the particular counsel involved.

25 There are statements in relation to scuffles and struggles in particular courts and there is a statement by a Mr Morman where he deals with, as he says, two prisoners who decided to jump the dock simultaneously and tried to escape and had to be apprehended. And the statements are in similar terms. They represent a variety of incidents and arrangements that the security officers face and which they spoke about this morning.

30 I might note just for the record that all of the statements have the names of the particular persons obliterated so that it's not for the public record to show who they are. But I think - and I won't labour the point - the commission, in reading those statements, can see that these are day-to-day occurrences, comments by officers in preparing statements about what they've seen. They're no different in some cases to those of police officers. And more importantly, they don't represent the run of the mill fare of an employee or a security officer who would be performing static guard or mobile patrol duties.

They are situations where judgment and discretion are required in order to defuse and/or resolve - with the emphasis being on resolving

the situation - in order to avoid brawls and possibly the use of force; all situations faced by members of the Tasmanian police force but not by employees covered by the award. And we rely on the evidence of Mr Archer. We talked about being able to restrain people as the last resort
5 in proceedings and the use of discretion.

Now we've heard from Mr Archer who spent thirteen years as a mobile patrolman which was a level 2 under the award. He spent thirteen years working in the security industry. He's been a static guard and a mobile patrolman. He's worked not only at the Magistrates Court but at
10 the Reserve Bank and a variety of other sites and his evidence which was both constructive, sound and expressing reality, indicated that based on his thirteen years of experience the work he's doing is not like any of the work that he's done before and requires an entirely different level of judgment and responsibility.

15 Now turning to that, I seek to now tender an extract of a judgment of the Tasmanian Supreme Court.

COMMISSIONER: For convenience we will mark this **EXHIBIT A.9.**

MR TULLGREN: As Chief Justice Burbury, as he then was, said in *Henry v Ryan* which is reported in 1963 Tasmanian State Reports in
20 dealing with an appeal against sentence relating to a constable of police who was found off duty in nothing but his underwear in the grounds of St Mary's College, and I quote:

*Many of the powers of a police officer are exercised by him by virtue of the independent public office he holds and cannot be
25 exercised on the responsibility of any person but himself. His duties are of a public nature and over a wide range of matters affecting the public -*

I end the quote there. Such is true of special constables. A special constable like a constable of police may be assiduous in the
30 performance of his duties and judicious in the exercise of his powers. The powers exercised by special constables have, as they are exercised by police, been the subject of detailed consideration by Australian courts, all of which have had to consider the exercise of the major portion of those powers.

35 I now seek to tender a judgment of the High Court

COMMISSIONER: **EXHIBIT A.10.**

MR TULLGREN: In 1986 the High Court in the matter of *Williams v The Queen* which is reported at Volume 161 of the Commonwealth Law Reports commencing at page 278 dealt with an appeal from the
40 Supreme Court of Tasmania arising from a conviction on two counts of burglary where the principal issue related to the questioning of an

arrested person. The High Court in considering the appeal had to consider what the power of arrest was and how it should be exercised.

At page 292 their Honours, Justices Mason and Brennan in a joint judgment said:

5 *The right to personal liberty cannot be impaired or taken away without lawful authority and then only to the extent and for the time which the law prescribes.*

At page 303 in a joint judgment by Justices Wilson and Dawson they observed in relation to the power of arrest that quote:

10 *At common law a police constable's powers of arrest extend to the apprehension, without warrant, of anyone whom he reasonably suspects of having committed a felony, whether or not the crime has actually been committed.*

15 And I say again, in answer to a question in cross-examination from my learned friend, Mr Archer was very clear that he understands, in exercising his powers as a special constable, is markedly different from a citizen who may wish to arrest a person simply because as a special constable he only has to have a reasonable suspicion that a person has committed a felony or an offence to detain them and is not required to show that the offence has actually been committed which is a cardinal legal difference between the right of citizens arrest and the right of arrest that Mr Archer and the other special constables occupy.

Turning now to another decision of the Supreme Court of Tasmania.

25 COMMISSIONER: **EXHIBIT A.11.**

MR TULLGREN: In 1994, his Honour, Justice Slicer in the Supreme Court of Tasmania in the matter of *Paul Lawrence Smith v Robert James Marshall* which is unreported but has the number LCA 2/1994 was dealing with an appeal from a commission made by a magistrate and specifically at page 3, his Honour deals with the powers of arrest.

At paragraph 12 on page 3, his Honour says, and I quote:

35 *A police officer may lawfully arrest a person if he, the police officer, believes, on reasonable grounds, that the person has committed an arrestable offence. He may arrest with warrant, in respect of some offence and for others without warrant. He is entrusted by society with special powers by virtue of statute and common law. He may not arrest without power nor act on capricious grounds. The test of what constitutes "reasonable grounds" is not dependent on the subjective belief of the constable.*

constable. Nor is it dependent on whether, at the end of the day, there exist sufficient evidence to warrant a conviction.

Further at page 4 of the judgment, paragraph 19, his Honour, in discussing the powers of police quotes the decision of *Innes v Weate* which is a decision of his Honour Justice Cosgrove of the Tasmanian Supreme Court where he considered the powers of police. And I won't read the quotation but I direct the commission to it and rely upon it because it clearly again sets out, as his Honour Judge Cosgrove says:

A constable on duty is a representative of the community, at large, and his duty is to the community, not to any one citizen.

Now that's exactly the same position as the special constables are in in relation to the operation of their responsibilities in the courts.

Further, there is one final decision of the Supreme Court of Tasmania.

COMMISSIONER: **EXHIBIT A.12.**

MR TULLGREN: Which is in the matter of *Kim Hibble v Jody William Phegan* and it's unreported but the number is LCA7/1997. In this matter his Honour Justice Zeeman, again in addressing the powers of arrest, at page 13, paragraph 51, sets out, as a result of referring to a number of English and New South Wales authorities, what the powers of arrest were in situations and they not only deal with a person being taken in *flagrante delicto* which, just as an aside I think is a wonderful literary term to describe people committing offences as well as arresting people on reasonable grounds.

So it is open as is shown for the special constables to be taking people in any of those three arrangements.

I now seek to tender a decision of the Court of Appeal of New South Wales .

COMMISSIONER: **EXHIBIT A.13.**

MR TULLGREN: It's the citation of the *State of New South Wales & Anor v Coleman*. It's unreported but it's New South Wales Court of Appeal 183 of 2000. The matter was an appeal where matters that had to be considered revolved around allegations of wrongful arrest and false imprisonment and in particular, his Honour Justice of Appeal Fitzgerald at page 8, at paragraphs 73 and 74, referred to a number of authorities in discussing the powers of arrest and he quotes at paragraph 73 from a judgement, as he then was, of Judge Dean of the federal court in the matter of *Donaldson v Broomby*, where he says:

Arrest is the deprivation of freedom. The ultimate instrument of arrest is force. The customary companions of arrest are ignominy

and fear. A police power of arbitrary arrest is a negation of any true right to personal liberty.

