

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 5044 of 1994

IN THE MATTER OF an application by
the Health Services Union of
Australia, Tasmania No. 1 Branch
to vary the Welfare and Voluntary
Agencies Award

re Clause 7 - Definitions

DEPUTY PRESIDENT ROBINSON

HOBART, 22 June 1994
continued from 10/6/94

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: Thank you.

MS HARVEY: Yes, Mr Deputy President, there are a number of minor matters that we need to deal with before turning to some threshold matters that we discussed in the previous hearing.

DEPUTY PRESIDENT ROBINSON: Well, first of all we have got a fresh application before us today and the questions arises as to whether or not it would be appropriate to join the two TCCI application with the HSUA application. Who would like to comment on that first?

MR FITZGERALD: Well, I suppose formally I appear on behalf of the Tasmanian Chamber of Commerce and Industry in respect of that application, in the first instance.

DEPUTY PRESIDENT ROBINSON: Yes.

MR FITZGERALD: It would be our view, Mr Deputy President, that the matters should be joined.

DEPUTY PRESIDENT ROBINSON: Yes.

MR FITZGERALD: Logically. I know that Ms Harvey has indicated that some matters contained within our applications, those being the conditions matters, she wanted to address that, but that should not prevent, in our view, the two applications being joined.

DEPUTY PRESIDENT ROBINSON: Well, Ms Harvey, first all you enter an appearance in relation to matter T5100?

MS HARVEY: Yes, Mr Deputy President, I enter an appearance and I have with MR BROWN C., and we would seek to enter an appearance in relation to that matter on behalf of the Health Services Union of Australia.

DEPUTY PRESIDENT ROBINSON: Right. And on the question of the joining of that matter, have you any comment.

MS HARVEY: On the question of joining - yes, I do have some comments. I think there are two issues, first of all I would also seek to join these two matters with - - -

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: - - - T2706, as in fact this is a continuation of that matter and that is the matter that - where the issue of the classification structure

was first addressed by the parties and the first minimum rate adjustment put in place.

DEPUTY PRESIDENT ROBINSON: I am sorry, which number?

MS HARVEY: T2706. I think for the sake of completeness, Mr Deputy President, we really need to get all these files together.

DEPUTY PRESIDENT ROBINSON: Yes. We do not have that matter listed for today so the question of joining does not arise if it is not formerly before us today. I take it that you - in those circumstances you might be foreshadowing that you would wish to indicate that it is a continuation of that other matter - - -

MS HARVEY: I certainly would and - - -

DEPUTY PRESIDENT ROBINSON: - - - is that right?

MS HARVEY: - - - I take your advice on the technical aspect of how I need to ensure that that happens.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: I understand from what you are saying, Mr Deputy President, that I need to put in some correspondence to the commission asking for the matters to be joined.

DEPUTY PRESIDENT ROBINSON: Yes, yes. Well, we will just take it as a matter foreshadowed for today, I think, and that will - - -

MS HARVEY: I will get that to you as a matter of priority.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: In - - -

DEPUTY PRESIDENT ROBINSON: Okay, well I agree that we join matters T5044 and 5110 of 1994.

MS HARVEY: Mr Deputy President, just in relation to that I was going to say before you made that final determination - - -

DEPUTY PRESIDENT ROBINSON: Oh, sorry.

MS HARVEY: Yes.

DEPUTY PRESIDENT ROBINSON: I thought you had not objected to that.

MS HARVEY: No, no, I had - I was actually coming to that.

DEPUTY PRESIDENT ROBINSON: Oh, right.

MS HARVEY: I - in terms of the application we have no objection in joining the application provided that, one, that the classification structure be dealt with separate from the conditions matter, in particular we are asking that the classification structure be determined in an interim decision and that the matters on conditions be deferred. There has been no discussion with the HSUA nor indeed the FCU, who are party to this award, regarding those matters that were in the application. There has been absolutely no discussion whatsoever.

And, indeed, some of the matters have already been dealt with under the structural efficiency principle by way of agreement and been processed before this commission. So, in addition the application is very unclear about what exactly it is seeking. It does not provide - does not provide draft orders or an indication of the actual change that is sought. In these circumstances we believe it would be completely wrong to proceed to arbitration as my organisation is in no position to agree or disagree with the application because we have no opportunity to consider it.

And I just hasten to add that I only received the application from the TCCI after my request on Monday afternoon. So I am a little bit concerned, given that the discussions that had occurred before you in relation to how we were going to deal with procedural matters, there had been a commitment given that we have a document from the TCCI outlining the classification structure and the differences for procedural matters to assist the commission in, in effect, not wasting time debating issues that were not required.

DEPUTY PRESIDENT ROBINSON: Yes. I guess the question of joining is the first questions and the probably the second question is how we then deal with the two applications.

MS HARVEY: Well, I have further submissions to put to you on that and how we actually determine it should the matters be joined, but perhaps it would be appropriate to determine the matter of joining in relation to the conditions that I have proposed on the joining.

DEPUTY PRESIDENT ROBINSON: Well, I mean - - -

MS HARVEY: I do not know - - -

DEPUTY PRESIDENT ROBINSON: - - - the applications are the applications and I cannot - - -

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: - - - join one part of the application and not the other. I mean - - -

MS HARVEY: Perhaps it would be useful if Mr FitzGerald could indicate his position.

DEPUTY PRESIDENT ROBINSON: Yes. From a technical point of view I either join or I do not, it is as simple as that. But I understand what you are saying in relation to the procedure which would follow assuming that both matters before us today are joined and I - and there is no need for me to repeat what you have said about your suggestion of separating the classification matters against the other general conditions matters. Can you help us there, Mr FitzGerald?

MR FITZGERALD: I think I can, deputy president. Firstly, if I can just respond to Ms Harvey's submissions in respect to the differences document. Regrettably, last week I had some time off sick and it was at a fairly critical time in terms of preparing this document and I was doing it by remote control from my home. I apologise to Ms Harvey on record that I had understood that in fact the document had gone to her as it had to the commission. I think I might have been a day late because of that sickness. I do formally apologise to both the commission and Ms Harvey for that. There is a document now which has gone to Ms Harvey which I think assists in identifying the differences.

Just getting back to the principle issue, we are of the view that - and I did indicate by discussion with Ms Harvey that our application would include other matters such as the conditions matters which are contained within our application. We are of the view that the applications if they are going to be joined should be joined totally and not separately, or some bits excluded or accepted.

DEPUTY PRESIDENT ROBINSON: Well, I have already indicated - - -

MR FITZGERALD: It may be appropriate that the arguments in respect to classification structure be put first but we are of the view that both applications should be put in total, including the conditions matters, and the commission should make a decision in respect of both applications and not delay or defer any other particular matters within particularly the TCCI application.

DEPUTY PRESIDENT ROBINSON: Well, you would envisage then that if both matters are joined that we would have some sort of procedures like this; that Ms Harvey would continue to present her case in respect of the HSU application and you would have the right to respond to it. Then when that is concluded, if you like, even with the right of reply perhaps, we would hear your application in its entirety - - -

MR FITZGERALD: Yes. I think that - - -

DEPUTY PRESIDENT ROBINSON: - - - that is classification matters plus everything else, matters going to conditions.

MS H.J. DOWD: Mr Deputy President, if I may, I would like to put in an appearance - - -

DEPUTY PRESIDENT ROBINSON: I am sorry, yes.

MS H.J. DOWD: - - - on behalf of the Australian Municipal Administrative Clerical and Services Union, DOWD H.J.

DEPUTY PRESIDENT ROBINSON: Thank you, Mrs Dowd.

MS DOWD: If I may I would like to make some comment, Mr Deputy President. The application by the HSUA is for changing the definitions in clause 7. Those definitions do not affect our union at all but the application by the TCCI in relation to the changing in work conditions definitely affects our members.

DEPUTY PRESIDENT ROBINSON: Yes.

MS DOWD: I would respectfully request that perhaps the TCCI amend their application and perhaps put in a separate application for the conditions simply because it is going to tie up a lot of my time by being here listening to the arguments between the two parties in relation to the definitions that do not affect our union at all but I must be here in relation to their classification - the conditions. If the commission pleases.

DEPUTY PRESIDENT ROBINSON: Yes. Well, I am sorry I have been a little bit untidy this morning. Is there any objection to - do you appear as of right, Mrs Dowd?

MS DOWD: Yes, I do.

DEPUTY PRESIDENT ROBINSON: A right, okay, and your appearance is noted.

MS HARVEY: Mr Deputy President, I just wonder whether it might not be of assistance if we just go off the record for a minute - - -

DEPUTY PRESIDENT ROBINSON: It may do.

MS HARVEY: - - - and see whether we can sort this out.

DEPUTY PRESIDENT ROBINSON: Yes. I think everybody would like that. We will go off record.

OFF RECORD

DEPUTY PRESIDENT ROBINSON: Right. Now, just for the record, I have had the benefit of the views expressed on, basically, procedural questions, and I just confirm for the record - if anyone disagrees with what I am about to say they will be heard - but I think from here on in I just confirm that the two applications, T5110 and 5044 of 1994, are formally joined. The procedure will be that the HSUA application will continue to be heard to finality.

Whilst that is occurring, because it will be on a number of days, the parties should confer in relation to the most recent application and try and identify where they disagree in relation to the conditions matters, and that on the classification matters that they will not be heard separately, and that at some time I will be advised of the progress in relation to the conditions matters and at that time I will make a decision as to whether or not the request that I eventually hand down an interim decision on the HSUA matters or not will be indicated.

And that would depend simply on circumstances. I acknowledge that it is competent for anyone to argue that the structure efficiency principle demands some matters be considered in tandem, that is wage rates, conditions type matters. Has anybody got any comment on that before we move on? I understand Mr FitzGerald has a threshold question to ask.

MS HARVEY: I just wonder, Mr Deputy President, whether we should go to the procedural matters about this hearing in relation to classification structure, ie, that it be done concurrently and that the order would be - in my submissions I will try to deal primarily with the differences rather than the agreed matters.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: Then Mr FitzGerald would present his submissions and then I would have right of reply and that would terminate the hearing or submissions.

DEPUTY PRESIDENT ROBINSON: Yes, that was my understanding and you have probably worded it better than I have, that the two cases would not - one would not go to conclusion and the other one start, as it were. They would be joined and treated as dealing with the same subject matters in relation to things other than conditions. All right. Now, Mr FitzGerald, you had a threshold question you wanted to raise?

MR FITZGERALD: Thank you. I appreciate also the commission outlining that fairly tortuous process we have been through but I think it clarifies it from our perspective. Mr Deputy President, I do rise with some reluctance. Since the initial outline by Ms Harvey and her taking us through exhibit HSUA1, on a threshold point which has two arms to it; two important facts which enlarge in part and determine, in our submission, the success or failure of the union's application in this matter. We raise it, as I said, with some reluctance, however the advice we have given to employers in this instance is such that we believe the matter is of such significance that it should be referred to a full bench and I this say with complete respect to the commission as constituted, and I will be putting further submissions to support that point of view and submissions which I intend to put in respect to that referral.

DEPUTY PRESIDENT ROBINSON: Is that in respect of both applications, presumably, Mr FitzGerald?

MR FITZGERALD: Yes. Now, I would - yes. You raise an important issue because our application does not in its cover sheet with the application itself include the provision that it should be referred to a full bench and, in that regard, we would need to seek an amendment to our application and that is the matter is in fact considered to be a full bench matter. Now, we - because the time frame has been fairly tight since the

- - -

DEPUTY PRESIDENT ROBINSON: Well, perhaps we had better deal with that procedural question - - -

MR FITZGERALD: Or if I - well, if I could seek - formally seek to amend the application to now show that it is now considered to be a full bench matter rather than it is not considered to be a full bench matter.

DEPUTY PRESIDENT ROBINSON: Right. That is the application. Is there any objection to the amendment of the TCCI application in the manner indicated?

MS HARVEY: No, we do not object to the application being so amended but reserve the right to put argument in relation to the issue.

DEPUTY PRESIDENT ROBINSON: Yes. All right.

MR FITZGERALD: That is understood.

DEPUTY PRESIDENT ROBINSON: Leave is granted to amend your application to say that it now includes that the matter should be referred to a full bench.

MR FITZGERALD: If it pleases and I understand Ms Harvey's point. Now, the reason why we seek to raise this matter is - or there are two arms to it, that is the current wage fixing principles of the commission as outlined in its decision of 24 December 1993 in T4692 of 1993 and also the provision of the Industrial Relations Act, that is section 24, and I will take you specifically to that later. In our submission, the union's application is not sustainable under either the wage fixing principles or as an application before the commission as currently constituted, and I will, as I say, put further submissions in that regard.

The - and I suppose we both suffer some disadvantage here in that both yourself, Mr Deputy President, and myself were not involved in early proceedings in respect to this award, but the union's application is based on the assumption that in respect to minimum rate adjustment there was some reservation of rights once that process was completed and you are probably aware that the fifth and final minimum rate adjustment has effect, I think, at the end of this month, and the wage fixing principles enables the union to have access to substantial wage increases both in movement of classifications and skill levels within the classification definition levels and the extension of existing classification to new levels.

This they now seek to do at the completion of the minimum rate adjustment process. Now, we understand that the union have reserved their rights but that does not necessarily, in our view, mean that the union have a process in which they can proceed and justify their application and it must, in our view, stand the test of the wage fixing principles and the provision of the Industrial Relations Act.

DEPUTY PRESIDENT ROBINSON: Would that not apply equally before a full bench or a single commissioner?

MR FITZGERALD: Yes, certainly, yes, I would agree. There is no question that it would apply either before the commission as currently constituted or a full bench. So, it does involve, in our view, an important - that is one of the aspects where we seek its referral. It does involve an

important matter of principle in respect to the commission's own wage fixing principles and that is whether in fact because the union has, by the process of broad banding and minimum rate adjustment, in fact, exhausted the processes available to it and, indeed, whether there is any process available beyond that and you will notice that our application, and you have referred also - already to percentages and differing percentages between our application and the union application, our application seeks to go no further than the 115 per cent rate, which is the extent of the award at the moment.

