

**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, 22 July 1994  
continued from 13/7/94

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: No changes in appearances?

MS HARVEY: No, Mr Deputy President. Before we start formal proceedings this morning, Mr Deputy President, I forwarded to the commission an outline of the proposal for the proposed program for the HSUA's inspections.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: Now there has been some discussions with the employers this morning. What I propose we do is go off the record, but I would reserve my right to put formal submissions if we get to that unfortunate stage on the matter.

DEPUTY PRESIDENT ROBINSON: Surely not. Surely not. I mean, this is a new day and we'll turn over a new leaf. Are you happy to go off the record to discuss those things?

MR FITZGERALD: Yes. I think just in terms of what I can put on the record in respect to the inspections, just very briefly. We forwarded a proposal this morning to Ms Harvey in terms of what we see as joint inspections, and -

DEPUTY PRESIDENT ROBINSON: The question was, do you want to go off record.

MR FITZGERALD: Yes, I'm happy to do that, but I just wonder if I can put some brief comments on record prior. If I could do that?

DEPUTY PRESIDENT ROBINSON: Certainly, right. I just want to be clear. We are on the record.

MR FITZGERALD: We forwarded a proposal to Ms Harvey in respect to our inspections which, in fact, to a great extent coincided, and we believe it is appropriate that we discuss that off record, and again, we reserve our right to make submissions in that regard. Hopefully not needing to, if we can resolve them in conference.

DEPUTY PRESIDENT ROBINSON: Alright, well we will go off record at this stage.

OFF THE RECORD

DEPUTY PRESIDENT ROBINSON: Still off record?

MS HARVEY: No, we can actually go on record, I think.

DEPUTY PRESIDENT ROBINSON: You want it to go on the record. Very well.

MS HARVEY: I am very happy to report that we have actually reached agreement on how the inspections will be run in that week.

DEPUTY PRESIDENT ROBINSON: Thank you. Next item.

MS HARVEY: Well the employees have asked me to convey something, which I have given an undertaking, so I will, and that is that there was a misunderstanding on their behalf. They didn't understand that we were having evidence in the commission around that week. They thought the whole week was set aside for inspections only. And, therefore, they couldn't understand why the union was hesitant to change the program.

And, secondly, they have requested that I write individually to each service who are inspecting rather than through the TCCI, which I have undertaken to do.

So that being sorted out, what we now have is an agreement in relation to the inspection program and it will be run according to the document provided to the HSUA, and there is also, as I understand it, an agreement that it will be restricted to four participants, and there is also a request that we have some consciousness about the use of cars so that we don't, you know, look like a fleet of people coming to inspect people's houses, which we are more than happy to liaise with your associate so that we comply with that request.

So, that being the case -

MR FITZGERALD: Sorry, there is just one comment if I could make in response. I'm not in any way contesting that, but just adding to it, if I could.

And that's in respect - even though we haven't presented it as a formal exhibit, Mr Deputy President, we have presented a document to you for consideration.

DEPUTY PRESIDENT ROBINSON: Yes.

MR FITZGERALD: And that's in respect to the protocol, for want of a better word, which precedes our inspection program.

We haven't had discussion on that, and even though there are some aspects which have come out in Ms Harvey's submission we would seek to reserve our position there for further discussion with Ms Harvey.

Now I don't believe that there is anything particularly contentious, but that's for Ms Harvey to determine a response on.

MS HARVEY: Mr Deputy President, I am more than happy to discuss it with Mr Fitzgerald over the luncheon adjournment.

DEPUTY PRESIDENT ROBINSON: Okay. Well I am glad that I ordered that you reach agreement.

MS HARVEY: Mr Deputy President, in the last hearing I was dealing with section 5.2 which went to arguments in support of the application - the HSUA's application - and through sworn evidence by witnesses I am seeking to demonstrate the scope of the work that is actually being done, amongst other issues as well.

Today I will be calling Ms Jennifer Jones. Ms Jones is the consultant who undertook the skills analysis on behalf of the State Negotiating Committee which has been - the report has already been provided to the commission in Exhibit 5.2. Exhibit 5.2 being the pink one.

DEPUTY PRESIDENT ROBINSON: Of course.

MS HARVEY: So the report is in fact contained in Tab 1.

Now the purpose of calling Ms Jones as a witness this morning - we don't intend to go to chapter and verse of Ms Jones' report, partly because neither of the applications before you rely on that report to be exactly what they want. Indeed, both the employer's application and the union's application has built on the report, as has already been tabled, rather than seeking to reflect it in its entirety.

So I just wish to make that point clear because I don't want to waste the commission's time in terms of either my evidence or evidence that I will be asking the witness to give, nor in cross-examination, because it is not the purpose of calling the witness to go to every detail of her report. The purpose is to show the process, the broad contact she had with the industry, the requirements for the award to go above the low management levels and some assessment in relation to the HSUA's application, and the consistency with the work that he actually did.

So, amongst other things, that's the main purpose of which I am calling the witness.

So if I could now call Ms Jones.

**MS JENNIFER ELIZABETH JONES, sworn:**

DEPUTY PRESIDENT ROBINSON: Sorry to have kept you waiting so long out there, Ms Jones.

MS HARVEY: Mr Deputy President, Ms Jones is actually just taking out her copy of her own report which she will refer to, and which we are more than happy for Mr Fitzgerald to have a look at. My understanding is that there is no notes or anything contained therein, but perhaps we can get sworn evidence on that once I have asked Ms Jones to state her name and address.

DEPUTY PRESIDENT ROBINSON: Yes. In other words, there will be no copies for distribution?

MS HARVEY: No. In fact, we are having a slightly different procedure in relation to this witness, Mr Deputy President. We'll be proceeding by question and answer, rather than a read witness statement.

DEPUTY PRESIDENT ROBINSON: So she won't be reading a witness statement?

MS HARVEY: No.

DEPUTY PRESIDENT ROBINSON: I see.

MR FITZGERALD: I think from my instructions there are a couple of reports, and we just need to clarify which report Ms Jones is reading from, and I may need to take some instructions from the employers on that because I didn't have contact at that time.

So, to be absolutely fair, I think we should know which report Ms Jones is referring to.

MS HARVEY: Ms Jones will be referring to Tab 1 in 5.2 which is identical to the report she has in front of her, and the only point that I will make is that there was an error in the original report. And so if you go to the last three pages of Tab 1 you will find some correspondence there outlining a correction.

MR FITZGERALD: Right. Thank you.

MS HARVEY: But I will say, as I said earlier before Ms Jones joined us, is that we don't intend to go to the content of the report in that respect. We'll be focusing more on the introductory section and the methodology than the actual content of the report.

So, Ms Jones, could you please state your name and address for the commission?... My name is Jennifer Elizabeth Jones, and my address is 36 Bald Hill Road, Trevallyn.

Thank you.

Mr Deputy President, I intend to hand up an exhibit at this stage which goes to Ms Jones' resume, and there is one other item there in relation to methodology. So this will be WS.6.

DEPUTY PRESIDENT ROBINSON: Yes, I was going to say it will be WS.6.

MS HARVEY: I pre-empted you.

Now, Ms Jones, I just wonder if you could take us to your resume which is on page 1 of WS - oh, I had better give you one. If I can just take you through to your resume in particular. If you could run through that first page by way of a summary - Tertiary Education?... Are you referring to page 1?

Yes?... Yes, I hold a Bachelor of Business from the University of Tasmania which majored in personnel management and industrial relations. Perhaps I should say that part of that was in training and development as well. I'm also partially through completing a Master of Public Policy which focuses on - with a focus on enterprise bargaining and industrial relations through the University of New England.

And I note you have got a few special achievements there?... Yes. Do I need to say more?

No, we won't make you read them out. If you could just go to your work history, please?... Is there anything specifically that you would like me to refer to?

Just the main positions that you have filled over the last couple of years?... Alright. Perhaps the most relevant - actually working back from page 2 - where from July 1987 to July 1988 I was employed by the Tasmanian Logging Association, an employer organisation for the timber industry in Tasmania. While that was initially as a bookkeeper, in fact with their restructuring I was then brought in to assist in the industrial relations section. After that period of time in accounting, and I actually had a year full time at the university, at the end of that I undertook the development of a - which was the Tasmania Bank then - the development of a personnel manual looking at all the personnel and industrial relations procedures. Then moving to full-time work in May 1991 to 1993 -

That's on page 1, is it?... On page 1, yes; with the Health Services Union as a training liaison officer.

And your current employment?... For the past year I have been working as an independent consultant in undertaking a range of projects in training and industrial relation arenas.

Right.

DEPUTY PRESIDENT ROBINSON: Are you teaching in the Launceston campus of TAFE?... Oh, yes, I am sorry, I should have drawn - yes, that's right, that's a part-time position, teaching industrial relations.

Good. Thank you.

MS HARVEY: If you could take us to some of your reports and research on page 3 that are particularly relevant to this industry?... I've undertaken a number of projects, both before I was a consultant and then in the last year for the Community Services and Health Industry Training Board. So they are listed there - the industry training profile and training plan and strategic plan - which required wide consultation across all the sectors dealing with employers and employees and unions and government departments coming to understand the current issues that they were facing and the training implications of those. The skills analysis obviously is listed there. I've also - which isn't listed because they weren't reports - but worked with two or three community organisations in dealing with some of their internal industrial relations concerns.

Great. Thank you. Okay, now we have referred to the report which you have a copy there of, which is a report which you did. Now on whose behalf was this actual skills analysis report done?... Yes, this is the final report that I have in front of me, and it was written as a result of the skills analysis and definition classification level and descriptions developed on behalf of the State Negotiating Committee for the reconstruction of the Welfare and Voluntary Agencies Award which was a joint employer/employee committee.

Right. Okay. And how did you come to do this report?... In the initial stages of the restructuring of the award the State Negotiating Committee was seeking funding from the commonwealth and from the state to employ consultants to undertake that work, but those applications were unsuccessful, and so I was asked to undertake that work as an employee of the Health Services Union at that time, but working in the training arena.

So when you were doing that work you were an employee of HSUA as you said. Who were you actually reporting to in terms of the project?... Well the methodology and the reporting were all to the State Negotiating Committee, so in fact they were directing that project.

Right. Great. Now when you left the employment of the HSUA how did you continue with this work?... At the time that I left employment with the HSUA the Tasmanian Community Services and Health Industry Training Board were able to allocate a small amount of money for the completion of the project, and

that went to the Tasmanian - I am trying to remember the name - the Disability Employer Association of Tasmania - and then I was contracted using those funds to complete the work.

Right. So that's T ASD is it?... That's right.

Yes. Now was there a conflict of interest since you worked for the HSUA?... Well I don't believe so. I suppose for a variety of reasons, firstly as I indicated before, my history was that I had actually worked - I have had my own business and I didn't go through that - but I worked for an employer organisation in the past and, in fact, working with the HSUA was my first union involvement. Secondly, I wasn't employed there as an industrial officer at any time. My work was specifically in the training area and dealing with training issues. And I think that those two things combined I believe allowed me to bring an approach that I was able to view all sides of it and be really not biased in any direction.

Right. Okay. You said in your report that you were assisted by Mr Gates - Mr Steven Gates from the TCCI - how did that assist you in maintaining a balanced view?... Well I guess that was another reason why I say that I don't believe being employed by the HSUA led to bias, in that Steve accompanied me at every stage and on every visit and on every interview and there were certainly quite a number of times when we viewed what we were seeing differently, which led to a hot debate, but I believe we worked through those things, and I guess it can be looked at that that was another safeguard against bias.

Okay. Now how did you actually report to the SNC? I understand in your WS.6 on the last page you've - sorry, on the third page - sorry on the last page, yes - there is - you've outlined there - perhaps if you could run through with us about the process of consultation.