I stop the quote there. At paragraph 74, his Honour Justice Fitzgerald talks about *judicial statements about the inappropriateness of resort to the power of arrest* when other methods could be used.

What we say is, that power of arrest and that power of detention which is so eloquently described by his Honour Judge Dean, as he then was, clearly fits within the powers and responsibilities of the security officers.

While it might be claimed that it might only occur every once in a while or it might never occur, the fact is that these employees are charged with these responsibilities and the courts have spent a lot of time in dealing with what the onus is and the responsibility of police in exercising those functions. I don't think, with the greatest respect, it could ever be successfully argued, although we may hear that, an attempt of that, that these eloquent descriptions about the role of police officers and so on could ever be equated to any of the responsibilities of a level 1 or level 2 security officer.

Special constables are in fact a species of police, as provided in section 22 of the *Police Regulation Act* and regulation 3(1) of the police regulations. They have the same powers and the principal power of police and the principal power is that of arrest. This is not a power held by other Chubb security officers or for that matter non special constables.

This extraordinary power which is eloquently described by Dean J as he then was in *Donaldson* is the essential and defining element in the powers of a special constable. This alone will be enough, in our view, to justify the alteration in the payment but added to the other functions and in particular, the security risk, put beyond doubt the correctness of our argument.

In relation to the negotiations between the parties, for over 12 months the union has been attempting to negotiate an appropriate industrial settlement in relation to the payment of special constables. Those negotiations have proceeded with Chubb Security who hold the current contract at the Magistrates Court. The position of the union has been that the work performed is not that of a level 1 security officer. The employees concerned are not the traditional static guard, the common title for employees at level 1. The union has indicated that it was flexible about the form of agreement, be it a section 55 agreement or an award variation.

In exploring the section 55 alternative, both the union and Chubb approached the court administration to determine if they could vary the contract to pay increased payments if an agreement were made. The answer was a resounding, no. The court administration advised

that if there were increases in the award rates, then under the terms of the contract with Chubb they, that is the courts, would be bound to pay the increase.

5 Chubb, not surprisingly, while agreeing with the union claim concerning under-classification, advised that they could not enter into an industrial agreement that meant Chubb would have to bear the cost and as a result of further negotiations the matter was unable to be settled and we're here today.

10 The application seeks to vary the definition of Security Officer Level 3. We will contain our submission to an examination of the definitions of Security Officers level 1, 2 and 3 only. At present security officers are sworn special constables and paid at level 1. Turning to the definition of security officer level 1 we see the indicative tasks fall into four areas listed (a) through to (e). Turning first to (a) it provides to: *watch, guard*
15 *or protect persons and/or premises and/or property.*

'Watch' is defined in the Shorter Oxford Dictionary as meaning to look at or observe something over a period of time so as to be aware of any movement or change, be on the look out, fulfil the duty of a watchman, keep under observation or surveillance.

20 'Guard' is defined in the same dictionary as meaning, keep or watch over, keep safe.

While 'protect' is defined again in the same dictionary as meaning to keep safe and to take care of.

25 All these in relation to persons and/or premises and/or property. In relation to (b) these tasks are related to the control of persons, vehicles, goods and/or property coming in and out of premises or property. (c) deals with response to alarms at their post. The last indicative task which is shown as (e) but should in fact be (d) relates to the use of hand-held scanning devices and closed circuit television systems. All
30 those tasks are basic security functions, in fact, of a static guard.

They do not entail any legal responsibilities in the sense we have referred to earlier in the duties of special constables or in the evidence, inspections. There is no power of restraint, arrest or detention. They do
35 not involve the use of force or coercion or escorting convicted persons who may themselves be dangerous or in an agitated state.

Security Officer Level 2, the next level up in the classification food chain, if you like, builds on the duties at level 1 but adds:

40 *- responses to alarm signals and attendances at and minor non-technical servicing of automatic teller machines -*

- and mobile patrols in vehicles. At this level there are a number of indicative tasks which are set out, and I won't read those. Further, there is the indicative task of operating a public weighbridge. These tasks are in the terms of monitoring and responding be it to an alarm
5 where one has been activated as well as monitoring visual display terminals or operating a weighbridge, the recording of information, in effect.

The tasks are not ones that have a significant level of judgment attached, in that the emphasis is on response. Again, none of these
10 tasks involve restraint, arrest, detention or the ability to use force or coercion in trying to resolve situations.

Turning to Security Officer Level 3, we say that that classification moves an employee more into the area of monitoring an operation of certain types of security systems. Such monitoring requires an
15 understanding of the system and the exercise of a higher level of judgment and/or discretion. An employee not only monitors but operates integrated systems which require an employee to go into the system and can include correcting faults and making judgments.

There is some recognition that in performing these tasks, resolving
20 some issues is implied. It is the higher level of judgment and discretion and involvement in resolving situations that we say is the appropriate level for inclusion of persons performing duties of special constables. The exercise of the statutory powers, which are the same as for other police are ones that require greater skill and discretion and judgment.
25 The power of arrest or restraint is to be exercised based on discretion or judgment and that's shown by section 55 of the *Police Offences Act*.

Turning to the application of the state wage principles, we say that the claim can be argued under principle 8.1 and I don't read that, save to
30 indicate that it deals with changes in the nature of work, skill and responsibility required or the conditions under which the work is performed.

Principle 8.2 deals with an allowance but it's common ground in this matter that the allowance is not the appropriate way to proceed.

Principle 8.3 deals with the date for measurement. 8.4 deals with
35 preventing, in effect, double counting. 5, assessing the quantum of any increase and section 8 deals with the definition of what the conditions under which the work is performed mean. Principles 8.7 and 8.8 have no application, we say, in this case.

Turning to principle 8.1, we say the evidence and the statutory
40 material put before the commission show that there have been changes in the nature of the work, skill and responsibility required by persons working at the courts.

We've heard and will see that it is a controlled environment where employees are required to provide a high level security service, including the handling, searching and escorting of convicted persons and persons who have been convicted and are to be sentenced to imprisonment. We have heard evidence about the physical and verbal threats made by persons, not only to those serving, or about to serve terms in prison, but to persons subject to various orders.

The evidence, and in particular the statutory evidence, shows the similarity of work including the skills exercised and responsibilities involved by these employees as compared to members of the Tasmanian police force.

