

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T Nos 5044 and 5110 of 1994

**IN THE MATTER OF** applications by  
the Health Services Union of  
Australia, Tasmania No. 1 Branch  
and the Tasmanian Chamber of  
Commerce and Industry Limited to  
vary the Welfare and Voluntary  
Agencies Award

re Clause 7 - Definitions and  
restructure of the award

DEPUTY PRESIDENT ROBINSON

HOBART, 4 August 1994  
continued from 1/8/94

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: Thank you. Ms Harvey?

MS HARVEY: Yes, thank you, Mr Deputy President. Prior to going on inspections, I had actually concluded the section 5.3 of my submissions. In fact, if I could just take you to HSUA.1 by way of starting today.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: Hopefully it's on the top. It's -

DEPUTY PRESIDENT ROBINSON: No, it would be on the bottom.

MS HARVEY: It's the light purple one. Don't worry. I mean, I can just speak to it. It's not really necessary.

So, in terms of where we're actually up to, we've done sections 1, 2, 3, 4, 5, 5.1 wage fixing principles; 5.2 on relativities in the classification structure; 5.3; 5.4; 5.5; that's on page 3. We're now up to that section of our submissions that deals with section 36 of the act, namely, the public interest test.

DEPUTY PRESIDENT ROBINSON: The interesting part.

MS HARVEY: Sorry?

DEPUTY PRESIDENT ROBINSON: The interesting part.

MS HARVEY: The interesting part. So, that's the - hopefully today, Mr Deputy President, I'll get through section 5.6. I do have a consumer witness in support of my submissions in 5.6 who - which - who will be giving evidence tomorrow morning. So hopefully today we'll get through 5.6 and most of 7, 6 being the process for translation and 7 being cost implications.

MR FITZGERALD: Could I just clarify, without breaking into a rendition of Peggy Sue - a private joke in the commission - that it seems that the 12th won't be needed then if that's the case?

MS HARVEY: I thank Mr Holly and quite possibly the 12th won't be needed. We'll see how we go today and I will certainly be in a position by the end of the day to inform the bench as to whether we'll need the 12th, but I'm - at this stage I don't think we will.

So, Mr Deputy President, the HSUA has already demonstrated to the commission in previous submissions that our application is consistent with the wage fixing principles and we took you at some length to the wage fixing principles and the history of the wage fixing principles. However, the other test that

we're required to meet, in terms of an application to vary an award, is section 36 of the act which deals with public interest and that section of the act says, and I quote 36(1):

Before the Commission makes an award under this Act or before the Commission approves an industrial agreement under section 55, the Commission shall be satisfied that that award or that agreement is consistent with the public interest.

(2) In deciding whether a proposed award or a proposed industrial agreement would be consistent with the public interest, the Commission shall -

(a) consider the economic position of any industry likely to be affected by the proposed award or proposed agreement;

(b) consider the economy of Tasmania and the likely effect of the proposed award or proposed agreement on the economy of Tasmania with particular reference to the level of employment; and

(c) take into account any other matter considered by the Commission to be relevant to the public interest;

end of quote.

Now, the two matters that I intend to go into some detail are in fact (a) and (c) of section 36(2) and in saying that, I don't believe that it is necessary to put any detailed submissions in relation to 36(2)(b) which deals with the State of Tasmania economy overall. Now the reason I say that is that the employment levels in this industry are very small. Comparative to the overall Tasmanian labour market, we're looking at a maximum of a thousand employees and I really don't think it could be contended in any way that an increase in award rates in this area would have any impact on the overall employment in the Tasmanian economy because the number of employees are so small, therefore, in terms of this application, I will be focusing on 36(2)(a) and 36(2)(c).

Now in relation to that, I intend to actually deal with 36(2)(a), that is the cost impacts on the actual industry in terms of levels of employment in the section of my submissions which deals with subsection - sorry, in the section of my submissions which deals with cost implications, which is section - is in fact section 7.0.

So, just to summarise, in relation to (b) we submit that there is no real impact on the Tasmanian labour market because the



number of employees is very small and even if one could demonstrate a cost impact in this award, there would be very - here would be negligible impact on the overall Tasmanian economy.

DEPUTY PRESIDENT ROBINSON: Before we know that, don't we have to know what the cost is and who is going to pay it and where it's going to be found?

MS HARVEY: Well I will be dealing with the cost implications, but I suppose I'm going to be addressing that under section (a), that's 36(2)(a) where I will present submissions to you, Mr Deputy President, in the cost impact and how - those questions that you've raised.

DEPUTY PRESIDENT ROBINSON: Well, all right. Well I'll -

MS HARVEY: Yes. I mean, it's probably an issue of semantics really. I - in these overall submissions, I'm addressing public interest in both this part of my submissions, 5.6, and also in 7.0, but in terms I suppose of creating an index if you like, I'd seek to separate (a) to when I - till - I deal with cost implication.

DEPUTY PRESIDENT ROBINSON: I don't care how you deal with it, as long as you answer all the questions.

MS HARVEY: Well I trust that will be the case.

DEPUTY PRESIDENT ROBINSON: To my satisfaction.

MS HARVEY: So, in - this section, section 5.6, I will be dealing with section 36(2)(c), in particular the requirements to take into any other matter considered by the commission to be relevant to the public interest.

I submit that there are two factors which should be taken into account in this regard and further that these factors outweigh any purported negative public interest arguments that relate to section 36(2)(a) or (b).

These two relevant factors that I will be discussing is the improvement in service delivery for clients and secondly, avoiding gender discrimination in awards of this commission and I intend to address these two matters separately.

First, improvement in service delivery for clients; there's a number of factors that we need to assess and the first of those factors is the requirement for skilled staff necessary to meet the standards that are set forward by the department that funded this sector. It's a pity, I believe, that the TCCI and the HSUA were not able to reach an agreement on agreed evidence - I might say despite the HSUA's attempt to discussion procedural matters. One thing I believe that both



parties would concur on is that there is room for improvement in service delivery in this industry. There is room for improvement in any industry and I think, given the evidence that we've submitted where there's been a huge level of change and a dramatic growth in the industry, I think no-one should be surprised that there is room for improvement in terms of service delivery.

I have said to the employers in discussion and I repeat these comments now on the record, that the HSUA accepts that there are services that may not be currently meeting the standards set by the two departments. It wouldn't matter to our argument how many services the TCCI dragged through this commission or how many services the TCCI took us to on inspections or how many witnesses they presented in this commission saying that there may be services that don't meet the standards currently. I would merely stand before you, Mr Deputy President, and say I agree, and in saying that, we would equally argue and I believe have demonstrated in submissions, in sworn evidence, in evidence - in inspections that there are many excellent services that are meeting the standards.

The critical issue is that the standards are what the community determines should be the level of which services in this industry operate. It's the government in its role as setting community policies and standards, has determined that these are the standards that should in fact apply.

Surely, and given that this industry, as we have demonstrated, is labour intensive the standards indeed fall or rise on the back of the staff in this industry. Surely, the objective of the award's restructuring is to set out an award that allows the industry to look forward and to be able to meet better practice standards in the future. That is what we believe the HSUA's application certainly facilitates.

The future in this industry, the best practice if you like, is established by the two departments responsible for funding and regulation in the industry. We have presented these standards to the commission in exhibit HSUA.2. The standards and the legislation, as a package, set out what the community expects of services for people with disabilities. These standards are about best practice and that best practice is what everyone should be striving to achieve. These standards are set to establish the appropriate levels of outcomes for clients. You will recall that witnesses have given evidence about the appropriateness of the standards, including our expert witness Miss Judith Knowles-Lock. I will also be calling a consumer witness tomorrow, who also attests that the standards are appropriate in terms of meeting client need.

I do not intend to go through the standards again. I think the commission is very aware of their content. However, I do

remind you that the standards focus on the need for professional service to meet the individual needs of clients and that has been reinforced over and over again, about the whole process of individual programme planning, of looking at long term goals for each individual, of facilitating and providing those individuals with skills that they need, to the best of their ability be able to participate in the community.

DEPUTY PRESIDENT ROBINSON: What you are really arguing for, so far as I am concerned, I take it, is better paid, better remunerated, better career structures mean better service delivery.

MS HARVEY: That is correct. I am coming to that very point.

There is a strong emphasis on the need for training for clients and to provide them with independently linked skills. The outcome standards themselves focus on the need for trained staff and this issue is particularly important because as I have said, this industry is labour intensive. The real factor that determines whether the services are successful or not, or whether the outcomes of the client are successful or not, is the relationship and the skill levels of the staff.

This issue of the need for skilled and trained staff is actually dealt with in the outcome standards themselves, which is perhaps not surprising this relationship between the need for skilled staff and the actual outcome standards, and I do wish to refresh your memory on what the outcome standards say in relation to staff.

In that respect, I wish to refer you to HSUA.2 tab 8, page 20, and I apologise to Mr Fitzgerald because I told him he did not need his exhibits and he does. It is the big green one.

MR FITZGERALD: What number was it?

MS HARVEY: Tab 8, page 20.

Mr Deputy President, these are the standards for all service providers that are set by the State Government, so it is those services that deal with residential and independent living services and it is a requirement of trained staff that is reflected also in the Commonwealth Standards of Support and Employment.

If I can take you to page 20:

DEPUTY PRESIDENT ROBINSON: We have been there before.

MS HARVEY: We have indeed.

The principle here is, and it says at the top, in the box:



There are appropriately skilled staff employed, under relevant awards, who are provided with ongoing training and support.

So that is a critical principle. It then goes down, saying there are 4 standards supporting this principle. It really could not be clearer than that, I believe. What I am saying is, supported by the standards themselves they make it extremely clear that it is a requirement and a need to look at skilled staff and that they should be employed under the relevant awards and that they should have ongoing training and support and indeed the similarity with the objectives of award restructuring are very clear, which also talks about the need to improve productivity and efficiency and quality by focusing on incentives to train and career structures and continual improvement in the skills of the work force.

DEPUTY PRESIDENT ROBINSON: Are you saying that there are not now skilled staff employed under relevant awards who are provided with ongoing training and support?

MS HARVEY: No, I am not saying that, Mr Deputy President. I think we have been at pains to say to you that there are skilled people, that there are two ways people can attain skills, either through a formal qualification process, or through life experience, on-the-job training. I think we have demonstrated that there is quite a lot of training happening in-house but a lot of it is not accredited or recognised.

However, there is a need for structured training and an incentive to train and a skill based career path provides that incentive to train. Also, appropriately established relativities also provide an incentive to train because I think it is reasonable to say, why on earth would anybody go forth and commit themselves to a very large degree of study, if they are not going to get any reward for that.

So, if we then turn to the supporting standard on page 23, which is in 4.4.

DEPUTY PRESIDENT ROBINSON: We have been there before.

MS HARVEY: We have indeed, and I said that I was seeking to reinforce it in the public interest argument.

It says in 4.4, the supporting standards, that the services assess and provide for staff training needs. On the left hand side they have examples that support the standard. On the right hand side, they have examples that do not support the standard. On the left hand side, it lists some points there:



There are regular assessments of training needs and programs.

The Service builds ongoing inservice sessions into rosters and work routines.

Inservice sessions are evaluated and modified to meet the changing needs of staff.

Staff are informed of external training opportunities.

There is career counselling for staff.

There are requirements for staff to report on external courses/lectures they have attended.

There is encouragement for staff supervisors to attend courses to develop their leadership and supervision skills.

The Service ensures that the training staff receive is put into practice.

There is regular performance appraisal which is linked to the identification of training needs.

Now, as I said to you before when we were discussing the issue of standards, this is clearly consistent with the whole thrust of the HSUA's application of creating a skill based award restructure that is linked to training, so that people are aware of their career path, so they know what training is required, that they can easily access training, that there is an incentive to train. It is all part of a package which is very consistent with the approach in the supporting standards and the reason, I think, is quite clear, that standards cannot be achieved if you do not have this high level of skill amongst the staff.

What the HSUA's application does, amongst other things, is to facilitate that process by putting in place a very clear skill base career path and outlining what the skill requirements are at every level and how people can actually upgrade.

So, I have said that the industry is actually labour intensive and I have said that outcomes fall or rise on the basis of the staff, therefore it is not surprising that there is such a strong emphasis on skilled staff requirements. Therefore, we contend that the HSUA's application is consistent with the best practice standards set by the funding bodies.

A skill based career structure which provides a career path and incentives to train, are necessary prerequisites to the outcomes required by the standards.

I intend to now focus on the issue of ease of planning, unless there are any questions you want to raise in relation to that section, Mr Deputy President?

DEPUTY PRESIDENT ROBINSON: Does your application not seek to reward people who are currently working in the industry who have no formal training?

MS HARVEY: Yes, it does, and that is the other part of the public interest test I think we need to look at, in terms of - in particular I am going to address as part of gender equity. One of the requirements of the wage fixing principles are that we set appropriate relativities between, or within awards, and to that extent I think there is concurrence with the public interest test, because unless we appropriately recognise and reward skills, then I believe it is illogical that the issue of retention of staff is going to be more difficult, if people feel undervalued and that they can have better pay options in other industries.

DEPUTY PRESIDENT ROBINSON: But there is not a huge turnover of staff, is there?