MR FITZGERALD: Sorry, I am just lost. Could you just -

MS HARVEY: Sorry, in WS.6, which is the witness's statement, on the last page Ms Jones has actually prepared some key consultative stages.

MR FITZGERALD: Okay. Sorry. Yes.

MS HARVEY: Right?... I attended almost all of the SNC meetings through that period of time. However, they didn't always deal with these skills analysis, so what I have done there is listed what I believe were the key reporting stages that we'd agreed to at the beginning of the project. So, following the DACUM workshops we came back and gave a full report and there was a lot of discussion at the SNC about the findings and where we would go from there. Similarly, on the 15th of July the questionnaire that we used for the validation process we brought a draft to be looked at. In October a



draft report was brought to the SNC for discussion before a final report taking into account the comments on the draft report.

Right. Okay. Did the SNC intervene in the process or the methodology?... As I just indicated, following the DACUM workshops we didn't find precisely what we expected to find in the first instance before we started the process, and that was why actually there was a lot of discussion on that day when we came back.

Which day was that, sorry?... That was on the 10th of June. And the discussion then focused around whether we ought to proceed with the methodology that we had expected or whether we needed to adjust it, and so that whole group which was myself and Steve and the SNC looked at that and we adjusted the methodology and went forward from there.

Okay. So do you believe that the SNC directed the process?... Oh, yes, absolutely, because I believe that we reported back and they directed any adjustments. For example, that one we just talked about, as we went along, and I mean that was the body that I was reporting to.

Okay. Great. If I can just take you to your report, and Mr Deputy President, that's in, as I said, 5.2 in Tab 1.

DEPUTY PRESIDENT ROBINSON: Mm.

MS HARVEY: And if we can go to page 1.

DEPUTY PRESIDENT ROBINSON: Headed, 'Overview'?

MS HARVEY: That's correct. And you will recall, Mr Deputy President, when I was giving submissions from the bench I've already taken the commission to this, so I'll just direct the witness to particular sections of it.

DEPUTY PRESIDENT ROBINSON: Yes. I think your submissions were from the bar table, actually, rather than the bench.

MS HARVEY: Oh, sorry. Delusions of grandeur, maybe. I have a problem with that, I don't know why. Every time I say, mean to say -

DEPUTY PRESIDENT ROBINSON: I didn't think my memory was that bad.

MS HARVEY: On page 1 in the fourth paragraph you state that: The classification levels were written with the Metal Industry Award as a guide. Why were the metal industry relativities used as your benchmark?... Well, we were instructed from the beginning to use them as a guide.

DEPUTY PRESIDENT ROBINSON: By whom?... By the SNC.

MS HARVEY: Okay. At any stage did anyone suggest they were not appropriate?... Yes, that did come up in discussion. I don't recall precisely which of the report-backs it was. It may have been at the draft report stage, it may have been earlier. It may have been both, but I do remember it being discussed at length. At the SNC meetings the employers sometimes changed their participation and at a particular meeting I am recalling one of those employers was questioning why were we using the metal industry relativities, and so there was quite a bit of discussion about that and it appeared - well, my recollection is that they didn't understand the history and hadn't been party to those discussions. But I guess what I am positive about is that that was discussed at length at that meeting and we were instructed to continue the way we had been going. So, even though it was discussed at length there wasn't any suggestion that we drop them.

Right. In fact it was reaffirmed?... Yes.

Okay. So if we go to the 'Methodology' on page 3 you list in 2.2 there are a number of sites that you actually visited and you have also outlined the methodology you used in the project. What percentage of services do you think you visited or had contact with as part of the project?... I would estimate 30 per cent. These services that are listed there in 2.2 were the ones we went to in the familiarisations, so in fact we contacted many other organisations beyond that during the rest of the process.

Right. Okay. Now in Stage 2 in your report you state that you used a DACUM process. Could you explain to the commission what the DACUM is?... Well, DACUM itself stands for Develop a Curriculum and it is a process that is used very commonly by TAFE and it is workshop where by a group process you determine the jobs that the people undertake and then break that down to the tasks that form their job, and break that down further to determine the skills that they bring to those tasks.

Right. Now how were the participants chosen for the DACUM groups?... Members of the State Negotiating Committee put forward names that they thought could be included. When it came to the actual selection of the people there were three criteria which I do list on the bottom of page 3 there. The first one was that they were prepared to be involved in the process and their employer was willing and able to release them. The second, that they were able to communicate well, so they are articulate, and the third their competence in their work. So, in fact, I guess the issue of release, being able to release people determined to quite a large extent who did participate in those groups.

Okay. Well, there are three things, there is the DACUM, there's the site visits and there's the participants in the interviews. Do your comments reply to all those three things?... Well, I - because of that issue of who was free to come away off the job for DACUMs and so on and who was available to us to interview, and to get a good cross-section of classifications, Steven Gates did the majority of that organisation of the people working with the different employers. So -

Right. So how would you describe the employers' input into who was chosen for all these different stages?... Oh, well, a very large input.

Larger than the union input?... Well, I am not positive about that, but certainly - I mean, I guess in the later stages that's probably true, because we were relying on the employers to be able to tell us who was working under which classifications to get that range of names. So, in the first instance I think probably both employers and unions put forward names, but I guess as it progressed that would be true.

Okay. Now in Stage 3 in the second paragraph on page 4 of your report you talk about the three variables affecting the hierarchy of classifications being autonomy, responsibility and complexity of work. Could you explain simply to the commission what you actually mean by that?... Okay. Well those three variables that we looked at - autonomy first - was related to the amount of supervision that employees worked under, to the amount of supervision that they received. Responsibility relates to the amount of responsibility that they had in their work, which is primarily in two areas. One is supervision of people with disabilities, but also responsibility particularly in supported employment services for product outcomes as well. So that range of responsibility. And then the third one, which is the complexity, was talking about the overall complexity of their work, of their job.

Right. Okay.

You then go on to talk about a validation process. Why was it necessary to validate the outcomes of the DACUM in the questionnaires?... Well the questionnaires were part of the validation process. The DACUM groups only had a small number of people from the industries so they were only a small sample and what we needed to do was to ensure that the information that we got at those processes adequately reflected what was actually happening right across the work force in the different services, so that was the key reason for the validation process.

Okay. Now on page 5 of your report - a summary of your observations and comments and you've listed a number of limitations. Now I want to direct you to the final limitation - limitation (c) on the bottom there, the: non inclusion of low and middle levels of management. Now was the SNC aware of this limitation?... Yes.

Right?... It was brought to their attention twice, at least.

Okay. What action was intended to overcome this?... Well it was recognised that there would need to be some further work - that it wouldn't be included in the work that we were doing, there would need to be some further work done in that area.

Right. Okay. Now, on page 7, there is - you deal with promotional criteria, in 3.7 at the bottom there. I wonder if you could just expand in relation to the level 2 upwards, promotional criteria, how you were recommending it should be done?... It became clear as we were doing it that sometimes it's difficult to describe tasks that are being conducted by different people differently, however, quite obviously they bring a differing level of skill and expertise to those particular tasks which is based on experience and their education and training which then affects the outcomes, so while you might describe the task in the same way, the outcomes differ and that's what I was trying to say there.

Right. Okay. Now, in your view, do competency standards need to be developed prior to an award classification structure being put in place?... No, I don't think so. I mean - because I think there are lots of examples where the classification structure's been put in place and the development of the competency standards does follow just because it takes so long.

Okay. In relation to other relevant qualifications, on page 8 of your report, you talk about in (b) there, other relevant qualifications. In your experience and research, what qualifications are currently being used in the industry?... Well there's a range. There are many people who have an advanced certificate in developmental disability through to degree level, so there's a range between there.

Right. Okay. And what are the employers' attitudes to these courses?... Well quite clearly there is some criticism of the courses available in Tasmania from the employers, nevertheless, very many of them encourage their employees to actually attend those courses and get those qualifications and in fact, one organisation that I can think of, it's their policy that they make it as simple as they can to - for the employees to be able to attend.

Now as you are aware the TCCI's proposals for relativities - oh, sorry, are you aware of the TCCI's proposals for relativities and qualifications?... Yes, I've seen that sheet.

Okay. What is your view on this?... Well, it seems to me that it effectively down grades the qualifications that people would hold in this industry, in developmental disability, compared to qualifications in other industry areas.

Right. Thank you. There - are you familiar with the HSUA's application?... Yes, I am.

Right. As you are aware, the HSUA has broadbanded your proposed structure and used annual increments. What's your opinion on this approach?... Actually I think that's - it's a very good idea because one of the difficulties that I encountered working to the instructions that I had from the SNC in the 8 levels was in fact it's quite difficult to differentiate between some of those levels. And again, the other issue about the annual increments refers to what I was saying before, is that the task might be described the same, but in fact, with periods of experience the outcomes differ and so - so I actually think that that's a good approach.

Right. Okay. At first glance, it appears that the HSUA's application value skills at a higher level than at in your report. Could you comment on this. I can refer you actually to page 8 through to 9?... That - well that would be so if you - yes, if you didn't look at this whole report as a package, so if you were just to compare it to the classification descriptions without looking at other recommendations and other comments, then that might be a true statement.

Could you comment on the different level of skills employees bring to the same task. Again I refer you to 3.7 on page 7 of your report?... Yes. I mean, I suppose I reiterate what I said before is that the tasks can be very difficult - the - to actually differentiate it by describing the tasks differently, but the outcomes can vary quite a bit because of the level of skills that people bring to them.

Right. Okay. You said that your report is a total package. How did you intend that people would be classified in relation to qualifications in your proposal?... Well that's why I was - yes, I was saying that if you just look at the classification descriptions that doesn't look at the issue that I raised which is -

Sorry, it's 3. - ?... - yes, page 8, 3.9 - where I was saying that to recognise the skills that people bring needs to - to those tasks can't be adequately described just by naming the tasks and in fact by linking them to the qualifications - relevant qualifications at those higher levels is a more appropriate way to deal with those higher levels.

Right?... So, - I mean, I don't know whether you want me to repeat what's here, but -

Yes, it may be useful actually?...

Okay. Well remembering that using the model of the Metal Industry Award as well that if people utilise skills and knowledge and have relevant years of experience then a person holding an Advanced Certificate of Social Science and Developmental Disability and utilising their skills and knowledge and who have 3 years industry experience could be expected to be at the level equivalent of 130 per cent of level 5, which I was referring to my level 5 of this award.

And the associate diploma?... Well the associate diploma again utilising those skills and knowledge and with at least 4 years of industry experience would be at 145 per cent.

Right. How does this approach that you've just described differ from the HSUA's application?... Well I guess what I'm saying is that I think the qualifications is the way to benchmark people at the higher rates, whereas my understanding of the HSUA application is in fact that you're not saying just qualifications but you're also linking in tasks as well.

Right, okay?... So people must perform tasks - particular tasks as well as hold the qualifications.

Right. So how does this aspect of the HSUA's proposal affect progression?... Well I guess it would give employers more control of progression.

Right, okay. Now are you aware of the competency project in Western Australia under the Industry Training Advisory Board?... Yes, I am.

What is the proposed time frame for the completion of that project?... Well they have been working to having first draft standards available between - well March. I gather they're running a bit late.

Right, okay. So March - ?... Sorry, March of 1995.

Right. What happens after March when they've done their draft standards? Where does it go after that?... Okay. Well the process is that the draft standards go to the competency standards body which is effectively a committee of the National Industry Training Board and they then go through a process of seeing whether they line up with the standards framework.

Right, okay. So how long do you think it may take until they're actually registered?... Well once they've gone through

that process and they're happy, they then go to the National Training Board and that's where the registration occurs. It's very hard to say. There are not that many competency standards that have actually got to that point in Australia so far because that's not a particularly easy thing to do, to develop them. I suppose in Community Services and Health it's quite experimental so they're learning as they do it. I guess the only one I can give as an example is the youth sector ones which are 3 years into that at the moment and they're still not registered because they are learning as they go.