MS HARVEY: Mr Deputy President, I - - -

DEPUTY PRESIDENT ROBINSON: You will get your turn, Ms Harvey.

MS HARVEY: Yes. I am just concerned that we are going to the merit of the case rather than the issue of procedural, that is all.

DEPUTY PRESIDENT ROBINSON: Yes.

MR FITZGERALD: I - look, I do not think that that is the case, if I could put my submission completely, it does relate to a procedural point only, not the issue of merit. It is our submission that the minimum rate adjustment process, which is now nearing completion, should fully exhaust any further wage movement under this principle. Other wage movements sought, which is the subject of the union applications, within the existing broad banded levels and, in our view, by extending the existing broad banded levels - now, this is obviously not agreed by the unions in that Ms Harvey, in her opening, indicated that it seeks to do no more than cover existing provisions within the award.

It is our view that in fact the application, and that is why we seek to make this submissions now, after hearing the outline of the case, that it does in fact go beyond the existing award provisions and if it does it should be tested in accordance with the commission's own wage fixing principles.

It is our submission that following the settling of the minimum rate adjustment process further wage increases can only be accessed under the state wage case principles through either the special case principle or under the work value principle and the work value principle can only - the basis for assessment there can be only dated from the date of the operation of the second structural efficiency payment. The principles relevant in this application is the union seeks to increase the level of remuneration for various skills and extending towards the new skill level.

Now, I know that will not find favour with the union in respect to that submission but it is our clear submission that in fact the effect of the union

application is to extend the award beyond its existing scope of coverage in terms of classification levels. In terms of the referral which we indicated would be our application it is our submission that the application is of such significance, both as to the magnitude of the wage increases and its flow on to other award areas, other sectors, both private and public and I just quote one example where I am involved personally and, that is, in the community services area which is currently before Commissioner Gozzi, and despite the differences in the sectors we would see that if this application made by the union were successful then it would have immediate flow on potential to that sector.

And without complete knowledge of public sector awards where there are similar services covered under the public sector we would see some clear potential for flow on to public sector awards. So in terms of the effect or the likely effect of this award we see that the matter is of significant importance and should be referred to a full bench pursuant to section 24(4) of the Industrial Relations Act and I quote:

A commissioner who conducts the hearings of an application under this referred to a full bench.

Now, clearly that vests discretion within you, Mr Deputy President, to either refer the matter to the president so it can be then referred to a full bench or not to. Now, in our view given the outline of the position made by the union or the unions claim, we are of the view that the discretion should be exercised in favour of the matter being referred to a full bench of this commission. Now, by making that submission we say we are not wishing to delay the matter but in fact it may expedite the matter because it does involve an important matter of principle and we are not - by making this submission - saying that you are incapable of determining that question. We believe that it is of such importance that it should be referred to a full bench for its consideration.

DEPUTY PRESIDENT ROBINSON: Are you involved in the - and I hope I am not interrupting your flow - are you involved in the Community Services Award matter before Commissioner Gozzi?

MR FITZGERALD: That is currently before Commissioner Gozzi. What has occurred there, Mr Deputy President, is that the award has been made in respect to conditions matters only. The classification structure has been somewhat long and torturous as well. As you would expect given the complexity of the industry, we have not formally put the matter to the commission for arbitration nor considered any similar submission as we are putting in this regard.

DEPUTY PRESIDENT ROBINSON: I am just wondering whether or not there had been a similar application to him for - to go to a full bench because if you are suggesting that there is some sort of nexus between the Community Services Award and the WAVA Award, then if his decision comes out first you might get to regret those - such a statement.

MR FITZGERALD: Well, we are not to that point at this stage in respect to - at this stage we - if I could just indicate the point where we are at there - is we are still training respective positions and even though I suppose everyone wants to bring the matter to a finality we are not to a point of actually setting it down for arbitration. As I said, we have progressed significantly in terms of making the bulk of the conditions.

DEPUTY PRESIDENT ROBINSON: There are applications in and before the commission?

MR FITZGERALD: Absolutely but they are not - they have not been formally put to the commission for arbitration at this point. It may be - - -

DEPUTY PRESIDENT ROBINSON: Has there been a number of hearings?

MR FITZGERALD: There has been a number of hearings but mainly relating to conditions matters or in fact only relating to conditions matters. There has been no hearing in respect to the classification structure at this time apart from procedural matters but - - -

DEPUTY PRESIDENT ROBINSON: Right. But no application for it to go to a full bench?

MR FITZGERALD: Well, no, there has not been but nor has there been - nor has it been formally before the commission for its arbitration at this time. It may be that - then again I suppose we are exhausting the negotiation and conciliation processes as much as possible. Commissioner Gozzi has been involved in some of those conciliation processes to some degree. That may be a position which parties reach depending on the extent of the new agreement but we are a long way short of what has occurred in this award.

DEPUTY PRESIDENT ROBINSON: But if the matter is settled by consent would you still say that there is some nexus?

MR FITZGERALD: I cannot necessarily concede that there is a nexus. Given the similarity in some of the work that is involved in some of the sectors we just simply say in respect to this award that there is a potential for flow. And for that reason we believe that the matter should be referred

to a full bench. Section 36 of the Industrial Relations Act clearly sets out the - and I am sure the commission would be well aware and it is probably unnecessary for me to take you to that section - clearly sets out the commission's obligations in respect to public interest and, given that this is the first type case that has come before the commission, we believe that there are significant public interest criteria which should be taken into account in considering this question of whether the matter should be referred to a full bench.

In conclusion, Mr Deputy President, the union's application in our view presents potential for large wage increases both in movement of employees within existing broadband levels and the extension of the existing classification levels. The union in our view have created an expectation that amongst employees in the field of substantial wage increases, and that I believe has been created against the background that those increases will be funded. That remains very much an unanswered question. If successful the application could cause the closure of service and have serious impact on employee levels and quality service levels for dependent clients.

Now clearly both those factors are strong public interest criteria which the commission should take into account when considering any application before it. The levels of employment and obviously in terms of the services falling within the scope of this award there are very strong public interest arguments that those services should not be curtailed or affected in any way. It is our submission that if the union application were granted then that could have serious implications in terms of the services offered.

It is, I believe, and it is not apparent within the union application - and I assume this will be either in response or at some stage further, but there is an obligation, in our submission, to outline how the union intends to justify its claim, particularly in terms of the wage fixing principles. And, as indicated, we are of the view that the union has exhausted the processes available to it under - by means of the minimum rate adjustments and broadbanding, and any further increases would have to be or would have to stand the test of the wage fixing principles.

DEPUTY PRESIDENT ROBINSON: I agree.

MR FITZGERALD: Now that is an issue which the commission can normally determine at first instance, but because I think it is probably the first time a submission such as this has been put in terms of where an award has received increases through the MRA process and broadbanding we believe this issue is of such importance that it should be referred to a full bench for its consideration. Now again we just simply say that we make that submission, not with an attempt to delay the matter but it may in fact expedite the matter, nor are we in any way suggesting that the

commission is incapable of resolving it, but because it is of such importance we believe that it should be referred to a full bench. So we conclude our submissions at that point, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Thank you, Mr FitzGerald. Ms Harvey?

MS HARVEY: Perhaps if I could just clarify one issue from Mr FitzGerald's submissions before I respond, Mr Deputy President. I am just a little bit - seeking clarification on the employers contention that the extension of the award above current rates is the issue, or the issue is that any change whatsoever, given that the minimum rates adjustment process has happened is the issue. I was unclear on that point. Mr FitzGerald did address both but I thought he fudged the issue a bit, but I need to know that before I respond.

DEPUTY PRESIDENT ROBINSON: Right. Would you - - -

MR FITZGERALD: Sorry, the extension or what?

MS HARVEY: In your submissions - sorry, Mr Deputy President. In the submissions by the employer advocate there were two issues that were touched on. One was that the award seeks to extend beyond the current rate of pay. The second was that whether there is any capacity to vary the award at all at any level. I am just confused about which of the two points Mr FitzGerald is making.

MR FITZGERALD: I would suggest it is both, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Thank you.

MS HARVEY: Thank you. I am at a slight disadvantage in responding to this issue, Mr Deputy President, because I did wish to deal with the issue of without prejudice that we had dealt with at the last hearing before addressing the issue of wage fixing principles. Mr FitzGerald is right in saying that any application before the commission does need to satisfy the wage fixing principles. However, he is quite wrong in saying that we did not intend to address them, because in the outline of submissions, 5.1 of my submissions explicitly will deal with the issue of the wage fixing principles. However, because of the manner in which the threshold matter is being sought to be dealt with, it will be necessary for me to bring forward my argument about the wage fixing principles to a certain extent to be able to deal with the threshold matter.

DEPUTY PRESIDENT ROBINSON: I am not quite sure whether you need to do that at this stage in dealing with the question of whether or not

there should be referral to a full bench. Of course I would have expected, if you had not told me, that you would eventually get round to explaining how your application sits with the current wage fixing principles. The question of whether or not the application should be referred to a full bench, to me - at the moment anyway - suggests that if I was to proceed the outcome might impact in some way upon the commission's wage fixing principles rather than simply applying them, as one would in every case, the outcome might clash in some way with those principles that are already established.

MS HARVEY: One - I mean, I want to make it very clear that we are opposing this issue of referral.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: We do not see this award as being any different to any other award that has been before the commission. Now, if the commission were to not be convinced in right into the arguments that I am going to put in submissions in relation to 5.1, clearly the commission would not grant the application, I mean, that is - - -

DEPUTY PRESIDENT ROBINSON: That is right.

MS HARVEY: - - - the bottom line. The - and therefore, it seems to me to be an unnecessary issue in attitude if pursued by the TCCI in every single case before it, before the commission, there would be some difficulty for the commission to be able to proceed in dealing with procedural matters. So, I certainly do not see that there is any need to refer it to a full bench. I - - -

DEPUTY PRESIDENT ROBINSON: I suppose whilst we are on the two, the other issue of public interest certainly equally I am required to consider public interest as defined by section 36 of the act. But Mr Fitzgerald is quite right, that 24(4) of the act does say that public interest will be considered in relation to whether or not the matter is of such importance that it should go to a full bench. So - - -

MS HARVEY: Well, there is two matters in relation to that, I mean, I think in the first instance we should look to section 35, which deals with what matter should be referred to a full bench to get some idea of what this part of the act is to do with, and then I will deal with section 36 and the public interest. In relation to section 35(1) there are a series of matters listed that are normally - that are deemed to be matters requiring full bench consideration. Now, none of those matters listed in section 35 are in any way similar to the application currently before you. Indeed, the only one

that Mr Fitzgerald in some way alluded to is actually 35(1)(e) that deals with modifying or affecting not less than five awards.

Now, Mr Fitzgerald indicated this may have an impact on two awards, one being the Community Services Award. Now, in relation to that point, if I could just say that he is incorrect in saying there is any impact on the public sector, the Community Services Award is, in fact, a non-government private sector award. It is not a public sector award, and its scope makes that extremely clear. Indeed, the public sector award that is relevant is the Community and Health Services Public Sector Award, which is currently before Commissioner Watling, who is sitting alone, in terms of determining the matter. So, there is - in terms if we go to section 35, there really can be no argument that any of the matters raised relate to that.

DEPUTY PRESIDENT ROBINSON: Well, it would be automatic if there - if there were any on that list they would have to go to a full bench, full stop.

MS HARVEY: Now, in relation to the issues of section 36, in terms of public interest, Mr Fitzgerald seems to be foreshadowing some sort of incapacity to pay argument in referring to the problems with funding in this sector. Now, I think there is a very clear principle that operates in this commission in terms of the incapacity to pay argument, that a - first of all a decision needs to be determined in the first instance, which has not occurred in this case. That in determining a decision it is made in relation to the wage-fixing principles in the act, not the incapacity to pay argument. And then subsequent to a decision being made, any respondent or anyone covered by the award is open to come to the commission to argue that point.

Now, I did indeed intend to address the issue of public interest in my submissions which were contained in the outline, but given that Mr Fitzgerald has raised it, I think it is important to say that if you look to section 36A, 36(2) in relation to the public interest test the first thing that needs to be said is that - is as I have already outlined, the issue with the incapacity to pay makes it very clear how he would deal with the sort of issue that Mr Fitzgerald is raising. And in the second instance, really we are talking about a fairly small group of employees in the economy. Certainly it would be our contention, it is difficult to get exact figures, but of the vicinity of less than 1000, that the impact on the industry we do not resile from that, that there would be an impact if our application was successful. But Mr Fitzgerald in his submissions seems to be in some way concluding that it would be successful, and I do not think we can pre-judge the matter in that way. Certainly I would not seek to pre-judge it in that way.

DEPUTY PRESIDENT ROBINSON: Well, certainly I cannot, I have not heard it.

MS HARVEY: No. Now, if I could also say in relation to the impact on the Community Services Award, if I could just touch on that matter again, Mr Deputy President, there has never been any discussion about a nexus between those two awards. As I say, it is not a public sector award, it is only a private sector award. And it is a matter that is completely separate; it is not before arbitration and there is no application seeking to refer it to a full bench. However, I do wish to turn to the issue about the, the substantive issue in relation to the wage-fixing principle, because Mr Fitzgerald has sought to refer this to a full bench, and I would argue that there is no need because a full bench has already determined the matter. And if I could, in fact, go to the wage-fixing principles and also bring to your attention some full bench decisions in both the federal and state jurisdiction that deals with - it may be of some assistance, I have got the relevant full bench decisions that I will be tabling.

DEPUTY PRESIDENT ROBINSON: Will you be tabling extracts from
- - -

MS HARVEY: I will be tabling the complete national wage case of 1993. I will not be tabling the state full bench or state wage case of the same because it adopts the decision in full. And I will be tabling extracts from T2399.