MS HARVEY: Yes, there is, Mr Deputy President. The services we have taken you to on inspections, there may be a lesser turnover, but certainly turnover is an issue in this industry and our witness tomorrow will attest that it is an issue of concern.

DEPUTY PRESIDENT ROBINSON: But financial reward is a factor in that, are you saying?

MS HARVEY: Yes, I am saying that.

DEPUTY PRESIDENT ROBINSON: How do you know that?

MS HARVEY: I think there is inherent logic in it and I will be coming to this issue because I will be providing you with comparisons of current wages and wages you can get under other awards. Currently, the top level of a supervisor in a group home at the moment is paid the same as a cleaner at the hospital.

Now, no one can tell me that people who have no amount of commitment, as the old saying goes, 'Pays the rent' -

DEPUTY PRESIDENT ROBINSON: You have cleaners covered in your union, haven't you?

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: Well, don't you value their work highly?

MS HARVEY: I certainly do, but I certainly would also submit to you, Mr Deputy President, that the responsibility, the work environment and the skill levels of someone who is in charge of a group home exceed those of someone working as a base grade cleaner, and I do not think that under values the skill.



DEPUTY PRESIDENT ROBINSON: I like being the devil's advocate.

MS HARVEY: Yes, I gathered that.

The point I am trying to make in this issue is that standards require skilled staff. Yes, there are skilled staff, but there are two things we need to do to strive toward better practice; one, is that we need to recognise the skills that people have in remuneration, which is consistent with the wage fixing principles; secondly, we have to provide a skill base career path with incentives to train and I certainly think there is a lot of scope in this industry to look at the whole issue of provision of training, which is part of the ongoing agenda which there have been joint working parties with the employers to set up.

DEPUTY PRESIDENT ROBINSON: So, you are not just saying that there should be an incentive for people to take advantage of further training opportunities. You are saying that those at existing levels are not appropriately rewarded because the relativities are not properly set.

MS HARVEY: Yes, I am saying that. It is a little bit hard to compare A with B, because A being the current award and, B what we are trying to put in place. I will come to this issue in more detail when I do a translation because what we are really going from is an award which really has very limited definitions in it, and people are being paid at all different sort of levels to what we are trying to create as a proper skill based award structure that looks at appropriate relativities. So - and in translating A to B, we are going to have to look at what every single individual does, in translating them, so it is not so simple as just saying A is undervalued. Some workers may not be undervalued, some may. That is part of a structural efficiency exercise, we believe as a union, that you have to set, appropriately set relativities and skill based award structure and then move people from A to B.

DEPUTY PRESIDENT ROBINSON: Yes, I see.

MS HARVEY: If I can now deal with a second issue under the public interest .... of improvement in service delivery for clients and that is the issue of ease of planning. There is no doubt that there are additional benefits for services and the funding body from a restructured award.

For services, it will be easier to negotiate funding with the departments. At the moment there is little consistency in funding arrangements and the departments demand outcome standards, without paying proper attention to the input required to meet those standards. I have already said the most



critical input into meeting those standards, is a level of skill of the employees.

At the moment, as I said before, Mr Deputy President, there is no consistency. Services are not aware of what other services receive. It is fairly higgledy-piggledy and there seems to be no actual basis on which funding is determined. It seems to be that it is based on application rather than need. So, what we would contend is that a new award in the terms proposed by the HSUA will allow objective discussion about outcomes. For example, services in the funding body will be able to identify required outcomes and the necessary staff mix to achieve that outcome. At the moment this is impossible because the award is largely irrelevant to how the industry is operating.

For example, the department can say: we want a recreation service with individual planning, we want task analysis and we want some personal support. The needs of the collective target group can be looked at and assessed. The funding body and the services can negotiate the skill levels and the mixes required to deliver the required skill. This will provide a planning framework truly consistent with the structural efficiency principle and public interest.

I cannot underestimate this whole issue about the way the relationship between the funding body and services can be assisted by putting in place a proper restructured award. We believe it is fundamental to a structural reform of the industry that the departments be forced to face their moral responsibility to not only talk about outcome but to talk about what is needed to achieve that outcome and that is what is really missing in the equation at the moment. It is fine for them to sit in their ivory tower setting standards but they do that in isolation from what actually is required out in the industries in terms of the staff inputs and the skill mixes and the support levels needed on the ground and we believe that a restructured award will force the department to face up to its responsibility in assessing the inputs as well as the outputs.

DEPUTY PRESIDENT ROBINSON: You say they will welcome this new award as proposed by you.

MS HARVEY: I say that if you could get somebody to give you an honest assessment, yes. Certainly, I have had discussions with the department about -

DEPUTY PRESIDENT ROBINSON: Are you going to call a witness?

MS HARVEY: No, I am not because I do not believe a witness would agree to appear before you to - I think that person would be under a lot of pressure and I do not think it is appropriate.

DEPUTY PRESIDENT ROBINSON: And you would not want us to have them summoned.

MS HARVEY: No, Mr Deputy President. I do not think it is required, it is logic. It is a basic principle of planning. To me it is an issue that is quite clear, that one can deduce the truth of from the logic of the argument. To me it is very simple. You have got outcome standards, which are fine and good, which we support, at the moment a funding body who really is not, in our opinion, properly assessing the inputs required to meet those outcome standards. So what we would be doing is by putting in a skill based award structure, allowing services and the funding body to sit down with an objective test on the sort of structures that they need and the sort of skill levels they need.

Now, we are not dictating to the industry about the way they organise their work force or the way they organise their work organisation but what we are facilitating and allowing through our application is for services to sit down and say, okay these are the outcomes that we need, these are the inputs that are required to meet those outcomes and to put it on an equal footing in negotiation with the department about funding.

DEPUTY PRESIDENT ROBINSON: And what would you see then as the final outcome? That there would be a better delivery of service to clients.

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: That they would be able to pick their game up a bit, that they are not doing a very good job at the moment.

MS HARVEY: No, I am not saying that, Mr Deputy President. I am saying - and I thought I made it very clear, that there are outcome standards, that there are many excellent services that are meeting those outcome standards and there are some that are wanting and certainly we do not resile from that.

There are two issues; there is always room - and that is what structural efficiency is about. It is about continual improvement, striving for best practice, and the two ways you do that is one, recognising the skills that are there and two, is putting in place skill base career paths and that is not just me who is saying that. That is the whole body of wage fixing principles in this country for the last 10 years, has been about the need to create productive and efficient industry and in the human services sector that is about quality and that is about improving efficiency and quality of service delivery.



So, it is not just my union saying that, we believe that is the whole direction that wage fixing principles in this country has been taken.

DEPUTY PRESIDENT ROBINSON: You are supporting the continuation of wage fixing principles?

MS HARVEY: I think you are asking me to roam much beyond what I am currently seeking to address you on, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: I am just seeking to better understand what you are saying.

MS HARVEY: I suspect you are being the devil's advocate. Do you really want me to answer that?

DEPUTY PRESIDENT ROBINSON: It is up to you.

MS HARVEY: I think it is a topic that is much broader than this and it might take me another day to put the HSUA's views in relation to the wage fixing principles and their continuation and what should happen in the future. We have put submissions on the matter in the State Wage Case.

DEPUTY PRESIDENT ROBINSON: I just like to take opportunities where they occur to better inform my mind.

MS HARVEY: Now I wish to comment on this issue in relation to the TCCI's application.

A clear problem is the failure of the TCCI's application to go to high enough levels. Middle management, senior positions, management and higher skilled staff would indeed be excluded.

This means that the planning capacity and the public interest advantage that I have outlined in relation to the HSUA's application would be severely curtailed as a large proportion of services staff would be excluded. Hence, they would continue to be subject to the whims of the funding body, without having that clear objective test of the award that the services could fall back on to negotiate in relation to.

There is no equity in this situation. Staff doing the same jobs are being funded at different rates, which is inequitous and bad for the industry as a whole.

For example, the funding body funds to different levels for positions doing the same work. For example, residential coordinators in different services are funded to vastly different rates.

The HSUA's proposed structure offers a seven level career structure. The first two levels have limited application.



The first level being a trainee level, and really designed for induction; the second level being one that has routine repetitive tasks without much client responsibility. They have client interaction but no client responsibility.

That means that we are offering a five level structure from which the industry would be able to organise its work.

By comparison the TCCI's application only provides five levels. The first two have limited application in a similar way as the HSUA's application. This means that the industry has three levels with which to be able to organise its workforce.

We contend that this is inappropriate, and in the evidence that we have presented to you in sworn statements about organisational charts, in the inspections that we have taken you on, you can see that there is already in excess of three levels being used in the industry, and therefore it is inappropriate to restrict it in the manner suggested in the HSUA's application. (sic)

The third point that I want to address in terms of improvements in service delivery for clients is that equitable wages will assist in retaining skilled staff.

I have already put submissions in relation to the appropriateness of the wage relativities in the HSUA's application when I dealt with section 5.3 of my submissions.

I don't want to revisit those arguments again. I think that they stand on their merit, and we have provided as many possible cross checks, if you like, as possible about the appropriateness of the relativities.

We are confident that the relativities that the HSUA is proposing is correct.

We also, unfortunately, believe that employers have not been able to see beyond the funding issue, and have in their application sought to devalue and undervalue the skills of workers in this industry because of their concerns with funding.

We believe that this is an incorrect manner of setting wages in this sort of industry, and I will discuss this in more detail.

However, it is important to say that if the commission was to discount wages in this sector because of concerns about maintaining the quantum of services, it would be jeopardising the quality of service provision which would ultimately be counterproductive.

There is a need for staff training. We have established that. However, rates of pay that undervalue the work of staff will lead to a de-skilling of the workforce.

Anecdotal evidence suggests that there is already a high turnover of staff because of stress and low wages in the industry currently, and that will be supported by my witness tomorrow.

There is also - we have also presented evidence to you, Mr Deputy President, about the importance of retaining staff and the importance of having long term relationships between clients and staff because of the long period of time it can take to actually for a staff member to ascertain the requirements of a particular client and a long period of time it can take to develop a rapport in a relationship and to develop appropriate program planning for the individual and appropriate behaviour management for the individual.

We cannot expect to retain skilled staff if the situation is allowed to continue where workers in this industry are undervalued.

Why would any worker undertake training at advanced level associate diploma or degree level and be paid less than the equivalent in other industries.

I know this sounds melodramatic, but it is accurate, and I want to just take you to the example - to give you an example - of these residential services.

Currently, the base rate for a support worker in the award in the residential setting is a Residential Worker Grade 3. Now there is a Grade 4, but Grade 4 requires sort of direct supervision and it is limited in what they can do.

So you have got a current Grade 3 for a residential worker who is really the base rate position. Their salary is \$20,500.

A Supervisor, Grade 1, which is the top of the rate in the current award in the residential section is at 100%, or \$22,100.

By way of comparison in the new Public and Private Hospitals Award - so both the public sector and the private sector - base grade cleaners and catering maids are earning \$20,100.

So that's the sort of comparison we are looking at.

Now I don't want to go into any more detail than that. I have provided that as just an example. But we rely on the evidence that we provided to you in section 5.3 that dealt with relativities about how the appropriate relativity should be set.



However, there is a problem, we believe, in the award structure at the moment that needs to be fixed - that our application does fix - and by appropriately valuing skill, and without that it is inevitable that we will have a problem retaining skilled staff.

The employer application virtually leaves this wages situation unchanged. This is achieved by the lower wage relativities and the larger requirements on staff at the lower levels.

The irony is that a better level of service provision through better paid and trained staff will lead to benefits for the community.

There are direct benefits to people with disabilities and their family through better quality of life and service delivery. There is also a financial benefit to the community.

If services are successful in their integration objectives, and we certainly have seen evidence that many services are, then clients can be assisted in independent living and they will be less reliant on government services.

The inevitable result of this would be a cost saving to the community as a whole.

It has the distinct advantage of a win-win result for everyone.

I want to make it clear that the union understands that not all clients will reach the independent living objective, and that there will always be a requirement for support services. However, if we can lessen the dependency of even a proportion of the clients, the win-win result will be achieved.

Again, I will be calling in an expert witness from a consumer group to support my submissions in relation to the benefits for clients and service provision of a skill based award in the terms of the HSUA's application.

I wish to now turn to the issue of avoiding gender discrimination in awards.

The need to avoid gender bias is clearly part of a public interest consideration under section 36(2)(c).

The Commonwealth Government has already legislated in a Sex Discrimination Act and other Acts and the State Government has announced its intention to do likewise.

There is a clear consensus in the Australian society that it is in the public interest to avoid gender discrimination in any form.



Industrial tribunals themselves have a history of removing gender discrimination.

The structural efficiency principle itself includes a point that deals with the need to remove from - discrimination - from awards.

The clearest expression of this important issue comes from the Sex Discrimination Commissioner appointed under the federal Sex Discrimination Act, Ms Walpole, in her submissions to the Australian Industrial Relations Commission Review of Wage Fixing Principles in June 1994.

At this stage, I would like to hand up an exhibit.

MR FITZGERALD: Can we have a couple of copies?

MS HARVEY: Yes. Do you want more? You can have one if you want. Do you want one?

MR FITZGERALD: Sir, can we have some for the other people, if we could? Thanks.

DEPUTY PRESIDENT ROBINSON: Thank you. We had better mark this appropriately.

MS HARVEY: This would be HSUA.5.6.

DEPUTY PRESIDENT ROBINSON: Thank you.