Right. So there's 3 years between when the - ?... When the project first started and they're not even in fact ready for registration yet. That isn't unique to that particular standards, in fact, it's been very long time frames in other industries as well.

Okay. Thank you. That actually concludes the questions I have for the witness. So I'm not sure how Mr Fitzgerald intends to proceed.

DEPUTY PRESIDENT ROBINSON: Would you like the opportunity to cross-examine, Mr Fitzgerald?

MR FITZGERALD: Yes, I'd like to be able to cross-examine briefly if I could. But I'd like, as we have with previous witnesses, to take the opportunity for a brief adjournment to examine some of the evidence given.

DEPUTY PRESIDENT ROBINSON: How long would you need?

MR FITZGERALD: I think probably 20 minutes/half an hour probably would be sufficient.

DEPUTY PRESIDENT ROBINSON: Very well, we'll adjourn.

SHORT ADJOURNMENT

DEPUTY PRESIDENT ROBINSON: Yes, Mr Fitzgerald?

MR FITZGERALD: Thanks, Mr Deputy President. Thanks for the adjournment also, that's appreciated.

DEPUTY PRESIDENT ROBINSON: That's all right. I was able to finish off a little chore I've been trying to get finished for ages.

MR FITZGERALD: I'm glad your time was profitably spent.

Ms Jones, just a few questions in response to your examination-in-chief. When you use the DACUM approach you spoke of in your evidence to Ms Harvey, was that in respect to

the award as it is then and as it is now in terms of the scope of the classifications?... Do you mean who we chose to participate in it?

Yes?... The people who we expected to participate were people from the classifications as the award was then.

Right, thank you. All right. In terms of your report you did include higher levels 7 and 8. Did you use the DACUM methodology there in respect to those levels?... Well the levels 7 and 8 of my report are equivalent to some of the existing classifications.

On what basis do you make that judgement?... Give me just a moment and I will have a look at what I've got. If I've got it I can - yes, if you just bear with me for a moment.

Certainly?... The basis of what I was working on was that the level 8 of the award was the equivalent to Functional Programmer 1, and Independent Living Training Services and Supervisor 1 from Supported Employment Services, and they were included in the project.

Was there any agreement from the SNC in respect to that?... Well that was the original basis that was that those classifications would all be part of the process. So level 7, for example, is Supervisor 2 and Supervisor 3 from Supported Employment Services. And that was part of the whole process.

So it's your view that your report encompassed existing levels of the award only at that time?... Yes, they were the ones that we dealt with in the DACUM process and in the validation process. Perhaps what I need to say about the DACUM process is that people who actually turned up to those DACUM processes in fact some of those people weren't within those classifications.

Weren't - sorry, I missed that last bit?... Some of the people who actually turned up to take part in the DACUM process - as I said, my expectation was that they would come within this because this was the agreed process based on who was available to release. Some of the people who actually attended were outside these classifications but when we went through the validation process we only validated within their classifications because that was what was agreed that we would cover, that we wouldn't cover above that.

So in terms of those higher levels it's your view that they were in fact at that time within the existing classification levels of the award?... I'm not clear on your question. Are you talking about the levels 7 and 8 of my report?

That's right?... The people that we looked at, as I said again, were the Supervisor levels 1, 2 and 3 from Supported



Employment Services and Functional Programmer level 1, all of which are encompassed by levels 7 and 8 of the award, and that was part of the process.

Thank you. Just going back to HSUA.5.2. There's a letter there which you wrote - I think Ms Harvey referred to - the third last page in Tab 1, which is dated 1 December 1993. Did you write a similar letter to the State Negotiating Committee or to Mr Gates of the TCCI?... Could I have a look at that letter please.

I thought you had that there, I'm sorry?... I don't have the tab. I have my report but I don't have that tab.

Yes please, if that could be - it's too difficult to answer the question without seeing the letter. That letter of 1 December 1993 to Ms Ros Harvey?... I'd have to check on my records. My recollection is that I sent this to the parties who had to be informed in relation to the contract with the Disability Employers Association of Tasmania because if you remember my final work was then under contract to them.

Right?... And the three parties to be informed were the Health Services Union, the TCCI and the Disability Employers organisation.

Wouldn't it show - wouldn't it be more logical that it in fact would go to the SNC and show on that letter that it had been circulated to all parties rather than just to the union in this instance?... Well not necessarily. I mean, my recollection is that I did precisely what the contract required which was to inform each of the three parties individually which is what I've done.

Right. You can't be positive that in fact the same letter went to the other parties, at this time?... Well my computer is at home. I would have to check that at home.

I wonder whether some reservation could be made in respect to that if -

DEPUTY PRESIDENT ROBINSON: Well perhaps Ms Harvey could undertake to follow that up for us.

MR FITZGERALD: Okay. You said Mr Gates worked with you on the project. In your view - and I'm not in any way wanting to degrade Mr Gates, but in your view did you have in terms of this exercise a superior level of knowledge and skills and expertise than Mr Gates?... I would certainly have no doubt in saying I did in the issue of training because he said to me consistently he couldn't comment on some of those areas because he didn't have the knowledge. So he couldn't agree or disagree with me. In relation to the bulk of the other area I would have said that my knowledge was higher than his but

perhaps not as great a difference as in relation to the training.

In terms of the compilation of the final report would you agree that you had by far the greater input than Mr Gates?... Not by far. I think what needs to be remembered is that up to the draft report stage the draft report came from both of us and there are two or three points in that where I make comments that I establish come from me because they're in the area of training where Mr Gates said he couldn't comment. But the bulk of the contract - the report, the draft report came from both of us based on what we'd agreed. There are only amendments and to most areas between the draft and the final and whether he would or would not have agreed I don't know because the SNC asked me to write and take responsibility for the final report.

So in terms of - I understand there were two reports, an interim report and a final report. Is that right?... Mm.

In terms of the actual initiation of that first report, the interim report, was that solely instigated by yourself or was it jointly with Mr Gates?... Jointly with Mr Gates.

Right. And he - in your view he had - there was equal input into that report, the writing of it, the expression of it, the compilation of it?... I think, as I recall, that the results and the information that went into it had been worked on together up until that point. One of us obviously did the actual writing. You can't both sit down and write it but then he -

Can I interrupt you there. Who actually did the writing of the report?... I did the writing and he saw it and made amendments that he wanted before it came to the SNC as the draft report.

All right, thanks for that. In terms of DACUM can you just clarify - I think you said it was used by TAFE colleges principally. Is that the case?... It's used extensively by TAFE Colleges although it's actually used much more broadly these days probably in the first stages. You know, some years ago it would have only been by TAFE colleges but it's quite commonly used now and modified, seen as a process of actually breaking down jobs to determine tasks.

Right. Is it recognised nationally from training institutions?... Yes, it is.

Is it given official recognition, in your view?... Oh, absolutely.

Are there other methodologies which would achieve similar outcomes, you're aware of?... There are other methodologies you could use.

Right, okay. Just moving on to another matter, if I could. You said that there was a submission put - and I don't think it was - I'm not sure who it was to - to the department, I think, for funding for this project. Is that right?... There were various approaches made and I believe a formal submission was put to both commonwealth and state department. There were certainly meetings with a variety of -

Do you know who prepared that submission?... The original submission, I think, Ms Harvey.

Right. So -

DEPUTY PRESIDENT ROBINSON: I mean, if you don't know, Ms Jones, just -

MR FITZGERALD: I think it's important that Ms Jones answers it rather than Ms Harvey provide an answer?... Well I don't know for sure.

MS HARVEY: I wasn't going to provide an answer. I was just going to say that I thought we were going beyond the evidence-in-chief that was given and I'm just not sure of the relevance.

DEPUTY PRESIDENT ROBINSON: Well as I say, if it's relevant it can be raised in cross-examination.

MR FITZGERALD: I'd refute that. It was certainly raised in evidence.

DEPUTY PRESIDENT ROBINSON: But it doesn't have to be, I'm saying, Mr Fitzgerald.

MR FITZGERALD: No, thank you. Yes. Well if I can get a response to that question?... I don't know for sure.

Can I suggest to you that it was simply - it was the union's submission and simply endorsed by TADS, the Tasmanian Association of Disability Services?...

You can suggest it, but I am not positive.

That's fine. Okay. We talked about the interim report and the final report -

DEPUTY PRESIDENT ROBINSON: Or draft report, it was referred to.

MR FITZGERALD: Oh, well, yes, okay. Thank you for that. I think the draft report and the interim report are the same thing. Is that right?... Yes.

Yes. And then there was a final report. Is it true that in fact Mr Gates contested many - or some of the matters in the draft report - the interim report?... My understanding of the only things that were contested in the draft report are not in fact - contested isn't even a correct term. He said he couldn't make comment on some things, therefore he wouldn't endorse them. And he said specifically at that meeting with the SNC that the training areas he had no knowledge of, so therefore he couldn't endorse them. But, on the other side of it he wasn't saying that he dispute them, he just couldn't comment.

So you wouldn't agree that in fact there are specific matters disputed by Mr Gates?... In the interim report?

Yes?... No.

Right. Can I put it to you that those matters, those areas of contention held by Mr Gates were raised specifically at an SNC meeting?... Sorry, can you just ask me again?

Can I put it to you that there were specific matters raised in contention by Mr Gates at an SNC meeting?... Well, can you tell me what you are referring to?

If I can just take one moment on that, if I could do?

DEPUTY PRESIDENT ROBINSON: Mm. If it might help everybody, I just notice on I guess it is page 5 of the Witness Statement 6, under the heading, 'Welfare and Voluntary Agencies Skills Analysis Project - Key Consultative Stages', straight after page 4, it says that on the 25th of October on those dates there that J. Jones and S. Gates presented a draft report to the SNC?... Well that's certainly my understanding of what we did that day.

MR FITZGERALD: Well, in terms of that question, if I can be specific, and sorry, I have been vague. The areas of contest were in fact the levels above level 5, and that's the areas which Mr Gates raised some dispute at the SNC meeting?... My recollection of what he was disputing about those was the linking of the qualifications, and you will see that I have done that in that. It's in the final report as well. I don't recall any dispute beyond that.

So there is no dispute in terms of going outside your brief of the current award coverage at that time in going to higher levels?... We discussed, as I said, on various meetings back the issue that we believed there were higher levels that needed to be considered. It would have been discussed again

at that meeting, I am sure. I don't recall though there being any disputes between Mr Gates and myself, apart from the issue of linking of qualifications.

You can't recall, in fact, reconsidering the position as a result of that SNC meeting before the submission of the final - sorry, before the actual completion of the final report?... Oh, yes. I was asked what I had said in terms of the linking of the training and such issues was that we had actually attempted to come to consensus, and that was reflected in the draft report. And the SNC then said they wanted a report that one person would take responsibility for. I was principal consultant and, therefore, I should be free to write in it what I believed without having - I don't know, for want of a better term - watered it down to consensus. And so, therefore, by comparing the two reports you could see what the two differences were from that point to the final report.

Alright. When you just mentioned that you were the principal consultant, how did - and this is after you left the HSUA I understand - how did that position of principal consultant come to be?... Do you mean how was I appointed, or - ?...

Mm?... I spoke with - when I knew that I was leaving the HSUA and that the project would be unfinished, I spoke with Mike Sertori of the TCCI and Ros Harvey, both of whom encouraged me to write a suggestion of how the SNC might deal with that. A proposal which I did do, and it included doing some research to see if there might be some funds available from the Industry Training Board. Presented that proposal to an SNC meeting. Steven Gates and I both left the room while they dealt with it and when we came back they advised that I would continue as principal consultant with Steven Gates assisting.