Compared to Security Officer Level 1, at which the employees are currently paid, there has been no diminution of responsibilities. In fact, the reverse is true. There has been a major shift in the nature of the work performed. The whole concept of security employees being special constables is new. Prior to Chubb taking over the work, the work was performed by members of the police.

The duties required take the employees far outside those of a security officer at levels 1 or 2 as set out in the award and described by the witnesses. Law enforcement is a matter of degree. It requires, as the witness and inspections have shown, patience, self control and tact, judgment and discretion. This is perhaps the most significant change. These employees are involved in law enforcement and security functions with an attendant high security risk.

One cannot doubt the reality of the changes in the nature of work, skill and responsibility required. These changes are in addition to any duties that may be required at level 1 or 2. They constitute a net significant addition to the work requirements. The expectation placed on individual employees is light years ahead of a Chubb employee working at level 1 or 2 in another place.

It is to be remembered that law enforcement was and is an entirely new area of work bringing with it higher levels of skill and responsibility. Witness the searching of prisoners, escorting murderers, rapists, fraudsters or violent juveniles, maintaining order in courts and pursuing persons who try to escape, being accountable for the security of the court, magistrates, prisoners and others is something additional. These two factors alone disclose a marked difference in the type and form of the duties.

Being a special constable enhances the intrinsic worth of the job. The burden is placed squarely on the shoulders of the employees. The special skills required increase the work value of the employees, not reduce it or remain it in neutral. We say that in assessing the work value argument, the proper consideration is based on the different factors making up the job before and after the work in question is included.

Turning to principle 8.2, we say an allowance is not appropriate because of the nature of contracting out and the nature of the award.

5 We say in relation to principle 8.3, that the award was subject to operation of the structural efficiency adjustments in 1991. This is the datum point for measurement. It's also when the contract came into force.

As for principle 8, we say there's been no previous work value judgements.

10 In turning to principle 8.5, we say that the method of determining the actual rate is clear and unambiguous and therefore the union method is not, surprisingly, the correct one. It is based on varying the definition of Security Officer Level 3. We say that based on an examination of the skill, responsibility and security risks of levels 2 and 3, level 3 is the more appropriate level.

15 Our case is not based on some arbitrary calculation. It compares the actual work at the various levels, the rates of pay for those levels and the nature and extent of the special constable duties.

I, at this stage, seek to tender a decision of the full bench of this commission.

20 COMMISSIONER: **EXHIBIT A.14.**

MR TULLGREN: It was a work value case concerning teachers in Tasmania which was reported at 1993, Volume 35 of The Australian Industrial Law Review. Turning to the decision, it addresses issues such as the nature of the work, skills, levels of responsibility and the conditions under which the work is performed.

25 Addressing the findings, we say, the work of the employees is different than that of other security employees. New skills have had to be found and learned and applied. Conditions under which the work is performed have altered dramatically. The work is a significant net addition to that of a level 1 or 2 security officer. The evidence and inspection show that the work, skills and nature and circumstances of the work are light years ahead of that for a level 1 or 2 employee as classified under the award.

30 Our proposal does not alter the existing internal relativities or if it were relevant, external classifications. We also say that our claim including the calculation does not offend principles 8.7 or 8.8. Therefore, we say that the variation is in accordance with principle 8.

35 Under section 36 of the Act the commission is required to satisfy itself that in the making of an award, which by virtue of the definition of an award in section 3, includes a variation to an award, such award is consistent with the public interest. Public interest is not defined in the

Act and therefore there is no statutory guidance to establish that varying the award is in the public interest. However, the term is an accepted legal and industrial relations meaning.

5 At this stage, I'd seek to tender two decisions. The first one is a decision of the High Court in *O'Sullivan v Farrer* and the second is a decision of the High Court *Re Queensland Electricity Commission*.

COMMISSIONER: *O'Sullivan v Farrer* - **EXHIBIT A.15**. The *Queensland* decision - **EXHIBIT A.16**.

10 MR TULLGREN: The observation on public interest by their Honours, Mason, Brennan, Dawson and Gaudron, in *O'Sullivan v Farrer*, which is at volume 168 of the Commonwealth Law Reports, page 210, but at page 216 is worth noting, where their Honours said:

15 *Indeed, the expression "in the public interest", when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters -*

Ascertainment of where the public interest lays is very much a question of fact and agrees with the High Court in *Re Queensland Electricity Commission Ex parte ETU* found and that's at volume 61 of the Australian Law Journal Reports at page 393, but at page 395.

20 We say that the commission has power to deal with the issues raised by our application to vary the award in the terms sought. In applying the concept of public interest, it is appropriate to look at the facts and circumstances of the present matter. Doing so, the commission must find that the existing award classifications do not comprehend persons being special constables. They certainly do not envisage the specific powers that special constables may exercise which are the same as those for police constables and the statutory basis giving rise to most of those powers, leaving aside the common law in relation to the powers of police.

30 The power of arrest, detention and restraint are not part of the daily fare of security officers classified under the award as it now stands. The present circumstances do require the commission to vary the award in the terms sought by the union. The commission's statutory duty to make awards includes making and maintaining awards that are relevant to the activities covered by the award. Such a proposition is trite but the law, where an award classification structure clearly does not comprehend particular roles, functions or responsibilities, the integrity of the award has to be maintained by ensuring the award reflects those changes.

40 In the recent past, it's been the view of some employer groups that awards are no longer relevant because they don't reflect the actual situation. While not agreeing with this view, we say that our

application is aimed at ensuring the award reflects the reality on the ground.

5 This is not, unfortunately, the view of some in Tasmania but that is not the law and until it is a party making an application and bringing sufficient supporting material is, unless it would not be in the public interest, entitled to have the award so varied. The commission should be satisfied that there has been reasonable negotiation between the union and the employer over the issue with Chubb indicating they will only entertain additional payment if the award is varied. This is for the reasons previously advanced. The negotiation centred squarely around increased payment for the employees concerned.

15 It is clear that there is no possibility of reaching an agreement, given the attitude of the employer and the accorded administration. The inclusion of special constables in the day to day activities of some sites fundamentally changes the work arrangements in the industry. Further, there can be no danger of the decision impacting outside the award because the use of special constables, save in terms of major civil disturbance or act of God, is limited to areas unique such as the courts and the hospitals.

20 The cost impact is also limited. We say that when the commission comes to determine the issues of the benefits arising from the granting of the application as opposed to any detriment that might be suffered, it must find as a matter of fact, that there is no detriment but even if there were it would be negligible or insubstantial when compared to the benefits accruing from the proposed variation as well as maintaining the award as relevant.

30 Therefore, we say that when considering the factual matter surrounding this application, there is no reason not to exercise the statutory discretion reposed in the commission. Further, the commission would not be able to show that the public interest would be infringed by the granting of the application.

