

HEARING COMMENCED 2.20pm

PRESIDENT: I'll take appearances.

MR I. PATERSON: If it pleases the commission, IAN PATERSON
5 appearing for the Australian Municipal, Administrative, Clerical and
Services Union.

PRESIDENT: Thanks, Mr Paterson.

MR A. FLOOD: Thank you, Mr President, ANDREW FLOOD from the
Tasmanian Chamber of Commerce and Industry.

10 PRESIDENT: Thank you, Mr Flood. Well, Mr Paterson, we've got a
whole set of new conditions.

MR PATERSON: If I can be fairly brief as to this application, what
this seeks to do is effectively to a large extent to import into this award
the relevant provisions from the occupational award, the Clerical and
Administrative Employees (Private Sector) Award. There are some
15 changes and I'll take you to one in particular. The scope clause has
been expanded to include a new dot point (iii) for telesales.

To make it clear, this was an issue that arose in a matter I had before
Commissioner Watling that there can be a distinction between
marketing and sales and this is to clarify. On the advice from my
20 dealings earlier with Mr Cameron, there's no opposition to that
inclusion here.

Looking quickly to the index, the annualised salary agreement clause I
have tried to simplify. I found ..[inaudible].. in the Clerical and Admin
Award difficult to read.

25 There is a provision in Part V for shift work. There is also, whilst not in
the index under employment categories -

PRESIDENT: Can you take me to the pages.

MR PATERSON: Sorry, I'll come back then.

PRESIDENT: Will you?

30 MR PATERSON: The employment category is the first one with a
change in it.

PRESIDENT: Yes.

MR PATERSON: It has a provision that I have - no, it's not in
employment categories -

35 PRESIDENT: Dealing with what?

MR PATERSON: Trainees.

PRESIDENT: Yes. Page 6.

MR PATERSON: Yes, that's correct, page 6. This is a clause that I have drafted and have promoted in a number of circumstances. I suspect that there won't be agreement from the TCCI on this particular matter as it really does need to be the subject of broader and higher level discussions if it is to be a common clause across awards which is our intention, so I imagine, subject to Mr Flood's response, that we'll probably delete that from this application and leave that to be dealt with at a later stage.

PRESIDENT: What do you know about the use of traineeships in this industry?

MR PATERSON: Extensive. It is one of the areas where traineeships have been targeted, particularly in call centre operations and there a Certificate II, III and IV in call centre operations were pushed through about twelve months ago, I think, in this state under the auspices of TASTA through its accreditation committee, TTAC to the extent that this award - and this was an issue that Mr Flood was just asking me about - to the extent that this award has potential application to info tech services, then that's another area where traineeships have been fairly heavily promoted.

PRESIDENT: This is what concerns me about leaving the issue virtually in the air.

MR PATERSON: It will be in the air in terms of this matter, but it won't be in the air in terms of the broader processes. The Trades and Labor Council has a meeting next week to look at a whole raft of issues to do with traineeships including the vocational, education and training aspects and the industrial relations aspects. The resolution of these issues is fundamental to the implementation and the national training packages, the state government and the office of Vocational, Education and Training and all the industrial parties have an interest in clarity around this matter.

PRESIDENT: They certainly do.

MR PATERSON: So from my point of view it is one of the - although not specifically - or not solely an industrial matter, I am personally pushing as hard as I can to do that and as an aside, one of the proposals that is being contemplated is that maybe a common rule trainee and apprentice award for the state private sector may in fact be the best way to go which could in fact be built out of and on top of the National Training Wage Award. To the extent that that became a reality then traineeship provisions in single awards would not be as urgently required.

PRESIDENT: We've still got to sort out some fundamental problems.

MR PATERSON: Indeed. Indeed. And the changes to the *Industrial Relations Act* that are, I believe - well, they're certainly in the public arena at the moment - deal with at least one of the fundamental issues
5 in terms of the change of the definition of an employee to include a trainee or an apprentice.

PRESIDENT: That's right.

MR PATERSON: So that fundamental dilemma would be removed if the Bill becomes legislation.

10 PRESIDENT: Yes. While we're in the employment categories section, is it deliberate not to refer to a full-time employee?