Right. Was it the HSUA who were principally pushing for you to be the principal consultant?... I was out of the room.

MS HARVEY: I have got to object. I have got to object to that.

DEPUTY PRESIDENT ROBINSON: I'm sure the witness can answer the question?... I was out of the room.

MR FITZGERALD: No, but to your knowledge outside that, in terms of liaison with the HSUA.

MS HARVEY: I am sorry, I have got to object to that. This is mere speculation about what may or may not have -

MR FITZGERALD: Well, I am asking the question. The response can be given?... Well, my understanding from liaising with people in this room, with Mike Sertori in the past, was that they were happy with what I was doing. That they were supportive of me continuing it, and I didn't really view it as

being, you know, one side supporting and one not. I never thought about it in that way. I can't see it in that way. I was working for the whole committee.

So there was no consultation between yourself and the HSUA in respect to the principal consultant's status position?... There was no more consultation with them than there was with Mike Sertori. The same conversation took place.

Did employers, particularly through Mr Gates, accept the final report you submitted?... I don't have any response in writing from them.

What was your perception of the employer response to the final report?... The contract said that on acceptance that I would be paid my final payment. I received that, so I presume they accepted it.

You had no comment from Mr Gates or any other employer representative on the SNC about the acceptability or otherwise of the report?... I had a letter from Mr Gates and I think that was between the draft and the final report, saying that it would be from wanting it to be seen that it came from him - from me, and not from him - and since that accorded with what the SNC had asked, anyway, I agreed that that would be the case and the covering letter with the report indicated that. It only had my name on it on the final report. I have no indication to the contrary that the final report wasn't received.

Okay. You mentioned in your evidence, just on another matter, that there was I think the union application which you viewed in fact presents as a better document I think in terms of delineation of the skills than your report. Is that the case? Just to confirm it?... Yes. What I - and, in fact, brought it up at one of the SNC meetings was - that we were having considerable difficulty in, in fact, differentiating that many levels as we had been directed to work towards. And, as I said earlier, is that I see it as a more practical approach to actually have less levels because the key difference is not so much in the description by task but the level of skill that people bring, which is almost always linked to experience and qualifications and/or. So, in fact, that model in my mind fits the industry better.

How does that then - how do you view your report, given that statement? I mean, do you still hold to the findings in your report?... Well, I think if you compare the HSUA approach to what I have got in the report, in fact it is bringing some of the levels together, rather than moving away completely from it. So, if you look at it as broadbanding some of the levels, in fact there is quite a degree of similarity.

Well, if you were able to revise your report in line with the HSUA application, or something along those lines, would you in fact see that as appropriate?

MS HARVEY: Again, this is speculation. I just don't think it is relevant.

MR FITZGERALD: Well, it is not, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: I think it is a fair question to ask whether or not there is any second thoughts on the final report.

MR FITZGERALD: That's right; exactly?... I guess the final report I believe does what I was asked to do. What I believe I learnt through that whole process was that what we were asked to do wasn't the ideal, and we didn't learn that until we were much further into it. And, as I indicated to you a moment ago, I did say to the SNC that there was difficulty defining between some of the levels. And, in fact, if you look at those levels and compare them I think that's quite clear, that it would be difficult at times to work out whether a person belonged in this level or the one just close to it. It's very difficult to define those differences. If I was doing the whole project again I would go by this other approach, yes.

Okay. So does that cast some doubt on your report, if that's what you are saying, if you were looking at the project again? Does that cast some doubt on the findings made in your report?... Well, as I said to you a moment ago, I mean I see them actually complementary if you consider they are broadbanded.

During the period of the completion of the interim report and the final report what period of time was that? Can you recall?... A couple of weeks. I don't know exactly.

DEPUTY PRESIDENT ROBINSON: Well the document we referred to earlier says that on the 25th October 1993 J.Jones and S.Gates present draft report to SNC, and then it just says November 1993 that J.Jones presents final report to SNC?... That's right. Yes, I am sorry, I didn't get the exact date there, but it was about 2 weeks.

MR FITZGERALD: Did you have specific liaison with the HSUA in respect to the interim report in that period?... In respect to the interim report?

Yes, the period between the interim report and the final report we are talking about?... I met with both HSUA and TCCI members.

You didn't meet or have any discussions with the HSUA alone in that regard?... I'm sorry. Both parties agreed that there would be an individual consultation where I would speak to it. I did it for both TCCI members -

Yes. Right. No, I am just asking whether in fact there was any individual consultation with the union in respect to it.

DEPUTY PRESIDENT ROBINSON: I think the answer is, 'Yes'. My understanding was that, yes, that there was, but it was with both?... That's right. I met with both.

MR FITZGERALD: Right, well if I can clarify it. Was there any individual consultation with the HSUA?... Do you mean separate from those meeting?

Yes?... When you say 'consultation' are you talking about in terms of changing what was in here?

Yes?... No, I don't remember any of that. I am sure there wouldn't have been.

Okay.

You said, I think - or made a statement along the lines: it was preferable that the classification be structured even without standards in place. Is that what you're saying?... What I'm saying is it isn't at all unusual that - to have a classification structure and the competency standards follow. If you think of what I was saying about the sorts of times that become involved in the development of competency standards -

Right?... - I mean, it is conceivable - it would be very unfortunate, but it is conceivable that they may actually be years away.

Right. Okay. Well in respect to that, I think you said - you referred to some project in Western Australia?... That's right.

I mean, you say - well it could be many years away, could it. Could you make some prediction in that regard?... Well, no, I can't predict, but what I can say to you, as I said earlier, is that their time frame is that they will have draft standards in probably the middle of 1995, that then have to go through a rigorous process. In many of the other industries they've been returned to the projects to do more work, to make changes, before they even get to the National Training Board .... the National Training Board will then adopt them and as I said, the youth sector ones are 3 years into their project and, you know, that's a relevant comparison because competency standards in community services type sectors are going to be quite difficult to develop. They're quite controversial -



Right?... - and so youth sectors are good comparison of what might happen.

All right. When you speak of classification structures, are you including wage relativities in there as well?... Well I was given the wage relativities for the eight levels to work to that have been determined.

So, you're including that relativities within the classifications - or along with the classifications, are you?... Well, in my report those levels, 1 to 8, reflect the relativities that were already agreed between the parties, so levels 1 to 8 had meaning for them in terms of relativities.

Right. Okay. When you were originally engaged on this project, you were working with the union at that time. Is that right?... That's right.

Right. And at what period after that - or from the commencement of the project were you with the union?... I was with the union until the - oh, I think the 25th of June of 1993.

So, just to summarise, what period of months was it, just to clarify?... The bulk of this work was actually done in the first part of 1993. There were some discussions I think at the end of 1992. There was quite a delay because - because - attempting to seek funding from the commonwealth and the state, so I - if you look at the stages in this exhibit, which I can't remember what number it was, sorry - the witness statement -

MS HARVEY: 6?... - if you look at the key consultative stages, what I've written in there is: the orientation visits were the first stages of that and they were conducted from the 14th of April to the 4th of May. There was about 2 weeks - 2 to 3 weeks of planning before that, determining which sites we would go to and when.

MR FITZGERALD: Right. Okay. If I could just move on. You said, I think, in your evidence, that in terms of qualifications many employers encourage employees to attend - and I think you said, in fact, one employer makes - stipulates as a prerequisite - is this information just your feeling about it, or do you have figures to substantiate that statement?... Well for one thing I didn't say it was a prerequisite. I actually said that one employer - I don't know the words I used, but I certainly didn't say it was a prerequisite, but it's certainly a priority that all their staff go through that. No, I don't have any stats in front of me, although I think the TAFE statistics would indicate that - how many people are actually going through that course who are

in employment because many of the people do it while they're actually in employment.

So, it's your feeling only. There's nothing really on which to base it in terms of survey information or anything like that?... No, I'm not saying it's my feeling. I'm saying the stats are available. I haven't got them in front of me, but they are available.

Okay. You said - looking at the TCCI application - that it in fact down grades qualification compared to other industry areas. What other industry areas have you looked at?... Well I was - if you remember we agreed that - I'd said that we'd been instructed to use the Metal Industry Award; certainly if you compare it to that industry it would have that effect, and that is the basis for what I was conducting my work and my understanding of the basis of award restructuring across quite a number of industries in Australia.

Well, you've only looked at the metals then have you. Is that correct. I think you described in your evidence - the transcript will show whether I'm right or wrong, but I think you talked about other industry areas, not just one area?... My understanding is that other industry areas have been - used the Metal Industry Award as their basis in restructuring.

Right. But you said - just in terms of the statement you made - that the TCCI application down grades qualifications compared to other industry areas?... Well the metal industry is another industry area.

Yes. That's the only industry area you're referring to, is it?... That's the only one that I looked at specifically in terms of awards and compared the relativities, and my understanding is that many awards in Australia have used the Metal Industry Award as a basis and that was the basis of my comment.

Right. Okay. No, I misunderstood you then, if that's the case. No, I have no further questions. Thanks very much, Ms Jones.

DEPUTY PRESIDENT ROBINSON: Thank you. I don't have any questions. Ms Harvey?

MS HARVEY: Yes. I'll try to be brief. I'm mindful that Ms Jones lives in Launceston so I'd like to try and give her the capacity to leave before lunch if we could, so I'll try and be quick.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: Ms Jones, Mr Fitzgerald's questioning implied that in somehow you were biased in relation to the HSUA.

MR FITZGERALD: Oh, that - I don't know whether I even suggested that, either expressly or implicitly.

DEPUTY PRESIDENT ROBINSON: No, he didn't suggest bias but he did ask whether there had been separate discussions with the HSUA and -

MS HARVEY: Do you - perhaps you'd like to - the opportunity to expand on whether you feel that in some way because of your relationship with the HSUA that this bias - or provided some bias in the approach that you used were the results?...

As I said earlier, I don't believe so. I mean, I think one of the advantages that I probably had is that I have worked representing employers as well and I've had my own business so therefore I have the ability to look at it from different angles. There are certainly times when I spoke to both yourself and Mike Sertori as representatives of employers and union on the SNC. You always knew when I was speaking to each other. I was very open about that and what I would be talking about, and often it was - one person would say - say I was consulting with both about - in minor details along the way about when next meetings about issues I needed to bring up at the meetings. And I don't believe there was any input from either employers or union beyond what has been openly stated.

Right, thanks. Can I just grab this back. You talked about - Mr Fitzgerald took you to the issue of classifications above - just the ones that you were looking at. And he asked you about whether you believe there was a need to go above particular levels. I just ask whether you could take us to - in your report on page 12 -

DEPUTY PRESIDENT ROBINSON: Is that in Tab 1?

MS HARVEY: Yes, in Tab 1. In 5.7 there.

MR FITZGERALD: I'm not sure whether this is a question or whether in fact it's assistance by Ms Harvey to some way make a submission.

DEPUTY PRESIDENT ROBINSON: Well .... seeking clarification of anything which is brought out in evidence-in-chief or, I suppose, raised in cross-examination.

MR FITZGERALD: But by Ms Harvey taking Ms Jones to the report it's really answering the question for Ms Jones, I submit.

DEPUTY PRESIDENT ROBINSON: Well the report is already part of the evidence.

MS HARVEY: It is already part of the evidence. I was just seeking to clarify because Mr Fitzgerald did ask in cross-examination specifically about the issue of classifications above, and I thought it only fair to clarify that we should refer to this. So I was just going to ask Ms Jones to comment on it in context.

DEPUTY PRESIDENT ROBINSON: We'll let you continue.