MS HARVEY: Now, Mr Deputy President, this exhibit contains in TAB 1 the Sex Discrimination Commissioner's submission to the Australian Industrial Relations Commission Review of Wage Fixing Principles June 1993 Extracts.

Now I haven't reproduced the whole thing because there are pages and pages of it, but I have sought to take out the critical parts.

Now the role of the Sex Discrimination Commissioner has been strengthened in relation to industrial relations by recent changes to the federal act.

And these are set out on page 4 of the exhibit. I will just take you to those, Mr Deputy President.

It lists there the new responsibilities of the Sex Discrimination Commissioner, and I quote:

New Responsibilities:

Amendments to the Sex Discrimination Act 1992,  
(Section 50 A and Section 50 B allowed complaints

of discrimination in new federal awards and agreements to be made to HREOC and increased the responsibilities of the SDC in federal industrial awards and agreements. Prior to these amendments, awards and orders of courts or tribunals were exempt from the SA (Section 40(1)(e) of the SA). The exemption remains but the amendments give the SDC powers in the areas of employment discrimination in new federal awards and agreements. Complementary amendments to the Industrial Relations Act (IRA) also required the AIRC to remove this discrimination unless the AIRC considers that it is not in the public interest to do so.

Under the IRRA, these powers were extended so that cases can be brought to the Industrial Relations Commission by the SDC, as well as by individual employees, or unions. The inclusion of the SDC as the only statutory officer to be granted this right also brings with it the responsibility to ensure, where possible, that agreements in awards are framed without discrimination.

Actually, Mr Deputy President, do you want me to run through the acronyms that were used in that passage I just quoted?

DEPUTY PRESIDENT ROBINSON: Were they acronyms? I thought they were the proper names.

MS HARVEY: 'HREOC' is the Human Rights and Equal Opportunity Commission, which is in the third line there; the 'SDC' is the Sex Discrimination Commissioner; the 'IRRA' is the Industrial Relations Reform Act, which is the recent federal act.

DEPUTY PRESIDENT ROBINSON: Yes. The IRA is there, too.

MS HARVEY: Oh, that's the Industrial Relations Act, the principal act.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: Amongst other things. In this context I suspect it is the Industrial Relations Act.

DEPUTY PRESIDENT ROBINSON: I'm glad.

MS HARVEY: Interestingly the capacity to seek redress extends to workers covered by state awards, so if I can just take you to page 7 on the fourth paragraph there, and I quote:

Access to the Commission under Division 2 is open to all employees without an adequate alternative



remedy and therefore includes non-award employees including managers, and some employees covered by the State jurisdictions, since the scope of the Division 2 provision is broader than the provisions applying in some States. "Adequacy" presumably would have to be assessed against the requirement of ILO Convention 100, to apply equal remuneration for work of equal value without sex discrimination. Where State legislation was more limited (eg in NSW the Industrial Relations Act 1991 provides for equal pay for work of equal value and similar nature), access would also be available for workers covered by State awards, where the claims involved dissimilar work.

So, really what Ms Walpole is setting out to the Federal Commission is the fact that the issue of gender discrimination is very much part of the public interest, as reflected in those federal legislation and pending state legislation, and that the issue needs to be taken into account in terms of establishing wages.

In her submissions the SDC argue that there was a need for regular review of awards and agreements and what form that should take.

She argued that there remain discriminations in some awards, even after award restructuring.

In discussing work value she looks at the wages gap between men and women, and if I can take you to page 5 of the exhibit - sorry, page 6, Mr Deputy President. On page 5 it actually outlines the difference between men and women's wages and then Ms Walpole goes on to discuss the factors affect the differences in wages, one of which is the way that work is valued, and she goes on to give examples on page 6 of some awards where this has occurred.

And on page 6 she deals with the Confectioners Union - sorry, the confectionery industry, and it says in the third paragraph down - and she is referring to research undertaken by a Ms Rosemary Kelly, and I quote:

... found that women's skills have been consistently under-valued throughout the history of the award, and that this had not been addressed by award restructuring, the minimum rates adjustment process, implementation of the equal pay principle, or any other wage principle or system.

Further down in that paragraph the last sentence says:

The study showed that pay inequity was sustained by gender segmentation, and that undervaluation of

women's work flowed from it being defined as unskilled.

Now over the page on page 7 she looks at the retail industry and there is a quote there from a study undertaken by a Ms Barbara Pocock, and I quote:

Retail workers have gained nothing in terms of career prospects and the reclassification of their skills through structural efficiency decisions. With respect to pay, while many (especially those not receiving sales bonuses) have benefited from minimum rate increases, in the main work is rewarded through incentive bonuses, not a skills related pay structure and formal training system. Changes in "flexibility" have been almost exclusively oriented to benefits for the employer: longer spans of ordinary hours, much more use of part-time workers, reduced call-in times for casuals and part-timers have been introduced.

And as another example given in relation to how some work that is normally performed by women has not been addressed through award restructuring she deals with the case of child care workers, and if I can take you to page 8 in the third paragraph there it says:

In some awards, substantial increases in rates were obtained, while in others increases in the minimum rates were wholly or largely absorbed by existing over-award payments. Information is not publicly available about the processes for investigating relative skill, responsibility and work conditions, and the comparisons made. For example, it is unclear why a childcare worker with a trades-equivalent TAFE certificate only reached the rate for a tradesperson with a TAFE certificate after a year's service. The rate for a child care worker compares unfavourably with that of a driver or storeman and packer. The rationale for differentials between trained child care workers and tradespersons at above trade rates also are unclear. For example, the holder of an Associate Diploma in child care was awarded 110% of the trade rate while the holder of an Associate Diploma in the metal industry was awarded 145% of the trade rate.

Now the child care relativities are of particular interest to this commission as they bear a very direct similarity to the relativities proposed by the TCCI in their application for the Welfare and Voluntary Agency Award.



Now the Sex Discrimination Commissioner has drawn direct attention to this award as an example of how through award restructuring that relativities when established can incorporate gender bias, and in terms of exploring this matter I think it is of some significance given that the TCCI's application is very similar in terms of the relativities that it set to the child care industry.

In TAB 2 I have reproduced the paper referred to by the Sex Discrimination Commissioner in relation to child care by Ms Rosemary Kelly.

Ms Kelly is a well known industrial relations researcher, consultant and academic, and we have reproduced her paper in TAB 2.

Now before I turn to that I have also in TAB 3 included a CV for Ms Kelly which I think shows her credentials and her experience in this industry in terms of research, which gives extra weight to her paper.

And if I can take you to TAB 3, Mr Deputy President, you can see in terms of her qualifications she has a Bachelor of Commerce, a Diploma of Education, and is currently undertaking a Master of Public Policy, and under her specialist research skills it lists down there some of the - and I will just quote from it:

Specialist Research Services -

- which is her Company -

- was formed by Rosemary Kelly in March 1986 as a consultancy offering policy analysis and research services. The health industry has been a major interest of Specialist Research Services since its inception. Specialist Research Services also offers consultancy services in the field of industrial relations. Issues relating to women and work have been the focus of much of the commissioned research undertaken. Clients have included the federal Departments of Employment, Education and Training (DEET) and Industrial Relations (DIR), and the Health Department Victoria.

Now over the page it sets out some of her experience, and in the second paragraph on page 4 it says:

She was also adviser to Simon Crean in his capacity as a member of EPAC, ACPI and the NLCC (prior to his taking up the Presidency of the ACTU).

DEPUTY PRESIDENT ROBINSON: Does he always take her advice?

MS HARVEY: I don't know, Mr Deputy President. We could subpoena him, perhaps.

It then goes to list publications that Ms Kelly has been responsible for, and there is a list down the side there of quite an extensive publications list.

Over the page it continues. The focus is, as she says in the beginning of her CV on industrial research, women and health.

Now I just wanted to take you to that, Mr Deputy President, to, if you like, go to the background and credentials of Ms Kelly in terms of her capacity and experience in writing this paper.

DEPUTY PRESIDENT ROBINSON: It says on page 3 of the TAB that we have got open at the moment, that she established Specialist Research Services. Did she employ equal numbers of men and women, or what?

MS HARVEY: I think she operates as an independent consultant. As far as I know, she doesn't employ anybody.

DEPUTY PRESIDENT ROBINSON: Doesn't she?

MS HARVEY: No. In fact, I can say more than that, I know that she doesn't employ anybody.

DEPUTY PRESIDENT ROBINSON: It just sounded such a - as if it might be a large organisation.

MS HARVEY: The paper which is included in TAB 2, at the bottom of page 1 it says - if you just see the citation there. It is, 'Based on a Seminar Paper presented at the Centre for Labour Studies, Adelaide University, May 1993. Publication forthcoming by Centre for Labour Studies, Research Paper No. 2 1994'. So she has actually written this paper for the University of Adelaide that has a Centre for Labour Studies, and it has in fact since I put this together indeed been published.

DEPUTY PRESIDENT ROBINSON: Yes. Have you heard whether the Full Bench of the Australian Commission which allowed Rosemary Kelly to intervene, have you heard the outcome of that to date, whether they have taken it into consideration?

MS HARVEY: Well, that's what I want to take you to, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: What I am trying to demonstrate in the submissions in relation to this section is that gender discrimination is



an issue that should be taken into account by any industrial tribunal. It's part of the structural efficiency principle, it's part of law of this country, and soon to be part of law of this State, given the State Government's announcement that it intends to enact some form of sex discrimination legislation.

The point of this is that it does happen, for whatever reasons, and some reasons are suggested in the paper of how it happened.

DEPUTY PRESIDENT ROBINSON: Notwithstanding the fact that we have got equal pay for work of equal value, and accepted as a principle in this tribunal and elsewhere.

MS HARVEY: Mm.

DEPUTY PRESIDENT ROBINSON: You say it still occurs for the reasons that I think you mentioned one day previously, that it is your understanding that wage rates have been set at a lower level in those industries where the employment of females has been predominant.

MS HARVEY: Yes. I mean, I don't think that we can isolate any institution that we have in society from historical factors. I mean, whatever are good intentions by industrial tribunals by a whole variety of people, these things happen, and I think the sign of maturity of any society is that we can have the honesty to face up to that sort of thing.

I don't think anything that I am putting to you is unusual in terms of that whole process of analysis, if you like, of what happens in industrial practice, in work, in work organisation, and that really I am just trying to take you to that because I think it is a very important point; particularly given that there is a very clear similarity between the TCCI's application for relativities and the Child Care Award.

DEPUTY PRESIDENT ROBINSON: Yes. Was the Child Care Award an arbitrated award?

MS HARVEY: No, it is a consent award.

DEPUTY PRESIDENT ROBINSON: A consent award?

MS HARVEY: Yes.

If I could go through this paper. What this paper seeks to do is to -

DEPUTY PRESIDENT ROBINSON: I am just trying to find out who was the culprit - culprits.

MS HARVEY: This paper goes to that in some detail. In fact, it is a very good read. I have actually reproduced the whole paper and I think it is a very interesting read about the world of real politic between the ACTU, the Federal Government and the union movement, and I have reproduced the entire document for that purpose.

The central thesis of the paper is that the ACTU, the Miscellaneous Workers' Union and the Federal Government did a deal which gave the growing child care membership to the Miscellaneous Workers' Union in return for keeping child care rates low. That's the central thesis.

Now, whether you accept that thesis, is irrelevant. The point is that in terms of objective tests the result - even if you don't accept that motivation - the result has been an undervaluing of the work that child care workers do in terms of wage relativities.

And I would like to take you to this paper if I can, because I think it is a well-reasoned, well-argued paper from a person who has a high level of credibility in research and experience in this industry - sorry, in the field of industrial relations.

I will take the commission to the relevant part of the paper. Ms Kelly on page 1 succinctly tells us about the society's view of the work that is done by women.

Now, when I say that, I want to be very clear that what we are talking about in this industry, and in fact over the days of the hearing I have heard it said, that all you need to be is a caring person, and I cited the example of when an employer said to me, 'All you have to be is just like a mum'.

And the point is that this is part of the health and community service -

DEPUTY PRESIDENT ROBINSON: And not a 'dad'.

MS HARVEY: Not a 'dad', yes. Well, maybe that's -

This is part of an industry that is seen as part of that caring role that the sort of employment that women have traditionally been employed in.

Now I accept obviously that men are employed in this industry -

DEPUTY PRESIDENT ROBINSON: And there are some caring dads.

MS HARVEY: Yes, and I accept there are some wonderful caring dads.



What I am talking about is overall structures of society. I am not talking about individuals. I am talking about -

DEPUTY PRESIDENT ROBINSON: I'm starting to feel a bit uncomfortable.

MS HARVEY: What I am seeking to demonstrate is that in industries that traditionally have high levels of women employment that have traditionally been seen as part of the caring sector, that the work performed by workers in those industries have unfortunately sometimes been undervalued, and I believe that child care is a case in point.

So, Ms Kelly deals with the issue about society's view about women's work, and on page 1 in the first paragraph at about a third of the way down there is a sentence there, and I quote:

Behind the low pay and status of child care workers lie perceptions of the work as low-skilled and as merely an extension of the natural role of a woman - that of a mother.