MR PATERSON: No, it's not.

PRESIDENT: We deal with casual and part-time and trainees, but there doesn't seem to be anything in respect of full-time employees.

15 MR PATERSON: No. It's not deliberate and I suppose my personal preference there is to have something that defines continuing employment.

The terms of engagement at clause 3 would date back though so that all employment other than casuals is by the week.

20 PRESIDENT: Yes.

MR PATERSON: But I'm quite happy to look at a full-time and a permanent proposal for that.

PRESIDENT: Yes, that's why I wondered whether it was a deliberate intention.

25 MR PATERSON: No, it's certainly not deliberate. Any omissions from this would really be as much as anything related to inadequacies in the Clerical and Administrative Employees Award.

PRESIDENT: Yes. Don't remind me.

30 MR PATERSON: So yes, the annualised salaries clause at page 23 - the definitions - sorry - the classification descriptors themselves are in effect retitled as business services worker through seven grades, otherwise they are the same as the Clerical and Administrative Award.

PRESIDENT: Do they need to be expanded to more accurately reflect the type of work that's -

35 MR PATERSON: I believe they will be. My approach and my submissions in this matter is that the making of this award is

envisaged by the union as, if you like, a three-stage process. The first stage was the title, scope and from my union's point of view, the award interest.

5 The second stage is to establish it on the foundation of mirroring the Clerical and Administrative Employees Award. And then the third stage would be to look at what either changes to those classifications or additional streams of classification may be required to reflect the work done in the industries.

10 My union has drafted a negotiating document for awards nationally for call centres and that includes a classification structure and rates for call centre operators to the extent that it's a priority for the parties. It may in fact be that there is a need for a technical services stream that would cover those engaged in computer services information technology work. I see that as the third stage of the process.

15 I do have a small amendment that I would like to make to this which I've just provided Mr Flood with a copy of which I would have inserted after at the end of what is currently the Grade 1 classification descriptor -

PRESIDENT: Yes.

20 MR PATERSON: - on page 9 and this is to close, if you like, or prevent the opening of a loophole which could see this award made but leave it open to either interpretation or argument that people engaged as telemarketers or call centre workers or telephone services workers are not covered by the descriptors in the award. If you like, it is an
25 interim measure to ensure that employees in those job descriptions are covered by at least the Grade 1 of this award. It has a counterpart, if you like, in a matter I had before Commissioner Watling which had to do with telemarketing and the Wholesale Trades Award.

30 PRESIDENT: Yes. Now would you take me through that amendment that you've proposed. I'm not certain I'm reading it properly.

MR PATERSON: The amendment would be inserted after (c) skill requirements to apply to Business Services Worker, Grade 1. Now the word 'apply' is redundant.

PRESIDENT: Okay.

35 MR PATERSON: So delete the word 'apply'. This classification shall be the minimum classification for employees engaged as telemarketers.

PRESIDENT: And it would sit there as a fresh paragraph.

MR PATERSON: As a fresh paragraph at perhaps (d).

PRESIDENT: Yes. All right.

MR PATERSON: Telesales or telephone service workers or call centre workers.

PRESIDENT: Well, we'll amend your application accordingly. No objection to that, Mr Flood?

5 MR FLOOD: No, I have no objections, Mr President.

PRESIDENT: And that's your intent, isn't it?

MR PATERSON: That's the intent, yes.

PRESIDENT: All right, the application is so amended.

10 MR PATERSON: As I was saying, the wage rates or the rest of this part - the wage rates, mixed function, and the supported wage clause are directly taken from the Clerical and Administrative Award.

The annualised salary agreements is taken from that award but is written in an attempt to make the proviso read better.

15 The payment of wages and superannuation are largely the same as the Clerical and Administrative Award. I think I've probably left some of - I've left the detail in terms of exemptions out of the superannuation clause and I know that Mr Flood wishes to make some submissions on that matter.

The allowances are those in the Clerical and Admin Award.

20 The next substantial change to the award is on page 29 - shift work - which at (c) - I think the definition of afternoon shifts and night shifts and the loadings for those shifts is a new proviso that's not found in the Clerical and Administrative Award. It may also be a matter that is open to considerably more expansion depending on the extent that the
25 parties wish to flesh that provision out.