MS HARVEY: Yes. I was just wondering if you could comment on this recommendation in the context of the question that Mr Fitzgerald was asking you about whether there was a need to go above the - ?... Well I guess if I go back to the DACUM groups and I mentioned earlier that the people who actually attended, a number of those people indicated that they worked above the existing award levels. Also in visits and other consultations with people within the industry it really became quite clear that there were probably several layers of management before you got to top management. This was discussed with the SNC on at least two occasions and while there were perhaps disputes about how many levels of management there were there was a recognition that there were people working above those levels that we included in our work or intentionally included in the work.

Right, okay, thanks. Now Mr Fitzgerald asked you about you being the principal consultant. If you could state again for the record who your contract actually was with?... In terms of the final work after I finished working with the Health Services Union, with the Disability Employers Association of Tasmania.

Right, okay. And did that contract state your relationship with Mr Gates?... I'd have to have a look, I'm not sure.

Okay, don't worry. It's not that significant.

DEPUTY PRESIDENT ROBINSON: What was the name of that organisation again? I didn't get it down?... Can I just check that I'm actually using the right name. I have the contract here with me and I have a horrible feeling -

MR FITZGERALD: I think we can actually correct it. I think it's the Tasmanian Association of Disability Services?... Yes, I'm sorry, I'm putting it the wrong way round - Tasmanian Association of Disability Services.

MS HARVEY: Right. Okay. Now you said that Mr Gates disputed the link with qualifications. Why did he in fact - did you ascertain from him why he was disputing it?... Well as I said before, I don't think dispute is probably the right term because he said to me on a couple of occasions that he couldn't either endorse or not endorse because he didn't know. He didn't have that body of knowledge so he wasn't willing to

put his name to it. And in fact in the interim report what I attempted to do was where comments were coming purely from me to say so and where I didn't say so it was from both of us.

Right. And Mr Fitzgerald asked you about Mr Gates' attitudes to levels above just those ones you were looking at. Did Mr Gates - just to clarify, did he agree that there needed to be higher levels?... Well he certainly recognised that there were people working in various levels of management that we weren't including in this work.

And did Mr Gates ever comment on his position with the TCCI in this project?... He did.

What sort of comments did he make?... Well a number of them were personal. I mean, I don't think it's appropriate to -

DEPUTY PRESIDENT ROBINSON: I don't think you need to answer questions that you don't feel comfortable with. I think I've said in the past that I don't believe that a witness is under compulsion in this jurisdiction.

MS HARVEY: No?... Could I just say that - I mean, to leave it then it sounds like it's leaving wavering in the air - that my understanding from the things that he said was that he was there - can I use the expression 'to keep the bastards honest'?

DEPUTY PRESIDENT ROBINSON: Well if I said 'No', it wouldn't make a difference?... That was my feeling about his involvement.

MS HARVEY: Right, okay, thanks. So Mr Fitzgerald asked you about the competency standards and existing prior to the award. Are you aware of any award where competency standards have existed prior to the award being restructured?... No, I'm not aware of any.

Okay. Thank you. That concludes my cross-examination - re-examination.

DEPUTY PRESIDENT ROBINSON: Thank you very much, Ms Jones, for coming down here today and giving your evidence. Much appreciated, and you may step down?... Thank you very much.

MS HARVEY: Just before we adjourn, Mr Deputy President, if I could just confirm on the record that we have managed to reach another historic agreement today -

DEPUTY PRESIDENT ROBINSON: This is really too much. I don't think I can take it.

MS HARVEY: - and that is that we - the 12th would be set aside in addition to the first week in August just for the -

DEPUTY PRESIDENT ROBINSON: 12th of August?

MS HARVEY: Yes, 12th of August - and that doesn't change any of the other dates following that.

DEPUTY PRESIDENT ROBINSON: Right. Very well. Well -

MR FITZGERALD: And the agreement about the finishing time tonight?

MS HARVEY: Oh, yes, Mr Fitzgerald also wants me to finish at 3.30 -

DEPUTY PRESIDENT ROBINSON: Is that agreed?

MS HARVEY: Well because I'm such a flexible person, Mr Deputy President, I have agreed to that.

DEPUTY PRESIDENT ROBINSON: You have.

MS HARVEY: I have.

DEPUTY PRESIDENT ROBINSON: Right. Well, we'll agree -

MS HARVEY: However, -

DEPUTY PRESIDENT ROBINSON: - we'll adjourn till quarter to three.

MR FITZGERALD: Well if I just -

MS HARVEY: I assume we're adjourning till - what time was it?

DEPUTY PRESIDENT ROBINSON: Quarter past two is the normal resumption time.

MS HARVEY: Thank you.

DEPUTY PRESIDENT ROBINSON: We'll resume at that time today. Thank you.

#### LUNCHEON ADJOURNMENT

MS HARVEY: Mr Deputy President, I'm still addressing you on section 5.2 of my submissions, that goes to the issues of relativities and demonstrating the scope of the work that's currently being performed in support of the HSUA's application.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: I do have one further witness to call in relation to this section which I won't be doing today and that's the tradesperson level classification. However, there's one more - some more evidence I want to put before you in terms of what are the requirements and skill requirements in the industry in support of this application, so - and this goes to the view about qualifications and what's actually required. Mr Fitzgerald actually asked Ms Jones in her evidence what her view was based on, that qualifications were required by employers, or you know, or preferred or actively encouraged and Ms Jones responded that, you know, it was evidence - sorry, it was a view that had come about by talking to the industry and, you know, and involved in her research.

However, at this stage what I want to do is to take you to what the industry itself says it wants and the way I seek to demonstrate that is through advertisements for jobs advertising jobs in this industry covered by this award and what sort of skill levels the advertisements set out, so at this stage I'd like to hand up an exhibit which is Exhibit 5.2A.

DEPUTY PRESIDENT ROBINSON: Fine. Thank you. 5.2A.

MS HARVEY: Now what we've done, Mr Deputy President, is go back through the 'Mercury' and look at advertisements for positions in this industry over the last 12 months, so what I seek to do is to actually take you through this exhibit, highlighting the sort of skill and qualification requirements that the industry itself is asking for, so on page 1 you have an advertisement there from the 'Mercury', page 85, 20th of March 1993 from the 'Southern Residential Services' for residential support workers, ie, those people working in group homes and what we're looking - in the very first line it says:

We are seeking experienced and or qualified staff -

- and then further down, in the third paragraph, it actually says, and I quote:

Qualifications in supported accommodation and or the social sciences are desirable -

- end of quote. So, what we're seeing is - and I'll go through all of these and come back and summarise rather than summarise after each ad.

Over the page, on page 2, we've got an advertisement in the 'Mercury' on page 50 from the April the 10th 1993, 'Tagari Lia' which is a community based organisation which is covered by the Welfare and Voluntary Agencies Award, running accommodation in group home services, so the first ad - there's a number of positions advertised, but the one I wish

to draw your attention to is for a 'Senior Residential Support Worker', and interesting there's four positions advertised.

It's full-time shift work and they're actually using the salary and conditions as per the Social Trainer Award; now this award is actually covered by WAVA, but it goes to the issue of the scope in the current award being so limited that people are actually drawing wages - this is a public sector paid rates award, the Social Trainer Award, and it will actually become part of the new Public Sector Community and Health Services Award in the technical stream because of qualifications to be a social trainer do require the developmental disability qualification.

So what in fact they're doing is picking up the salary and conditions from a public sector paid rates award, but they are clearly covered by the Welfare and Voluntary Agencies Award which is evidenced by the very opening paragraph which says:

Tagari Lia is a non-government organisation that provides supported accommodation for people with physical and intellectual disabilities.

Which is very clearly within the scope of WAVA. And if you - you'll see then under there it's got desirable qualifications for the senior residential support workers:

Qualifications in developmental disability or other related human service area.

So it's quite clearly saying that's their desired qualification for this sort of work.

And then it goes onto the residential support workers which is obviously the level below and interestingly they're then shifting back to the Welfare and Voluntary Agencies Award which is a funny way to structure one's organisation, but I can only deduce from this that because of the inadequacy of the current award, they're swapping between two which is hardly desirable a sort of public interest type test, to have such confusion about what awards cover one organisation's employees.

And then if you go down to senior in charge, under 'Leisure Options' there. Again you've got the senior in charge being under the Social Trainer Award and desirable qualification:

Qualification in the area of Developmental Disability.

And then you've got the leisure options support workers - obviously at the lower level - swapping back to WAVA, so you've got people in the same employee covered by WAVA that obviously the lack of scope in WAVA has meant that people are



swapping between two awards to try and get rates that are appropriate.

Over the page on page 3, we have an advertisement for training and development officer and I remind you that evidence that Joanne Dickinson gave in sworn evidence, she was actually employed as a training and development officer with Oak Enterprises, so this is an equivalent type position with TADPAC which is also a supported employment service, and it says there in the second paragraph, in terms of the duties:

The duties of this position include: the provision of training to people with disabilities; maintenance and review of I.P.P's -

- and you will recall that's the Individual Program Plans for clients -

- development of training plans; some policy and procedural development; liaison with community groups, government departments and other services.

And under the desirable qualifications:

Degree/Diploma in Humanities/Social Sciences field or applicable experience in the Disability Services area.

Over the page, on page 4, 'Tyenna Wholistic Health Incorporated', which again is a non government organisation providing residential and occupational support services for clients with intellectual disabilities and in the third paragraph down there - this is an advertisement for a house manager:

The position is a full time, shift work position with salary and conditions per the WAVA Award -

- and then down further, skipping a paragraph, it says:

Desirable Qualifications: Relevant tertiary qualifications in developmental disability or other related human service area -

- and it goes on to specify the current first aid certificate.

I'll just - there is an ad for - on page 5 - but I'll just go over to page 6 - there is nothing in particular that I wish to draw your attention to on page 5. On page 6, there's the 'Mercury', the 23rd of April 1994, on page 82. It's for a residential support worker at Oak Enterprises for the community living program and it says that - it sets out what the work is and it says, in terms of desired qualifications:

- or possession of a formal qualification in the human services field will be highly regarded.

Over the page, on page 7, the 'Mercury' from the 7th of May 1994 on page 66. This is for the Northern Residential Support Group (Inc), Residential Support Officers and again this is a service which was establishing two new group homes, and if I could take you to the second paragraph, and I quote:

Residential Support Officers are responsible for ensuring that the objectives of the NRSG (Inc) are met in the day to day provision of support training to people with an intellectual disability within the service.

And then under 'Duties', it goes on to say:

Providing support and skills development training;  
Devising and implementing individual training programs for people with an intellectual disability;  
Assisting in implementing behavioural management strategies;  
Working with residents with challenging behaviour whilst strictly adhering to the policies and principles of the service.

Administering and monitoring prescribed medication in accordance with established procedures.

It goes on to list the salary range, approximately \$20,800 to \$23,800 and then it says:

Qualifications: A formal qualification in the human services area is required, eg Developmental Disability Social Sciences (Welfare) -

- which is of course run by TAFE -

- General Nursing, Psychology social work or qualifications deemed equivalent by the Board of Management.

End of quote. Over the page on page 8, 'Mercury', the 7th of May 1994, page 69; again Northern Residential Support Group (Inc) for a training officer and it lists - this is the .... as I was just discussing previously - it lists the duties:

Assist staff to devise, implement and review training programs for residents of the service;

Develop quality assurance mechanisms to ensure all programs are, and remain, consistent with the service principles;  
Develop and regularly update Induction/Orientation package;  
Assist in the planning and development of the Service.  
Salary Range: \$29,441 to \$30,640;  
Qualifications:  
Desirable:  
Qualifications in a relevant discipline (eg: Psychology, Education, Developmental Disability);  
previous experience working with people with disabilities.