And further down in that paragraph at the end there she says:

There is an inherent bias against the valuation of the skills of those who teach young children, and who are predominantly women. For child care workers the bias is compounded by the view of their work as simply 'child minding' which fails to recognise their responsibilities in managing the complex interaction of the physical, emotional and intellectual development of children in their care.

Now, the Miscellaneous Workers' Union did put together a claim in relation to the industry for a test case.

The full bench undertaking the hearings in the federal jurisdiction did investigate the need for training in the industry.

If I can take you to page 10 in TAB 2.

DEPUTY PRESIDENT ROBINSON: Did they accept the notion that there should be a proper test case? The full bench.

MS HARVEY: I'll come to how it came about, the whole issue.

In about two-thirds of the way down the page it says:

The claim involving the Australian Capital Territory and Northern Territory awards was heard by a Full Bench which delegated Commissioner Laing to inquire into and report on the matters at issue. In his report, Laing, C found that:

'For the purposes of this enquiry it is abundantly clear that quality child care is essential and that the vast majority of centres attempt and do provide this level of care. This in turn turns on the skills within the industry. Training, including academic courses, in-service and on-the-job training all appear to play a significant part in providing the skills necessary.'

So the full bench found when they commissioned Commissioner Laing to look at the need for training that indeed there was a need for training and there was a direct link with quality, which is not dissimilar to the argument that I am putting to you in relation to this industry.

Despite this conclusion, an agreement was reached between the Miscellaneous Workers' Union and the employers, and this deal is described on page 11 in some detail, which I wish to take the bench to.

Now at the top of page 11 - sorry, on the bottom of page 10 and into page 11, the last sentence on page and again I quote:

However there was no discussion of the rationale for the fixing of the rate or its position within the hierarchy of rates proposed by the ACTU 'blueprint'. It was agreed by the parties, including FMWU, that a child care worker holding a Technical and Further Education (TAFE) certificate would be paid at the rate for a tradesperson holding a TAFE Certificate, but only after one year's service, rather than immediately, as was the FMWU's original position. There was no explanation given of why the rate of pay for trained child care workers should be discounted in this fashion; but it is implicitly an acceptance of the view that qualifications and skills used in human services are to be valued below those used in manufacturing. Despite the words of Commissioner Laing, there was no attempt to justify the rates of pay based on the training and skills of child care workers.

End of quote.

Now, Ms Kelly goes on to compare the description of child care and metal industry classifications on page 15 and 16 and I just take you to those. So on page 15, it's set out there the child care relativities in relation to the metal industry award, so in table 3 on the left hand side you've got the training/qualification and in the middle column you've got, child care relativity, and then on the next column you've got the metal industry relativity with the - with trade rate.



So you can see the untrained/entry level had a rate of 80, 82, 84.6, but the metal industry equivalent was 78 per cent. Then in the first year training: 1st year you've 85 per cent, 2nd year 87.5, 3rd year 90 per cent and thereafter. The equivalent to the metal industry being 82 per cent. Certificate I and Certificate II at 87.4 per cent and 92.4 per cent and the trades certificate which is common between the child care and the metal industry award, you've got at the 1st year child care starting at 98 per cent and only attaining the 100 per cent after one year in the industry, whereas in the metal industry award, it's - it reaches the 100 per cent when they first attain their certificate.

DEPUTY PRESIDENT ROBINSON: Yes, but the other end of the story is that they go to 102 per cent whereas - it looks as if the metal industry relativity stays at a hundred.

MS HARVEY: There is some difference in that. I think some of the biggest differences, Mr Deputy President, is in relation to the level of qualifications above and if I could just take you to that in this paper where it is set out - if you could bear with me half a minute -

MR FITZGERALD: Just while we're on that point, can we just clarify that - and I assume it is in this paper, referring to the federal award in respect to child care, not the award before this jurisdiction which may not necessarily be the same; I just make that point now.

DEPUTY PRESIDENT ROBINSON: Well I -

MS HARVEY: Yes, Mr Deputy President, that is correct. There is - I'm not making submissions about the award that's before this jurisdiction. What I am seeking to do, although there is some similarity between the -

DEPUTY PRESIDENT ROBINSON: So this is a federal child care award?

MS HARVEY: Yes, that's correct. There is some similarity between the federal and the state award, but really I'm trying to demonstrate it is an issue of principle how it is possible in restructuring exercise to undervalue work predominately performed by women as compared to the metal industry and it is important because it is part of this public interest test that we should be aware of, so if I could take you to page 12, it sets out, above the trade rate what happened in that federal award for qualifications so at the trades certificate level, as you rightly pointed out, it starts at 98, goes to 100 and then to 102; the advance certificate level which, in the metal industry - we've already provided submissions to you - it reaches 130 per cent after a number of years of experience, so - but if you look at the child care relativity, the advanced

certificate stops 114.7 per cent. The associate diploma which stops at 114.7 per cent, whilst in the metal industry it's 145 per cent and in the advanced certificate/associate diploma plus 200 years - 200 hours not years - in service -

DEPUTY PRESIDENT ROBINSON: Maybe it feels like it.

MS HARVEY: Yes, it does - it stops at 115 per cent. And there's a diploma level in - obviously in the Metal Industry Award that we previously discussed, of 160 per cent.

MR FITZGERALD: Well the only point I'd make at this time and I think we will make submissions on it, Mr Deputy President, those relativities are not indicative of what appears in the current award before this commission.

MS HARVEY: Mr Deputy President, Mr Fitzgerald has every right to put whatever submissions he likes in response to my mine and I think it's appropriate that I be able to be allowed to continue.

MR FITZGERALD: Well all I just say is what is the relevance of these submissions in terms of another award or another jurisdiction which may not be reflective of what is current before this jurisdiction and I just raise it on the issue of relevance.

DEPUTY PRESIDENT ROBINSON: Yes. I - you can explain your argument better than me.

MS HARVEY: Well, I assume by Mr Fitzgerald's intervention, he is seeking to stop me putting these submissions rather than foreshadowing that he wants to put submissions to it in his right of reply.

DEPUTY PRESIDENT ROBINSON: I don't think Mr Fitzgerald would try to stop you from putting ....

MR FITZGERALD: No, I - the commission's free to -

MS HARVEY: Well if I -

MR FITZGERALD: - to obviously regulate its own procedure, but I just have some strong reservations in terms of relevance of what's been put. Now, I'm not going to attempt to stop Miss Harvey in these submissions, but I just simply raise the question of relevance at this time.

DEPUTY PRESIDENT ROBINSON: Yes, well that's noted.

MS HARVEY: Yes. Well given that Mr Fitzgerald is not seeking to stop me from my submissions, I'll continue. I think I've already established relevance. I'm seeking to address - and I'll state it again for Mr Fitzgerald's benefit



- I'm seeking to address the public interest test in section 36(2)(c) of this legislation which gives the commission the power to consider other relevant matters. I've established that sex discrimination is an issue of public concern. It's one that governments in both state and federal jurisdictions have felt the need to pass legislation on. It is one that is reflected in the structural efficiency principle itself under which we're hearing this application and in addressing the matter some one of great authority, the Sex Discrimination Commissioner herself, refers to a case example, the child care case, as being an example of where such discrimination may have occurred and she refers to a paper which I'm now taking you to in some detail.

Now the additional level of relevance in this - it's not just a salutary warning - is that the relativities bear some similarity between the - with the TCCI's application. Now to make it even more relevant for Mr Fitzgerald, if I refer you to TCI - sorry, to HSUA.4.1, on page 3, you will see - in the differences that compares the HSUA's proposed relativities for this award and the TCCI's proposed relativities for this award, at the associate diploma level it has been the HSUA's submissions throughout this hearing that the metal relativities are the appropriate relativities in terms of comparison, that at the associate diploma level the HSUA application seeks to value it with the appropriate years of experience at 145 per cent which is consistent with how the metal industry does it.

The TCCI's application by comparison seeks to value it 115 per cent which is substantially less and bears a striking resemblance to the child care award which I'm directing your attention to now, where an associate diploma is valued at 114.7 per cent. So I trust that establishes -

MR FITZGERALD: To the - to child care federal award.

MS HARVEY: The child care federal award.

MR FITZGERALD: Right. Okay.

MS HARVEY: Of which there is a very clear similarity in this jurisdiction but I'll leave that to Mr Fitzgerald. No doubt he may wish to take you to that in his right of response to my submissions, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: And I'm sure he will be given an uninterrupted right too, to response.

MS HARVEY: I'm quite sure he will.

So I was - had just outlined to you, Mr Deputy President, in page 12 the differences that occurred in that award between the qualifications and the relativities.

DEPUTY PRESIDENT ROBINSON: Do you think that was an exception to the general rule, or do you reckon that's indicative of something which is pretty general?

MS HARVEY: I think it's an exception to the rule.

DEPUTY PRESIDENT ROBINSON: Mm.

MS HARVEY: I think that certainly in the evidence that we've presented to you in relativities, that there has been a desire by unions and employers and industrial tribunals to treat the metal industry award as some sort of benchmark, if you like, for looking at appropriate qualifications and experience.

And that's why I suppose I am directing your attention to it. I think it is an exception to the way that it is normally done and I think some explanation or examination of that is required, particularly given the similarity with the TCCI's application.

Ms Kelly goes on to compare the description of Child Care and Metal Industry classifications on pages 15 and 16 of her paper. At the bottom of page 15, the very last sentence there, it says and I quote:

The duties of a child care worker Level 1 are described as including implementation of early childhood programs under supervision; implementation of daily routines; ensuring the health and safety of children in care; giving each child individual attention and comfort as required; working in accordance with licensing requirements; understanding centre policy and working accordingly at all times (Print 4316:10).

This compares to the duties of an entry level worker in the metal industry (C14) who performs routine duties of a manual nature and to the level of his/her training (Print J7179 :7) and such a worker after 3 months (C13) who works under direct supervision and whose tasks might include -

repetition work on automatic, semiautomatic or single purpose machines or equipment; assembling of components; basic soldering; boiler cleaning (Print J7179:8)

DEPUTY PRESIDENT ROBINSON: Do you think the conditions under which the work is performed will be the same or just similar?

MS HARVEY: Well, without going to all the different arguments in relation to this, Mr Deputy President, I cannot really answer your question, but one would expect that the metal



industry workshop, that sort of environment, would be one that is fairly standard in the manufacturing industry and child care centres - well that is obviously a different work environment and I think there are different pressures.

DEPUTY PRESIDENT ROBINSON: They might be both noisy.

MS HARVEY: I think that I can come to this issue more clearly when I start talking about the way that the skills that women workers have are valued - I think I have discussed this point before, that there are three types of skills; there is technical skill, social skill and operational skill, technical skill being the capacity to perform a particular technical function which can be quite easy to measure and in the metal industry it might be the capacity to machine a certain piece of metal to a certain point.

Then there is social skill and operational skill. Social skill is the way you relate to clients, or your other staff people and operational skills are the ways you organise your tasks. Now, social and operational skills are the things that tend to dominate in industries where there is predominantly high levels of women workers and I think we have seen that in this case, in that a lot of evidence that has been presented to you people talk about the stress, about how many different demands there are on their time, having to be aware of different things happening around them all the time, needing to be required to organise their work and taking into account all these different factors.

So, I think the question you have asked is pertinent -

DEPUTY PRESIDENT ROBINSON: Actually, I think you have diverted to the skills aspect of assessing wage rates as against -

MS HARVEY: The work environment.

DEPUTY PRESIDENT ROBINSON: - yes. The conditions under which the work is performed, which has been part of work value principles for a long time now and even before, I think, the formal establishment of that principle itself, that that is the sort of basis upon which those charged with the responsibility of fixing proper wages have been guided.

MS HARVEY: Yes. Well, certainly I hear what you are saying. I do not know about going to particular circumstances but I can imagine a child care centre would be every bit as noisy as a manufacturing workshop -

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: - and it may be every bit as cold and every bit as wet.

DEPUTY PRESIDENT ROBINSON: Yes, the work value changes of the current principles start off by saying, and it is only short so I will read it:

Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which the work is performed.

And that is why I just mentioned that as I thought that ought to be considered as relevant. I accept that it is difficult to make comparisons on such diverse occupations.

MS HARVEY: I remind you too, Mr Deputy President, that we seek to process this claim under the Structural Efficiency Principle and the extent to any work value the change has occurred, it would be subsumed by it in accordance with the principles.

Really, what I am trying to establish is the key matter - the way the qualifications were valued respectively and the wage fixing principles in relation to structural efficiency says that when establishing relativities, that we have to have regard to the level of skill.

DEPUTY PRESIDENT ROBINSON: Quite so. Yes.

MS HARVEY: Ms Kelly analyses the systems established by comparing work with classifications known as the Taylor method. I do not want to go into detail, however I do wish to take the Bench to the beginning of the last sentence on page 16.

DEPUTY PRESIDENT ROBINSON: The Taylor method?

MS HARVEY: Mm. She does give some history of it in terms of the issue of work value being established by a Commissioner Taylor in relation to a vehicle industry case -

DEPUTY PRESIDENT ROBINSON: Oh, right.

MS HARVEY: - which looks at criteria for comparing work value. So in the very last sentence on page 16, it says and I quote:

The use of the Taylor criteria to assess the work of women in human services industry does not take into account skills such as creating a comfortable environment, dealing with group processes, conflict resolution, persuading, nurturing, crisis management and management of frequent interruptions and simultaneous tasks which are characteristic of work such as child care. Further, many skills



which women exercise are discounted in assessing work value because they are seen as personal attributes or talents rather than as skills.