DEPUTY PRESIDENT ROBINSON: Yes, well I think I had probably better have my copy at hand if we could just stop the record for a minute?

OFF RECORD

DEPUTY PRESIDENT ROBINSON: Sorry, Ms Harvey.

MS HARVEY: Yes. If I could just say, Mr Deputy President, that in addition - before I turn to these decisions which support the position I am putting to you - is that Mr FitzGerald's submission is inconsistent because on the one hand he is seeking to, in effect, argue that our claim is outside the wage-fixing principles, but his application and the employees application is very similar in the sense that it puts forward different classification structures, so clearly he is not relying on the issue that the MRA process has been exhausted in relation to his own application, but only seeks to apply it in relation to the HSUAs application.

The only difference being between the two applications that the HSUAs application seeks to go to higher levels than the employees application. So I would submit that Mr FitzGerald is being somewhat inconsistent in arguing that it is not possible to vary the award in relation to the structural efficiency principles when he is seeking to do exactly the same thing. Now, if I could turn to the issue of the wage-fixing principles - - -

DEPUTY PRESIDENT ROBINSON: I do not want to interrupt you, but I do not want us to stray too far from section 24(4) of the act.

MS HARVEY: Yes. I understand that.

DEPUTY PRESIDENT ROBINSON: Really, that is what determines whether or not anything should go to a full bench.

MS HARVEY: Well, Mr Deputy President, I understood that Mr FitzGerald to have said that because the matter was of some public interest because we were seeking to redefine the principles in some sort of novel way, now, I have already put my primary submission that you are the one, in hearing this case, that determines that matter. However, I do think it possibly would be of assistance to the commission to deal with the fact that it has been considered already by a full bench, both in the federal and state jurisdiction.

DEPUTY PRESIDENT ROBINSON: Yes. But I do say you should keep under scrutiny 24(4) of the act. It is - - -

MS HARVEY: Well, in relation to 24(4) before I turn to the wage-fixing principles, I think I have already substantiated that (a) does not apply. Certainly, there is no nexus with any other award in this jurisdiction, in any formal sense, and the Community Services Award, as Mr FitzGerald has said, is there is no real application for the commission in relation to a wage structure there, and certainly my organisation has not sought to draw any nexus. And in my understanding there has not been a discussion of any nexus in relation to those issues.

DEPUTY PRESIDENT ROBINSON: Perhaps we ought to just pause there for a second? Section 24(4)(a) of the act says the application directly affects another award. Now, is there any argument about whether or not it directly affects another award?

MS HARVEY: We certainly contend it does not.

DEPUTY PRESIDENT ROBINSON: I think Mr FitzGerald used the words along the lines that it has the potential to flow. I do not know if that

is quite the same thing as saying the application directly affects another award?

MS HARVEY: Since Mr FitzGerald has declined to answer, it certainly was our contention that it does not directly affect. The only way it could be considered to in any way affect would be as a result of the operation of the wage-fixing principles in terms of the structural efficiency principle that requires all awards to have consideration to relative skill, responsibility and work environment, and that is not a direct impact on that award. In relation to (b), which is the part that Mr FitzGerald sought to rely on in seeking a referral, is that it was in the public interest. I dealt with the issue about public interest and incapacity to pay. The other issue he relied on was that it would be some reinterpretation of the wage-fixing principles.

Now, I contend that it is up to the commission to determine whether our application in any way is seeking to redefine those wage-fixing principles. It is the HSUAs application. We seek to process it under the structural efficiency principle. It is up to our organisation to determine how we wish to run our case in that respect. And if we do not meet the wage-fixing principles, obviously you will not find in favour with the application. Now, I can go to the wage-fixing principles, but from your comments, Mr Deputy President, I am not sure whether that is actually required. It would take some time. My basic - - -

DEPUTY PRESIDENT ROBINSON: Well, I have always refused - no, not always refuse, that is too strong - I am always very, very reluctant to tell advocates what they can put on record and what they cannot, with the proviso that it must be relevant just the same.

MS HARVEY: Yes. Well, with - I think it is in this case, given the importance of what has been discussed, I think it is probably worthwhile turning to the actual wage-fixing principles.

DEPUTY PRESIDENT ROBINSON: Well, I would rather let you do it than deny you the opportunity.

MS HARVEY: To do this I will need to hand up an exhibit.

DEPUTY PRESIDENT ROBINSON: Your fifth, I think?

MS HARVEY: Yes, if the commission would not mind, I would appreciate it if I could call it HSUA5.1. It then retains consistency with the numbering I have used, so I just think that will avoid confusion.

DEPUTY PRESIDENT ROBINSON: Right. HSUA5.1, it shall be.

MS HARVEY: I will say, Mr Deputy President, that when I do finally come to my substantive submissions in relation to this matter I will try not to repeat what has already been said in this part of the hearing.

DEPUTY PRESIDENT ROBINSON: That would be handy.

MS HARVEY: In terms of the wage-fixing principles, the HSUA claims that the application is consistent with the wage-fixing principles and indeed we seek to process our application under the structural efficiency principle. That principle was handed down by the federal Australian Industrial Relations Commission and was subsequently adopted by the Tasmanian Industrial Commission in September 1988. The structural efficiency principle has been maintained in all the wage cases since, with minor modification. Now, if I could just refer you to tab 3 of exhibit HSUA5.1.

This contained in exhibit - in tab 3 is the reasons for decision from the Australian Industrial Relations Commission dealing with the national wage case. Now, the reason I have reproduced it in full is that in the state wage case decision that dealt with the flow on of the national wage case the commission was quite clear: the full bench clearly stated that it adopted both the decision and the reasons for decision. So, in effect, this is a reason for decision from the state jurisdiction.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: If I could draw your attention to - - -

DEPUTY PRESIDENT ROBINSON: I do not think you have mentioned that it was a review of the principles of October 1993, did you?

MS HARVEY: Sorry, yes.

DEPUTY PRESIDENT ROBINSON: So, we - so mentioned for the record.

MS HARVEY: That is correct. Now, it is our view that this decision makes it extremely clear that the structural efficiency principle is an ongoing principle and one that is not bound in any way by time that ceases at some magic date. It is indeed very clear in this decision that the structural efficiency principle is an ongoing process, and I wish to take you to particular parts of the decision to substantiate that view. On page 15 in tab 3 in the second paragraph it says, and I quote in the third sentence:

Any enterprise bargaining system must of its very nature lead to differing outcomes two can be complimentary.

So, the commission is making it clear that the two systems are going to go side by side, the structural efficiency principle and the enterprise bargaining principle. On page 17 in tab 3 - - -

DEPUTY PRESIDENT ROBINSON: Page 17?

MS HARVEY: Yes. In the third paragraph in approximately the third sentence it says:

Indeed, the current principles and their predecessors represent a concerted attempt industrial relations outcomes.

So again the full bench is making it clear that there is no cut off date for structural efficiency principle; the two systems are going to work side by side. On the bottom of the page where the full bench rejects the submissions for the rescission of the current principles, the full bench says:

Moreover, rescission of the current principles -

which include the structural efficiency principle -

and their replacement by the processes under the act could have the result of impeding intended to create.

Again the full bench is making it quite clear that it is an ongoing process that is not completed, it has not got some magical date when it ceases. If I could take you to page 25, and again the commission is emphasising the importance of the ongoing process of the structural efficiency principle. In the third paragraph:

Consistent with that rationale it is our intention that members of the commission and transition agreements - - -

DEPUTY PRESIDENT ROBINSON: Arrangements.

MS HARVEY: Sorry; arrangements. And just skipping that next dot point it goes on to say:

The commission is prepared to explore with the parties, including by way of the provisions their ongoing relevance.

Again the full bench is making it extremely clear that there is not some magical cut off date; indeed, it offers its assistance to the parties for awards to in fact restructure again over and beyond what they have already done. So it makes it extremely clear that there is not some magical date

on which the whole thing finishes. If I could then take you to page 33, it says:

The principles which relate to the key elements and which will continue to apply as amended in April 1991.

So that that is very clear that there are - the structural efficiency principle is maintained and continues its relevance in terms of dealing with establishing awards. Now, finally on page 49 in tab 3 on the final dot point it says:

The commission will raise at the time an award variation is sought to reflect in further progressing them.

So again the commission is saying that this is an ongoing process that is required to continue. Now, if I could just continue in relation to the issue of the work value. I said that this matter had already been determined by the full bench in the Tasmanian jurisdiction. To demonstrate this I am going to have to hand up extracts from exhibit 2 from the case T2399. It was originally in HSUA3.

Now, because of the problems with HSUA3, Mr Deputy President, which we were to resolve this morning, you will recall that Mr FitzGerald had some problems about some of the content, I have actually rewritten sections of HSUA3 and am ready today to replace the old HSUA3 with a new one which removes any reference to the minutes. I am not sure the easiest way of dealing with this. I could refer you just to the full bench decisions in the old HSUA3 if that is acceptable.

DEPUTY PRESIDENT ROBINSON: Well, if there is some understanding in relation to the non reference to something contained in HSUA3, I suppose the rest of it could be relied upon in an exhibit, and I would certainly accept that there would be no reference to those minutes contained in that document.

MR FITZGERALD: I have no problem with that course.

DEPUTY PRESIDENT ROBINSON: All right. So there, you can use HSUA3, Ms Harvey.

MS HARVEY: Actually, I apologise, Mr Deputy President. I am ahead of myself. I will come to that in a minute. I still have one other matter to deal with in HSUA5.1 but I hear your comments in relation to HSUA3.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: In relation to HSUA5.1 if I could refer the commission to tab 2. Tab 2 contains extract from the decision T2399 which is the full bench arbitrated decision in relation to the classification standards and wage rates for the public sector.

DEPUTY PRESIDENT ROBINSON: I find 5.1 in exhibit HSUA1, do I not?

MS HARVEY: No, the yellow one, HSUA5.1.

DEPUTY PRESIDENT ROBINSON: Oh, yes. Right, of course, sorry. Tab 2 you said?

MS HARVEY: Yes, tab 2.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: In this case, Mr Deputy President, the employers argued a very similar position that Mr FitzGerald has argued in relation to the need to use work value principles for setting classification rates. Now, if I could just take you to the relevant parts? In the final paragraph on page 3 the full bench in the state jurisdiction says:

We reject the minister's submissions on this point -

and this point is the view that any increases in rates of pay would be contrary to the wage fixing principles and unsubstantiated in terms of work value. It says:

We reject the minister's submission on this point because any broadbanding and structural and to the community generally.

It then goes on to say, under the special cases and work value heading on the bottom of page 4:

The bench was informed of the concern of the minister that in those will be from 1 December 1992.

Now, Mr Deputy President, the reason I have included this is that the full bench made it very clear when they were responding to a very similar submission from the employers that the only way you could put in classifications over and above the 6 per cent was by work value; that that was not the process that was to be followed. What they were saying is that

the structural efficiency principle allows a bench to set classifications and rates of pay and those would be set in accordance with the structural efficiency principle and then a process of translation would occur.

Now, that is precisely what we are proposing to do in relation to this award and the full bench have made it very clear from their decision that that is how the matter should be processed: that is, that you set the classifications and wage rates according to the structural efficiency principle and then people are translated according to that. Now, this is an HSUA application which we seek to run under the structural efficiency as required by the wage fixing principles and any work value change, to the extent that it has occurred, should be included in the structural efficiency principle exercise and we do not walk away from that. I think that that is very important. Now, one final point which I wish to deal with is the matter of the minimum rates adjustment process having partially begun.

MR FITZGERALD: Partially?

MS HARVEY: Having begun and not completed. Mr Deputy President, it is somewhat difficult for me to deal with this matter because there is matters in HSUA3 that I wish to draw to the bench's attention and they do go to matters that are only on the public transcript. Now, I am prepared to run the argument without prejudice but I - and I will do that in full if required. However, I need to refer to the transcript and reasons for decision that were contained in HSUA3.

DEPUTY PRESIDENT ROBINSON: And you are not going to provide - you are going to provide us with - - -

MS HARVEY: A revised copy.

DEPUTY PRESIDENT ROBINSON: - - - a revised copy, yes.

MS HARVEY: So, in HSUA3, if I could turn to page 3, which is the transcript from the hearing 2706. On page 4 about two-thirds of the way down the page, at the time that the minimum rates adjustments were commenced there was a very clear agreement about the need for an ongoing process in relation to the structural efficiency principle and if I can just quote from the comments that I made on transcript on page 4 there. It says, and I quote:

The parties, as I pointed out before, have been meeting fairly regularly a document which outlines what we've done in this phase of the process.

And then over the page, Mr Deputy President, it says at the bottom of the page and again I quote from my own submission:

Mr Deputy President, that goes to really the changes we are seeking in this application to put in the actual skill-based definition within the award.

Then over the page it says, and if I can quote Mr Sertori, who was the advocate at that point in time, halfway down the page Mr Sertori says:

The exercise in respect of classifications has been well reported which is effectively to phase that in over a period of time as well.

If I can now refer you, Mr Deputy President, to your decision in relation to this matter, and that is contained on page 8. At the top of the page it says:

Funding of the various establishments within the scope of the award encouragement and support through the provisions of adequate funding in the very near future.

Then three paragraphs down you go on to say:

A significant feature of the amendments put forward concerns a major reduction being the key 100 per cent benchmark figure.

And further down:

Whilst much has been achieved, as is reflected in the draft order submitted, the exercise as a whole is ongoing and in particular various definitions still need to be addressed.

Now, the reason I have gone at some length to all of these matters is to demonstrate to you, Mr Deputy President, that it has always been clear that this is an ongoing process. Now, Mr FitzGerald has been very good at admonishing my organisation and this commission about the dangers of using without prejudice documents. He should also be very aware of the danger of not upholding agreements that are reached before this commission.

Now, I just wish to say that at the time we went into the minimum rate adjustment process which was by agreement there was a very clear agenda, there were very clear commitments given, and indeed my organisation would not have agreed to go into a minimum rate adjustment process if we

thought it would have jeopardised our future activity in relation to a classification structure which we had clearly indicated our agenda to the employers before. So, it seems very unfair to me that they would seek to deal with the matter in which it is currently being sought to be dealt with.