End of quote. Over the page, on page 9, the 'Mercury' the 14th of May 1994, page 75. This is 'Moondani Incorporated' a new service being established to provide residential support for - I understand it's for CIP clients and there's a senior support worker position and it lists the functions and I just quote:

To ensure the daily physical, emotional and social enhancement of the consumer; to manager the day-to-day running of the house; to promote and facilitate independent living skills. To work as a proactive team member.

Award: Welfare and Voluntary Agencies Award.

And then it says:

Qualifications: Essential: an appropriate qualification in the field of Developmental Disability. Desirable: Experience in the management of challenging behaviours.

And then it goes on to list the support worker:

Function: To assist the Senior Support Worker in achieving the above.

Award: Welfare and Voluntary Agencies Award.

Then it goes on to list qualifications as being:

Proven experience in the field of Developmental Disability.

Desirable: Experience in the management of challenging behaviours.

Occupational Support Worker:

Functions: to assess the occupational support needs of the consumer, and facilitate the meeting of identified goals. To work as a proactive team member.

Again the award is WAVA.

The qualifications:

Essential: Proven experience in the field of Developmental Disability.

Desirable: Experience in the management of challenging behaviours.

Over the page - if I can just actually say in relation to that, Mr Deputy President, that's not - that's very similar to the sort of structure that the HSUA is proposing because we're looking at a - I would imagine how it possibly would be translated for a group home is, your group home employee would be at level 4; your basic employee and your senior would be at level 5 which is the advanced certificate level. So it's very consistent with that sort of approach.

Now obviously how it will actually apply in the field would vary according to the way the work is organised and what level of responsibility and skill people have, but that's a model that would be consistent with the award that .... classification structure we're proposing.

Southern Residential Services Coordinator on page 10, the 'Mercury', page 85, May the 15th 1993 and this for Southern Residential Services Coordinator and it says there that:

SRS receives funding from the Department of Community and Health Services to provide accommodation support to adults with an intellectual disability in the community.

It goes on to say that:

The position requires an enthusiastic, innovative and energetic person who is able to work with minimal supervision. Duties will include the training, rostering and supervision of staff, management of finances of the organisation, development of policies and procedures and oversight of services provided to the clients. The successful applicant will be responsible to the SRS Committee of Management. It is preferred that applicants will have a tertiary qualification in the human services, relevant experience in the

field of intellectual disability and current drivers licence.

DEPUTY PRESIDENT ROBINSON: Human sciences I think you meant to say, didn't you?

MS HARVEY: Sorry, Human Sciences. What did I say?

MR FITZGERALD: Services.

DEPUTY PRESIDENT ROBINSON: Services.

MS HARVEY: Oh, I beg your pardon. House supervisors and in the second sentence for house supervisors advertisement said:

We are seeking experienced and or qualified staff to take on a senior role -

And -

The supervisors were responsible to the Co-ordinator for the day to day management of the respective homes.

Now, over the page, on page 11, the 'Mercury', page 76, May the 22nd 1993, and again we're talking about Northern Residential Support Group. Coordinator for residential support:

Duties: To liaise with the board of management and co-ordinate service delivery. To be responsible for the day-to-day management of the service. To liaise with residents and their family/carers, supervise staff, organise rosters and participate in planning and review processors -

- it says. I think that means 'processes'.

Salary: A salary package of approximately \$40,000

-

- and, 'Qualifications', it says:

A tertiary qualification in the field of human science is desirable.

Certainly, just in relation to that market rate, if you like, of \$40,000 for a coordinator, residential support service, that is far less than what the HSUA is proposing in our minimum rates award where the top rate in our award would go to \$34,500.

Over the page on page 12, the 'Mercury', the 29th of May 1994, page 78, Southern Residential Services Inc:

We are seeking applications from suitably qualified and or experienced persons to fill the following vacancies.

It's got a 'House Manager' and then 'Residential Support Workers':

All Positions: Welfare and Voluntary Agency Award  
Division B -

- which is the award that covers residential services.

Tagari Lia which - on the next page, on page 13, the 'Mercury', the 25th of June 1994, page 87:

Tagari Lia Community Living Association -

- which is again a non government organisation that provides supported accommodation options and a day time leisure options for CIP clients. 'Senior Residential Support Worker' and it says there:

Senior staff are the team leaders in the group home responsible for the provision of high quality support to the client group, the day-to-day running of the group home and supervision of the team of Residential Support Workers working within the house.

And then it says:

Salary as per Social Trainer Award. Conditions as per WAVA Award.

Again, I would indicate - say that this is evidence of the fact that the current award is inadequate in terms the - of how high it goes and that people are resorting to drawing salaries from another award, but still using the conditions from WAVA.

'Residential Support Worker', and it's - their salaries and conditions which is the next level down are:

Salary and conditions as per WAVA Award.

The next page, on page 14, which is the 'Mercury', page 72, June the 26th 1993. It's an advertisement for Oakdale Lodge Yalabee for a coordinator. Oakdale Lodge, you will recall, Mr Deputy President, is one of the services offered by Oak Enterprises and it says:

Applications are sought from people with qualifications and/or experience in developmental disabilities or related human service areas.

Again there's a salary package range of \$30,000 to \$33,000. Again that is certainly consistent and indeed more - that range would be more than the HSUA's proposal if you look at the relevant classification for that sort of position being a level 6 in the HSUA's proposal.

Tyenna Wholistic Health Incorporated, on page 15, the 'Mercury', the 16th of July 1994, and this is an advertisement for residential support workers. I apologise for the reproduction. It's not very good. It's come off a microfiche so it's come up a bit dark, but you can just see above 'Essential Qualifications', it says:

Salary and employment conditions in accordance with the WAVA Award.

And then:

Desirable Qualifications:

Development disability certificate/study.

Now that's the end of the exhibit, Mr Deputy President, in relation to the ads I wish to bring to your attention. And I don't for a minute say that all of these ads are requiring these qualifications because clearly some of them aren't, but some of them are. They say 'essential' and others are saying 'desirable', but what it indicates and supports the submissions that the HSUA has put to you over the many days of hearings on this matter that we are moving towards an industry where there is a desirable qualifications and indeed some of them are essential and that it's appropriate that the award structure recognises that and appropriately rewards that, and those qualifications go from, as demonstrated by these advertisements, from the advanced certificate level .... right through to the degree level that are actively being sought and used in the industry.

So the other thing I think is instructive from these advertisements, Mr Deputy President, was some of the duties that were set out which made it quite clear that in the context of residential support and independent living services that we are looking at services that provide clients with quality support, that look at individual - their individual requirements, that have a component of training and the teaching of independent living support services. We're not talking about just nice people needing staff who just are just nice caring people just like Mum. We're talking about a high level of service that is required and is reflected in the

advertisements that are being put in the press for positions to staff these establishments.

DEPUTY PRESIDENT ROBINSON: We might have to reserve the right of Mums to enter an appearance here and -

MS HARVEY: I said it somewhat facetiously, Mr Deputy President, because when I was talking to an employer the other day I actually said to them: 'Look, you must accept that the level of skill you're expecting of your staff is quite high'. 'Oh, no', she said, 'it's just like Mum'. And I said, 'Well do you teach ....?' 'Yes'. 'Do your staff - are they required to use ....?' 'Yes'. Are they required to, you know, be involved in independent living programs?' 'Yes'. I said, 'Well, with respect to Mums, that's a little bit more than most Mums would be required to do and indeed many of the things that Mums do do are far often, I believe, very under valued.

DEPUTY PRESIDENT ROBINSON: I'm not quite sure whether motherhood comes into it or not. I mean -

MS HARVEY: Okay. Mr Deputy President, I've already indicated that I have another witness I need to call yet who unfortunately is not available today. So what I intend to do at this stage is reserve my right, if you like, or reserve my position in terms of summing up the whole of 5.2 until after we've had that witness.

So therefore at this stage what I'd seek to do is actually move on. If you can go back to HSUA.1 That's the light purple -

DEPUTY PRESIDENT ROBINSON: Of course it is, we all know that.

MS HARVEY: As I was saying that I'll come back to - on page 2 of HSUA.1 you can see that there's the relativities and the classification structure, and I have one more witness yet to call before I conclude that section.

We've already had section 5.3 in relation to the training reform agenda. 5.4 I don't intend to put extensive submissions on because it is in fact the matter that is agreed between the parties. Because both applications have annual increments so it's not a point of contention in principle so therefore I really don't believe it's one in which we need to put submissions on because I understand it to be an agreed matter.

MR FITZGERALD: I'm not certain about the number of increments. I just need to go to our application, but I thought we only had two increments.



MS HARVEY: I was talking about the principle of annual increments per se.

DEPUTY PRESIDENT ROBINSON: I want to make it clear that where parties come to an agreement regardless who's involved, whether it's an organisation or between an organisation and individuals or between individuals, that the commission doesn't necessarily rubber stamp agreements up here at North Hobart.

MS HARVEY: I hear what you're saying, Mr Deputy President. I may come back to you in relation to 5.4 but I think it's fair to say that it is not uncommon to have annual increments in minimum rate awards.

DEPUTY PRESIDENT ROBINSON: But I don't want you to be under any misapprehension that because something is agreed that the commission will necessarily accept it.

MS HARVEY: No, that's a fair comment. Obviously I'm required to meet the tests. But in terms of this I suppose it's an issue that's not been one of great contention in this jurisdiction. There are many minimum rate awards that have annual increments and indeed in the evidence that I presented to you in relation to 5.2, we presented examples of awards of this commission, minimum rate awards with annual increments and particularly we cited the Medical Diagnostic Services (Private Sector) Award. And I understand it's not an uncommon practice in this jurisdiction.

DEPUTY PRESIDENT ROBINSON: Right. It is a requirement for applications before this tribunal to take into consideration public interest.

MS HARVEY: That's correct. If I could now turn to 5.5 in relation to junior rates.

DEPUTY PRESIDENT ROBINSON: 5.5.

MS HARVEY: 5.5. That's the matter I seek to address you on this afternoon, hopefully to finish before 3.30. So I will actually be dealing with section 5.5 -

DEPUTY PRESIDENT ROBINSON: I thought you agreed that you'd finish at a different time.

MS HARVEY: 3.30, is that what I said?

MR FITZGERALD: Mm.

MS HARVEY: Yes. That's correct.

DEPUTY PRESIDENT ROBINSON: I stand corrected.

MS HARVEY: So, Mr Deputy President, if I could at this stage hand up an exhibit which is indeed HSUA.5.5.

DEPUTY PRESIDENT ROBINSON: HSUA.5.5 it is.

MS HARVEY: This section of the HSUA's submissions deals with the minimum rates of wages to be paid to juniors, as outlined on page 21 of HSUA's application which is in exhibit HSUA.4. When I outlined my submissions, Mr Deputy President, I drew your attention to the fact that we had made some changes or proposed to make some changes to the junior rates provisions in the award. And essentially just recapping on that I said that what we had done is taken the percentages - sorry, I'll - it's that blue one.

MR FITZGERALD: What are we looking at, sorry?

DEPUTY PRESIDENT ROBINSON: I was looking for HSUA.4. Do I need to go to that?

MS HARVEY: No, not really. I can just take you to it. It's very straightforward. What we've done, there's two divisions in the award currently, Division A and Division B. Now this application only affects Division B.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: There are three different percentages currently in Division B. Now because it deals - there's a separate sort of section or subsection, if you like, for residential or separate subsection for independent living and a separate subsection for supported employment. And each of those subsections have the same relativities in terms of their rates. So all we've done is consolidate that because if our application is successful obviously we won't have those subsections. So the percentages are identical.

Now I will just point out because it has been the basis of some confusion that percentages in Division A, of which this application does not affect, are in fact substantially higher. And so many people when they look at our application think that we've reduced them; we haven't. Division A is a completely separate division of the award which this application doesn't affect. And indeed it's at this stage on a without prejudice basis we would be looking at to eventually removing Division A altogether. But that's a matter for further discussion.