So, I think there is some significance in this statement. Certainly, it has been my experience that when you go and talk to people in the industry, and in this industry indeed, about the level of skill that they often take some time to unpack what their skill actually is because society says it is not a skill, it says it is just a personal attribute like being patient and that it takes some time to actually talk to people about what they do and break it down and to recognise the skill that is indeed involved.

The funding bodies in this case also play their role in devaluing the work of child care workers. As in this case, the argument was put that the government could not fund any increases and therefore the workers in the industry would in effect pay for the services that they provide to the community through discounted wages. If I can refer you to page 8, in the final paragraph, and I quote:

The Commonwealth government had intervened in the Victorian case and stressed that 'its current priority is on expanding the number of child care places available to assist in meeting the significant level of unmet need ... In the interests of equity, and improving general community access to child care, there can be no guarantee of additional Commonwealth funding being made available to cover the additional costs (of an increase in rates of pay)' -

Interestingly, when the time came, they did, and indeed there has been an expansion of the industry.

DEPUTY PRESIDENT ROBINSON: What did they do - double the tax on cigarettes, or something.

MS HARVEY: I think there has certainly been a push from the Commonwealth government - as was found in the teachers case of which I understand you were a member of that Full Bench, governments have a capacity to reorder their priorities and to work out ways to provide services. So, I assume what happened is, the Federal government indeed did that.

DEPUTY PRESIDENT: I will never forget the teachers case.

MS HARVEY: No, I did not think you would.

Ms Kelly has actually summarised the outcome of the child care case on page 17 of the exhibit.

DEPUTY PRESIDENT ROBINSON: I started off in the teachers case as a young bloke.

MS HARVEY: Let's hope this one is not going to be the same.

At the bottom of the page, in the final paragraph, in the second last sentence it says:

In the child care workers case, of course, it was not the Commission that had placed the relative value on child care workers skills but the ACTU and the federal office of the FMWU. The Commission simply relied on the Taylor work value criteria to which it was referred in ratifying, and justifying, the structure that had been put to it as an agreed position between the ACTU/FMWU and the employers in the industry.

So hence, it answers the question you asked me, whether it was an arbitrated decision or a consent decision and indeed it was a consent decision.

DEPUTY PRESIDENT ROBINSON: But by fairly substantial parties.

MS HARVEY: Yes. But there is also a very substantial party, the sex discrimination commissioner, the person who is vested with the responsibility under the Federal Act, has drawn attention to this case in her submissions to the AIRC National Wage Case, someone with indeed a huge level of experience and expertise. It is her who has referred to as being a case in point of the danger of these exercises in undervaluing women's work.

DEPUTY PRESIDENT ROBINSON: What, accepting agreements of parties, or understanding them?

MS HARVEY: No. Of the danger of relativities being established less - at the relativities being established at a lesser rate in industries where women predominate than industries such as the manufacturing industry.

DEPUTY PRESIDENT ROBINSON: Yes, but that was a personal view, wasn't it, as against - presuming the view of the party is to that consent award?

MS HARVEY: No, it was not a personal view, Mr Deputy President. It was a view which she made clear when she was commenting on her responsibilities. She had statutory responsibilities that came by virtue of the legislation and her role within it, so I don't think it can be dismissed as just a personal view.



DEPUTY PRESIDENT ROBINSON: Well, okay. But you certainly acknowledge and don't dispute her status for one moment.

MS HARVEY: Well, she is not disputing her skills.

DEPUTY PRESIDENT ROBINSON: No, no. You have two situations. One where the employer is the ACTU and indeed the Federal Commission are prepared to put into an award certain relativities and then you have this other argument from Ms Kelly, that I don't agree with what they did and they suggested that they were bias.

MS HARVEY: No. I don't that -

DEPUTY PRESIDENT: Is that a bit harsh.

MS HARVEY: Yes, I do. I think it is too harsh. I think what is being said and what I was careful to say at the beginning is that I think in a modern society we must indeed have the capacity to analyse what has happened in history and make criticism where criticism is required. It is not an issue of attributing blame. It is an issue of saying, these things happen for whatever structural reasons and having the maturity to assess that and ensure that we do not fall into the same trap again and I think that was the intention of the sex discrimination commissioner's submissions and indeed she goes on to suggest ways in which such a problem can be avoided in the future, and I would like to come back to that.

It is not a thing of attributing blame. It is a matter of recognising an inequity when it has occurred and ensuring we do not fall into a similar one. I do not rely just on this submission - I mean this forms part of my submission of public interest, but I think it is important to keep in mind that we have already put extensive submissions in relation to 5.3 of our submission, where we considered relativities, we looked at the process used by the State Negotiating Committee and whatever the employers say now, I can't force them to agree to the metal industry relativities, but they did agree for a very long period of time and withdrew that agreement at the end. I can't force them to agree now, but it should give some weight to the argument about the appropriateness of those relativities that there was a consensus for such an extended period of time.

Secondly, we presented to you - so the skills analysis is done and we have given you sworn evidence by a person in this Commission who could demonstrate the methodology and the process was such that it was a credible process. So, we have shown consistency with that. We have shown consistency with the Metal Industry Award. We are showing consistency with other awards in the state and federal jurisdictions in the relativities we are establishing and we have also gone to prove that the level of qualification that we are seeking to

draw the relativity with, is an appropriately accredited qualification within the framework of Australian legislation and we have also taken you to the Australian skills framework which is again this national method of setting skill hierarchies and valuing them.

So what we have done is, we have provided you with a cross-check of a variety of sources on the appropriateness of the relativities that we are proposing and what I am seeking to do now is to show that this, within the public interest context, is important that that work we have done not be devalued or dismissed on the basis - in fact that the methodology we have used is consistent with what reputable authorities like the sex discrimination commissioner suggests and that is important in terms of avoiding gender bias and it has additional relevance because indeed the relativities that the TCCI's application has, bears some similarity to precisely this award that has somewhat questionable status in term of the appropriateness of its relativities.

DEPUTY PRESIDENT ROBINSON: You are not suggesting that the TCCI application shows any sexual bias.

MS HARVEY: I haven't heard the TCCI's submissions. It may be that in my response to it, I may wish to suggest that. But at this point in time you would be aware, Mr Deputy President, I have presented a differences document, to which I still have no response. So, it is impossible for me to put submissions. Mr Fitzgerald has indicated that there may be things he wants to come back to that he agrees with, and maybe he doesn't. I cannot respond until I've heard his case.

DEPUTY PRESIDENT ROBINSON: All right. But, I can still ask the question.

MS HARVEY: Yes. I .... myself. I am getting somewhat passionate.

If I can now return to Ms Walpole's to the National Wage Case because she gave an important suggestion on how the dangers of valuing work can be overcome, child care being a case she draws attention to.

On pages 10 to 11 in Tab 1, at the bottom of page 10, the second-last paragraph and I quote and will do so at some length because it is significant:

Australia has had a broad approach to measuring work value, including skill, effort, responsibility and working conditions. Probably the most famous formulation is the fourteen considerations outlined in the vehicle builders' case in 1968 by Commissioner Taylor. However, there has been increasing concern in recent years to whether the



work value criteria adequately describe and value women's skills.

It may be that the Australian Standards Framework (ASF) will assist in comparison of skill values of dissimilar work. It is increasingly important for the AIRC to take account of the training reform process, as awards incorporate competencies as the classification (and hence pay) framework. This is important in relation to paid rates awards as well, as has been canvassed in the Family Court Counsellors' Case.

Some effort has been made to see that skills and competencies are defined without general bias, but there has not been a comprehensive review of how successful that has been. The ASF would provide a framework for comparing dissimilar work which would be more in keeping with past approaches to work value than, say, job evaluation systems while still offering improvements in reducing gender bias and not shifting the basis of value from demands on the worker to value to the employer within the enterprise.

So, the significance of this point, Mr Deputy President, is that this is precisely what the HSUA sought to do in justifying the application before you. We did make that link with the ASF, a procedure indeed suggested by the sex discrimination commissioner as a way of minimising gender bias in terms of valuing relativities in awards.

In addition, you will recall that Ms Jones' work had a significant requirement to avoid gender bias. The appropriate reference is in HSUA.5.3 Tab 1, page 4. I do not intend to take you to it because we discussed it previously.

Now, whilst Mr Fitzgerald has stated that the test case was not flown into the Tasmanian jurisdiction in its entirety, there certainly is similarities in the relativities that were established. However, I suspect that it will not be long within the federal or the state jurisdictions before a group of workers or a union decide to prosecute the matter in the federal jurisdiction under the power referred to under the sex discrimination commissioner under the new Industrial Relations Format. So I suspect it will not be long until the matter is indeed tested.

In summary I submit that the HSUA application meets the public interest test set down by Section 36. I have provided submissions on the benefits in terms of service delivery and I addressed those three factors, in particular the need for skilled staff to meet standards. Secondly, I looked at the ease of planning provided through proper skill-base award and,

thirdly, I addressed the issue of equitable wages being required to assist in retaining skilled staff.

In this second section I have looked at the issue of gender bias and submitted to you, Mr Deputy President, that it is part of the public interest to avoid gender discrimination in establishing wages, that this has not always been the case, that the Sex Discrimination Commissioner in her statutory role provided evidence to the National Wage Case about the dangers of valuing womens' work under the SEP and particularly draw attention to the child care case which we have now analysed and suggest an alternative way to ensure that such gender biases are avoided, namely some reference to the ASF, which has indeed occurred in terms of the HSUA's submissions in relation to this case.

So, in relation to public interest test, that includes my section that deals with Section 36(2)(c). I have already put submissions in relation to Section 36(2)(b) which was the impact on the total Tasmanian economy and I will this afternoon go to the issue of Section 36 (a), which deals with the cost impact on this particular industry and so I will address public interest as part of that.

I would suggest if it is appropriate, Mr Deputy President, that we adjourn now and resume this afternoon.

DEPUTY PRESIDENT ROBINSON: We will adjourn until 2.15 p.m.

#### LUNCHEON ADJOURNMENT

MS HARVEY: Just before I return to my submissions, Mr Deputy President, you'll recall that a question was asked of Ms Jones when she appeared as a witness about whether some correspondence dated 1 December addressed to myself had also been provided to the employers.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: I've received a fax from Ms Jones on this matter and I have selected it to read it into transcript. I'll make it available to Mr Fitzgerald.

It's dated 3 August 1994, addressed to myself, and it says:

Dear Ros

Re: covering letter sent by me on 1 December 1994, together with revised Level 8 recommendations for the WAVA classification structure.



As requested, I have checked my records. A letter with content identical to that sent to you was forwarded to Mike Sertori on 1 December. I attach a copy of the letter.

My records reveal:

1. The letter was sent to both you and Mike Sertori by changing the heading address on the computer and reprinting. You will note that when I did that I made an error and did not correct your name at one point there. Therefore, following the address it reads, 'Dear Ros. My apologies to Mike S. for this blunder.

2. The letter was hand delivered to the TCCI office in Launceston.

3. I do not believe a similar letter was forwarded to the Tasmanian Association of Disability Employers.

I trust this meets the requirements of the Commission.

Yours sincerely

Jenny Jones

And she has attached a copy of the letter that was sent to Mike Sertori.

Mr Deputy President, before the luncheon adjournment I had concluded my submissions in relation to section 36(2)(c), and just to confirm, I made a comment in relation to 36(2)(b), the impact of any change in the award on the total Tasmanian economy with reference to employment.

Over the luncheon adjournment I checked the total level of employment in the Tasmanian economy and it is 1.4 million persons. So -

DEPUTY PRESIDENT ROBINSON: Employed?

MS HARVEY: Hang on. I might have to get Mr Brown back. That's the figure he gave me. That's the figure he gave me.

MR FITZGERALD: That's in Australia.

MS HARVEY: I'll check it again. I think that's obviously wrong, because it couldn't possibly be. We don't have that many people in Tasmania.

DEPUTY PRESIDENT ROBINSON: I don't want you to think that I am questioning, but -

MS HARVEY: Totally fair enough. I will check that figure and tell you exactly what it is tomorrow. Obviously there is an error.

But the point I was trying to make is the total number employed in this industry compared with the total level of employment is very minimal, so that therefore you couldn't say that a variation to this award had any real impact on the Tasmanian employment levels.

But I will check that total number again.

DEPUTY PRESIDENT ROBINSON: Well, we will hold you to that.

MS HARVEY: To checking it again - not the 1.2.

DEPUTY PRESIDENT ROBINSON: To check the figures.

MS HARVEY: Yes. So, now in terms of my submissions, I wish to address the issue of translation.

DEPUTY PRESIDENT ROBINSON: Weren't you going to go back to 36(2)(a) of the Act?

MS HARVEY: I'm going to do that under cost implications.

DEPUTY PRESIDENT ROBINSON: Oh, right. Okay.

MS HARVEY: And I was going to do translation first, because it is important to understand the process that we're recommending for translation before turning to the cost impacts.

DEPUTY PRESIDENT ROBINSON: That's alright. I just thought you might not have remembered your place.

MS HARVEY: If I can just hand up an exhibit.

DEPUTY PRESIDENT ROBINSON: Thank you.

MS HARVEY: This being HSUA.6.