Part VI, I think to my recollection, the only variation to annual leave is expressing the period of leave in hours.

PRESIDENT: I'm not certain about that.

MR PATERSON: In terms of?

30 PRESIDENT: Whether or not it's in the Clerical and Admin Award in that fashion.

MR PATERSON: Oh no, it's not a - no, that's right. The difference is putting the word 'hours' after 152.

PRESIDENT: Is that right?

MR PATERSON: The Clerical and Administrative Award doesn't have the word hours, it just says, a period of 152.

PRESIDENT: It could be years.

MR PATERSON: Yes.

5 PRESIDENT: Mr Flood would say minutes.

MR PATERSON: I believe that there's probably again an error that's come from cutting and pasting in carer's leave. The reference to sick leave would appear there to be the sick leave clause reference from the Clerical and Administrative Award and should in fact read clause 6. I
10 may seek leave to amend that here as well.

MR FLOOD: Also at (b)(2) at the top of page ..[inaudible]..

MR PATERSON: And at the top of page - well that's a different change. That will go back to - well, in the case of the top of page 32, I would suggest deleting the 'as specified in subclause 24(a)'. I think
15 that the intent and the purpose of that would be clear without the reference to a particular clause. I'd be guided by you, Mr President, on that matter.

And the loading in lieu of entitlements is clear in terms of the operation of the award. If there is a need to have a reference to it, it
20 will be a reference back to -

PRESIDENT: To what does it go back to?

MR PATERSON: I'll just check that. It will be Part II, clause 2(a)(i) and (b)(iii).

PRESIDENT: I think it ought to be specific.

25 MR PATERSON: In that case, I'm more than happy to delete the words 'subclause 24(a) and put Part II, 2(a)(i) and (b)(iii) and those would also be the words to replace subclause 24(b) on page 34 in (b)(ii).

PRESIDENT: Yes, 24(b) being?

30 MR PATERSON: The part-time employee who does receive the loading has entitlement to unpaid carer's leave.

PRESIDENT: All right.

MR PATERSON: The parental leave clause in this application is the new parental leave clause as per your correspondence to other
35 commissioners.

PRESIDENT: As received from TLC with advice that TCCI have agreed with it?

MR PATERSON: That's my understanding of the correspondence. I note also that going over to clause 6 at page 42, that will also be
5 needed to be amended to be Part II, 2(a) and (b).

PRESIDENT: So what is it?

MR PATERSON: It will be the casual - well, it will be as engaged as a casual or a part-time employee mentioned in - that will be the part-time employee who receives a loading which is clause 2(b)(iii) as
10 distinct from the part-time employee who has pro rata entitlements.

PRESIDENT: Yes.

MR PATERSON: Part VII commencing at page 44, the new provision there is a disputes and grievance procedure - an expansive disputes and grievance procedure otherwise the provisions in that part are as
15 per the Clerical and Administrative Award. Part VIII is in accordance with the Clerical and Administrative Award.

The award compliance and union-related matters with the new right of entry provision that is merely in line with section 77 of the Act is again the provision - with that addition that part mirrors the Clerical and
20 Administrative Employees Award.

PRESIDENT: What? Point 2 - or just the right of entry?

MR PATERSON: The point 2 - I'll just verify this - point 2 is in effect the steward clause from the Clerical and Administrative Award. The right of entry is the new preferred format following the award review
25 process.

PRESIDENT: Yes. The union reps clause, is that word for word with Admin and Clerical?

MR PATERSON: I believe it is.

PRESIDENT: Okay. And going back to Part VII, 1 - Workplace
30 Agreements - is that word for word with Admin and Clerical?

MR PATERSON: I believe so. I'd have to find the relevant - well, the clause in the Clerical and Administrative Award is called 'enterprise agreements' which I think is not a very useful term given that it has a specific meaning under the Act. But apart from that - what I have done
35 there is to leave out the provision at (d) in the Clerical and Admin Award which says: Any agreement which seeks to vary a provision of this award shall be referred to the Industrial Commission. I think that's almost a tautological statement that an agreement that is not registered can't vary the award.