35 In conclusion we say that when all of the evidence, both statutory, visual and verbal is weighed and sifted, the commission should find that the work in question is not comprehended in the existing award definitions. The work in question falls within the application of principle 8.1 of the extant state wage principles. That applying the accepted work value tests, the nature of the work does constitute a significant net addition to work requirements so as to warrant the granting of the claim and does not offend the public interest.

40 The work is that previously performed by police, and in the adjoining remand centre, by prison officers, all of whom are paid at rates reflecting these skills and responsibilities. The employer has, with the greatest respect, we say, and we would say this in advance as we always do, failed to counter our well crafted, accurate and forceful case

- there's nothing like getting in early - if the employer relies upon cost as an argument, that this cannot and is not a valid argument.

5 In conclusion, weighing all of this, we say that the commission should vary the award in terms of our application. That's our respectful submission in this matter.

COMMISSIONER: Thank you, Mr Tullgren. There was reference in your submission to a decision by, I think, Deputy President Johnson. Was that a consideration of wage rates?

10 MR TULLGREN: No. What had occurred was, a dispute in relation to termination of two employees but part of the evidence was that they were actually commissioned as special constables, security contractors at Hobart Hospital, and that material was before his Honour. I put it in mainly to indicate that there are special constables in other places and this matter has surfaced before, if indirectly.

15 COMMISSIONER: Thank you, Mr Tullgren. Mr Mazengarb?

MR MAZENGARB: Thank you, Mr Commissioner. I suppose it goes without saying but I'd better say it for the purpose of the record - if I wasn't going to say this, we wouldn't be here - the TCCI on behalf of the employer opposes the claim that's been requested to amend the award as per the order.

20

Mr Commissioner, we'll have to say that my colleague on the right-hand side has been extremely emotive in relation to the submissions he's put to you, particularly this afternoon and before the luncheon adjournment. I must emphasise and I expect and request that during your consideration of this matter, you bear in mind that we are talking about security officers. These are people who apply for and do jobs in relation to the security of individuals, precincts, properties and whatever. We're not talking about individuals who may be doing clerical work, may be doing waitressing work or whatever and those people going into a completely alien environment and doing completely different work.

25

30

The work of security officers is security be they level 1, 2, 3, 4 or 5 under the award, so I do ask that you bear that in mind when you're making your considerations in this matter.

35 We oppose the application, as I said, to level 3. It is our submission, Mr Commissioner, that we believe that the duties and functions that have been outlined today fall within the classification and meaning of level 1 of the award.

I refer you to the award, as my colleague did just a moment ago. Level 40 1 under Definitions, Clause 7, at (a) indicate:

Indicative of the tasks which an employee at this level may perform are the following:

(a) watch, guard or protect persons and/or premises and/or property;

5 In relation to the only witness that came forward this morning for the applicant, I asked him the question, would it be appropriate to indicate that he watched, guarded and protected persons in the courts. He said, that would be one part of my duties. I accept that. I don't have any argument with it.

10 I also asked him the question, was it his role and function to protect the premises of the court and his response was, yes, to protect the premises and the people in the court.

I asked, was he required to control the movement of persons and goods in and out of the courts and he said, that is correct.

15 Are you required to respond to fire and security alarms, was a question I put and he said, yes, we're required to respond to duress alarms and in actual fact we are the fire wardens.

In relation to the last component of the level 1 as defined under clause 7 of the award, I asked, are you required to use hand-held scanners and operate closed circuit television systems and he said, yes, that is correct.

I also asked him, was he expected to report on alarm signals, and he said, yes, that is correct.

25 I also asked him, do you monitor and respond to electronic intrusion, detection or access control equipment, and he said, yes, in relation to duress alarms and doors.

The majority of those tasks are level 1 tasks under the current definitions of the award. So it would be our submissions, Mr Commissioner, that the duties and functions as outlined, and I must say, quite eloquently by my colleague, are covered within level 1 of the award.

In relation to the evidence from Mr Archer, that as a patrolman he was level 2 and then making the comparison back to what he is doing now, I ask you to bear in mind one important thing and that is, if you look at the definition of a Level 2 Security Officer it says under (i):

Indicative of the tasks which an employee at this level may perform are the following:

(a) duties of securing, watching, guarding and/or protecting as directed, including responses to alarm signals and

attendances at and minor non-technical servicing of automatic teller machines, [and this is the important bit] and is required to patrol in a vehicle two or more separate establishments or sites;

5 In relation to security officers employed by Chubb, I can assure you, and it should be the case for any security officers employed under this award, if they are expected and required to patrol in a vehicle where they have two or more separate establishments, they automatically will be level 2. There's no option. They cannot be anything else.

10 So the evidence given by Mr Archer, that he was a level 2 is quite correct and I don't contend that it isn't but I must emphasise that in relation to the evidence he gave, he also said, I visit a number of sites in the vehicle and do certain tasks. Because he does visit more than one site in the car, that automatically entitles him to level 2.

15 To make the comparison and say, well, that's what you were doing as level 2, in relation to level 1, I think it should be taken account of in relation to the definitions.

I have been advised in relation to the evidence provided by Mr Archer, about his classification of level 3 at the Reserve Bank - I have been
20 advised that the arrangement and the contract that was entered into between the Reserve Bank and Chubb Security was that the employees who were employed or supplied by Chubb for that contract would be at level 3. I can't give you any more information than that as to why the Reserve Bank wanted that but that is my understanding. If the
25 representative of the union wishes to question that, I can get information on that if he so wishes.

Now turning to the legislation, I have to say that when this was coming forward this morning and this afternoon I was getting somewhat perplexed in relation to where we go with this but I'm, in effect,
30 indebted to Mr Tullgren because I was a little bit at a loss as to how these people were appointed and the impact that it had in relation to such employment at the courts.

If I can refer you to exhibit A.3 and in particular clause 23, which is on page 13. Sorry, can I just take you back. I'll go back to exhibit A.2 first,
35 if you don't mind, Mr Commissioner, because I have to work out how we got to the situation that we did with regard to the appointment of these special constables.

If you look at clause 22.3 it says:

40 *Notwithstanding subsections (1) and (2), the Commissioner [who is the Commissioner for Police] may, with the approval of the Minister, appoint to act as a special constable for the whole of the*

State and for the time and purposes authorized by the Commissioner -

And I go to (b) because I don't think (a) or (c) apply:

5 *A person appointed or employed under an Act or other law of the Commonwealth or of Tasmania for the purpose of administering or enforcing any such Act or other law, while that person is actually engaged in performing his functions under any such Act or other law -*

And then it goes on to (c).