DEPUTY PRESIDENT ROBINSON: HSUA.6. Thank you.

MS HARVEY: A pretty orange colour it is.

HSUA.6 contains the HSUA's proposal for translation. It is my submission that this translation process should be attached as a schedule to the award. The purpose of this would be to avoid confusion.



We have had some experience in this matter before, Mr Deputy President, in two awards particularly I could cite: Private Hospitals, where the translation process wasn't attached as a schedule to the award and led to confusion in the industry about the process to be used; and the Nursing Homes Award when it was attached as a schedule it was much easier for both the TCCI and ourselves.

So I think it is important that certainly our submission would be that whatever the translation document determined, and we would obviously argue for the process that we're putting forward, that it be attached to the award as a schedule.

And I think it is particularly important in this industry because my understanding is that many of the employers are not members of the TCCI. There are many small, community based organisations, and therefore I think it adds even more of an argument for attaching it.

So we have basically attached the classification structure. I will run through the differences between this - sorry, the translation process. I will run through the differences between the HSUA's proposal and the TCCI's, and indeed in most respects it is the same. So we very largely will have agreement. Don't fall off the chair.

The only differences with the employer's application are that in section 1, classification structure, the word 'arbitrated' - sorry, are you right? I am on page 1.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: The very first sentence says, 'The arbitrated classification structure'. In the employer's proposal it says, 'The agreed classification structure', so I have just replaced it with 'arbitrated'.

DEPUTY PRESIDENT ROBINSON: In the employer's it says 'agreed'?

MS HARVEY: Yes, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Noted.

MS HARVEY: In section 2 in Point 5 the employers have included the words at the end of the sentence, 'using the indicative translation guideline'. So their's reads, 'that the employer would compare this information with the new classification structure and identify placement of the employee using the indicative translation guideline'.

Now we have actually not used that term, nor attached an 'indicative translation guideline'.

The reason being that we think it could easily be misconstrued if it has no status as a translation document saying (a) should end up as (b). Then it shouldn't be included because it may be inadvertently misunderstood. So, therefore, we have not included 'indicative translation guideline'.

Under increment points on the next page, which is section 3, the employer's proposal says in the first paragraph:

Employees will be translated to the appropriate classification increment level subject to the increment progression provision.

Now what we have actually said or stipulated is that, 'Employees will be translated to the appropriate annual increment, taking into account their experience in the disability services industry, at an equivalent level'.

Now the reason that we are totally opposed to the employer's proposal in relation to incremental progress is similar to - I wish to adopt my submissions that I made in section 4.1 in relation to this whole issue - and the point you'll recall is that in the employer's proposal for increment progression they had two requirements that we objected to. One is that progression would be subject to the employer's satisfaction and, secondly, a successful completion of an accredited course. So, instead of saying 'or' it said 'and'.

I would certainly submit to you, Mr Deputy President, that the employer's proposal in this respect is not a well thought out proposal because it is not workable as there is no accredited training modules linked to the classification structure that currently exists.

So, therefore, either they are intending not to move anyone past level 1 or, they have made a drafting error. I'm not sure which one it is, but it is totally unworkable the way that it is currently written, because it would not be possible to implement the translation document with that provision in it.

So, I don't wish to make any more points on that, other than, as I said, that I adopt my submissions in relation to 4.1 in regard to this point.

The next area where there is some difference is in the operative date.

The HSUA's proposal is that the operative date be the first full pay period on or after the 22 April 1994, that being the date of application by the HSUA for this award variation.



Now, the employer proposal suggests a 4 year phasing in of increases and it's suggested that it be in equal instalment over 4 years. The HSUA is totally opposed to this proposition. We believe it has - the employer's have already been - had an extremely lenient period of time when you consider that the first SEP principle was determined in 1988, that's 6 years ago and we believe that it would be outrageous that workers in this industry have to wait 10 years to achieve a result that other workers had access to in 1988.

So, we're totally opposed to that and seek an operative date, as I say, of the date of application and whilst I don't resile from that primary submission, if the commission did not find it acceptable to grant retrospectivity, our preference would then be date of decision.

Finally, if I could just say - if I could just run you through the translation process that we're proposing. So that's fundamentally the differences. There's not really that many, other than the very significant one of the difference between 4 years and obviously an immediate operative date, whether it be date of application or date of decision.

So, if I could just run you through the proposal. In section 1 in the classification structure, basically both parties have said that the arbitrated classification structure to be placed in the award in Division B as new divisions and wage clauses pending the finalisation of the national competency standards project currently being carried out under the auspices of the Health and Community National Industry Training Board. It is recognised that when the above project is finalised, that a review of the classification structure may be required. The commitment to examine the classification structure upon finalisation of the competency project does not prejudice the right of either party to put any submissions on the classification structure should a change be proposed by either party.

So, essentially, both the employers and the union's proposal recognised that we may have to come back and review once the national competency project is finished, and you will recall that in Ms Jones' sworn evidence in relation to this that whilst the actual project in Western Australia might finish in March - that's its deadline, although it's looking pretty, you know, may take a bit longer than that - the actual process of registration of competencies may be dragged out 2, 3, 4 years, it's hard to say. So we're really putting in that safety net to come back and review once that competency project is finalised.

DEPUTY PRESIDENT ROBINSON: Somebody else will have it then - have this award then.

MS HARVEY: To the translation process. Really what we're proposing is first of all that the employer would inform - that we would inform employees of the new classification structure and translation process and obviously both the union and the TCCI has a role in informing the industry generally, but the idea is that the - that all employees would be informed and we would - are certainly proposing that employers tell employees.

Secondly, that the employer list the employee's name and current position. I must say, Mr Deputy President, I'm not sure whether perhaps I should make a draft amendment. It really should be that the employer and then all these dot points inform the employees of the new classification structure that the employer list the employee's name and current position.

DEPUTY PRESIDENT ROBINSON: Do you want to vary - amend then?

MS HARVEY: I think perhaps for the sake of clarity we should. In 1. it would be that the employer inform employees of the new classification structure. In 2. it should be the employer lists the employee name. The employ - in 3. it should also have the amendment, the employer if necessary -

MR FITZGERALD: It would the same for all, is it?

MS HARVEY: Up to 6. So 4. would be the employer list employees existing duties. 5. would be the employer -

DEPUTY PRESIDENT ROBINSON: Up to and including 6.

MS HARVEY: Up to and including 5.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: So if I could start again that. Sorry about that.

DEPUTY PRESIDENT ROBINSON: Oh, that's all right.

MR FITZGERALD: Can I say just before Ms Harvey does, we'd have no objection for leave being sought to amend the application as such -

DEPUTY PRESIDENT ROBINSON: Yes. Thank you.

MR FITZGERALD: - or amend the documentation as such.

DEPUTY PRESIDENT ROBINSON: Yes. Thank you. It's not really amending the application, but -

MS HARVEY: So, - yes, if I could just say it again, Mr Deputy President, going back to the - the employer would



inform the employees of the new classification structure and the translation process. The employer would list the employee's name and the current position. The employer, if necessary, would discuss the matter with the employee and the supervisor. The employer would list employees' existing duties, responsibilities, qualifications and skills utilised. The employer would compare this information with the new classification structure and identify placement of employees.

The above process would be completed within 6 months of the decision provided that the operative date for any increase will be the same as the order from the TIC giving effect to the new classification structure. So they'd have 6 months to do it, but it would then be back dated if it took a bit longer.

That each employee would be advised in writing of their classification and relevant increment point. The employee would also be provided with a written copy of the information gained from 4. which is listing the employer's existing duties, responsibilities, qualifications and skills utilised.

8. if the employee disagrees with the classification and/or incremental scale allocated by the employer, the employee shall approach the employer with their complaint and ask for a review of the decision at the same time providing the supervisor with the reasons and facts surrounding the disagreement.

In the - 9. goes on; in the event the disagreement still exists following the review by the employer, the employee who is an HSUA member may negotiate such disagreement through the agency of the HSUA. Really, what we're saying is that in the first instance in line with good industrial practice that employees should try to resolve the matter at work place level, but that doesn't prejudice their right to have the matter, if disagreement still exists, to pursue this through the HSUA.

10. that the informal process for dealing with complaints shall be conducted without prejudice to either party and in the event that the employer or the employees feels dissatisfied at the end of the process, it is open to the employee or the employer to pursue their award rights under the act.

Now that's an interesting point in how we've actually done that. This agreement resulted out of quite lengthy discussions about the appropriate way of doing a translation process and as I indicated before, we've had some experience in this in other private sector awards and we found that if we can encourage people to talk about their problems at a work place level, sometimes the issue can be resolved, but we've also found that people are worried that in that discussion

they might be doing themselves in, so that if we can say to people that, look, all that discussion is going to happen in a 'without prejudice' basis, you're not going to take any rights away. They may in fact reach an agreement more easily.

So that's - it's a very similar process to what we used in Medical Diagnostic Services Award, Mr Deputy President, and I don't think we had one dispute before the commission when we translated with that.

DEPUTY PRESIDENT ROBINSON: Keep up the record.

MS HARVEY: In terms of increment points; I've already explained. Really all we're saying is that in the translation the - that there is - there is agreement with the employers, that their - that years of service should be taken into account. The difference is how the annual increment provision should be applied and it really is a consequential difference, if you like, from the main application that the TCCI has, that their annual increment provision is what we object to rather than the idea of taking into account annual increments.

Obviously, the operative date, there's a vast difference on that and I just - although there's no need, I indicate that I will be - and obviously I'll have to respond to that after Mr Fitzgerald's put his submissions.

DEPUTY PRESIDENT ROBINSON: If needed. If needed?

MS HARVEY: If needed, yes, Mr Deputy President.

MR FITZGERALD: Sorry, I just missed that. I cleared my throat at the wrong time. Was there some reservation as far as operative date? Is that what you said?

MS HARVEY: No.

DEPUTY PRESIDENT ROBINSON: No, no, there was just a reservation as to whether Ms Harvey would need to make further submission on operative date -

MR FITZGERALD: Oh, I'm -

DEPUTY PRESIDENT ROBINSON: - after you've made your submission.

MR FITZGERALD: Well, I'm not - I suppose they can address it. I can address my submission in terms of operative date, but I would have thought that Ms Harvey's primary submission in respect to operative date would have been put here and now, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: It has been put.



MR FITZGERALD: But I'm not sure whether there can be a right to reserve further submissions other than address what I put. It seems a bit unusual that the reserve for further -

DEPUTY PRESIDENT ROBINSON: The final right of reply I suppose is sort -

MR FITZGERALD: Yes, but there's been operative - but there's been submissions already been put and I don't think we're - it's open for the commission to reserve it for further submissions to put other than the right to reply to what I put in terms of operative date.

And it's really - what I'm saying, Mr Deputy President, it's not open for the - for Ms Harvey to present further submissions in evidence in support of her position in respect to operative date.

DEPUTY PRESIDENT ROBINSON: Oh, no, no, it wouldn't be in evidence. I wouldn't ....

MS HARVEY: Yes. I think there's a misunderstanding. I think you cleared your throat at the wrong time. As you said, basically all I was saying was that I intended to put no further submissions in relation to that matter, however it's possible that I may need to respond after you've put your submissions in my right of reply.

MR FITZGERALD: Oh, I think that's in the case of all submissions I'd say, if that's the case.

DEPUTY PRESIDENT ROBINSON: Yes. Right then. I suppose I was a little bit facetious in saying if necessary to respond. I mean, with the obvious implication that perhaps it might be a matter upon which the parties are agreed.

MR FITZGERALD: Well I had a misunderstanding of what Ms Harvey said. It does clear it up.

MS HARVEY: Finally, the HSUA accepts that it is logically possible that an employee maybe translated to a level below their current rate. I mean, that's a logical consequence of the sort of proposal that we're putting forward. Accordingly, an appropriate savings provision needs to be put in place. I believe that clause 73 of the award is appropriate but this is not a matter on which I've had discussions with the employers and it may need to be looked at just to ensure that it is indeed accurate. But certainly I don't believe there would be any disagreement with the employers that there's a need for an appropriately worded savings provision so that if someone was to be classified at a lower level to what they currently would be on, they'd be frozen at the current level whilst the award caught up.

DEPUTY PRESIDENT ROBINSON: Yes, I understand what you're saying.

MS HARVEY: I don't intend to put any further submissions in relation to the process for translation, Mr Deputy President, as it's a matter I think is fairly logical and straightforward and one where there is substantial agreement with the employees in terms of the process other than those two matters which obviously will be a matter of further discussion. Unless you have any questions?

DEPUTY PRESIDENT ROBINSON: No, I don't have any.

MS HARVEY: I know wish to address section 7 of my submissions which goes to the issue of cost implications and at the same time I will be addressing the public interest test under section 36(2)(a).

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: And I'll just repeat that section of the act, and it says:

In deciding whether a proposed award or a proposed industrial agreement would be consistent with the public interest, the Commission shall -

(a) consider the economic position of any industry likely to be affected by the proposed award or proposed agreement.

In addressing this issue I will focus on three points. First, the feature of the disability services sector as a funded sector. Secondly, cost savings through successful community integration. And third, the wage fixing principles.

There is absolutely no escaping the fact, Mr Deputy President, that this sector is a funded sector. Residential and independent living services are virtually 100 per cent funded by the government. In supported employment there is some capacity to raise revenue through sales whilst they also receive funding from the Commonwealth Government.