PRESIDENT: Yes. I think that was the reason why it was put in. I mean it was put in there for the purpose of making it clear that this award doesn't give the parties the power to agree not to apply the award. The only authority which can be given to the parties not to
5 apply the award is by way of Part IV or Part IVA agreements which have to be registered, and the way this is written it seems to give to the employer and employees the right to negotiate their way out of the award.

MR PATERSON: No, that's certainly not the intention. That was
10 certainly not the intention, and I guess to the extent that there is good industrial reason for that part (d) being in workplace agreement clause, then I would seek leave to amend this to reinstate that provision into this which would replace the (d) - would reinsert
15 subclause (d) which reads: *Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.*

I seek leave in terms of our on-the-run discussion.

PRESIDENT: Yes, well these things will have to be tidied up.

MR PATERSON: I'll seek leave to vary that and subject also to the
20 matters that Mr Flood may wish to raise in terms of the TCCI's response to this application, there may be subsequent amendments that are also needed which I would incorporate and provide to the TCCI and to the commission.

As a general principle, what the union relies on to a significant extent
25 in the making of this award is in fact the first award principles of the Wage Fixing Principles and I would submit and contend that to the extent that employees are currently covered by the Clerical and Administrative Award and will be covered by this award once it's made, that the reliance on the Clerical and Administrative Employees (Private
30 Sector) Award is *prima facie* the existing rates and conditions, and should we need to go further on that, then we'll make further submissions on that question - that matter.

Clearly there are functions performed which would lie outside of that
35 award and it's not my intention at this stage to make any submissions on that but clearly reserve the right if we can't reach consent on an approach to the finalisation of this matter.

I would like to see the matter progressed from a brief discussion I had
with Mr Flood earlier this morning. The points that the TCCI wish to
40 raise I believe probably fall broadly into three groups; there are those that we would be happy to accept; there would be those that we would resist, and there would be those that we can accommodate. I don't think that any of them should or hopefully any of them will delay the progressing of this matter such that we may see it being finalised

before Christmas. I don't think that's being overly optimistic. If the commission pleases.

PRESIDENT: All right. Well, just before your side of things is concluded or your initial stages, I'll just hear from Mr Flood. You've no
5 objection to the application to amend the application in respect of the workplace agreements clause?

MR FLOOD: No, Mr President, I've no objection to that, but there are some comments that I wish to make in relation to the whole clause.

PRESIDENT: I'm sure.

10 MR FLOOD: Yes. But as to the application -

PRESIDENT: I just want to get through these formalities.

MR FLOOD: Yes. No, objection at all.

PRESIDENT: The application is amended then in the form that you've requested. Very good. Well, Mr Flood?

15 MR FLOOD: Mr President, as you're aware, Andrew Cameron from my office has had carriage of this matter and Mr Cameron has provided me with a document setting out his comments in relation to the draft provided by the ASU, and as Mr Paterson has indicated to you, we have had a quick discussion earlier this morning, so he's well
20 aware of the matters that we would like to address. I don't think that I need to go into all of those with you. Some of them are very minor, such as clause numbering and so on which Mr Paterson has already addressed.

25 There is one matter, Mr President, which I've advised Mr Paterson and I now advise you that we will not give our agreement to, and that is, the ratio of juniors clause. We feel that that's obviously a bigger matter than just this award, but we feel that it's a discriminatory provision and we will not give our agreement to that.

PRESIDENT: So are you saying there should be no ratio?

30 MR FLOOD: That's correct, yes.

PRESIDENT: Yes. I just wondered on that - and I'm sorry to interrupt you - but I was interested in the retention of up to 21 as junior as an up front offer. I thought that was very generous on the part of the applicant.

35 MR FLOOD: Yes, maybe the applicant is not prepared to run that argument just yet, but in any case, as I said, it is a bigger issue than just for this award.

In relation to the superannuation clause, Mr President, we believe that given that the super guarantee legislation adequately covers superannuation entitlements, we would like to see no reference in the award at all to superannuation so that it would revert back to the provisions under the federal legislation and I understand Mr Paterson has given his agreement to that.

MR PATERSON: With some provisos in principle. Well, you take your run and I'll respond, if you like.