Now, if I could just go back to the substantive issue about the threshold matter. In conclusion I would say that the matter does not require to be referred to the full bench, that the HSUAs application we seek to process under the structural efficiency principle, at the time we put the MRAs in place it was clear that this would happen, indeed it was a conditional agreement for the MRAs. The SEP is ongoing, this has been reinforced by full benches of both the AIRC and the Tasmanian Industrial Commission in the most recent national and state wage cases. It has been interpreted and applied in the way that I suggested in the full bench arbitrated decision of T2399.

Given all of those facts if I can just return to section 24.4, I believe that I have substantiated that it does not fall within the scope of (a), nor does it fall within the scope of (b), because it is very clear from the full bench decision, both in federal and state, that the matter has already been clearly determined. If I could finally say that the commission obviously has the power under section 21 and the discretion to deal with procedural matters and I would ask the commission to exercise that discretion to ensure that this application continues before you and is not referred to a full bench which would result in inevitable delays and I believe is contrary to the intentions of the last hearing, whereby the parties had agreed that we would just deal with the differences documents.

And, indeed the introduction to my submissions was given before we entered into that agreement and I think it is only proper that we continue to hear this as expeditiously as possible. If the commission pleases.

DEPUTY PRESIDENT ROBINSON: Thank you. On the threshold question, Mr FitzGerald you have sort of got - have a - exercise a right of reply.

MR FITZGERALD: I would like to. Some of the matters do pertain to - oh, at a time when I was not involved and I would just like to be able to consider, very briefly, it would only be very briefly, I am conscious of delays already caused as a result of procedural rates, but whether we adjourn now and come back after lunch or whether we just have a 5 minute adjournment so I can respond, it is up to the commission.

DEPUTY PRESIDENT ROBINSON: Well, if we give you a 5 minute adjournment, you respond - - -

MR FITZGERALD: Yes.

DEPUTY PRESIDENT ROBINSON: - - - I might well want to think over lunch anyway as to how I am going to respond to your threshold application.

MR FITZGERALD: So it would be best if I completed before lunch then.

DEPUTY PRESIDENT ROBINSON: Yes, if that is convenient.

MR FITZGERALD: Yes, that is fine. That will be fine.

DEPUTY PRESIDENT ROBINSON: Will that be all right?

MR FITZGERALD: If I could just have 5 minutes then that would be appreciated.

DEPUTY PRESIDENT ROBINSON: All right. We will adjourn briefly.

SHORT ADJOURNMENT

DEPUTY PRESIDENT ROBINSON: Yes, Mr FitzGerald?

MR FITZGERALD: Thank you, Mr Deputy President for that brief adjournment, it was certainly appreciated. I just - - -

DEPUTY PRESIDENT ROBINSON: Is there is any value to me?

MR FITZGERALD: Well, I hope it is, maybe we have got something which you might want to consider over lunch in terms of our submission. But - - -

DEPUTY PRESIDENT ROBINSON: I do no want to get indigestion.

MR FITZGERALD: Oh, I am sure you will not, I am sure you will not. In terms of the principal submission we put, it is an application pursuant to section 24(4) and the basis of the application is what we have already put before you and I will respond to Ms Harvey's submissions shortly, in brief format. I certainly do not intend to be long. But the discretion is vested in you to refer the matter to the president, not to a full bench. The president, as you would be aware, and I just look at the words of section

24(4) ultimately would determine whether or not the matter should be referred to the full bench not yourself, so the referral is in fact - - -

DEPUTY PRESIDENT ROBINSON: Yes, you are quite right, quite right.

MR FITZGERALD: It is only to you, yes, so if - I just simply say if, with respect to the commission, if you are having doubts about our application then we believe that the matter should be referred to the president because he is ultimately makes that determination whether the matter should go to a full bench. In respect to the matters raised by - and this is a stand alone section - in respect to the matters raised by Ms Harvey indicating which matters under section 35 should be referred to a full bench that, in my view, does not assist us in any way because all it does do is set out those matters which are required where it is mandatory that matters be - those matters be referred to a full bench.

Section 24(4) stands alone and vests discretion in you to refer to the matter to the president. So, in that regard we do not see any assistance by reference to section 34 or 35 because it is not a matter of like nature as set out in 35, that really does not assist us, in our view. In our submission, as we indicated in the first instance, Mr Deputy President, we believe that - and I will go to some of the matters in respect to the union's application - it would assist the parties if the matter were referred.

As you are aware there are obviously appeal processes which could be put in place, and we are not suggesting that they be put in place, but by reference to a full bench - to a full bench that process or the matter is finally determined by the full bench rather than at first instance and then referred to an appeal bench.

DEPUTY PRESIDENT ROBINSON: Right. Well, it might cut out a process by sending you straight there, do you reckon?

MR FITZGERALD: That is - I just simply - yes, I simply make that point and it might be more expeditious for those reasons. I am not suggesting in any way that that be an ultimate outcome, but it may be one of the factors you should take into account in referring the matter to the president for him to determine whether the matter is referred to a full bench.

The other matter which I wanted to address in terms of the awards I addressed, and I mentioned the Community Services as one, only because I am personally involved with that at the moment, but I do not believe it is necessary to confine ourselves to that award or any others, we simply say that given the magnitude of this application it has a potential to effect -

directly effect other awards of this commission. There is no requirement as Ms Harvey seems to suggest that there be a nexus between the two awards. There has been none formally established nor - but in our view there is no requirement that in fact that it be established.

DEPUTY PRESIDENT ROBINSON: Well does not 24(a) indicate quite clearly that one of the things to be considered is that if the application directly affects another award.

MR FITZGERALD: I do not know whether that necessarily requires that that be by means of a formal nexus or not. I would believe not, in our submission, not.

DEPUTY PRESIDENT ROBINSON: Well, how else would it directly affect another award.

MR FITZGERALD: Well, it is a good question you raise.

DEPUTY PRESIDENT ROBINSON: Yes, I thought it would be.

MR FITZGERALD: It is a good question you raise, I am not certain how to answer that. The principal tenet of our submission is, is that the matter is of such importance in the public interest, the second part of section 24(4)(b) rather than that other matter. And I - that is the one which we would intend to concentrate - well, we have concentrated on in our submission of the first instance, and intend to concentrate on in response to Ms Harvey's submission.

Ms Harvey referred us to transcript of previous proceedings before you and to decisions of the Australian Industrial Relations Commission and the Tasmanian Industrial Commission in respect to public sector awards. We do not deny that the process was ongoing, that is certainly contemplated within the principles and we do not deny that the union reserved its right to come back following the minimum rate adjustment process. But we always have maintained the position that there was going to be - always be some difficulty, and that was always on the basis of an agreed position.

Regrettably we were not able to achieve that agreement, but we did always point out, in our submission, that there would be difficulties in presenting a case in accordance with the wage fixing principles. Just simply because the union has reserved its right does not necessarily mean to say that the - it has a claim, a valid claim, particularly in accordance with the wage fixing principles.

In our submission, and where Ms Harvey has - what Ms Harvey has failed to do is in fact take us to the principles herself which would enable her

claim to be validated. In our submission because the union's application seeks to extend the award - and that is the important point - from the current limit, which is effectively the 115 per cent mark, up to a maximum of 160 per cent and there are some particular employees who would in terms of the union's claim see substantial increases which would be awarded in the range from the existing 100 per cent rate up to the 160 per cent rate as claimed by the unions, the maximum claim within the structure. That in itself will cause significant cost impacts.

Now given the significance of that cost impact which is inherent in the union's application, we say that it is important, given the extent of that, that the matter is of such importance that it should in fact be referred to the President for him to consider whether a full bench should determine the issue. The TCCI in giving advice to members of this process is not in any way intending to walk away from agreements which Ms Harvey purportedly said existed previously, but is simply advising on what we see is the appropriate process, given the importance and the significance and the cost impact of the union application.

So what we said in our primary submission is that once the minimum rate adjustment process is complete, the union then to proceed further, and extend the award beyond its current status, must do that in accordance with the wage fixing principles. And that, in our view, the only way that can occur is by a work value case. Now there has been no - and it is not simply possible for the union to pluck a process out of the wage fixing principles without direct reference to the wage fixing principles. Now Ms Harvey has referred to a number of decisions but not directly to the wage fixing principles.

In our submission the only way which this claim can proceed beyond its current scope in terms of its classification structure is by means of a work value case. Now for all those reasons, Mr Deputy President, we would see it appropriate that you at least refer the matter to the President for his consideration so as to allow the matter to proceed by way of a full bench hearing rather than before the commission as currently constituted. If it pleases.

DEPUTY PRESIDENT ROBINSON: Thanks Mr FitzGerald. I benefited by the brief adjournment that I granted to you, in that I was able to study the act more and I think that in view of all the comprehensive submissions made - and I congratulate the parties on being so thorough on this important question - I have decided not to refer the matter to the President and have decided to proceed at a quarter past two as scheduled. Thank you.

LUNCHEON ADJOURNMENT

MS HARVEY: Mr Deputy President, as I foreshadowed this morning I will be introducing the - seeking to introduce evidence from an expert witness. This is in relation to section 2 of the evidence I have already introduced in relation to the nature of the industry. So perhaps if we could proceed to swear in the witness.

DEPUTY PRESIDENT ROBINSON: Yes.

JUDITH MARJORIE KNOWLES-LOCKE, sworn:

MS HARVEY: Could you please state for the record your name and address please?---My name is Mrs Judith Knowles-Locke, and I live at number 5 Turiff Lodge, New Norfolk, 7140.

Thank you. At this stage I would like to introduce an exhibit which is a witness statement.

DEPUTY PRESIDENT ROBINSON: Thank you. You had better tell me the exhibit number as usual, Ms Harvey.

MS HARVEY: It is WS1, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: WS1?

MS HARVEY: Yes, witness statement 1.

DEPUTY PRESIDENT ROBINSON: WS1 it is.

MS HARVEY: If I could just hand this to the witness. Now Mrs Knowles-Locke, have you seen this document before?---I have.

What is the document?---It is material I have prepared for this hearing.

Mr Deputy President, we would be seeking to deem Mrs Knowles-Locke an expert witness, so perhaps Mrs Knowles-Locke if you could read from your prepared statement in relation to your personal details?---My name is Marjorie Judith Knowles-Locke and my address is 5 Turiff Lodge, New Norfolk. My relevant qualifications are I have a Master of Arts degree in

Psychology from the University of Minnesota in the USA. I have a Diploma of Education from the Victoria College. I have a post graduate Diploma of Education (Psychology) at Monash University and I have completed a Ph.D in psychology; it is waiting for examination. I am currently employed at Willow Court as a clinical psychologist-in-charge. This is a dual role of senior clinical psychologist and manager of the professional support services team. The professional support services team consists of 22 professionals including a psychologist, speech pathologists, occupational therapists, physiotherapist, social workers and program officers. My role includes co-ordinating case loads and ensuring that all residents of Willow Court are receiving appropriate professional services. The work of program officers for whom I am responsible, includes day and evening provision of leisure and educational services for Willow Court residents. This is equivalent to the role of independent living services and supported employment services in the non-government sector. My role also includes contributing to policy development.

If I could just stop you there. Perhaps if we could go to tab 2, could you tell me what that document is that is there?---This particular document just gives more information concerning where I operate within the disability services structure. This particular flow chart indicates the general structure of disability services some sub-program. I work at Willow Court centre, and as you can see on the third box there, that I am the clinical psychologist in-charge in that particular structure.

So you report - who do you directly report to?---I am directly responsible to the CEO component of the position outlined above, which is the chief executive officer of Willow Court centre.

Mr Deputy President, at this stage we would seek to formally deem Mrs Knowles-Locke an expert witness unless there is any objection.

MR FITZGERALD: I am - it is a bit difficult to respond to that, Mr Deputy President, because I am not sure, in terms of the qualifications I do not think there is any question we can deny that, but in terms of the evidence she is going to give for these proceedings, I am not certain whether she - - -

DEPUTY PRESIDENT ROBINSON: Well - well did the - the preliminary question is whether or not you recognise the qualifications.

MR FITZGERALD: Oh, I do not think we would deny those qualifications, Mr Deputy President.

MS HARVEY: Mr Deputy President, the - Mrs Knowles-Locke will continue to read from her witness statement and I ask her to so do

now?---All right. Willow Court clients have varying degrees of intellectual disability. they usually, although not always, have other disabilities. For example, physical and sensory disabilities. The Community Integration Program, which is commonly known as CIP, is the program designed to assist residents of Willow Court to move into the community. The objective is that people with disabilities live in the community to the best of their ability. To date approximately 150 clients have been transferred to the community sector under the CIP. I have attached a work organisation chart on tab 2 and you will see that and my position description at tab 3. One of my roles is to co-ordinate the preparation of clinical reports for each resident in the CIP. These reports are the assessment before residents go out into the community from the various professional perspectives, eg, speech pathology needs, leisure needs, and where people require support, etcetera. The psychology reports, which I do directly for some residents, are about individuals level of disability and what support they need. The individual assessment documents clients needs and are designed to assist with the planning of optimal independent living and occupational support programs for the client in the community. The intention is to use the reports to assist in negotiations with the services about the type and level of service for the client. They are supposed to assist and support the transition of the individual to the community.

The needs of clients in the service delivery. This industry should be about what clients need. This determines the skills and ultimately the type of award to regulate the industry. That is why I am addressing client need first. Client assessments. Client assessment is the first step to providing a client focused service to meet the client's need. Good client assessment is done for Willow Court clients through the CIP through the professional reports. There is a problem in that the professional reports are done for CIP clients but they are not always done for community clients. The responsibility for the case management of community clients lies with the community services. I expect that this will change as in - as there is an increasing expertise and expectation in the industry and the community about the level of service required. It is my opinion that there will be a higher number of professionals in the non-government disability services industry to provide these types of services.