So what we have done is just use the percentages for Division B but the old award stipulates classifications of which the percentages will be taken from. And what we've done is said instead of doing that because those classifications have gone, they'd be irrelevant, that it should be a percentage of the relevant classification rate that the employee is working in,

and we've added another proviso, that being that where an employee is classified above level 3 that they will be paid for adult rates. So that's essentially what we're seeking to do. It's fairly straightforward.

And likewise this submission will be very straightforward. Under the structural efficiency principle we're required to show that any application before you is consistent with establishing a skill related career path which provide an incentive for workers to participate in skills formation. And indeed that was contained on page 5 of exhibit HSUA.5.1. And additionally that in it we have to - we are required to address any cases where award provisions may discriminate against any sections of the work force.

In lines with this - we believe that the HSUA's application is consistent with these requirements of the structural efficiency principle. And indeed it's in line with the - in line with this principle is the intention of the relevant state, territory and commonwealth ministers to phase out junior rates in awards through the award restructuring process. This is based on the recognition that under the national training reform agenda and the wage fixing principles, advancement should be via a skilled based career pathway and not through current age related formulas.

It is recognised however that in abolishing junior rates without having either the appropriate training clauses in industrial awards or competency training arrangements in place may be counterproductive. The HSUA recognises this and in the interests of young people and the stability of their place in the Tasmanian labour market our application is at this stage recommending only a minor interim change.

So whilst in the long term we may seek to remove any reference to junior rates we believe that we need to do it in a phased approach, that we need to have other training clauses actually in the award and also that we need to do it slowly, not an all-in-one hit, which is exactly what we're seeking to do.

Now this view is, as I said, one that's not just the HSUA's view, it's indeed one that is linked to some weight by MOLAC. Now MOLAC is the Ministers of Labour Advisory Council. It's made up of the Commonwealth and State Ministers of Labour. And they have indeed recognised that there is a need to phase out in any new industrial arrangements junior rates and aged related payment of wages. In so doing they have acknowledged that the ongoing process of award restructuring will force a review of youth and training wage arrangements.

To assist the industrial parties in the process of reform the ministers have prepared a document entitled, and I quote: 'Principles and Guidelines for Handling Change to Youth and Training Wages in the Context of Award Restructuring'. And

this is contained in HSUA.5.5 in Tab 1, these principles and guidelines.

In the preamble to this document the governments detail their broad objectives of the intended reform. And if I could just take you to the objectives as set out on page 1 of Tab 1 in 5.5, and draw your attention particularly to - in (a) and (b), and I quote:

(a) to bring equity and consistency of the treatment of young workers, whilst at the same time protecting their place in the labour market and providing the basis for greatly enhanced training and career opportunities including those industries where entry level training and training wages are limited or non-existent, such as in building and construction; and

(b) to ensure the development of a broad skills base for all at entry-level, which will contribute to a more highly skilled and adaptive workforce, and ultimately, to a more efficient and competitive Australia.

These were the objectives that were actually set and consequently the ministers developed principles and guidelines. And there's actually five principles and guidelines that are actually set out in this Tab 1.

DEPUTY PRESIDENT ROBINSON: Does all this really mean that the objective that eventually juniors will be paid not upon their age but upon their qualifications to perform the job, and ability?

MS HARVEY: That's exactly right.

DEPUTY PRESIDENT ROBINSON: On the merit principle.

MS HARVEY: Yes. Consistent with the idea of a skill based career path.

DEPUTY PRESIDENT ROBINSON: Mm.

MS HARVEY: I mean, I suppose historically that's where we've ended up with junior rates is because we didn't have skill based career paths. It was sort of some very crude proxy.

DEPUTY PRESIDENT ROBINSON: Excepting that there were assumptions based upon age, I suppose, that perhaps someone at a certain age would be deemed to have just left school and had no work experience, all those sorts of things.

MS HARVEY: Yes, I can understand the history of these things, where they come from. But certainly I think it would

be our organisation's view that youth related wages are totally inappropriate, but we don't want to move too hastily to remove them if it's going to - you know, we believe that we should be doing it in a phased manner and replacing junior wages with training wages.

DEPUTY PRESIDENT ROBINSON: Mm, yes, I understand.

MS HARVEY: Okay, I'm really seeking to demonstrate to the commission that it's not just an HSUA view; I suppose it's a broad view that's supported by commonwealth and state ministers of every state and territory and that is reflected in these principles and guidelines that were issued by MOLAC.

Principles and guidelines, the first one is the matter I was just addressing, that there should be no hasty movement away from youth related wage rates in those areas where they now apply unless a suitably skilled and experienced base replacement is available.

Now Mr Brown has already detailed what entry level training developments are planned in this area to ensure a skill and experience based alternative to junior rates. So we're already taking action in relation to that principle. So our application is consistent with that approach of having the two go in tandem.

Secondly - the second principle there that government will not increase funding to programs to enhance youth employment, such as traineeships and apprenticeships subsidies, to facilitate the removal of youth/age related wages. I've got really no comment in relation to that.

On page 2 in the third principle there it says youth/age related wage rates should be examined as part of award restructuring negotiations on a case by case basis. These negotiations should be - involve the formal commitment to provide relevant workforce preparation/training and a corresponding basis for adjusting wage rates. They should conform with the current national wage case principles, establish appropriate relativities within and between awards based on work performance and skills required and take account of the likely effect on youth employment in the industry.

This principle, this is why we were requesting only minimal interim changes to the junior rates at this stage and request that the matter be - we be granted leave to address this matter at a later date so that we are consistent with this approach in this application that's before you.

In relation to 4, it says in regard to training wages and structured arrangements consideration should be given to the need for employers and employees both to make a contribution to training costs consistent with the potential future

benefits to both of the training, bearing in mind the level of contribution already made by governments be time spent in structured training whether on or off the job, and see the removal of demarcation barriers to effective industry based entry level training arrangements.

In relation to this there are already developments under way in the federal jurisdiction which will impact on the principle outlined here, and I am particularly alluding to the National Training Wage Award.

Five says that the change to individual awards should be based on a thorough review recognising the fragility of the youth labour market. It should take into account the particular circumstances where appropriate of individual enterprises and recognise the particular circumstances and peculiarities of the industry concerned.

Just in relation to that comment of the peculiarity of the industry, it would be our view that there are in fact very few juniors employed in this industry because of the type of industry it is.

It's not one that I can substantiate in any way because, unfortunately, we don't have a data base that can show us, and it is - really is sort of more anecdotal experience with the industry.

However, we are erring on the side of caution and not removing them altogether, but I would be very surprised if there were many juniors in the industry at all because of the nature of the work.

DEPUTY PRESIDENT ROBINSON: Yes. The impression being that people need a certain amount of maturity to come into such a challenging environment.

MS HARVEY: That's correct. And, obviously with something like retail you would be more concerned about this than you would be in this industry.

The review should aim - such a review as outlined certainly has not taken place in this industry - and I think it is going to be very hard for it to take place in a meaningful way, unless perhaps we could get the cooperation of the employers to ascertain the number of juniors. But I think that's something that is going to happen in the future.

(a) An obligation on employers to provide appropriate training, whether on or off-the-job, for all new entrants to their workforce, including those currently treated as "juniors" and part-timers as well as apprentices and trainees.

Now, although employers have expressed a willingness to participate in proposed training developments, no such recognition of this obligation outlined in this principle has been forthcoming to date.

So we really sought the developmental stage of that industry working group that is looking at entry level training requirements for this industry.

(b) The provision of career paths, based on competency and skill levels acquired, progressing from point of joining the workforce to entry to the mainstream classification structure.

Certainly that is what we are attempting to do with this application is indeed put in place that skill based career path which then would be able to dovetail with the entry of trainees.

(c) A competency based classification structure through which new entrants to the workforce advance to the relevant "mainstream" classification, including:

(i) for recruits entering contracts of training -

And I won't go through all of it, Mr Deputy President. If I just go to (ii):

For recruits not entering into a contractual training arrangement -

So those two types.

As Mr Brown has already pointed out, and supported by Ms Jones' research, the application is consistent with the development of a competency based classification structure, which this principle requires.

The HSUA is currently working on training wage arrangements across a number of awards and we'll be in a position to commence detailed negotiations with the employers on these matters as more information on other developments become available, and again I am referring to the federal jurisdiction in proceedings that are currently occurring.

So we will be seeking to put in place training wage arrangements across all of our awards in this jurisdiction.

DEPUTY PRESIDENT ROBINSON: Yes, from hearsay discrimination on the basis of age might - in federal regulation - might be a factor.

MS HARVEY: That's correct. Certainly the bill that Mr Brereton presented to the federal jurisdiction did outlaw age discrimination.

I understand there has been some amendments since then that may have changed the situation a little bit, particularly in relation to juniors to make it consistent with these principles.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: I am not sure about the other end, the retirement age, whether they have actually agreed to remove that or not.

DEPUTY PRESIDENT ROBINSON: We shall wait and see.

MS HARVEY: I won't go into all the subsections of Principle 5. I think the general thrust of what I am talking about is clear.

However, if I could say that this view that is supported by MOLAC is also supported by the National Labour Consultative Council principles.

So, in addition to, and consistent with the MOLAC Principles the National Labour Consultative Council - the NLCC - has also prepared a document entitled, 'Guidelines for Training Wage Arrangements' for the Australian Vocational Certificate Training System.

The NLCC comprises ACCI representatives, ACTU representatives and the Commonwealth Government, so it is a tripartite forum.

As you will recall from Mr Brown's submission the Australian Vocational Certificate Training System will be the overwhelming means of entry by young people into most industries, and there has been some targets set in terms of the year 2000.

So if I could take you to Tab 2 in Exhibit HSUA.5.5, and this is the tab that sets out those guidelines I was referring to that have been issued by the NLCC.

And I won't go to all of it, but if I can take you to page 2 in 4.1, and this is the section that deals with awards.

And I remind you that this is an agreed document between ACCI and the ACTU and the federal government.

Now it says in 4.1:

In relation to the award stream, it will be necessary for the award parties to develop competency-based AVC training arrangements tailored



to the needs of their industry. Trainee wage structures appropriate to these training arrangements will then need to be developed.

And over the page on page 4 in terms of guidelines in 8.1, and I quote from section 8.1 and 8.2:

8.1 The parties should develop trainee wage structures which appropriate reflect the competency-based AVC training arrangements that are to be established. These should provide competency-based training classifications through which trainees advance to the relevant "mainstream" classifications. Points of entry and speed of advancement will reflect the underlying training arrangements and be based on competency.

8.2 The parties should establish rates of pay for each point in the trainee classification structure expressed as a percentage of the relevant mainstream classification. The rates of pay should reflect the relative value of the competencies demonstrated by the trainee on the job over the period of the training arrangement. Trainee wage rates will therefore:

- i) establish appropriate relativities which take account of work value/skill evaluation
- ii) reflect any need for young workers to mature in work orientation and experience in order to achieve full competency
- iii) be equitable to trainees, while ensuring they are competitive in the labour market by reflecting the cost/benefits to employers of providing training.

Now this principle in 8.2 is exactly what the HSUA application is seeking to do.

We are seeking to say that junior rates should be of the relevant classification, the relevant competency in which they are performing, rather than some arbitrary picked salary point in the award.

DEPUTY PRESIDENT ROBINSON: In my limited experience where some awards in the past have introduced competency-based training classifications there have been disputes occur because it was alleged that employees couldn't progress because the training wasn't made available and there were delays, and they were being held back.

MS HARVEY: Because parties didn't make training available.

DEPUTY PRESIDENT ROBINSON: Yes, at a sufficient rate, allegedly.