MR FLOOD: Well these are the matters that we can address between ourselves subsequent to today.

PRESIDENT: Mr Paterson might like to put on the record before we leave just what his views about superannuation are. Yes?

MR FLOOD: In relation to the shiftwork clause, we feel that there's probably some need for an expansion of that clause. There doesn't appear to be any provision in there for matters such as rotating rosters, for notice of change of rosters and so on, and I would hope that's something that we could agree upon.

PRESIDENT: That seems reasonable, yes.

MR FLOOD: In relation to the bereavement leave clause, we're prepared to extend the scope of that clause to cover grandchildren.

In relation to the disputes and grievance procedures clause, Part VII, 2, whilst we don't have any great problem with that, Mr President, we do disagree with an automatic right of the unions to represent employees. Of course no problem at all if the employees request the union to represent them but we do object to an automatic right.

There is a provision in there that says at part (b) of that clause - (b)(vi) - that representative of the appropriate union, if requested by the employee. So it's certainly, I think, the intention of it but when we get into some other areas, second meeting and so on, from memory the union is there as of right.

PRESIDENT: Where does that appear? I note (b)(vi) seems to be at the request by the employee.

MR FLOOD: Yes, that's what I've said, Mr President, (b)(vi) is certainly at the request of the employee and that's how we'd like to see it all the way through. I think we did see something this morning. No, there's not.

MR PATERSON: There is (iii). I think on that matter, it's a matter of the clause being read down from that initial provision and that where 'union' appears after that the presumption is, the union has been

invited. That's how I've always used this clause. This, effectively, is the clause we put into the Community Services Award.

MR FLOOD: It may not be a problem, Mr President.

5 PRESIDENT: Yes. All right. Well, I think each side knows, a) what they want and, b) what it means and it seems as though they're pretty close to each other so we shouldn't have too much trouble.

10 MR FLOOD: That's right. The final matter that I wish to talk to you about is Part VII, Clause 1 - Workplace Agreements. Our position on that, Mr President, is that that or a similar clause was inserted into the majority of the awards of this commission some years ago. My understanding is, that that was inserted before the Part IVA provisions of the *Industrial Relations Act* were inserted and that that clause as it stands prevents employers and employees from entering into part IVA agreements. I might rephrase that.

15 MR PATERSON: It may help.

MR FLOOD: It prevents employers entering into - - no, sorry. It does prevent employers and employees from entering into Part IVA agreements other than with the union as a party and in particular at 1 -

20 MR PATERSON: (b)(iv).

MR FLOOD: Yes, 1(b)(iv), the relevant union shall be a party to the agreement. Well, with Part IVA it is possible to have an agreement where the union isn't actually a party to the agreement.

25 PRESIDENT: Yes. That's an interesting construction to put on it. I don't think that's the intention.

MR FLOOD: I don't think that's the intention either, Mr President.

PRESIDENT: And I don't know how the award can override a statutory entitlement.

30 MR FLOOD: That's just about what I was going to go onto and following on from what I've just said, we believe that this whole clause is actually unnecessary. The *Industrial Relations Act* perfectly covers what this is trying to cover and we would prefer for the Act of course to cover it.

35 PRESIDENT: I think that's a - I was going to make a political comment, but I won't. It's interesting that that clause was inserted at the request of the TCCI.

MR FLOOD: I think, as I see it, Mr President, and it was before my time with the TCCI but it was before Part IVAs were in existence.

PRESIDENT: It was 1992. In fact, it was 1991.

MR FLOOD: In those days, the only agreement that an employer could have, was with the union as a party.

5 PRESIDENT: I think that's an unfortunate over-reaction to the clause but you're entitled to over-react.

MR FLOOD: Other than that, Mr President, they're the only comments that I have to make. To proceed this matter further, I suggest that I take the comments from today back to Mr Cameron. Where Mr Cameron has a wish to vary a particular clause, I'll ask him
10 to provide that in the actual wording that he would like to see, rather than just the general comments, provide the wording to Mr Paterson for his comments.

PRESIDENT: Do I take it from that then, they're the only areas of non agreement at the moment, that you've referred me to?