10 If I can now refer you, as I was doing previously, to exhibit - and I should point out, if you look at exhibit A.1, that was the bunch of exhibits in relation to the appointment of special constable - you will find that that section 22(3) of the *Police Regulation Act 1998* gives the power to the Commissioner for Police, in this case Mr McCreadie, to
15 appoint, and as he states in exhibit A.1, individuals *as a special constable for the State of Tasmania for the purpose of providing security services for the Hobart Magistrates Court and other Courts as directed by the Chief Magistrate.*

20 So the power to appoint the special constable comes from section 22(3)(b) and is reflected in that instrument that is provided at exhibit A.1.

25 If I refer you to exhibit A.3 and in particular to clause 23 of A.3, which is on page 13, you'll note that prior to clause 23 - and no doubt you'll have a look at this documentation in a little bit more detail later. If you
30 look at all the preceding clauses, from clause 12 through to clause 22, it relates to the specific functions of those persons who are referred to in clause 3.1, that is chief superintendent, superintendents, inspectors down to special constables.

If you look at clause 23, in effect, all it says about special constable is:

35 *A special constable shall observe the provisions of regulation 21, with the necessary adaptations and modifications.*

Those few words are very important. The necessary adaptations and modifications. They're referring to clause 21, which is on the previous page, at page 12. If you look clause 21(1) it says:

40 *A constable shall be responsible for the proper discharge of the duties that are assigned to him.*

In relation to clause 23, a special constable shall observe the provisions of regulation 21, which will be that they will be responsible for the proper discharge of the duties that are assigned to them with the

the necessary adaptations and modifications.

I don't particularly want to provide the commission with too much information. One reason could be that it certainly might just swell the information you provide and not actually get you to the nub of what we are looking at today. So, I'll only produce, in effect, one exhibit and I'd like to table that now, with your permission.

COMMISSIONER: **EXHIBIT TCCI.1.**

MR MAZENGARB: Thank you, Mr Commissioner. What you'll notice in this documentation is, that it is an Act called the *Admission to Courts Act 1916*. In the preamble it states:

Whereas it is desirable that, while the general principles of the common law relating to the trial of causes in open court should be maintained, power should nevertheless exist to control and regulate admission to courts for the purpose of securing public order and safety in the courts and in the interests of the public morals and decency.

They cite the Act as the *Admissions to Courts Act 1916*, number 1.

Interpretation 1A says:

In this Act "authorised officer", in relation to a court, means a member of the police force, within the meaning of the Police Regulation Act 1898, [so we go back to that Act which I've just alluded to] and, in relation to a particular court, means a person who is appointed under section 1B to be an authorized officer of that court.

If we turn the page, we will find under 1B under the heading, Appointment of authorized officer, it says:

A registrar of a court may appoint a person to be an authorized officer of that court for the purposes of this Act.

What happens when a person is employed as a security officer at the courts, because it is within the judiciary, the registrar will automatically make that person a special constable in accordance with the provisions of this Act. This Act gives them the power to go back to the 1898 Act.

If we look under, Regulations, in particular regulation 22, it says:

Without limiting the generality of subsection (1), regulations made under this section may confer power on an authorized officer [this is the person who has been appointed as the special constable] to -

- 5 (a) *require any person who is in a court to state the person's name and address; and*
- (b) *require any person entering, or in, a court to submit to a search; and*
- 10 (c) *seize and detain anything found on a person searched that the authorized officer considers to be dangerous; and*
- (d) *remove, or cause to be removed, from a court any person behaving in an unlawful or disorderly manner.*

That sets out the requirements and expectations of the person who is being appointed as an authorised officer and special constable.

- 15 If you turn to the back of the document, you'll find that there is another extract, Admission to Courts Regulations 1995. Under clause 6 - Powers of authorised officers, it says:

An authorised officer may -

- 20 (a) *require a person in any court to give a person's name and address and evidence of the person's identity; or*
- (b) *require a person who is in, or about to enter, any court to deposit with the authorised officer any placard, instrument, device or other thing which is liable to engender violence or create a breach of the peace; or*
- 25 (c) *require to leave, or not enter, any court or remove, or cause to be removed, from any court any person who is -*
- (i) *behaving in an unlawful, disorderly or menacing manner; or*
- (ii) *the subject of an order under regulation 5(1) or 5(2).*

- 30 You'll notice I've attached 5(1) and 5(2) for the completeness of the exhibit. It goes on to say under 6(2):

An authorised officer may refuse a person entry to the court or remove a person from the court if the person fails to comply with a requirement made under subregulation (1).

The information I have from the court administration is, that is the instrument that is used for the appointment of these people under the 1898 Act and that reflects -

5 MR TULLGREN: Mr Commissioner, I've got to object. Where's the evidence. This is all assertion. There were court officers present on the inspections this morning. There were no matters raised and now my friend's asserting that his instruction from the court is that this is used. There's absolutely no evidence to this and none of this was ever put to the witness.

10 If my friend was in receipt of these instructions this morning, then he's got a responsibility to put to the witness whether the witness is an authorised officer under this or to put any other matter, with the greatest of respect.

COMMISSIONER: Are you contesting his assertion - ?

15 MR TULLGREN: I just raise as a matter of procedure, a) that none of this was ever put to the witness, and b) with the greatest respect to my friend, these are a series of assertions. He asserts, a) that the Act applies. He then asserts that this is the Act that applies to these people and he does so on the basis of some nebulous comment that he says
20 he has, or instruction he has from the courts. None of that is admissible, with the greatest respect and should not be accepted by this commission.

COMMISSIONER: The series of statutes and regulations that you put to me this morning were not, as I recall, put to the witness. They were
25 put as an assertion as to, that this is the way they're appointed.

MR TULLGREN: No, with respect, commissioner, we tendered the notices of appointment signed by Mr McCreadie, the Police Commissioner. The legislation sets out what special constables are and their powers. We say it's axiomatic that Mr Archer is a special
30 constable. There's a notice of appointment. How that appointment comes into being, that is the legal force by which Mr Archer was appointed, is the subject of the legislation we took the commission to and about the powers that are reposed in a special constable.

Mr Archer, with the greatest respect, is not a witness and was not
35 called as a witness to be qualified to comment on what legislation he was appointed under. He says he's a special constable, which is common ground. We've sought to give you the legal underpinning for that. It was never put to him that he was an authorised officer under section 1B of the *Admission to Courts Act 1916* when it could have been
40 and should have been. It's properly a matter that if my friend believes he had any knowledge of, he should have put to him.