If I can just say that in terms of the cost impact of the HSUA's application, it is very difficult to assess. The reason it is difficult to assess is that we're not talking about translating 'X' classification to 'Y'. We're really talking about establishing a whole new skill based award and assessing individuals and translating them over to the properly established relativities, definitions et cetera.



So in that respect it is not possible to give you a strict cost estimate of how much the HSUA's application will impact on the industry, although I will later in my submissions give you an absolute maximum that I've heard quoted by employers.

Now whilst I say it's not possible, there is some trends that it is possible to say. And that is that the biggest impact of the HSUA's application and indeed it's a similar comment could be made for the TCCI's application, is in the residential and the independent living services. It is not in supported employment. And I think that is widely recognised. The major impact is in those two areas and it flows from the point that I was making earlier in my submissions that the top rate currently in residential is 100 per cent. Under this new skill based structure obviously there is capacity for some movement above that.

So I think that that is important to say because in the submissions that I will be making to you I will be focusing on the cost impact on the State Government. There is in the Federal Government a program called 'Moving Towards Award Wages', where the Commonwealth Government will fund movement from non award to award where new awards are established. Now this is a provision I understand there's some capacity within the State Government to access in relation to the Community Services Award because it's award free moving to award.

We have had discussion with the State Government and the Commonwealth Government in relation to whether such a program could be used in relation to supported employment. There is some difficulty in the sense that an award already exists so technically it falls outside the Commonwealth guidelines because an award already exists. They can't .... that it's moving from non award to award. It's funding a movement in an award. And certainly my organisation is committed to having continuing discussions in relation to whether that funding program can be used to assist in supported employment, although the movement, if our application is successful, we would submit is fairly minimal in that area.

My understanding is from the State Government and the minister's office that those discussions with the Commonwealth have not been finalised and that further discussion is actually required in terms of how much funding the Commonwealth Government could pick up or if they would pick up.

I said earlier that you cannot escape - we cannot escape from the fact that it is a funded area and as such there is no escaping from the fact that there would be an impact if this award was moved on employment if and only if there was no adjustment to funding. So in terms of the public interest test we must - indeed we're forced to admit that there would be a potential impact on employment in the industry, but if

and only if there was no adjustment to funding. And I think it sounds semantical but it is in fact a fairly important point in terms of assessing the whole public interest argument.

Indeed it's a very vicious cycle. If industrial tribunals do not adjust wages in community services areas for fear of impact on employment, governments are relieved of the responsibility of providing appropriate funding. There is an extremely important principle at stake in relation to this whole public interest test on this award and that principle is that should wages be determined for all workers in accordance with appropriate industrial principles, in this case the structural efficiency principle, or should wages in fact be replaced by some sort of concept of what funding bodies choose to fund to.

Now if that proposition was accepted then one must really ask what the point of industrial tribunals would be if a funding body were able to say: We choose not to fund therefore the industrial tribunal should in some way have their hand forced to not provide wage increases through properly established industrial procedures.

If the capacity or incapacity to pay replaced the wage fixing principles by a narrow interpretation of section 36, sections of the work force who work in funded sectors would be discriminated against and forced to accept lower wages because governments and the community do not choose to adequately fund services. And I use the word 'choose' advisedly.

This would be equivalent to a private sector employer - I just got the total figure on the Tasmanian labour force. They looked a little surprised when I said 1.2 million. I apologise for the interruption.

As I was saying, this would be equivalent to a private sector employer being able to set wages on the basis of wages he or she chose to pay. This clearly would result in a manifestly discriminatory wage system which would be a recipe for industrial unrest if wages were set on such an arbitrary. Clearly this is against the public interest.

In the event that the commission grants the HSUA's application with the impact of an increase in wages, there would be a huge moral pressure for governments to increase funding to reflect the increases in the award, especially a government which gave itself a 40 per cent wage increase. The moral hypocrisy of a government if it refused to fund an increase set by an independent umpire would be immense. It would have to argue that the community couldn't afford an increase to workers in this industry but it could afford to give itself a 40 per cent increase.



And I remind the commission that that 40 per cent that the politicians gave themselves is indeed what many of our members earn in this industry.

The increase they gave themselves, as I just said, is more than many workers in this industry earn. It has always astounded me that service providers in this state do not recognise the huge political clout they could exert. If the government was not prepared to fund increases then services would be cut. The HSUA believes that this outcome would not occur as such a decision would undermine the entire community integration strategy which has been pursued over the last 4 years.

In addition, it would result in a cost increase for the government if clients were returned to Willow Court as the per client cost is less in the community than the government sector.

Now I'd now wish to actually look at that matter, Mr Deputy President of the cost savings through community integrations, and I'd like to hand up an exhibit. This would be HSUA.7.

DEPUTY PRESIDENT ROBINSON: HSUA.7, it is then.

MR .... : Pink for girls, Ros?

MS HARVEY: Pink for girls.

MR .... That's discriminatory.

DEPUTY PRESIDENT ROBINSON: Is it all right if we fellows have a look at HSUA.7?

MS HARVEY: You're not all getting sensitive on me, are you?

DEPUTY PRESIDENT ROBINSON: Defensive.

MS HARVEY: Mr Deputy President, the document that I prepared is an estimate - it contains an estimate of non government disability service savings for the government as a result of community integration.

DEPUTY PRESIDENT ROBINSON: What's the source of your figures?

MS HARVEY: The source of my information is actually on page 3; I've included the source. The sources of information are the Department of Community and Health Services Annual Report 1992-1993. And in addition information which I very badly needed to do this was provided by Mary Bent in terms of the number of clients in the community sector. We've had some trouble, you'll recall at the beginning of my submissions in section 2 ascertaining the total number of clients in the

community as opposed to Willow Court in residential support. Now that was provided by Ms Bent as she was quoted in the 'Mercury' on the 31st July 1994.

DEPUTY PRESIDENT ROBINSON: Do you believe everything you read in daily newspapers, with the greatest respect to the named paper?

MS HARVEY: Well, Mr Deputy President, as I've said, we've had some trouble extracting what the total number of clients are. The article I refer to is one where Ms Bent actually responded quite formally to an article written by the 'Mercury', so one can only assume that it was put together by the department. But I only rely on that in relation to the total number of community clients, the rest comes from the annual report.

DEPUTY PRESIDENT ROBINSON: Mm.

MS HARVEY: So in terms of these figures, Mr Deputy President, what I've done is compared the per client cost of the Willow Court centre as opposed to the combination of the CIP and DSGA programs. Just for clarification, you will recall that CIP are those clients who are moving from Willow Court into the community sector. The DSGA, which is the Disability - sorry, it should be CSDA, which is Commonwealth State Disability Agreement - CSDA Program. That program is the funding provider to community clients, not those clients who have come through the Willow Court complex.

So if I could just go to the information, there are approximately 156 clients at Willow Court at a total cost of \$9.9 million in the '92-93 Annual Report. Unfortunately the '93-94 Annual Report is not actually available at this point in time. The per client per day cost is \$174.00. Now the Willow Court complex does involve not only residential, it also has a supported employment focus, it also has independent living training. So it's a combined cost if you like, it's not just residential.

The CIP and CSDA programs, there are approximately 522 clients at a total cost of \$20 million. Now that \$20 million also includes all the administration of the grants programs within the department itself. So the \$20 million is not what the community sector is getting, it's the total program cost.

The per client per day cost is \$105.00. Therefore the total savings per client per day saving of the non government sector to the government sector in this industry is \$69.00 per client per day, representing a total saving of \$13.2 million per year.

Now the reason I've included these figures, Mr Deputy President, is we certainly do not believe that the non



government sector should be just a cheap option budget initiative dumping ground for the government. We believe that people with disability deserve the best level of service, the objective of community integration is indeed a laudable one, but that it shouldn't be pursued as purely just a budget reduction exercise. And indeed we would contend that community integration if it was funded to an appropriate level should indeed cost more than centre based per client cost for the simple reason that you get some economies of scales in big organisations and big institutions. And secondly, you're not pursuing such an active labour intensive process of community integration which you've heard in the submissions from the HSUA can be very labour intensive to be able to get a client to gain the skills that they need to work towards the goal of independent living.

Now we've also over the page - I've done a cost study of savings for residential support. The reason for doing this is to give you some sort of indication of the sort of savings that the government can make as a result of differences between awards in the government and non government sector. There are approximately 75 group homes in 1992-93, eight of those were in the government sector and it's a stated objective of the State Government to move those group homes into the non government sector.

Now I've just looked at two issues only; one is sleepover, the other is wages. In terms of sleepover, sleepover alone in the non government sector in this award there is a princely payment of \$20.00 per night to undertake a sleepover. And I remind the commission that sleepovers are in additional hours to a full time employee's 38 hours, and we've heard evidence throughout this case that it varies but people are doing from 7 days in a fortnight on sleepover to 4 days in a fortnight. There is some variation but indeed most of the workers in residential support are doing sleepovers.

Now sleepovers come about from the requirement to provide duty of care and therefore to have a staff available in certain homes, certainly the vast majority on a continual basis. In the government sector there is no sleepover provision therefore when - in a government group home when someone is required to stay on the premises at night they are indeed on a night shift. And they are currently - I've calculated what it would cost per night on the basis of the Social Trainers Award, which is the relevant award for the government sector. And that payment working out of 15 per cent shift penalty, and that's the only addition I've made, on the base grade top increment is \$115.00 per night. So you can see the immediate cost saving of the non government versus the government sector is \$95.00 per night for a group home. So savings per group home per year just on that one factor of sleepover alone is \$34,675.00. So obviously if you were to times that by 75 of the group homes that are currently in the non government

sector then you've got a very substantial cost saving by the operation of the non government sector and members are covered by this award.

DEPUTY PRESIDENT ROBINSON: And the 75 group homes might be increased in number over time?

MS HARVEY: Indeed that's the objective. Since this time there were eight - this was in the '92-93 Annual Report. There were eight in the government sector; there has been a process of handing them over. And in addition because we're looking at another round of community integration of approximately 56 clients in this financial year, then you're going to have another round of group homes. So if there's four clients in each group home, for example, which is the standard amount, then you're looking at another 14 group homes in the next round of community integration, all saving in relation to sleepover \$34,675.00 per group home.

If I can now touch on the issue of wages.

Currently, the wages in the - and again I am looking at the example of residential support. I've taken the current wage for a non government residential support worker under WAVA, which I have used Residential Worker Level 3, which is the base grade without supervision, of \$381.10 per week.

Now, in the government sector, which again using the Social Trainers Award and the same classification I used for sleepover, is \$471.95 a week.

Therefore, you have a cost saving per full time equivalent of \$90.85 per week, and if you times that by six full time equivalents per group home, then you have got a saving of \$545.10 per week, or \$28,345.20 per year.

So if you add those two figures together the saving from sleepover and the saving from wages alone - and these are only two factors - then you are looking at a total saving per group home of \$63,020.20.

You can see, Mr Deputy President, why I have some confidence in saying that if the non government sector could only recognise the clout that it does have, if it were to front up tomorrow and say to the government that it's not being adequately funded, which we certainly contend it is not, and I certainly believe the employers would concur on that point, and if they were to say that we are no longer to bear the responsibility which we have taken on behalf of the government, because it is a government responsibility to provide these services, therefore being no other place for these people to go other than the government sector to take them back, you are looking at a huge cost impact on the State Government.



Now if you were - sorry - with the continuation of the community integration process the State Government will save millions of dollars.

There is a target, as I said, to move another 56 clients to the non government sector this year, which represents substantial savings to the State Government.

If the HSUA's application was costed at 20% total cost impact per worker, which I believe is absolutely overly generous, overly generous, but that's the outside I've heard ever quoted by an employer, is that it would be 20% with oncosts, so not just 20% in the award but 20% with oncosts for sleepover and shifts, and all that sort of thing.

If indeed that was the cost, which as I said I believe is overly - overestimates it - then the client per day per cost would rise in the non government sector to \$126.00. That's \$126.00 per client per day.

This is still a \$48.00 per day per client cheaper than the provision of the service by the government sector.

If the award increases which I have used, which I have already said is a high estimate, if the 20% figure were used, you would be looking at approximately a \$4 million increase as a result of the change in the Welfare and Voluntary Agencies Award.

Now I want to state again, I think it is extremely high, because it is very difficult to make comparisons. I'm going on the figure - the highest figure ever quoted to me by an employer - and it is very difficult to estimate because of this thing of having to translate individuals.

However, if that was correct, and we look at the Department of Community and Health Services' budget, and on page 3 there should be a correction, it should be \$450 million not \$622 million.

Then making that correction, Mr Deputy President, if it was to increase by that amount - which I have already said I think is, you know, a very high estimate - then we would be looking at 0.9% of the total budget of Community and Health Services. I have corrected that 0.6.

This is significantly less than inflation which is currently running between 2.6% and 3% per annum, so we are really looking at a very small impact overall on the department's budget.

Now I accept that in terms of putting this exhibit to you, Mr Deputy President, it is an attempt to try and give you some sort of estimate.