15 MR FLOOD: They are, essentially, commissioner. There's some other very, very minor things that I don't -

PRESIDENT: The classification structure and the wage rates, in particular, are they acceptable?

MR FLOOD: We would like to see the classification structure actually
20 reflect the industry a bit better than just the straight out C & A Award. However, Mr Paterson has assured us that his intention is to address that matter.

PRESIDENT: Yes. I think that's very important.

MR FLOOD: Fairly quickly, yes.

25 PRESIDENT: But you're happy to proceed on an interim basis with the current classification structure.

MR FLOOD: That's correct.

PRESIDENT: And wage rates. So it's virtually half a dozen items that you've referred to me that are the sticking points?

30 MR FLOOD: Yes, commissioner.

PRESIDENT: Well, I think we can safely assume it's pretty close to being concluded. Mr Paterson?

MR PATERSON: Mr President, if I can respond, both to that remark
35 and to the - you're quite right, the six key points of issue the TCCI wishes to take, I will similarly draft up - I'll amend the application and send the amendments appropriately annotated to the TCCI. I believe that is correct and I believe that really it probably comes down to two

issues, or maybe even only one, depending on the view that the TCCI take about the workplace agreements.

5 I'd be eminently practical in this, that there are two issues. One, I would agree that an award *per se* can't limit something that is a right under the Act. So, I'm more than happy to have a look at an appropriate amendment to that, that says the union will be a party, if that's the way the agreement's constructed in accordance with the Act, or leave it out all together, because it has to be in accordance with the Act.

10 On the other hand, particularly if things like - if we don't flesh out, for instance, the shift work provisions, then the capacity to have unregistered agreements to give effect to the award, may in fact be desirable. I guess, the issue is, that that can happen in any event, that the workplace agreements dealing with the sort of matters that are
15 mentioned here or in the manner they're mentioned here, don't have to be registered if they don't in any way reduce, diminish or vary an award provision and I think that arrangements around shift work, for instance, if the award doesn't deal with them comprehensively, then the workplace agreement clause is the vehicle for reaching local
20 workplace agreements on shift arrangements.

I'd also say that I think it should not be deleted in its totality.

PRESIDENT: Could I interrupt you there. That was one of the reasons for the provision going in, in the first place, that it was seen as necessary to be able to have workplace agreements within the award
25 boundaries which could be effected without having to go through any of the formal processing.

MR PATERSON: Particularly, the provisions at (c), are the ones that provide the award-based framework for those in terms of, how an agreement can be terminated or varied. That framework, I think, is
30 still useful. I would suggest that I'd be willing to look at making this clause comply with the facilities available to any employer under the Act but I think it should be retained.

The disputes and grievance one, I don't believe there's any problem there in any event and I'm more than happy to see a subclause written
35 that does clearly say where the union's mentioned, it's rights are subject to their involvement being requested by members. We're certainly not in the interest of representing non members. That's not what our interest is, although we do have many people who join us when they have disputes.

40 The bereavement leave, grandchildren, that was an issue raised but there is really no point of difference there. I don't think it is in the application. I'd be more than happy to put that in.

Shift work, again, there would be plenty of models around. It really is a question of how expansive you want to get, whether you want to go to the Metal Trades shift work provisions that are almost a book in themselves -

5 PRESIDENT: I think we need to have a better idea actually of what shift work is being applied in the industry. I'm not too sure whether it is a 24-hour demand.

MR PATERSON: To the best of my knowledge, not yet in Tasmania in the private sector call centres, although neither of the two major
10 private sector call centres will be covered by this. One is subject to AWAs and the other has a Part IVA. The Voda Phone is the largest single private sector call centre in the state. In lots of ways it sets the pace.

PRESIDENT: And is that done -

15 MR PATERSON: That's the one where the employment there is subject to AWAs, Australian Workplace Agreements, under the federal Act. They don't currently operate shifts after midnight but they do operate seven days a week. Their provisions are I think - probably by
20 and large, we'd be happy to look at modelling on them. Any employer that's prepared to pay five times ordinary time for working New Year's Eve after 11 o'clock, their general provisions are probably acceptable.