It just seems to me that these assertions which my friend seeks to have the commission rely upon - the commission may not. I may be

premature but in the sense that I should formally object on the basis that it is all assertion, none of it put to the witness and there's no evidence. We've at least taken the commission to providing the instruments of appointments signed by the police commissioner. If
5 these appointments exist, where are they.

MR MAZENGARB: Mr Commissioner, I might be able to assist you there. If my colleague has a difficulty with that, I'm more than happy to table a document which has been provided to Chubb Protective Services from the manager of the court support services dated and
10 signed 13 September 2000, which makes it quite clear what the requirements and expectations are of the 1916 Act that I'm referring to. I have no objection to that if that causes a -

COMMISSIONER: This should be a question of fact and not a matter of contest between the parties and I must say, I was trying to establish
15 in my own mind whether an authorised officer and the special constable are mutually exclusive or can they be one and the same person. I'm a bit lost on that at the moment.

You'll appreciate that this commission is not bound by the rules of evidence but we won't act without evidence but this should be a
20 question of fact. Somehow we have to get to a factual position. I take on board what Mr Tullgren said. If there was a contest about what you're asserting, Mr Mazengarb, it will be in some way necessary to support it with evidence.

If it's not contested, that's an entirely different matter but it appears as
25 though it is.

MR MAZENGARB: Well, if it assists Mr Tullgren, I can read into transcript an extract of this letter of 13 September, which fully, more than eloquently, does it a lot more better than I did in relation to explaining what the situation is. You've got to understand, this is
30 coming from a legalistic perspective in relation to the appointment of these officers and I'm relying on the advice of those that are in control of it.

MR TULLGREN: Mr Commissioner, I think perhaps the easiest way might be to recall Mr Archer and ask him what he knows because my
35 friend - with the greatest respect to my friend and his instructions, he's putting to you that Mr Archer is appointed as an authorised officer under section 1B of the *Admissions to Courts Act*.

Now, if that's the case, if Mr Archer is, Mr Archer should know and the best person to ask, with respect, is Mr Archer. So, with leave, I'd seek
40 to recall Mr Archer to put specifically to him, or get Mr Mazengarb if he wants to, to put to him, what Mr Archer says he knows about this because my friend asserts that Mr Archer is an authorised officer.

COMMISSIONER: Can he be both?

MR TULLGREN: I would submit that he probably could be. There would be an argument but there's no evidence that he's - there's certainly evidence he's a special constable. There's no evidence that he's an appointed officer. Mr Archer instructs me that he's not but Mr Archer's here. He could clear that up to the satisfaction of the commission, about whether he's appointed. With the greatest respect to what Mr Mazengarb might be told in a letter on 13 September this year by an officer of the courts administration, that can be asserted but if people exercise these duties and so on, they've got to know.

COMMISSIONER: Very well. I would propose to recall Mr Archer to test this aspect of the evidence. In the event that the matter remains in dispute - it is an issue of fact which we just really have to get to the bottom of and if necessary, Mr Mazengarb, you'll be given the opportunity to call further evidence to determine this issue one way or the other. Thank you.

WITNESS RECALLED

MR TULLGREN: Commissioner, I'm not sure whether it's appropriate for me to put these questions to Mr Archer, or Mr Mazengarb because he's the one who asserts that Mr Archer is an authorised officer. I'm happy to put them but I don't know whether -

COMMISSIONER: What do you say, Mr Mazengarb?

MR MAZENGARB: One, I didn't assert that Mr Archer was an authorised officer. What I did indicate was that the information I have received from the courts is that, for the process of employees to be appointed as special constables under the 1898 Act they have to go through a process in relation to the 1916 Act and then that gives certain powers in relation to those people who are authorised officers to become special constables.

I may ask Mr Archer the question, is he aware of this process of authorised officer and he may go and say, no he's not. He may not have to be aware of that. I'm not going to put Mr Archer in a difficult position because of the arrangements that are made by the courts in relation to the appointment of such officers, because he may not need to be aware of that. I don't know.

5 If we need to clarify that as a point, I would believe that we would need to bring along those people, one of those registrars or those people who administer the courts who have that information. I don't particularly want to put Mr Archer in a difficult position because it's already been indicated by his representative he's going to say, no, to the question I'm going to put: Do you understand what an authorised officer is or have you been appointed as one?

10 COMMISSIONER: I'm not sure what turns on this point because I must say, I'm far more concerned about the actual work that these people perform than I am by necessarily the legal niceties of their appointment, although that is conceivably not unimportant. I think, Mr Tullgren, it may be more convenient if you ask the question.

15 MR TULLGREN: Mr Archer, prior to you hearing the submissions concerning the issue of an authorised officer, had you ever been told either by your employer or anyone in the court administration that you had been appointed as an authorised officer in accordance with the provisions of the *Admission to Courts Act 1916*?..... No, I haven't.

20 Have you ever received or been shown any document or written material that purports to appoint you by the registrar of the court as an authorised officer?..... No, I haven't.

Have you ever been told, either by your employer or by an officer of the court administration, that you were required to be appointed as an authorised officer under the *Admission to Courts Act* before you could be appointed as a special constable?..... No, I haven't.

25 Thank you. I think that disposes of the issue, save if there is anything that arises.

COMMISSIONER: Mr Mazengarb, have you any questions?

MR MAZENGARB: No, I have no questions of Mr Archer. It goes to what I just said prior to the questions being asked.

30 **WITNESS WITHDRAWN**

MR TULLGREN: Can I say, commissioner, that the point is, section 1B is a positive requirement. It says:

A registrar of a court may appoint a person to be an authorized officer -

35 If he's appointed, he's got to know he's appointed and there's got to be a form of appointment.

5 In the case of this witness, because he was the one who gave evidence, the evidence is clear, that there is no appointment. So we submit that the matter is not open to be pursued as an argument because it's a positive. It's the same as section 22 of the *Police Regulation Act* where the commissioner may:

- by precept in writing under his hand appoint -

10 The legal requirement to appoint a person to do something - I'll take the commissioner in point if I may. When the commission was appointed here I would presume that the commission actually has a written appointment signed by the Governor of Tasmania or the Lieutenant Governor that appoints you as a commissioner, not some letter from some court official that says, Mr Tim Abey has been appointed as a commissioner under a particular piece of legislation. It's a positive legal requirement.

15 My friend can't show that. The witness denies that that's the situation. We say, that's the end of it. It's not a matter open for further debate. Either this matter was known about this morning and my friend said, he didn't want to call any evidence because you put that to him, knowing full well that he was going to advance this proposition. 20 Therefore, we say that he's effectively outmanoeuvred himself, that there's no positive appointment and it's not appropriate to be calling evidence about this matter when he should have done that this morning if he believed - or at least been able to produce a form of appointment, if I can call it that, similar to the forms of appointment that we've provided to the commission. Apart from the fact, it's 25 that common courtesy let alone it's professional procedure, with the greatest respect. Neither of those have been applied.