Now the union does not have access to all the information that the department has, not can I imagine that the department would give it to us, but I think whilst the actual figures down to every cent and dollar may not be 100% accurate it is enough to give you a trend or an understanding of the massive savings of the non government sector to the government sector in this industry; and, indeed, I am quite sure it is a submission that employers in the industry would certainly understand and support, because I think many of those have said to me over many years that they feel underfunded by the government sector by comparison to the sort of resources and facilities that the government sector has at its disposal.

If I can now turn to the issue of the wage fixing principles themselves.

The wage fixing principles are quite clear in relation to the cost implications of any granted increase in award rates.

It is dealt with through the economic incapacity to pay principle, and if I could refer the commission to HSUA.5.1. TAB 1 on the last page.

The incapacity to pay principle which is on the very last page of the principles in HSUA.5.1, TAB 1, and it says:

Any respondent or group of respondents to an award may apply to reduce or postpone the application of any increase in labour costs determined under the principles on the ground of very serious or extreme economic adversity.

The merit of such application shall be determined in the light of particular circumstances of each case and any material relating thereto shall be rigorously tested.

Now, whilst I have stated that this sector is 100% funded, there are also - it is quite possible that there are services out there who have received, for example, behests or other payments or are subject to sponsorship from corporate bodies or from extra funding from families - we really don't know the answer to that for the case of every single service.

So this principle makes it clear that a decision must be made prior to application for reduction or postponement can be made.

Now this approach is logical, as without it the objective of setting a rational system of minimum rates would be



frustrated, and you will recall, Mr Deputy President, in the most recent national wage case where the full bench of the Australian Industrial Relations Commission gave a summary of wage fixing principles since the return to centralised wage fixing.

There was a very clear emphasis on the need to set rationally objective, consistent rates of pay, and that a fairly strong objective was to set this framework of minimum rate awards which were internally consistent and externally consistent so we'd have this rational base from which to move on to with enterprise bargaining.

Now if this principle were not applied in the way that I have interpreted it, then we would have the situation I alluded to before of wages not being set on rational objective tests but being assessed on the basis of what an employer said they were able to pay.

So, really the emphasis is on we set the rates in accordance with the structural efficiency principle and then the onus is on any employer if they were unable to pay that to make application under this principle and to have the matter heard before an industrial tribunal in relation to either postponement or of having such a variation not apply to their particular circumstances.

I want to stress that this sector is in no way different to any other sector that the government funds either through direct employment or through funding to an auspicing body.

There is no difference, in our opinion, in terms of the liability for the government of a sector that employees people directly or one that it funds other organisations to employ people.

If a narrow interpretation of section 36 were used in this award it would be completely inconsistent with the way that the commission has treated other funded sectors, which would be inequitable and against the public interest under section 36(2)(c).

For example, public hospital staff, nurses, public servants and a myriad of other workers are not forced to accept below normal wages because of government decisions on budget strategies.

It is clear that the commission has used the economic incapacity to pay principle to satisfy its responsibilities under section 36(2)(a) of the Act.

So, if you like, Mr Deputy President, the submission that I am making is that that incapacity to pay provision of the principles satisfies the public interest test required by the

commission under section 36(2)(a) because it allows an employer who may be adversely affected, which we can only ascertain by looking at their direct circumstances, it provides them avenue to this commission to put their circumstances and to put their case.

In evidence of this I wish to refer the commission to the full bench arbitrated decision in T.2457, which is indeed the teachers' special case, which I understand you were part of the full bench in relation to that matter.

In that case the government ran an incapacity to pay case based on its budget strategy.

It is useful to note that the position of the government has improved substantially since that case was run, and I understand that the government claims to have stabilised its budgetary situation. Certainly to such an extent that they can give themselves a 40% pay increase without jeopardising their budget strategy.

In that decision on page 7 of T.2457 of 18 May 1993 the full bench said, and I quote:

We fully recognise, as we believe the community at large does, that the Tasmanian Government's financial circumstances are difficult. Against that we have had to reach a conclusion on whether or not that difficulty justifies the indefinite postponement of a properly determined salary increase for teachers who represent one section only of the Government's workforce. Particularly when the Commission is aware that other groups of employees during the conduct of the teachers' special case have received substantial pay increases, and no attempt has been made by the Government to exercise the economic incapacity principle.

Now I have said it once, I have said it many times, they certainly didn't seek to apply it to themselves, and that, as I say, I think would cause incredible disquiet in the community if the government were to stand before this bench, having given itself a 40% increase, and arguing that workers in this industry who are so vital, who work so hard to provide the best level of service, and who are paid so lowly, should not be able to have an increase which is determined by an independent umpire.

Further, the full bench said in relation to the teachers incapacity to pay argument:

Having regard to all the material provided, we have concluded that the Government has available to it a



range of options and the capacity to rearrange its priorities to enable it to meet its industrial obligations.

Indeed, a conclusion which we believe is appropriate in these hearings.

Finally, the full bench rejected the government's application for amelioration of its responsibilities under the teachers case which relied upon the incapacity to pay principle.

In conclusion if the HSUA's application was granted there is no escaping the fact that there would be a cost impact.

However, this has to be seen in the context of the financial contribution that the non-government sector already make to the government's budget through lower wages and conditions of its staff which make the non government sector a cost effective alternative to the government sector.

And whilst we don't resile from the fact that this sector is funded, we do not know the individual circumstances of each service and, therefore, the only way which the incapacity to pay principle could be applied is that we need to determine a decision based on an appropriate industrial principle, namely the structural efficiency principle, and then it is open to any service to put argument before a commission based on the incapacity to pay principle.

If you look at it within the context of the total saving that the non-government sector makes to the government sector - to the Government's budget - through the provision of services in the non government sector, within that context even if the HSUA's application was granted there is still overall a total saving to government.

I submit that the HSUA's application is consistent with the public interest test as well as the wage fixing principles.

In particular, just to recap, in terms of section 36(2)(a) which deals with the economic position of the industry, I have outlined that the disability services is a funded sector. However, the government has a choice whether it increases funding or not, and that it is not appropriate for this commission to make decisions on wages based purely on a narrow interpretation of section 35(2)(a).

I've gone through the cost savings that the non government sector already contributes to to the government by providing services in a cost effective manner.

I've outlined the wage fixing principles and the access that any service does have under the economic incapacity to pay principle if it was in a position where it truly could not afford to pay.

And I have said that that aspect of the wage fixing principles indeed, in our submission, does satisfy section 36(2)(a) and the commission's responsibilities in relation to that.

So, in conclusion, Mr Deputy President, if you take together my submissions in relation to this section and in relation to 36 - sorry, in relation to section 5.6 of my submissions - together with all the other evidence that we have presented to you in terms of public interest and the improvement in client service, the evidence provided by witnesses about the importance of skilled staff, if you take all of that together as a package we submit that the HSUA's application is indeed within the public interest, and if it was to be approved by this commission it would certainly have satisfied itself in relation to section 36 generally.

DEPUTY PRESIDENT ROBINSON: Thank you; 36 is of course a statutory provision, whereas the wage fixing principles don't have that same status. I mean, they have a status of their own.

But to substitute a wage fixing principle almost to satisfy a statutory provision like section 36 is probably an oversimplification, and a shift of onus, which the legislators don't appear to have ever contemplated. If they did, they haven't said so.

MS HARVEY: I hear what you are saying, and if I were to rely only on that aspect of my submissions I would probably be concerned, but I believe that I have put enough evidence before the commission in relation to the other matter of public interest that as a package it would certainly, I believe, justify the HSUA's application and the requirements in relation to public interest.

DEPUTY PRESIDENT ROBINSON: Yes. And, lest it ever be misunderstood, certainly my association with this tribunal and its predecessors has always been that public interest should be considered whether there is a statutory requirement or not.

MS HARVEY: Mm.

DEPUTY PRESIDENT ROBINSON: So that it certainly is part of the Act which I wholly endorse and support.

I thank you for your submissions. I don't have any questions - further questions.



MS HARVEY: Now if I could just clarify, in case it has been, you know, in case I haven't put it in the best possible manner. I'm not suggesting that the incapacity to pay principle removes altogether the public interest test requirement. Clearly it doesn't. And I have gone to some length to address each individual item in relation to public interest, and as a whole I certainly believe the HSUA's application is in the public interest.

I suppose the point I am trying to make about section 36(2)(a) is that if it were narrowly interpreted in the way that some may suggest in this type of hearing that we have to offset people's wages or somehow not use the same principles that every other worker has access to, that if that were done on the basis of 36(2)(a) that that would be against the public interest in the sense that it is in the public interest to have a properly set rates of pay and there is access to the incapacity to pay which meets the responsibility of the commission not to send people to the wall, if you like.

So, if you take it as an overall package in terms of the submissions we have put to you, we certainly submit that on every strict application of that test that we would have met it.

DEPUTY PRESIDENT ROBINSON: Right, well I am glad you have clarified that. I would hate anyone to get the impression that you were saying don't look too hard at section 36 because if somebody feels they don't have the economic capacity to meet the costs of any new award, then they have got other remedies.

MS HARVEY: Certainly I am not aware of any private sector award in terms of relativities that has had its relativities reduced on the basis of 36(2)(a).

DEPUTY PRESIDENT ROBINSON: Well, I suppose it needs to be acknowledged that these hearings are publicly advertised. Indeed, they are directly notified bodies that the legislation recognises, like the TCCI and the TTLC and the minister, as defined.

MS HARVEY: Yes.

DEPUTY PRESIDENT ROBINSON: And that would give the opportunity to those who have some responsibility in finding funds to intervene in this matter and they would be able to intervene as a right, if I remember how the Act is worded, and have the opportunity to express whatever reservations or fears they may have about the outcome of this case.

MS HARVEY: And, not only that, Mr Deputy President. I mean, we have had departmental people here earlier on in the hearings who are totally aware of it. I have met with the

minister, the TCCI president, I have provided a copy of the HSUA's application to the department. I mean, there is no way known it could be said that they don't know what's happening.

DEPUTY PRESIDENT ROBINSON: Yes. I don't mean to put all the onus back. I'm just saying that as one factor, amongst many, it could be noted that there was that opportunity. It would be wrong if there was not the opportunity through people not knowing that this matter is on.

MS HARVEY: Mm. Mr Deputy President, just in relation to the public interest in this section of my submissions, if I can just clarify. I have got the Tasmanian number employed now, and it is 195,000.

DEPUTY PRESIDENT ROBINSON: 195,000.

MS HARVEY: Employed people in Tasmania.

DEPUTY PRESIDENT ROBINSON: Persons employed in welfare services?

MS HARVEY: No, no, in the Tasmanian economy.

DEPUTY PRESIDENT ROBINSON: Oh, right.

MS HARVEY: There are 195,000 in the Tasmanian economy. The estimate - and I explained to -

DEPUTY PRESIDENT ROBINSON: Public and private?

MS HARVEY: Yes, total employed. I explained earlier in section 2 of my submissions that it is very hard to get accurate data on employment in the industry. You can't rely on ABS because the samples are too small in Tasmania to just aggregate to that level, and unfortunately the department wasn't able to provide me with accurate information.

So that thousand is an estimate which you'll recall I explained how I reached that estimate in section 2. I am not sure whether it is one the employers accept or not, or whether they have some alternative estimate.

MR FITZGERALD: Which one?

MS HARVEY: One thousand people being employed in the industry.

MR FITZGERALD: I think I will comment when I make submissions.

DEPUTY PRESIDENT ROBINSON: Is that full time, or full time equivalent?



MS HARVEY: Well, I am saying heads.

DEPUTY PRESIDENT ROBINSON: Heads. Right.

MS HARVEY: I certainly wouldn't be saying one thousand full time equivalent.

So, anyway, if it were to be one thousand and if one accepts that figure, and I accept it is rough, then you really - if there was an impact - certainly if the award increases there is no way you could argue that every single thousand jobs would be lost, or anything like that. So you would be looking at a fairly minimal impact of the overall percentage of 195.

I mean, even if you said you were going to lose 100 jobs, which certainly I wouldn't accept, then you are looking at 100 out of 195,000 and you are really looking at a very minimal impact in terms of 36(2)(b).

DEPUTY PRESIDENT ROBINSON: Mm. I guess it is a subjective sort of opinion as to whether the possible loss of any jobs is minimal.

MS HARVEY: Well, if that was the test if, of, you know, in that sort of way that was to be applied in the jurisdiction in that sort of way, I don't think you would ever see an award ever move anywhere.

DEPUTY PRESIDENT ROBINSON: Yes. I guess it is the difference in the definition of a recession or - I forget the thrust of the analogy - but, yes, it was along the lines that it all depends if you are the one affected or if it is someone else who is affected.

MS HARVEY: Yes. I certainly wouldn't want to down play the importance of unemployment and how that affects individuals.

DEPUTY PRESIDENT ROBINSON: Yes, I guess it is the difference between a recession and a depression.

MS HARVEY: Yes. If I could just say, Mr Deputy President, that we will be calling a witness in relation to this whole issue of public interest tomorrow to provide sworn evidence in relation to some of the submissions that I have made, and I would seek at this stage to adjourn to allow so that tomorrow we can have the witness. I can then conclude completely on public interest.

Then I am required - I have left to address - is future issues, which will be very brief, and some preliminary concluding remarks pending my final conclusions after Mr Fitzgerald puts his submissions.

DEPUTY PRESIDENT ROBINSON: Right. Very well, we will adjourn until tomorrow.

HEARING ADJOURNED