The other private sector call centre, Watts at Devonport, also doesn't operate 24 hours a day. That's not to say that the next one that comes
25 won't. They do operate outside ordinary hours. That's the whole point of being in Tasmania, is to operate at hours that may be different to New Zealand or South Africa, United Kingdom or United States. Voda Phone has major operations, I believe, in New South Wales and Victoria and if they were to decide to centralise all of their work here, it may become a 24-hour a day operation. There's nothing to say that it's
30 not necessary.

PRESIDENT: Were you at all concerned by the report in the press today about call centre work going offshore?

MR PATERSON: No, we had a call last week from a former Victorian
35 Trades and Labor Council secretary who's now an acting agent for a call centre wishing to have discussions with the union, so this is always there. In fact, Watts have said to us that if they're unionised, they'll leave the state, so there are many reasons why employers might choose to up and leave and go somewhere else. We don't have control over that ultimately.

40 I think the strategy of having an appropriate industrial regime, appropriate education and training regime and skilled workers who want to work in the area where the call centre is, is what will see call centres stay here.

There are many issues about call centres that the union has concerns about but getting back to the issue of shift work, I think the framework type provisions are probably what I would be keen to see rather than prescriptive ones. So, the framework time changes around what notice, what breaks between shifts, those sort of things rather than anything that's prescriptive about the nature of actual shift work because that will vary according to the operations of the employer.

The question of superannuation - my view on superannuation is that a provision in awards which provide that employers shall comply with the *Superannuation Guarantee Act* is almost all that's required unless the existing provisions provide for something different or better. A matter we had this morning in respect of the Produce Award - the Produce Award currently has an obligation on the employer to make monthly payments. Now, that provision was desirable. It is not in the current Clerical and Administrative Award. There are other awards of this commission that have different definitions of eligible employees that extend beyond the provision of the *Superannuation Guarantee Act*.

From my reading of it, I don't see anything in the Clerical and Admin Award provision that provides for anything better than the Act. That being the case, I, in principal, don't have any problem with the provision merely referring to the Act.

PRESIDENT: I think it's worthwhile having some sort of reference or sign post.

MR PATERSON: I certainly wouldn't want to see the superannuation clause deleted in total but to the extent that it deals with the same matters as a federal Act, then it clearly has ultimately no effect unless it is going beyond those, as I said, in terms of defining an eligible employee.

I believe the Miscellaneous Workers Award defines any employee as an eligible employee, so employers have an obligation regardless of the earnings limit. The Community Services Award defines any permanent employee as an eligible employee, so that also has application beyond the earnings per month limitation.

PRESIDENT: It would exclude people as well. Oh, no, it wouldn't because the federal law would pick it up.

MR PATERSON: As I say, I don't see any - sorry, I'm wrong here. The contributions shall be made on at least a calendar monthly basis. I had omitted that.

PRESIDENT: Yes, that was the original standard clause.

MR PATERSON: So that is here, so I would seek to retain that. That will be in our application then I presume and would seek to retain that.

MR FLOOD: So that's the award ..[inaudible]..

MR PATERSON: That's the award that I'm referring to there, which is in clause 7(c), the second paragraph of 7(c) in the application. I have just changed the order, to put the definitions first in the redraft. So, at
5 page 24, we'd be seeking to keep that second paragraph in (c).

I'll have to give consideration to the question of adult junior ratios. I think that once you've got the provisions that are here - on one hand, if the employers have got a problem, then I think the problems are by no means fixed by not allowing that provision here when in it's in the
10 Clerical and Admin Award. I'm not aware of any attempt to delete it from the Clerical and Admin Award.

On the other hand, two juniors to one adult, I think would probably be incredibly generous in any event. That allows a workforce of six to have four juniors, a workforce of twelve to have eight juniors, a
15 workforce of ninety to have sixty juniors and I think the version as it is, is probably incredibly generous to start with, three employees, two of them can be juniors but I'll undertake to get back to the TCCI on that. I haven't got a position on it.