Good case management is critical for a successful independent living program at residential occupational support and living skills centres. It must be consumer intended and designed for the benefit and advocacy of the client. In dealing with a population group with learning difficulties simple demonstration and observation is not enough. It is not just a matter of learning a particular skill, it needs to be integrated into an overall life plan. A macro approach is needed for the client's development.

There are three critical steps necessary for successful case management. First, there needs to be a clear determination of the client's needs and support level requirements through an assessment process. Second, there also needs to be translated into a plan to meet those needs and requirements. The third level is the plugging in of the support requirements. This includes both service types and support within any particular service. For example, one client may have a plan that identifies the skill requirement for independent living in a residential setting and complimentary skills needs in an occupational support setting. Staff in both of these services need to be able to deliver skills in accordance with the plan.

Individual plans need to be well documented. It is important that there is a process of evaluation and modification of plans. All staff interacting with the client need to be involved at some level with this process so that their experience and knowledge is fed back into the plan. The quality of service delivery for clients can be undermined by low wages. Staff are diminished by poor wages, that is, why should I write plans, monitor behaviour, etcetera, when I am not recognised for this?

There is a huge variation in levels of dependency of clients, eg, medical and social. You cannot assume that there is a homogenous group of clients in any one service. For example, we try to keep friends together in residential services and the level of dependency can vary enormously amongst friends. Services need to ensure that the person with a disability who has a need, for example a medical need, has access to the appropriate service. This requirement covers all types of services, leisure, medical, professional, vocational, etcetera.

Now, complex behaviour: I am reluctant to use the term challenging behaviour, and I prefer to use the term complex behaviour. This is generally understood to mean clients with asocial behavioural patterns, eg, a tendency to violence, low tolerance of frustration, etcetera. I have had a lot of experience with complex behaviour. Generally clients who are readmitted to Willow Court come back because they show symptoms of complex behaviour. Services need to be able to deal with complex behaviours as clients will never reach their full potential under objectives of CIP if they are constrained by complex behaviour patterns.

Dealing with crisis: clients will have crises. These include medical and as well other crises. A crisis situation for people with behaviour problems is more stressful and difficult than for the general population. For example, a client with poor coping skills may assault someone else when she or he gets frustrated. Medical crises can be made more difficult because of the behavioural problems and vice versa. Clients need to be

supported by a service that can minimise crises by preventative action as well as to deal with the crises when they occur.

This is now going to deal with skill requirements and meeting client needs. Mixed staffing models: I support auspicing in the non-government sector of services for people with disabilities. This is the direction of government policy at the state and national level in the disability services industry. However, it is important that community services have the skill levels to be able to provide a professional level of service. I also support the idea of mixed staffing models providing that there is an integrated team environment which is reflected in the approach to the clients needs. Not every staff member needs to have a degree or an associate diploma.

The skill needs of staff are determined by the client needs for support. Services need to have skilled staff to meet the needs that I have listed above. The level of skill required of hands on staff should not be underestimated as they are the most critical in the education process given the high level of contact. It is a minimum requirement that there is direct supervision for staff who only have limited expertise. Staff need as an absolute minimum the skills listed below to be able to safely work in the industry where they have client interaction: understand the basic individual plan and their role in it, including the capacity to undertake training requirements; recognise behaviour and symptoms that require notification to senior staff; interact with the client according to the requirements of the plan; deal with crises; maintain necessary documentation; participate in the evaluation and development of plans; have a good communication skill and the capacity to work in a stressful work environment. In addition, the need to be patient and not get frustrated with what can be difficult work. It is not possible to segment work into routine and non routine in the way often done by more traditional workplaces. For example, dealing with a crisis, which by definition is non routine, is a hands on responsibility. It is counterproductive for hands on staff not to be able to deal with crises immediately. For example, it is totally inappropriate just to ring someone up to come and deal with a crisis. Inadvertently this leads to the client - the client into learning that when someone with authority comes in they can act upon me but someone with less authority cannot. This diminishes the junior staff members and lessens their effectiveness. In addition, delays could be dangerous for clients themselves, other clients and/or staff. I have studied the HSUAs application for a new career path. I am not able to comment on the valuation of the skill; however, in my experience it covers the skills required and groups them appropriately in a hierarchy of skills. I consider it a good model suitable for service delivery. Skills for dealing with complex behaviour: I have highlighted this issue because staff in non government disability services need to have particular skills in this area. Staff in the non government disability services have had experience with violence from clients in their services. The reason for this varies.

Sometimes it is to do with inappropriate medication, interaction issues, frustration as a result of poor management or poor case management. Behaviour management for clients with complex behaviour is a very complex area because individuals have often been that way for many years. People who have had many years of contact with a particular client have worked out how to deal with the client and how to avoid episodes of complex behaviour. Sometimes it is not possible to avoid because services rightly don't want to over-control the environment. It is hard to manage the balance of giving lots of opportunity to the client for self-development and restricting complex behaviour. Staff need to be equipped with skills, including a range of options, about how to deal with behaviour management. Conclusion: The current proceedings are critical for the future of the industry. In my evidence I have identified critical issues about service delivery and skill needs. A proper skill based award will assist in identifying training and skill needs of staff. This will mean better planning and case management for clients.

Thank you, Mrs Knowles-Locke. I have no further questions at this stage.

DEPUTY PRESIDENT ROBINSON: Right. Mr FitzGerald will no doubt like to ask some questions, if you do not mind.

MR FITZGERALD: Yes, very briefly.

Mrs Knowles-Locke, just a few brief questions if I could put to you. Your qualifications are indeed impressive. You are awaiting a doctorate; is that correct?---That's correct, yes.

Just by - just to clarify that. Thank you. What has been your recent work experience? Has it been principally with Willow Court?---Principally with Willow Court, yes.

Right. Have you had experience with private providers in this industry?---With private providers, yes. My principal responsibilities are to Willow Court. However, I had been often engaged over the last two years provide consultancy to the non-government sector both at regional and occasionally at a statewide level.

Well, could you just detail those for the purpose of the record?---An example would be a co-ordinator of a non-government agency, main rate contract, a clinical opinion concerning a client in their particular service because we are working very hard with admissions to Willow Court my management supports me giving an opinion in those cases and, therefore, there would be examples where I have travelled to the north and north-west of the state in that capacity to respond to difficult cases.

So it would be for specific client needs? Would that be the case?---That would be for a specific client and complex behaviour problems, yes.

So you actually have not worked with private providers other than in a consulting role? Is that - - -?---Only consultative level, yes.

In what sectors of private providers have you worked with? In what particular sectors?---In relation to this particular document or - - -

Well, no, generally?---Generally.

You know, have you worked in the supported employment area or - - -?---My main role is working in the living environment in the residential setting, yes.

Just on that issue of supported employment have you had any exposure particularly with private employers at - the private providers, sorry, in the supported employment sector?---Well, what happens is that in this particular industry at Willow Court there is an employment service and I obviously would work as a consultant in that area, that is in the Willow Court capacity. In the non-government sector in relation to the integration program and community clients, clients work in what is called occupational day support and occasionally I would also be consulted to offer them trainee suggestions or behavioural management strategies to deal with clients in those environments.

So have you had experience with private providers in this particular sector in terms of other than just specific client needs?---You mean at a management level?

Yes, yes, management of services?---In the management of services?

Structures, skills, etcetera?---Could you be more specific about that question, please?

Well, have you actually been exposed or worked in a management role with one of the private providers?---I haven't taken a management role as far as being a member of a management committee. I have been providing assistance in the development of policy as a member of executive management and advised the corporate management through my own agency which has been eventually translated into the non-government sectors guidelines.

Right. Is Willow Court typical of non-government agencies? I think that is a term we should be using, is it not, non-government agencies?---Willow Court is not a non-government agency.

No, no?---No.

Is it typical of non-government agencies?---There would be some common denominators in what the service is asked to provide. However, the nature of the living environment is designed and strictly in terms of the way it is structured is different from the non-governmentinaudible. . . . The non-government sector provides group homes or shared homes in a neighbourhood whereas Willow Court is a campus environment.

And what exposure have you had in the management of group homes in the non-government sector?---As far as the management - in terms of offering suggestions or being a participant?

Well, no, just generally in the management of group homes?---I have not - I am not sure whether that's a - - -

MS HARVEY: If I could just - I am concerned that Mr FitzGerald did not contest the status of the witness as an expert. The evidence that has been introduced goes to client need and staff requirements. We did not introduce Mrs Knowles-Locke as an expert on the management of non-government services and, in fact, there was no evidence in the chief evidence on that issue. So it appears to me that Mr FitzGerald is seeking to introduce new issues that were not part of my original evidence.

DEPUTY PRESIDENT ROBINSON: Well, that might have clarified for Mr FitzGerald if you are not claiming certain things - - -

MR FITZGERALD: I am just - well, I am attempting to establish Mrs Knowles-Locke's exposure in the private sector and I think as a witness at large I am entitled to do so.

DEPUTY PRESIDENT ROBINSON: Yes, I will allow the question.

MR FITZGERALD: I am not trying to prolong it in any way but - - -

DEPUTY PRESIDENT ROBINSON: No, no. If Mrs Knowles-Locke does not feel that she is able to answer the question she is at liberty - - -

MR FITZGERALD: I am quite happy with that response.

DEPUTY PRESIDENT ROBINSON: - - - to say, "Well, that's outside of my expertise," or "I can't help you."?---I haven't been a direct participant in the management process.

MR FITZGERALD: Thank you. I do not want to prolong these questions at all.

DEPUTY PRESIDENT ROBINSON: Well, that is all right, no.

MR FITZGERALD: In fact, I would like to shorten them, thank you.

So you would have spoken to individuals - sorry, would you have spoken to individuals in management roles in the private sector?---Absolutely.

Sorry, I keep switching terms. Non-government sector is probably the easiest way to refer to it, is it? Would you - - -?---On numerous occasions, yes.

Okay. So do you say that you have a complete knowledge of what occurs in the private sector or limited knowledge?---I would have a wide knowledge of what happens in the private sector in relation to the integration program, primarily because the request from my consultancy usually comes from the management of that private agent.

But - - -?---So it is always the co-ordinator of that private group or it is a member of the management committee that would make the referral to me.

Right, okay?---And so quite often the nature of the referral is not only about client needs it is often about problems that they would be having in the general management of the household or the service.

Right, okay. You make a - I just - if I can just take you to your statement. Have you got it there in front of you? Okay, at page 1 towards the end of 1.0 last - second-last paragraph: The work of Program Officers, and you make a statement there:

This is equivalent to the role of Independent Living Services and Supported Employment Services in the non-government sector.

How - can you just further elaborate on that, how is it equivalent?---How is it equivalent, the kind of work that the program officer does, you want clarification on how it is equivalent?

Yes?---Program officers at Willow Court their job is designed to support people in vocational, education and leisure settings.

Right, okay. So that when you say it is equivalent to independent living services and supported employment service you are able to have a knowledge of those services in the non-government sector to make that statement, are you?---Hm mm.

Right. And how - just, sorry, how do you gain that knowledge?---How have I gained the knowledge of supported employment in the - - -

Non-government sector and independent living services?--- - - - non-government sector. That again has been by referrals from the - from agencies that support supported employment. So what happens is that, I in principle answered the question earlier, that my main involvement has been for individuals from the living environment. However, that is not exclusively been the case, occasionally a client would be experiencing major difficulties in the work place and again I would be engaged to provide services and support as to - to the client in that setting.

All right. Well, when you make the specific comparison with supported employment services you have enough knowledge to make that statement without qualification, do you, in terms of knowledge of the private sector providers?---I feel I have sufficient knowledge to make a comment, yes.

Does it differ in any way to supported employment service in the non-government sector, are there any differences which you would be aware of?---Yes, I am aware of differences, yes.

All right. What sort of differences would exist?---The differences are in the way - not so much in the nature of the work but the employment services as provided by Willow Court is very much based on an attempt to pay people appropriately within their - within the fact that they have a disability pension, they work to a fairly, sort of, normal working environment.

Right?---Whereas in the non-government - in the private sector quite often supported employment is not able to offer that range of opportunities, however there are some longstanding supported employment options that definitely work within those standards, and I have exposure to those.

In terms, and I do not want to labour this point, I am sorry I am going on so long it is not intentional by any means - just to clarify for my purposes, the terms of the actual skills and responsibilities exercised by program officers at Willow Court compared to those in the non-government sector, can you make a direct comparison that they are similar?---I think the answer to that question lies in specifically which settings that they are being asked to work in.

Right. Could it be said that they - - - ?--- - - - and so you - yes.

- - - would differ depending very much so on the setting?---It depends very much on the setting. The program officers that I support as a manager do not work in residential - - -

Right?--- - - - specifically, however, they may be required to support individuals and residential if it involves skills training programs at home.

Would it - could it also differ in terms of the setting particularly as to the level of disability of clients?---No.

It could not?---The range of disabilities of clients both within Willow Court and the private sector is multi-dimensional and is the same for both settings.

Right. Okay?---Did that answer the question for you?

Yes, it does, thank you. Yes, thank you very much. But it probably pre-empted a question which I was going to have in respect to 2, number 2, where you say: Willow Court clients have varying degrees of intellectual disability. And you say that is the case in the private sector also?---That is true, yes.

Is the range as great? I mean are there - could it be that there are people - clients with, in the private sector, with lesser degrees of disabilities than those at Willow Court?---The range of ability in both the government and private sector would be exactly the same in terms of complexity and difference and types of disabilities.

So you could have a severely disabled person or a mildly disabled person in both sectors?---Exactly. There are many severely disabled people that are not registered with the service but they do exist in the community and are supported by their families. So the range and complexity within both the government and the private sector is the same.

Right. Okay. Just - if we could just go over the page at page 2, your point 3, you say:

The industry should be about what clients need this determines the skills and ultimately the type of award to regulate the industry.

Are you aware of award conditions which exist at Willow Court? Is that why you make this statement?---Can you clarify your question, please?