MS HARVEY: I can't really comment because I am not sure of the specifics of what you are referring to.

DEPUTY PRESIDENT ROBINSON: Well, I am saying that where there are - in my experience there have been some disputes that I recall, and I don't wish to name them - where an employee's advancement has been dependent upon their obtaining training and, therefore, recognition and qualifications. On the job training, in particular, but that they alleged that they were held back. They were ready, willing and available to advance themselves but the training wasn't being supplied. And I am not going to go into whether it was the employer's fault or the fault of other training institutions.

MS HARVEY: Yes, I know exactly what you are saying. We had some consideration on this matter when we drew up the HSUA's application, because you will recall that in the section that deals with progression there are two requirements. One, either annual progression, and it says, 'and/or completed appropriate qualifications'. That's, in fact, exactly why we said 'and/or' because obviously if you are going to require people to complete certain training in order to progress, there has to be a guarantee that that's available, and if it is not available and the employer doesn't allow people to access it, or it is just not physically available if you are living up on the north west coast, you shouldn't be disadvantaged.

DEPUTY PRESIDENT ROBINSON: Well, I mean, obviously there can be problems if there are a lot of people who want to be trained at the one time.

MS HARVEY: Exactly, exactly. So, certainly in our view, you need to be very careful in that sort of thing in the way you set up the award, and our intention in relation to the annual progression - which is why is allowed for 'either/or' - and we did have some internal discussions about when we get to the stage where qualifications exist how should that be worded.

And the sort of wording that we would favour is one that says if it is not available to the employer's own fault, not to the employee's fault that they should be able to progress. That's a point perhaps for further applications rather than this one.

DEPUTY PRESIDENT ROBINSON: Yes. Well, I just mentioned it in passing to make sure if people are aware of possible pitfalls.

MS HARVEY: Yes. In relation to 8.5, and again I quote:

Conversion will generally involve changing the existing wage arrangement to one based on competency from a time-served or age basis. For example:

i) a competency-based trainee wage structure could be achieved by taking each rate in an existing apprenticeship or traineeship and aligning it with the level of competency of the average trainee at the corresponding stage in the apprenticeship or traineeship

ii) where the amount of accredited training in the existing arrangement is varied, wage rates would be varied to reflect the consequent changes in the value of the trainee to the employer over the duration of the training arrangement.

So I think all in all, Mr Deputy President, what I have quoted to you from Tab 2 there reinforces that the approach that the HSUA is taking is consistent not only with MOLAC but also with the National WAVA Consultative Council, which is indeed a tripartite organisation.

Now Mr Brown detailed in his submission on the HSUA application and the National Training Reform Agenda that there is an imperative to restructure industrial awards and agreements to promote career development and to facilitate further skill acquisition.

In particular, Mr Brown pointed out the competency-based training, therefore career pathway development, was based on the principle of skill acquisition and not age.

If a young person can demonstrate a level of skill and competency applied to a given standard for a specified level in their workplace, then they should be recognised as having that level of skill, regardless of other factors such as age.

It is important that in a socially-just society artificial barriers to attainment in career progression such as age and gender be removed to enable equal access and participation.

The continuance of age-based criteria in the determination of wages is not only inconsistent with the new vocational, education and training system but is inconsistent with the structural efficiency principle of this jurisdiction.

And it is also inconsistent, I would contend, with the public interest test required under section 36, and we would certainly contend that age-related discrimination or any other form of discrimination is not consistent with the public interest.

DEPUTY PRESIDENT ROBINSON: You don't think there would be friction between, say, a 16-year old who gets paid more than a 19-year old on the basis of one can demonstrate higher skills than the other?

MS HARVEY: No. Indeed, I think that friction already exists at the moment on precisely the opposite where you have got people, say, for example who are 19 or 20 being paid at a much lesser rate than someone who is of an older age or 1 or 2 years older doing exactly the same work.

And I think that people resent, and I think rightfully so, that where they are expected to do the same amount of level of work and have the same level of skill and responsibility that they should be paid a lower rate of pay than someone they are working side by side with.

And, indeed, I think all concerned find the idea of different wages much more acceptable if it is based on an objective criteria such as competency. Something that can assess the individual rather than just on some artificial fairly mandatory measure such as age.

The views of MOLAC and the NLCC are views that are also being supported, I would argue, by the full bench of this commission, and in particular in the matter of T.2399 of 1990 which was a continuation of the structural efficiency adjustments state wage case October 1989 public sector awards before the full bench. A determination was made in relation to this particular issue.

And if I can take you to Tab 3, page 4, and Mr Deputy President, this Reason for Decision is actually from the full bench arbitrated decision on the four streams to be put in place in the public sector award.

DEPUTY PRESIDENT ROBINSON: Attempt to.

MS HARVEY: No, it is more than attempt, because we are implementing it in the Health and Community Services. If you consider that we are nearly half of the public sector, I think you did quite well.

On page 4 of that, when considering this matter of junior rates, the full bench said, and I quote from the top of page 4 there:

We have decided that the use of junior rates established on the basis of age should be discontinued and trainee rates, expressed as a percentage, 70%, 75% or 85%, of the final rate of Level 2, shall be applied.

Mr Deputy President, that makes it quite clear from the full bench's view is that age is not the determining factor. Indeed, what it is is an issue of training, and obviously the bench had in mind that there was a movement to a competency or skill-based career progression, and the impact on this on the outdated concept of junior wages; and, indeed, the full bench did require the parties to consider more the issue of how those trainee rates will actually apply; and they set that trainee rate, which is based on those relativities, at Level 1.

So, Level 1 was established as a trainee rate on the basis of those percentages of Level 2.

DEPUTY PRESIDENT ROBINSON: You would acknowledge no doubt, though, that that full bench put out a number of decisions as it went along, and I think it was a little bit disappointed finding that all the parties resisted what it was attempting to do across the whole of the state service.

But I acknowledge what you say, that there was the right and, indeed, some organisations have picked it up and run with it.

MS HARVEY: Yes, that's right.

Just in relation to that, I mean I think it is important that I make some comment on it, because my understanding of this decision that we have quoted, and we have cited other decisions relating to the same case, is that the bench determined, and I think it actually said from memory that it had work-valued certain classifications and rates of pay that stood, and that what was incumbent upon the parties in any particular agency was to go through a job redesign process to implement that decision.

So, whilst it hasn't been implemented in the entire state service, as I said, it's been implemented in the Community and Health Services Agency.

I think the integrity of the decision stands. Where the integrity is perhaps lacking is in some of the capacity of the parties to implement the decision in agencies other than ours.

DEPUTY PRESIDENT ROBINSON: Yes. I can't remember the final wording in the final decision, but I think you are quite right in that it did say something along the lines that whilst it didn't intend to make an award with four streams for the whole of the service with all the other ramifications, that it hadn't completely abandoned the exercise, and it said something along the lines of if there are other applications for particular areas that - and then, prima facie, what it had already determined would be accepted and -

MS HARVEY: That's right, and it would subsume all the other special case considerations because it in effect work valued.

DEPUTY PRESIDENT ROBINSON: That's right, and every other application which came along would be deemed to be a special case, which is of some significance.

MS HARVEY: Yes, it certainly was.

DEPUTY PRESIDENT ROBINSON: However ...

MS HARVEY: It certainly was one I think that was not very well understood, I might add, because it gave incredible scope.

DEPUTY PRESIDENT ROBINSON: There are not many of us who always understand everything.

MS HARVEY: Where was I?

DEPUTY PRESIDENT ROBINSON: You were at the top of page 4 in Tab -

MS HARVEY: Yes. Thank you. I was dealing with the issue of that matter of junior rates, and the full bench's determination in relation to removing junior rates.

I might just say that in terms of the implementation of that we have now placed in the Community and Health Services Public Sector Award the - we have a decision on clauses 7 and 8 that go to definition and wages - and there are no junior rates in that, nor is there in the Private Hospitals Award which there is a direct nexus on the wages between the public and private sector in relation to hospitals, and there are no junior rates in that award either.

So it has actually - in the new restructured award I think a decision was only issued a couple of weeks ago - and that doesn't have junior rates either.

DEPUTY PRESIDENT ROBINSON: Was that before a full bench again or a single commissioner?

MS HARVEY: No, it was before Commissioner Gozzi. So it was actually the - as I said, there's a direct nexus - and we've in fact put in place a four stream structure that the full bench determined in relation to T.2399 into the private hospitals through the nexus. So it is now in that award and been implemented.

And so people have actually been translated and being paid according to those rates that have been established, and junior rates were removed.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: So we are being much more considerate of the industry in relation to this award - is that the old 'Carl Vinson' leaving us?

DEPUTY PRESIDENT ROBINSON: Yes, well that's a farewell to Tasmania.

MS HARVEY: So we are a nuclear-free zone again.

So, if I could just make some final comments in relation to the training wage award.

You would be aware, no doubt, of the negotiations that are currently going on between ACCI, the ACTU and the Commonwealth Government regarding the training wage arrangements.

I don't intend to go into detail regarding the potential outcome of these negotiations except to indicate that there was an application before the Australian Industrial Relations Commission in the federal jurisdiction for the making of a national training wage award, which replaces both junior rates and the existing training wage arrangements in federal awards.

If successful, it is intended that a similar application will be made in all state common law jurisdictions as soon as possible to cover all awards in state jurisdictions.

The HSUA's application, Mr Deputy President, I have already stated that the percentages are identical, that we are not seeking to change those at this point in time, but we are merely proposing that the percentage should be relative to the level of work being performed.

If a young person is performing work at level 2, then the percentages should apply to the level 2 rate of pay; if a young person is performing work at level 3, then the percentages should indeed apply to a level 3 rate of pay.

The proviso we have replaced on this in our application is that an employee will not be paid a junior rate when he/she is classified in accordance with the classification definition above level 3.

Given the level of work expected at above level 3, and the lack of supervision, it would be inappropriate to apply the principles which underpin junior rates to these higher levels.

If a young person is competent to be working at these higher levels, then regardless of age, they should be paid the appropriate adult rate.

These are the only changes which we are seeking to make to the junior rates in the award at this point in time.

However, I would stress that the changes we seek are interim arrangements until such time as we have negotiated appropriate training wage courses with the employers.

We therefore request leave to reserve further issues concerning junior rates and training wage arrangements to a future time.

If the commission pleases.

DEPUTY PRESIDENT ROBINSON: Leave is so reserved.

MS HARVEY: Thank you. At this point in time I think it's probably - given that I have given a commitment that we'd stop at 3.30 - it's probably not worth starting halfway through something.

DEPUTY PRESIDENT ROBINSON: Unless there is some objection?

MS HARVEY: I know Mr Fitzgerald is very keen for me to continue until 5.00, but he is going to draw - tear himself away.

DEPUTY PRESIDENT ROBINSON: I think I have observed that, yes, but notwithstanding that we might have to overrule him and finish now.

Right, we'll adjourn to the next sitting day. I'm not quite sure what it is. Mrs Devine? Tuesday of next week.

MS HARVEY: No, the 1st of August, that's what I have got.

MR FITZGERALD: Could we just get to which dates are actually - what I don't think we have got are actual hearing dates as opposed to inspections.

MS HARVEY: Perhaps could we go off record and it might be easier if we just deal with this?

DEPUTY PRESIDENT ROBINSON: It might be misleading, because we have got another matter concerning the same award.

MS HARVEY: Oh, yes. That's correct, Mr Deputy President. That's the application in relation to scope.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: For the 26th; which I must admit we haven't really discussed a date, but perhaps we could use the next 15 minutes to do that.



DEPUTY PRESIDENT ROBINSON: Yes. But this particular matter is adjourned until Monday the 1st of August. Thank you. Have a good weekend.

HEARING ADJOURNED