Going back to one other question that, Mr President, you raised, the issue of permanent and full-time. In part, the permanent employee is
20 dealt with in the definitions clause of Part I, an employee engaged on a regular continuous basis. The full-time is implicitly in the hours clause and my personal industrial position on this is that the issue is, notwithstanding the questionable nature of the word, permanent - I would prefer to use, continuing employees, rather than permanent
25 employees, but the issue of 38 hours to me is an issue of the number of hours per week you work. The full-time to me is a question of working 38 hours. The key issue is the permanency or the continuity of the employment relationship which is picked up in the definitions, but I'm more than happy to look further at that and maybe to include
30 full-time in the definitions in Part II, full-time employee means an employee engaged to work 38 hours per week.

They are essentially the issues I see as outstanding. I will also provide to the TCCI the proposals we have for call centre operators, which will
35 give us another stream of generic classifications to look at and our union would also have, by virtue of its coverage, the capacity to advocate and represent the interests of technical employees through, what used to be the Technical Services Guild of the union. So, I don't see any impediment to us looking at the issues of technical IT, info
40 tech computer support staff if the need arises.

I don't intend spending the rest of my life on this award and I imagine, to some extent, if there are real issues this will become the award that is the foundation and the test for either Part IVA or Part IV, Section 55 Agreements and that probably the reality is that that's where most of

the work in the industry around it's industrial regulation will take place.

5 So, I would like to actually see, to the extent that it's practicable within your commitments before Christmas to have a further hearing set down and a time frame for these half a dozen, or five matters really, to be reported back and if there is consent, then the award made by consent.

PRESIDENT: When do you think you'll be in a position to get your side of that to Mr Cameron?

10 MR PATERSON: I should be able to do that - I can make a commitment to do it by Thursday lunch time.

PRESIDENT: And after that, Mr Flood, what do you think?

MR FLOOD: It's difficult for me to commit Mr Cameron to anything but I would certainly think he would have a response within the week.

15 PRESIDENT: Good. Well, if we try to look at something in the early part of next month, that should be time then.

MR FLOOD: Mr President, if I may, with Mr Cameron's personal circumstances, it's much better for him if it could be heard on a Tuesday, if that's at all possible.

20 PRESIDENT: Yes. I'm not thinking about setting a date right now. I don't think that'd be fair. We will be in touch with both you Mr Paterson and Mr Cameron.

MR PATERSON: Subject to a notice and discussion and your own commitments, I'm happy if the matter is heard in Launceston. If there
25 is another matter in early December that was to be taking you to Launceston, I'm sure I could endeavour to meet with that sort of arrangement.

PRESIDENT: Yes. We'll go off the record for a moment.

OFF RECORD 3.15pm

30 **ON RECORD 3.24pm**

MR PATERSON: In common with a matter we had on earlier today, the issue of trainees, I would propose that the existing trainee clerks clause appropriately retitled be the one that we put into this award, rather than pursuing the more expansive provision or leave it.

35 PRESIDENT: Could I suggest, perhaps you could leave it out.

MR PATERSON: I think for the most part, leaving it out is not a problem because most trainees would be, in effect, covered by the

5 National Training Wage and I guess the issue then is, that I don't think we've had the application made to vary the National Training Wage to include this award and that's something that I would probably end up doing on behalf of the TTLC. I'll just need to discuss that with the TTLC.

10 Most trainees are at that level. The issue with the trainees clause though is that not all trainees are within the ambit of the National Training Wage Award, but I'll have some further consideration and discussion of that, talk to Mr Flood and Mr Cameron and we'll either do one of two, either leave it out or go with the trainee clerk provision that is in the Clerical and Admin Award.

PRESIDENT: I wouldn't leave clerk in there. I'd just have trainee.

MR PATERSON: That's what I said, appropriately retitled.

PRESIDENT: Yes.

15 MR PATERSON: Thank you, commissioner.

20 PRESIDENT: Very good. Thanks for those constructive submissions. The matter is progressing much more tidily than I imagined it might, which is good news for everybody and as a result of our off record discussions, it's been agreed that, depending on the level of consent that arises from your discussions, Mr Paterson, with Mr Cameron in Launceston, it may be possible to list the matter to be dealt with by consent early in the next month. If that circumstance doesn't arise we'll have to list another time for arbitration and we'll try and do that some time before the end of the year.

25 Having said that, the proceedings this afternoon are concluded and the matter is adjourned *sine die*. Thank you.

HEARING ADJOURNED SINE DIE 3.26pm