Well, you make a statement about the award, I assume you meant the industrial award there, do you, the type of award to regulate the industry?

MS HARVEY: Could I just intervene here? I apologise for interrupting the flow - - -

MR FITZGERALD: That is all right.

MS HARVEY: - - - but we do not seek to use Mrs Knowles-Locke's evidence in relation to industrial issues. She is not an industrial expert.

The statement, as I understood it, was just a general statement about service and needs, determining what is required into the skills and awards. We do not seek to use Mrs Knowles-Locke's evidence as industrial - - -

DEPUTY PRESIDENT ROBINSON: No. Regardless of what you seek to use it - if you put forward a statement, I think it is fair enough for the other side to seek some clarification.

MR FITZGERALD: Thanks, Mr Deputy President, I was just seeking to do that, yes. You make that statement - if I could just seek some clarification on that statement, I assume you meant the industrial award, was it?---I can't be - it's a general statement and my comment about that would be that given the nature and the complexity of the clients that obviously there needs to be a work structure or an award-type structure that is able to accommodate the complexity a client needs. Now that is a statement - it is a clinical statement. It is a kind of statement that I would make as a condition. In other words, I believe that because the complexity of clients varies enormously, then I believe that staff also need to really, in their school level, or whatever level they would come into at an award, to cope with the level - do you understand - - -

DEPUTY PRESIDENT ROBINSON: Yes. I think I understand. What you are saying is that the - - -?---Yes. I'm only speaking from a clinical point of view, not from an industrial point of view.

MR FITZGERALD: That is fine?---Yes.

DEPUTY PRESIDENT ROBINSON: Yes.

MR FITZGERALD: That is what I really sought - the answer, yes, thank you?---I'm required to make those sort of statements in my clinical expertise all the time. But it is not to have an industrial intent.

Okay. Thank you. Thank you for that aside and it does clarify it. At page 3, just the first paragraph on page 3, you talk - you say it is your opinion that there will be a higher number of professionals in the non-government disability service industry; is there any evidence so far of that occurring? Have you any tangible evidence of numbers of professionals in the non-government sector?---It's in the growth of the program, that is the community integration program, there has been more activity between the government and the professional associations and societies regarding the needs and the requirements for consultancy in the disability field. So what is happening is that there is more interest developing at the professional level and providing consultancy from any of the professions that I outlined in the statement to the industry. So that when I say it is my opinion there will be a higher number it is because

there is an increasing interest in providing professional support to non-government disability services. And that has been happening in the last 12 months to 2 years.

So you say it has increased activity, has it?---And I believe that's - mm?

Increased interest - interest and activity in professional services; is that right?---There appears to be a growth of interest in providing consultancy particularly in the area of complex and challenging needs.

Does that mean to say that there is, in fact, an increased number of professional people involved in the non-government sector?---Yes.

So there are more professional qualified people?---The professionals that I refer to there are professionals as in speech pathologists, physiotherapists, OTs and psychologists.

And they are being engaged in a direct situation or in a consulting role in your experience?---In both fields, yes, direct - both training, consultancy and hands-on.

Okay. Just going over to 3.2, the third paragraph, you talk about three critical steps necessary for successful case management; is this your professional approach to case management at Willow Court?---Could you ask that question again?

Yes, certainly, and I will go to the various aspects of it shortly, but you say there are three critical steps necessary for successful case management. Is this something that you have in place at Willow Court?---Yes, definitely.

Right?---Yes.

Is it something which is in place in the non-government sector?---The non-government sector is a wide domain so that in terms of referring to the non-government sector there is the community integration program component; there is community services that have existed for many years so we need to just clarify that point. It is a very wide domain with a number of elements to it. And it is not my opinion that good case management exists across all of those settings.

Okay. So could it be said that the approach would vary - - -?---Would vary.

- - - significantly in the private sector; would that be - - -?---Mm hm. That's correct.

Okay?---There would be some instances in the private sector where case management is not an approach to service delivery.

Right. So you would see this as the ideal rather than necessarily the practice in the private sector; would that be the case?---No. I don't believe it's an ideal. I think an ideal and the absolute practical, it would be somewhere in between there.

Yes?---It does happen. I am not saying it doesn't happen at all and it shouldn't be an ideal but it's not happening to the level that it ought to be happening.

Thank you. Just to move on, I have not very many more questions but if I could just move onto the next paragraph. You say it is important that there is a process of evaluation and modification of plans. Is that something which is evidenced in the private sector as well in your experience?---Yes, I'm trying to follow - - -

Sorry, it is - the next paragraph down, the next complete paragraph down.

DEPUTY PRESIDENT ROBINSON: The second-last paragraph on page 3.

MR FITZGERALD: The second-last paragraph, that is the best way to describe it?---Mm hm.

DEPUTY PRESIDENT ROBINSON: Perhaps if you could give the quote.

MR FITZGERALD: Sorry, if I could repeat the question, yes. I should have been more specific in identifying the paragraph. You say:

It is important there is a process of evaluation and modification of plans.

?---Okay, I'm with you now, thank you very much.

Is that something which is practised in the private sector: evaluation and modification of plans?

MS HARVEY: Can I intervene just for a minute again here? It comes back to why we have introduced the evidence that we have and I thought that it was made clear, both in Mrs Knowles-Locke's statement and the statements that I made, as we were talking about client need and the industry requirements, we have not introduced Mrs Knowles-Locke as a witness to testify as to what occurs in the non-government sector. We are

talking about client needs, skill needs in that macro sense and I am just a bit concerned that Mr FitzGerald is going beyond my evidence-in-chief in his cross-examination.

DEPUTY PRESIDENT ROBINSON: Well, he is quoting from a document which has been produced and not otherwise.

MS HARVEY: He is quoting out of context though, Mr Deputy President, because the document actually says:

This is what is needed.

It does not say:

This is what is.

DEPUTY PRESIDENT ROBINSON: Well, I did not think it was quoted out of context to be honest.

MR FITZGERALD: No, you know, I do not really understand Ms Harvey's objection.

DEPUTY PRESIDENT ROBINSON: I repeat, if Mrs Knowles-Locke feels that a question goes beyond something that she is here to give evidence on I am sure she is at liberty to know she can say, "Well, I'm not going to give evidence on that," or "You've misunderstood what I've said," or whatever.

MR FITZGERALD: Yes, certainly. I understand the purpose of the evidence given by the witness but the witness is a witness at large and I am not trying to labour a point too much at all, Mr Deputy President, but I think I am entitled - given this is a claim in respect to private providers and there is an overview of the industry which includes private providers - I think I am entitled to ask a question of a witness as to her understanding of the private sector because that is what we are here about not the non-government sector.

DEPUTY PRESIDENT ROBINSON: Yes. I am giving you that right, I think, Mr FitzGerald.

MR FITZGERALD: I am not denying that, your Honour, thank you. Sorry, I am not quite sure where I was. I think it was in respect to process evaluation.

DEPUTY PRESIDENT ROBINSON: You were in the second-last paragraph on page 3.

MR FITZGERALD: Thank you. I am not sure whether I got an answer to the question but the question was whether your statement in respect to the importance of evaluation and modification of plans, whether that was in fact something which is in place in the private sector?---That is correct.

It is?---Mm hm.

Right. And is that a widespread practice in the private sector?---Evaluation would occur in all areas of the private sector, yes.

And modification?---Modification plans, that would be variable.

So, I mean, you are talking about the whole range of services in the private sector, are you, now?---In the disability area.

Yes, yes. Supported employment as well as a residential setting?---In terms of the overall industry then it would be variable.

Right. So how did you - how would you gain your knowledge in the private sector in respect to evaluation and modification of plans?---Again, through - I'm probably not in a position to give extensive information to answer your question. However, at the beginning of your questioning I referred to the means by which I had become acquainted with the industry and that was through a process of referral, either for individual or by managements of varying non-government agents who had sought consultancy at various levels. You probably need to appreciate that because I'm a senior consultant I'm consulted about complex behaviours but I'm also consulted about the systems and the management approaches to individual client need at a broad level. So often when I receive a referral it is not simply about how do we reduce the behaviour that - which causes a problem in the workplace. I'm often requested to give an opinion on how can we in fact improve the working environment itself to reduce that behaviour. So my opinion is often sought of how to improve staffing practices or training schedules and things of that nature and that's why I've had a range of exposure to a number of settings in the industry.

Just as an example what number of settings would there be that you have had exposure in the private sector? Would it be one or 10 or in excess of 10 or - - -?---I'm probably not the first person to answer that. I can tell you what categories of service they were but I couldn't tell you what numbers they were.

I mean, are there significant numbers of services you have had exposure to?---Well, in the CIP service alone in the southern region there's at least 15 registered private agencies.

Right. And you have had exposure to all of those or - - -?---All of those services through the integration program, yes.

Is it - could it be that there are some providers in the private sector who do not have a strict process of evaluation in place even though you do say it is important?---I don't think I'm qualified to answer that question.

Right, thanks, okay. You say further - I will just move on, I do not want to labour the point - you say that:

All staff interacting with the clients need to be involved at some level with this process so their experience and knowledge is fed back into the plan.

DEPUTY PRESIDENT ROBINSON: That is the same paragraph?

MR FITZGERALD: The same paragraph, yes. I should be identifying it for you. It is just immediately following.

Now, is that something which you see as desirable both in the public and the private sector?---Absolutely.

Right. Is it evidenced in the private sector in your view?---Yes.

So when you say all staff, is that even those performing very basic duties, routine duties?---Absolutely.

Right. And that is something - - -?---In some part or another they need to contribute to the plan and have a role in relation to clients.

Now, again through your experience can you say that that process and involvement is common in the private sector?---I don't ever give an opinion and I would prefer not to do that unless you would like my opinion.

Well, as Deputy President Robinson said, if you are unable to give an accurate answer we would prefer it that way?---Can you ask me the question again, please?

Is it, the process of staff involvement, common in the private sector?---Staff are involved in many different ways, but I couldn't be specific, I couldn't answer that question.

DEPUTY PRESIDENT ROBINSON: I think that goes beyond what - the statement there is that - the statement is that all staff interacting with clients need to be, whether they are or not, and I suppose we are attempting to see

whether or not there is justification for setting up an award to reflect that sort of situation.

MR FITZGERALD: Right. Okay?---Thank you.

Well, I will move on. I do not want to labour the point any further. Just the next paragraph, you say:

The quality of service delivery for clients can be undermined by low wages.

How are you able to make - what evidence do you base that statement on?---Again I was speaking as an expert commission, and this - and I can only clarify as to why I made that statement and it said "can be undermined by low wages". It has been my experience that if people are paid at a level of salary that is not equivalent to the amount of work required of them, then, one, they don't particularly want to perform the tasks that they may be required to perform in that environment; that's the first argument. The second argument or the second feeling I have about this statement is that if people are paid low wages in this industry then they then feel devalue and then the kind of work that they offer is in itself of low value. And my primary commitment to this process is because if people feel devalue then they will provide a less than satisfactory service directly to the client.

Okay?---So it's a statement of my judgment rather than an explicit fact.

DEPUTY PRESIDENT ROBINSON: Are you saying that the level of wages is the main or the chief motivating factor when a staff member provides service to a client?---No.

I did not think you would?---No. I think it's a contributing factor - - -

Yes?--- - - - but it's not the principal factor, no.

No. Have you seen any instances where - in your experience where staff provide less than optimum service to clients because they feel under value?---I have.

Have you?---Yes. I would - - -

At Willow Court?---No. Willow Court is driven by a very clear wage structure and requirement. I haven't seen that in that setting.

I guess it is hard to always be objective in assessing what is value for service. Thanks, Mr FitzGerald.

MR FITZGERALD: Mrs Knowles-Locke, in tab 2, which is the organisation structure, you have, I assume, a number of professional people responsible to you?---That's correct.

What - can you just outline those again. They are somewhere in your statement but if you could just outline the nature of those positions?---I have four teams that work as part of the professional support services team, and two of those teams involve program officers, and program officers, which amount to around 13 members of the team that I'm referring to, are required to be at least one year trained with a development or disability TAFE course or an equivalent or an enrolled TAN, and they provide services both during the day and after hours and weekends. The remaining component of the team is made up of professional officers of a different type and they comprise of senior speech pathologists, senior occupational therapists, senior physiotherapists and their assistants, senior social worker, and at any one time the program would sustain people on short term contracts, post graduate students and so forth.

So is it true that your statement generally is written from the perspective of the professional person, the occupational therapist and the speech pathologist and the like?---From - can you clarify that question?

Well, your statement provides a number of ideal objectives, I suppose, in terms of, in particular, in good case management. Is it true that you have written or have put to the commission those aspects from a professional point of view, particularly in view of the staff who report to you, professional staff who report to you?---I have particularly done that from the point of view of being a professional clinical manager.

Right. So the involvement - the requirement for involvement comes from a professional aspect more so than a non professional aspect in your view?---From a professional aspect, yes.

Yes. Okay. You have read the HSU application?---I have.

Are you aware that it contains - sorry. Are you aware whether it is wide enough to encompass professional people such as occupational therapists and speech pathologists?---I don't believe I'm in a position to answer that question.

If I indicated that it does not encompass those sort of professional people, would that in any way change your statement?

DEPUTY PRESIDENT ROBINSON: It sounds like a difficult one to - - -?---I could make a comment about that, but I can wait and see what other - do you want me to proceed with that?

MR FITZGERALD: I think it is a fair question.

MS HARVEY: I think it is a big ask to ask someone to respond from memory about a classification structure. And if Mr FitzGerald wants to make statements, ask questions in detail on that, Mrs Knowles-Locke should have the opportunity to have the document in front of her.

MR FITZGERALD: I would be most happy for that to occur?---I can make an opinion - I could give an opinion. I don't have the document in front of me and I am aware - - -

I wonder whether that could be provided.