COMMISSIONER: As I say, I'm interested in the factual position. You have put your position very clearly. I'll allow Mr Mazengarb to continue 30 and if this issue remains in contest, then I'll have to form some sort of a view on that and decide accordingly.

MR MAZENGARB: Thank you, Mr Commissioner. The reason why I believed that I didn't need to bring any evidence, I, in effect, as we were receiving this information from Mr Tullgren this morning, I expected 35 this information to come out in his evidence this afternoon. That didn't occur, although I fully anticipated that it would. The reason why I didn't bring the evidence, I didn't believe it would be contested. Now that it has been contested, I suppose there are two ways to go.

40 If your decision swings in relation to that particular part of the evidence then I think we need to seek an adjournment, or I would need to seek an adjournment with a view to getting someone from the court administration to explain in better terms than I can, because it is their area not mine, to give you evidence on that. If it is not going to swing 45 on that particular aspect to any great extent, I'm happy to proceed with

with my submissions.

COMMISSIONER: Well, as I say, I'm more concerned with the work and the responsibility of the individuals and I would propose to ask you to continue. If I consider that something will turn on this which is material to the decision that I ultimately make, then I may take the unusual step of seeking further evidence, albeit, it would be in a different order to which things are normally done.

This is a question of fact rather than necessarily disputed facts which is more akin to say, an unfair dismissal case. The actual form of how this evidence comes forward is not so critical in my view. At this stage, I would ask you to continue.

MR MAZENGARB: Thank you, Mr Commissioner. I'm also mindful of your time and I'll try not to delay it.

Going back to my original position or the position of the TCCI and our members, we believe that the classification of level 1 adequately applies to the duties and functions as outlined.

With regard to the application to insert in level 3, an assurance that that will be the classification level that will apply to officers employed as security officers and designated as special constables at the courts, I would ask that the commission take into consideration the totality of that classification of level 3.

It refers to:

- (a) *the monitoring and operation of integrated intelligent building management and security systems terminating at a visual display unit or computerised printout which requires data input from the Security Officer; [that does not apply in this instance]*
- (b) *a Security Officer, who in the opinion of the employer has no previous relevant experience at this level, and is undertaking the tasks of a Security Officer - Level 4 whilst undergoing training and gaining experience during the first six months of employment as such;*

That certainly doesn't apply. Mr Archer was indicating that he's had at least 13 years experience in the industry generally and nine years particularly at the courts.

The third requirement or expectation of level 3 is:

- (c) *may be required to perform the duties of a Security Officer - Level 1 and Security Officer - Level 2.*

So it's an encompassing task there, to ensure that persons at level 3 can also do the duties of level 1 or level 2.

5 Mr Commissioner, I am instructed to indicate to you that if you are of a mind to grant an increase, we believe that the increase should be granted by way of a classification of level 2, being allotted to this particular type of security officer. That is no way implying that we agree with the submissions put by Mr Tullgren that it's a level 3, but we believe that if you don't accept our primary position of level 1 being appropriate, then level 2 should be the appropriate classification.

10 We would also expect that if an employee was going to be paid at level 2 doing special constable work, that they in actual fact would undertake an appropriate special constable course. There are courses available. As I understand, Mary, who was involved in inspections this morning, has done one of these courses, but there are courses available with regard to arrest procedures and appropriate functions to be carried out by special constables within the courts.

15 Again, I repeat, this is not in any way diminishing our preliminary position of level 1, but if the commission was moved to grant anything, we would believe that level 2 would be more appropriate in light of the duties and functions outlined through inspections and evidence today and the definition of level 2 under the Security Officers Award.

20 I don't intend going to the submissions made by my colleague in relation to the Wage Fixing Principles as I have no real objection to those. With regard to operative date, however, if you were of a mind again to grant the increase as either requested by the union or indicated that we would have as a fall-back position to level 2, we would like to see an operative date being the date of the decision - the first full pay period on or thereafter. That concludes my submission, thank you, Mr Commissioner.

25
30 COMMISSIONER: Mr Mazengarb, on this latter point, so I can clarify things in my own mind, as I understand it, the point of Mr Tullgren's argument, reduced to its essentials, is that a special constable has all the responsibilities which falls to a normal constable within the police force. Are you suggesting that that is not the case?

35 MR MAZENGARB: I am, for two reasons. One, a constable in the police force or a police officer, as defined under the Act and regulations, can exercise their powers anywhere within their jurisdiction. So, it's not, in effect, confined. In relation to security officers employed at the courts, it is confined by exhibit 1. You'll notice exhibit A.1 says:

I hereby appoint a Special Constable to the State of Tasmania for the purpose of providing security services for the Hobart Magistrates Court and such other Courts -

As Mr Tullgren has alluded to today. It is restricted to that particular area, the judiciary. Secondly, it is our belief that regulation 23 of the Police Regulations says:

5 *A special constable shall observe the provisions of regulation 21, with the necessary adaptations and modifications.*

We believe the adaptations and modifications are the work that is performed within the judiciary within the Magistrates Courts. We do not believe that they can exercise the powers of a constable or police officer outside of that judiciary.

10 COMMISSIONER: I'm not sure that Mr Tullgren's intending that. As I understand the argument - and Mr Tullgren will correct me - that within the confines of the court system, and that may include the footpath outside for all I know, these people perform the same role and have the same responsibilities as police constables who previously did
15 the same work.

Now, Mr Tullgren, is that your position?

MR TULLGREN: It is. I wanted to make an additional submission in response to my friend. I don't know whether it's appropriate to make it now to help the commission.

20 COMMISSIONER: Good.

MR TULLGREN: Our position is that my friend is wrong and we say he's wrong because on his own argument, he relies upon the appointment - and he's taken the commission to section 22(3) and he says he identifies is the position of the appointment of the special
25 constable, which is set out in the form of appointment.

He then, as I apprehend his argument, says that when you apply regulation 23, which talks about, with the necessary adaptations and modifications, that the special constable can't perform the full duties of a police constable. The reason he's wrong, very clearly is, that section
30 26 of the *Police Regulation Act 1898*, which is exhibit A.2 says and I quote:

35 *Every special constable appointed under this Act shall, within the district, if any, in and for which he is appointed or, in the case of a special constable appointed under section 22(3), shall, throughout the State have and exercise all such powers, authorities, and privileges, and be liable to all such duties and responsibilities, as any other constable duly appointed now has or hereafter may have in this State.*

Constable means, a constable of police as defined.