DEPUTY PRESIDENT ROBINSON: We have been going for about an hour. I thought we might take a 10 minute break anyway and take the opportunity to have that document put before Mrs Knowles-Locke and she can have a bit of a look at it and we can all take a 5 to 10 minute breather. We will adjourn.

SHORT ADJOURNMENT

MR FITZGERALD: I will try to be brief, as brief as I can. I will not unduly delay it now.

Mrs Knowles-Locke, just turning the page to point 3.3 on page 4, in the second paragraph you make a statement:

Services need to ensure that the person with a disability who has a need, for example a medical need, has access to the appropriate service.

Is that something which private providers are providing at the moment, are you aware?---Yes, they would be.

They are. Can you quote examples of that?---Well, medical needs would be a whole range of medical needs as people would generally understand them to be. Whether it be a requirement for hospitalisation or any other medical requirement. However - - -

What about - sorry, sorry to interrupt you?---You need to - the population - there is a requirement that individuals have varying ranges of medication

and it is important that they have access to the appropriate medical services to provide that service.

Would organisations such as Oak Industries or Devonfield be providing those services, would you be aware?---They don't actually provide the medical services itself in the terms of medical service. They would refer - I would presume that they would refer the individual to the service that is required.

When you say presume, you have no actual knowledge of that referral service being available - - -?---I haven't been - - -

- - - in the private sector?---I haven't been directly involved in a pure medical situation in a private sector where I have had to know whether or not an individual has been referred to - to hospitalisation. That is outside of my area. However, if it is an area of requirement where the individual requires medical support because of medication, that is related to behavioural intervention, then I would know whether or not they had been referred to the appropriate medical service. And my experience has been that they had been referred to the service required.

You have had a chance to just re-familiarise yourself with the HSU application, have you?---Yes.

Right. Are any of these statements, in your view, outside the scope of the application; are you referring to employees and employees skills and requirements outside the scope of the application or are you talking about employees within the application?---Employees within my application are those that are referred to people that I manage and co-ordinate; is that what you - - -

Well, that is the question. Is that the basis of your statement, or is from the perspective of employees covered within the scope of the HSU application?---My statement is about the industry and my knowledge of people that work in that industry. And in which case the award refers to people that work in that industry.

Say for instance occupational therapists and other professionals who are outside the scope of the HSUA application, you still have made reference to it in this statement; is that correct?

DEPUTY PRESIDENT ROBINSON: I do not quite understand the question.

MS HARVEY: Can I just clarify - - -?---No, I'm not sure about the question.

MR FITZGERALD: Sorry, let me just rephrase that.

MS HARVEY: Could I just make a point of clarification. They are included in the scope of the application.

DEPUTY PRESIDENT ROBINSON: So the claim document - - -

MR FITZGERALD: I will move on from that question, Mr Deputy President, it might be easier.

DEPUTY PRESIDENT ROBINSON: Yes, all right.

MR FITZGERALD: So, just go back in terms of meeting dependency needs, you do not know whether some of the private providers or could you tell me whether you know whether some of the private providers in fact cover the sorts of services which you referred to in 3.3, leisure, medical, professional, vocational or was that something which you in your working capacity are used to?--I can't, you're referring to paragraph 3, under 3.3?

That is right, the last sentence of paragraph 3?--Okay. This requirement covers all types of services, eg, leisure, medical, professional, vocational, all right. All of those services in varying degrees would be offered in the private sector.

So, providers such as Devonfield would provide all those services in your view, medical, leisure, professional, vocational?--I'd need to qualify my answer by saying that if they were not a direct service provider they would seek to have that service provided to their client.

Have you actual knowledge of that or is it just what you feel is desirable?--I have visited Devonfield and have had dealings with Devonfield, yes.

So, they would refer - sorry, clients in respect to leisure, medical, vocational?--Yes, they would do that.

Right. And is that common from your experience in what prevails in the private sector?--I don't feel equipped to answer that question.

Okay, thank you. Now, in the mixed staffing models which is point 4.1, page 5, the second paragraph you say it is important that community services have skill levels to be able to provide a professional level of service. How evident is that in your view in the private sector at the moment?--Can you ask me that question again?

Certainly. You make the statement that it is important that community services have the skill levels to be able to provide a professional level of service. How evident is the level of skill that you talk about there in the private sector at the moment?---I think I need to clarify that that is about what needs to be there, not what is or isn't existing.

I see, that is fine, thank you. I assume that you make the same comment, please tell me if I am wrong, in respect to the next paragraph, 4.2, paragraph 3, where you say:

It is a minimum requirement that there is direct supervision for staff who only have limited expertise.

Is that - - -?---That's what I believe there needs to be. Again, I don't want to comment as to whether it does or doesn't exist. Was that what you are leading to?

Yes, that is right, okay. So, it is an ideal recipe, if you like, rather than what actually exists as a practice at the moment; would that be so?---It's a proposed formula that I believe was necessary.

And that would apply to the paragraph and the dot points following that too, would it not?---Yes, that's correct.

Okay, thank you. It just particularly, the last dot point which is the first point on page 6, you say:

Have good communication skills and the capacity to work in a stressful work environment.

I mean, are all settings in your experience in the private sector particularly stressful?---Yes.

Right. What about those who cater for clients with milder levels of disability?---I still believe that the nature of the work for one reason or another can be stressful from time to time, given the nature of the clientele, right.

But could it be so that that would vary enormously depending on the client needs?---Yes, that would only be one contributing factor to the area of stress though.

I am getting close to the end now, sorry I have taken so long to get there but you say in the last paragraph in 4.2 towards the middle of the page, you say and I quote:

I have studied the HSUAs application for a new career path. I am not able to comment on the valuation of the skill however in my experience it covers the skills required and groups them appropriately in a hierarchy of skills.

How are you able to say that, make that statement?---Okay. My answer to that question is again from a clinical professional point of view and I refer there to the, it covers the skills required, so, in my experience as a clinician or a professional co-ordinator it covers a range of skills that I believe are necessary to be an employee in the field.

Okay. You go on to say:

I consider it a good model suitable for service delivery.

Again, how are you able to make that statement?---Again, it's from the point of view of making a clinical management judgment.

Have you considered any other alternative model whether that could in fact - - -?---I haven't made a statement, no, I haven't made a statement that I have compared it to any other models.

Have you examined the counter application made on behalf of employers?

DEPUTY PRESIDENT ROBINSON: Well, I think that question has been answered in - - -?---That is not - - -

- - - by virtue of the previous answer.

MR FITZGERALD: Yes, it has. Yes, okay, that has.

DEPUTY PRESIDENT ROBINSON: Unless I am wrong.

MR FITZGERALD: No, I think you are right there, Mr Deputy President.

Would you be prepared to consider our application and whether that, in fact, presents as a suitable model?

MS HARVEY: Can I just say that is a rather odd question? Again, I emphasise that this is my application, HUSAs application.

DEPUTY PRESIDENT ROBINSON: And your witness.

MS HARVEY: And my witness, and my understanding of the rules of evidence is that cross-examination is to be restricted to the

evidence-in-chief, and the application before - the issue being considered here is the cross-examination of the evidence that the witness has already given, not on some other matter that is unrelated.

DEPUTY PRESIDENT ROBINSON: I think, with respect, the question goes to its - it is somewhat speculative as to whether or not an invitation will be taken up for Mrs Knowles-Locke to come back as your witness.

MR FITZGERALD: No, not necessary, but I just - just let me go back to the point of evidence, too. I do not believe the rules of evidence have strict application in this tribunal, in any event.

DEPUTY PRESIDENT ROBINSON: Well, I always make the declaratory statement that the only test really is relevance. There is, I think there is a perception about - that you cannot raise anything that was not raised in evidence-in-chief. I do not believe that is quite true.

MR FITZGERALD: I was - certainly - - -

DEPUTY PRESIDENT ROBINSON: Am I on the wrong track, Mr Fitzgerald? You with your law degree.

MR FITZGERALD: I do not know whether I can speak authoritatively on it at all, Mr Deputy President, but it is my view that within the act there is specific provision which excludes the strict rules of evidence, and the commission can proceed without regard to meeting the technicalities in form. However, I agree that, you know, the issue of relevance is - - -

DEPUTY PRESIDENT ROBINSON: No. Of course, no one would raise technicalities - - -

MR FITZGERALD: No, of course not.

DEPUTY PRESIDENT ROBINSON: - - - and rely on - in this commission.

MR FITZGERALD: But look, I will not proceed with the question any further.

You make a point at point 4.3, the second paragraph:

Staff in the non-government disability services have had experience with violence from clients in their services.

How do you or on what basis did you make that statement?---On the basis of numerous referrals from the private sector and the government sector.

Right. Is that something which would be common in all services, particularly in the private sector?---No.

So, could it be that it is confined to a small sector of services in the private sector?---No.

Is it - - -?---It is not a predictable issue. One could not predict that in one service it never exists and never likely to exist again. One could say that it could occur in time depending on the nature of the clients being serviced by that agency at the time.

Right. For instance, the supported employment area, would you have had any experience in respect to - experience with clients in that sector?---Again, the nature of the clientele through those services varies from time to time so at any time there could be an example of where the propensity of a client evolves in one of those scenes.

But would you acknowledge that that could vary enormously depending - dependant on the client and the client needs?---It varies enormously but that does not diminish the prevalence of it.

In the concluding statement here, the final paragraph of the concluding statement, you say:

A proper skill-based award will assist in identifying training and staff - and skill needs of staff.

Why do you make that statement?---Why do I make that statement?

Yes?---A proper skill-based award will assist in identifying and skill based needs of staff? I make that statement because I believe that it is essential that there be a structure or a requirement or a skills requirement listed - - -

Could - let me put - - -?--- - - - so that the staff know the parameters or the way in which they are required to work as there are no - - -

Does that necessarily - is that requirement necessarily established through the basis of a proper skill-based award, as you put it?---Sorry?

Is that necessarily required to be established through the establishment of a proper skill-based award?---I believe so.

Right. Well, could it not exist without an award in place, simply by management?---I do not think I am an expert to comment on that.

Right. Could it be that you have, in fact, utilised the assistance of the HSU to assist you in making that statement?---I would not answer that question.

Well, I think you are required to answer it. With respect, I wait for the deputy president to make a judgment on that.

DEPUTY PRESIDENT ROBINSON: Witnesses in this jurisdiction are not compellable.

MR FITZGERALD: Well, that is your judgment, I respect that, but I would ask Mr Deputy President that it is a reasonable question. There is very much an industrial thrust to that statement, and the witness has already stated that - - -

DEPUTY PRESIDENT ROBINSON: Well, I think you have got to respect a witness right to make the judgment as to whether or not they are able to make a comment?---I'm willing to clarify my response to that question. Part of my expertise as a clinician and a clinical co-ordinator is in the field of analysis and systems analysis and I believe that I am in a position to make a comment that is given from a clinical perspective in saying that I feel very strongly that an award structure or a - that assists in identifying training needs would be beneficial to having - would be complimentary to clinical service delivery and I am certainly willing to reinforce my statement which is this will mean better planning and case management for clients.

MR FITZGERALD: But does the award structure necessarily ensure there is better case management?---It reads as though a skill-based award will assist in identifying training and skills of staff. I am prepared to accept and make this statement that it is - that an award would assist in that process.

What I am uncertain is how will an award assist in the process? You made the statement there, can you tell me why and how an award can assist in that process?---Because it provides a known career path and structure and it is of my opinion that when people are offered a very clear structure and known career path that they are then able to function more confidently.

Right. But it talks about - you talk about training - identifying training and skill needs of staff; could that not be just as well identified without an award being in place? Why the necessity for an award to be in place to - - -?---I made a commitment to - - -

DEPUTY PRESIDENT ROBINSON: Well, an award would be an official document which would identify a classification structure, and

anyone would only have to look at the award to identify whether they can fit into that classification or they cannot, and if they cannot, then they would need to look to getting some extra training, I would have thought, in any particular area. I would have thought it very self-evident, with respect to Mr FitzGerald, that I suppose we can speculate as to whether or not the same result would occur if there was not this official identification - if the claim gets up.

MR FITZGERALD: The point I make is that it is very much an industrial statement in nature, Mr Deputy President, and the witness has already indicated that her expertise lies in the clinical side rather than the industrial side. And that is the point I was trying to question her on; simply that. Mr Deputy President, I think, given the very comprehensive evidence given by the witness, Mrs Knowles-Locke, and it is, well, it is in my experience unusual that it be given in this form rather than verbally. There is nothing wrong with that and she has certainly testified as to its correctness, I am not doubting that, but we - - -

DEPUTY PRESIDENT ROBINSON: Well, it can be of benefit to have a document.

MR FITZGERALD: It can be, but I think we would seek, after the unfolding and the progression of the union's case, to simply reserve our rights to - if we could recall the witness - it may be we do not seek to exercise that right but we would simply just seek to reserve that right at this time.

DEPUTY PRESIDENT ROBINSON: Oh, well, we will examine that question if it arises, at the time.

MR FITZGERALD: If it please. Thank you very much for your time and effort.

DEPUTY PRESIDENT ROBINSON: Yes. I have just got a couple of questions to satisfy my inquisitiveness, if I may? And I refer to the top of page 2 of your statement; where you refer to the fact that the Community Integration Program, or CIP:

Is the program designed to assist residents of Willow Court to move into the community.

And you say that the objective is that:

People with disabilities live in the community to the best of their ability and to date approximately 150 clients have been transferred to the community sector under the CIP.

How many people are left in Willow Court compared to that approximately 150 who have moved out?---150.

Another 150?---Yes.

And has the expectation rather than necessarily the objective, that the whole of that 150 will be suitable for community based support or will there always, in your view, be the need for an establishment like Willow Court, if not Willow Court itself, to have that sort of facility with it?---There are a number of levels required to answer that question.

Yes?---At the first level, which is a philosophical level, there is an ongoing commitment that people with intellectual disability have a right to live in the community.

Yes?---The second level to that question relies in the constraints concerning the economy and so forth. And the third level is based on my own opinion which you sought, and that is an opinion I have always held, and that is that a range of accommodation options need to be available to cope with the complexities of clients that live in Tasmania, including a centre-based option.