By his own argument, he can't succeed because a special constable has those powers and our position is that the special constable has those powers within the courts, both in the Hobart Magistrates Court and any other court which the chief magistrate so determines because
5 that's what Mr McCreadie the commissioner has said and I'll read you what it says in relation to William Henry Archer:

- *as a Special Constable for the State of Tasmania* [so he's a special constable for the State of Tasmania and under section 26 talks about, shall throughout the state have exercise] *for the*
10 *purpose of providing security services for the Hobart Magistrates Court and such other Courts as directed by the Chief Magistrate and duties associated with the custody, care and control of prisoners.*

COMMISSIONER: But he wouldn't have jurisdiction at King George V
15 Football Ground?

MR TULLGREN: I would think he probably doesn't and I've not advanced that but on a reading of the appointment, it does say: *as a Special Constable for the State of Tasmania*. That might be open but I don't advance that but it also gives him, *and duties associated with the*
20 *custody, care and control of prisoners*, so that if Mr Archer, in this case, and as the extract of the Department of Justice document says, he can be involved in the escort of prisoners, it is possible that Mr Archer could be required to escort a prisoner from Whitemark to Hobart. Anywhere in Tasmania where that escort takes place, if the prisoner
25 decided he wanted to make a dash for freedom, then Mr Archer, exercising his responsibilities of special constable, can seek to detain and prevent that, whether it happens in Hobart, Whitemark or somewhere outside Epping Forrest, effectively.

In relation to the compass of his duties he would have exercised those
30 powers. Even if you take the far more restrictive view that says, within the confines of the Hobart Magistrates Court four walls - and I presume it's a rectangle or a square, so it's got four walls as opposed to it being something else - or the four walls at the court at Granton or somewhere, even if he exercises the powers, under section 26 when
35 he's within those four walls he's got all the powers of a police constable.

He's not restricted in what he can do. I'm not sure whether Tasmanian police are armed which I think is a sign of my ignorance of not being here very long, but the one thing he doesn't have the power to do is
40 shoot someone because he's not armed but for all intents and purposes under the *Police Regulation Act* he's got all the powers of a police constable.

COMMISSIONER: That submission to me is very clear and your submission and the evidence as it stood, it was very easy for me to

accept that proposition, that within the confines of the Magistrates Court, however you wanted to define that, these people have the same powers and responsibilities and duties of police constables who've previously done that work.

5 What I'm trying to establish is, from Mr Mazengarb, if it is the view of the employer that in some material way that notion is constrained. In other words, are there some duties or responsibilities within the confines of the Magistrates Court, however defined, which these people don't have which previously fell to the police constables.

10 MR MAZENGARB: I might be able to clarify that for you, Mr Commissioner. If I haven't made it clear, I apologise. It's not intentional. It was obviously my inability to be able to relay that to you. The situation is that special constables have the same powers as the police force when they are acting within the court jurisdiction. That
15 could be at Gagebrook, Whitemark or wherever.

In relation to the anecdotal question you put in relation to, does Mr Archer, for instance sake, have those powers when he's at King George V Oval. The answer is, no he does not and he cannot exercise them. He can exercise them as an individual as I can but he doesn't have the
20 power given to him by that exhibit A.1 to exercise those powers in that sort of environment. But within the confines - when I say confines, I don't mean the four walls, within the work area as defined by the employer, being in effect what I'll call the general judiciary, yes, he does have the powers of a police officer. And that's where I have an objection
25 to what Mr Tullgren has been putting to you because he's saying that there is no difference.

My argument is, there is a lot of difference because of the fact that a police constable as distinct from a special constable enacts his powers everywhere. It's not within a controlled environment. The actions and
30 powers that are exercised by a special constable are within a controlled environment, being the judiciary.

COMMISSIONER: Yes, I understand the argument now. From my point of view, my interest is then in the terms of the Security Industry Award as it applies to the special constables as they've been described
35 in this particular case and I'm not too concerned about North Hobart Football Ground, because it's not going to impact on this decision. We are dealing with a work value exercise in accordance with the principles and we have evidence and submissions before the commission and I think we've agreed on that basic point, that within
40 the confines of the judiciary a special constable and a police constable are one and the same.

If we've agreed on that, then I don't think we need to go to any further evidence.

MR MAZENGARB: I don't have a problem with that, Mr Commissioner.

COMMISSIONER: Mr Tullgren, you have a right of reply?

MR TULLGREN: Very briefly, commissioner. I don't want to strain the
5 friendship. My friend puts his alternate position, I think the more
realistic position, in my respectful view, about that if it has to be level 2
there should be a training requirement. We say we don't have a
problem with the training requirement, except that the statutory
provisions about appointment of a special constable don't have any
10 precondition attached to them.

We say it would not be proper for the commission, without having
heard any evidence about it, to seek to attach a requirement because
the evidence of Mr Archer was that he was marched up there on the
15 first day and told, you're in here and you're a special constable. There
was no training. Things have probably improved a bit but I don't say
that you can attach that.

Secondly, Mr Mazengarb says that you can't attach it to the
classification for level 3 because of the position descriptors but the
application actually seeks to insert a final provision which says:
20 *Provided that anyone appointed as a special constable will be paid at no
less than this level.* That's an entirely different issue than I think the
one my friend is getting at, about the indicative tasks, because it says
that regardless of that if you're a special constable you get paid no less
than level 3. We say that that would deal with that issue.

25 Finally, we say that the work may be security but the reality of the
position - and this is not seriously challenged by my friend either to the
witness or in his submission, that what we say and what the evidence
of Mr Archer and the inspections and the discussion with Ms Moles is,
that there is a significant degree of discretion and judgment that
30 reposes in these people in the work they do and that that discretion
and judgment, in particular in relation to powers of arrest and so on is
as the High Court has said and the Court of Appeal and the Supreme
Court of Tasmania, not something to be enterprised or taken lightly
and that that is significant.

35 We are not talking about, as Mr Archer said, someone who is a static
guard who's simply standing in the front of a building or operating a
boom gate. There is far more to it and there is a greater security risk
and they are the factors, we say, based on the decision of the full
bench of this commission in the *Teachers* case, which go to show that
40 it's those issues which test the work value principles.

My friend hasn't addressed any of those, I might add. He's simply not
addressed any of those. We submit that the commission can clearly
find that if those matters haven't been addressed, my friend effectively
accepts that our submission is correct in relation to those and because

he hasn't addressed them or seriously challenged them, then they go to justify our claim in relation to the appointment to them being level 3 because of the level of skill, discretion and risk that's involved in the work.

- 5 They are my submissions in response.

COMMISSIONER: Thank you, Mr Tullgren. I will reserve my decision on this matter and hand it down as soon as possible.

This commission stands adjourned.

HEARING CONCLUDED 3.53pm

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