Yes. Is it a fact that there has probably been a worldwide trend for the relocation of people with physical intellectual disabilities to move into the community?---Could you repeat that question, Mr Deputy President?

Yes. Is it true, in your - within your knowledge, or not, that there has been a worldwide trend to get people out of institutions like Willow Court into integrated community locations?---That is true.

Yes?---That internationally in the western culture and nationally the trend has been to move people out of congregate care into community settings for the last 20 years.

Yes. And would it be true that the rate of integration into the community away from establishments such as Willow Court is dependent upon the capacity of the community to provide alternatives suitable - suitable alternatives?---That is correct, yes, that would be correct.

Yes?---But the - - -

And would it be that, your position, that you would support, as I think you have already said, that eventually the whole of the other 150 would eventually have no need - - -?---That is a philosophical position.

- - - to be located in such a - - -?---That is a philosophical response.

Yes?---The practical response is, we are certainly driven by the nature and the scope of the infrastructure available to provide the range of support for clients. The population is wide, diverse and complex.

Yes, of course. Yes, I was particularly interested in that aspect because you sometimes get some community debate as to whether or not that direction is a continuing one or there will be a peak reached. We shall wait and see and hope, I guess?---Wait and see.

Ms Harvey, do you want to just re-examination. I - now you are restricted in my view to not raising fresh material.

MS HARVEY: A restriction that I shall follow vigilantly. And I find it somewhat amusing, Mr FitzGerald asking me to sit down, considering that this is the third day of hearings and we still have not really got - this is the first time we have got to substantive matters. But anyway.

DEPUTY PRESIDENT ROBINSON: Well, I guess it can be - this atmosphere can be testing for us.

MS HARVEY: It can. A stressful atmosphere, I think I will have to run a work value case for union officials, Mr Deputy President.

MR : No, all advocates.

MR : Include us, please.

MS HARVEY: All advocates, you want one too.

Okay, if I could just ask you a couple of questions. Now, dealing with the issue of the equivalence of the services within Willow Court about independent living services, I think it was on page - - -?---One. Page 1.

Yes, page 1. Now, what aspect of the service are you actually saying that is equivalent there? It is just I think we should clarify that?---I cannot - you are looking for the equivalent of the service provided by the program officers - - -

Yes, but when - - - ?--- - - - out to the community.

Yes. When we are making comparison of equivalents you are usually comparing one thing, what aspect of the service are we comparing, is it the outcome, the staff, the role?---I cannot - the roles for program officers and the role - the equivalent role in the community would be similar in terms of the support requirements. The settings would also be similar, except for the independent living services, which I have referred to there, does not

include residential. So, yes the same - there would be an equivalent to all of those services.

Right. So, it is the equivalent except for the residential, that is the only aspect that is not equivalent to Willow Court?---Except for residential.

Yes. Okay, now you go to the issue about varying client needs. Could you just clarify your statements in relation to this: do you think there are different needs between government and non-government clients? Are their needs different?---No.

Not in any way?---Again it is a multi-level response. If you take the common denominator level then the needs of clients are the same, they have the same needs to be respected and offered services and support that meet their needs and the range of services required for them is the same for the entire population.

And again turning to the issue of process, in terms of the case management you have described, is that the same by sectors?---Yes, all individuals require case management.

Okay?---It is critical to understand that because this population is highly dependent then they rely upon case management and processes to support them gaining services and - and the support that they require.

Okay. You said in your statement that you have an involvement in policy development, could you give me some examples of what sort of policy development you have been involved in?

MR FITZGERALD: Whereabouts is this, sorry.

MS HARVEY: In fact you asked a question about it which was in - yes it is in - the bottom of page 1 before 2 in 2?---do you want examples of where I had involvement or where I would - - -

Yes. What sort of policy you have been involved in?---I had involvement in the development of policy regarding the delivery of professional support services, policy development concerning standards of care, policy in relation to staffing requirements, quality assurance, things of that issue - things in those areas.

Have you been involved in policy development as it effects the non-government sector?---Only vicariously or indirectly.

Okay. Who would you consult within the context policy development processes?---Say that again?

Who would you consult in the process of policy development?---What kinds of individuals or bodies, do you mean?

Yes?---I am active member, first and foremost, of the executive committee of Willow Court. I can be called on at any time to provide an opinion or submissions or statements to corporate management at agencies level. I can required to contribute to report submissions or consultancies for non-government management committees if they require. that would be the range of levels.

So there is a role in consulting the non-government sector in policy development?---Yes.

If I could just turn to the issue of health professional services. Are you familiar with the outcome standards - - - ?---Yes, I am.

- - - for non-government sectors? Do these cover health professional services?---They do, yes.

Right. In what way?---Health professionals as in the kinds of services that I provide or in the non-government sector are catered for under two areas, and one is under the accommodation area and also under the rights of - the standards relating to education and leisure. And that is where the professional services are required to meet certain outcomes.

Right. Now, you said you are familiar with the outcome standards, the steps you have identified in case management are they consistent with those outcome standards?---That is correct, yes.

MR FITZGERALD: I just wonder whether this is going any further than the original evidence. The opportunity was given in the presentation of the statement and further elaboration. It was certainly, from my recall, nothing which arose from cross-examination. I did not raise the matter at all in cross-examination. It seems to me, Mr Deputy President, that it is raising further material.

DEPUTY PRESIDENT ROBINSON: Yes. Well, it should - this process should simply be to explain something which was raised which - - -

MS HARVEY: I am seeking to do that, Mr Deputy President, because the implication of what Mr FitzGerald raised was that the steps in the case management were not something that was required in the non government sector, it was only something that was in the government sector, and I am just seeking to demonstrate that the two are consistent.

DEPUTY PRESIDENT ROBINSON: See, evidence-in-chief has been present, and if Mr FitzGerald asked a question then the witness would be confined to that question, but it still did not clarify in your view or it left unstated something, then this is what the exercise is about and Mr FitzGerald is quite right that you would not want to be raising matters which were not raised in evidence-in-chief.

MS HARVEY: Well, I will rephrase the question that I asked. It was in relation to the three steps of case management which was raised in cross-examination.

DEPUTY PRESIDENT ROBINSON: Well, that is the critical thing.

MS HARVEY: The critical point is, those things that you were - the three steps in case management, are they equally applicable in both sectors?---That's correct.

Yes?---They are required under the outcome standards.

I was wondering if you could just give me an example of how - you said that management problem leads to - can lead to client problems, and I was just wondering if you can expand on that a little bit?---Did I make reference to that?

In the cross-examination.

MR FITZGERALD: Well, which particular area is it reference to?

DEPUTY PRESIDENT ROBINSON: Yes, if you could preface your question by an explanation of where it comes from.

MS HARVEY: You were talking about the evaluation process in the private sector and whether that was actually required, and the response given was that there was a range - that the witness had been involved in a range of services where this evaluation had been involved and that there had - yes, in referral from clients back from the community sector because of complex behaviour problems, that sometimes that was to do as a result of management problems, and that the witness was required to be a consultant to management in the non government sector to try and resolve the client problems.

DEPUTY PRESIDENT ROBINSON: I see.

MS HARVEY: That was the context in which I was asking that question.

DEPUTY PRESIDENT ROBINSON: Okay. And the question is?

MS HARVEY: The question is if the witness could just give a bit of an explanation because I thought it was a bit unclear and it would assist everyone if you were a bit clearer on that by way of an example?---Can you repeat the question, please?

The question is, could you give an example of where you have had to deal with a situation where the management practices have led to client problems in the non government sector because of management difficulties?---Yes. An example would be where a client would be referred for a clinical opinion or for consultancy, and that referral would have come through the management. Their concern would be around the future of the client's safety and the safety of the staff given the nature of the behaviour that the client might have been referred for, which would be severe because mostly cases that are referred to me, if they come to my level, are complex and severe otherwise they are dealt with by staff at other levels. So an example would be where the behaviour is complex and severe, and the management believes that the problem is not indigenous only to the client but it could be inherent in the environment. The environment then includes a number of staff and the nature in which - the way in which the environment is run. So they would seek an opinion from me as to not only how one directly deals with the client and what ought to be done at a micro level but would seek an opinion as to how to rearrange or in some way advise them on increasing more effective work practices that would then support the client and support the staff and increase the overall positivity of the whole working environment. So that would be an example, yes.

Thank you. If I could just turn to the issue about case management again. Mr FitzGerald - just to give the context, Mr FitzGerald was, as I understood what he was asking, was implying that this case management process is just something that happens at a senior sort of professional level and is not something that happens at lower levels. Now, you talked about the need for an integrated approach with all staff involved in case management. Could you just expand on that?---I believe that the core individual to the process is the client and therefore because there are a number of individuals that ensure that the client is supported and a service is provided to them that all individuals that have a role have to be involved in the planning. In order for a plan to exist there has to be a case manager, and because the client can't case manage themselves - in some cases they do - in the majority of cases they require someone to manage their life or to ensure that some co-ordination occurs for them. If that only occurs at a senior level or at a level beyond the home or the direct care level then the staff are not involved in contributing what components should be involved in the plan nor do they take ownership for the plan that may then be devised for them. So I'm committed to a democratic process where participating management leads to better client outcomes.

And what happens if staff at the lower levels are not aware of the plan and their involvement in it?---Well, they don't carry it out: they are not committed to it, they don't contribute to it, they don't - and if they don't have the skills to recognise that a plan needs to be in place, they neither seek it nor are committed to it.

And what is the result and impact on the client if that happens?---The impact to the client is that they have good and bad days as a result of that, or it is a very unco-ordinated approach they overallinaudible.

Right, thank you. Just a couple of further questions. I think we need to clarify this thing on section 3.3, which was about the medical services. I thought it would be useful to clarify - from the questions that were being asked, I think there is some confusion about what you were saying. My understanding of what you are saying is not that the service provides the medical service themselves but the staff have to be able to refer; is that correct?

DEPUTY PRESIDENT ROBINSON: You are not going to answer the question for the witness.

MR FITZGERALD: I was about to stand up. Is it a question or an answer?---I did answer that.

MS HARVEY: So, is that correct, that those services - Mr FitzGerald asked you whether the services themselves provide that?

DEPUTY PRESIDENT ROBINSON: That is a leading question?---And the services don't provide it because they are not a medical service.

MS HARVEY: Thank you. I wouldn't think that Mr FitzGerald would object to the question because I thought it would assist the case that he was trying to put in fact, but I will come back in a minute.

MR FITZGERALD: We will decide that.

MS HARVEY: Now you have made a statement that direct supervision is necessary for staff with less expertise. Why did you make that statement?---Why did I make that statement.

Well, what happens if it does not happen?---The staff don't have direct supervision, then they become reliant on their own individual judgment, and they then draw upon their own individual skills to react to all manner of situations. And without some co-ordination or direct supervision, that

can lead to a conflict of all sorts of individual styles and individual decisions being made from - that may not be in the client's best interests.

Thank you?---I could give an example if you wanted one.

Yes?---An example would be that it may be considered part of the plan that that individual have a certain medication regime and have a certain supported leisure option. If staff aren't directly supervised, and if they are without supervision for any length of time, they may then lead to - they then make decisions about, well, the client mightn't need medication, or I've changed my mind to allow them to have a leisure option andinaudible. and tomorrow they mightn't need it. So it leads to a very ad hoc service delivery for the client.

Okay, thank you. That actually concludes the questions that I was going to ask in reply. So I would like to thank you for appearing. If the commission pleases, can we dismiss the witness.

DEPUTY PRESIDENT ROBINSON: Thank you, Mrs Knowles-Locke for making yourself available here today. It is not easy for anybody to be a witness, although I must say I do not think today was as adversarial as some other instances I have seen, much to the credit of all involved. We will allow you to remain or depart as you wish.

THE WITNESS WITHDREW

DEPUTY PRESIDENT ROBINSON: We might just go off the record.

SHORT ADJOURNMENT

DEPUTY PRESIDENT ROBINSON: What would you like to do with the rest of today?

MS HARVEY: Mr Deputy President, I just wanted to sum up the witness. Obviously later in my submissions I will be tying that in to support some of the evidence that has already been given, and I will not take time in doing that now. But I do think that it is worth clarifying this issue about medication and medical services because it would cause me

some concern if the commission was under the misapprehension that we are arguing in any way that services are providing a medical service. They are not. What they are doing is, and as I understand what has been said is that what they are in fact doing is if there is a need they are referring outside.

The whole model of the disability service industry is not a medical model, it is about providing support and being able to recognise when we need to buy in services. Now I am a little bit cynical about this particular issue because there are very serious legal implications under the Poisons Act, and I just would not like it to be misunderstood in any way, which leads I suppose to the issue of why I may have been accused of inaudible. . . . questions, but I thought it very important to clarify that statement because I think it was slightly misinterpreted, what she was saying.

DEPUTY PRESIDENT ROBINSON: Yes. Would staff though not have some responsibility for the provision of medication or making medication available at set times, which has been properly prescribed and kept on the premises?

MS HARVEY: This is a very complex issue and we will be calling witnesses who can tell you exactly what happens. The Poisons Act as it stands does not allow certain non-qualified people to in any way provide medications. Now what tends to happen in this industry is that a system of dose sets or pack system is used whereby a qualified person such as a pharmacist or a doctor puts it into dose set form and then people are assisted to take it themselves.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: Now having said that, whilst there is no discretionary power on behalf of the staff, obviously there is a monitoring that goes on and in addition staff need to be able to deal - to recognise symptoms. Say, for example, that if a client was about to have an epileptic fit, to be able to recognise and know what action is to be taken in a crisis situation. But I think it is very important that - and certainly my organisation has never argued that staff in this setting should have responsibility that is beyond their legal - - -

DEPUTY PRESIDENT ROBINSON: No. From what you have said I assume that that assistance in matters of medication would perhaps be along the example that, okay, it is now a certain hour of the day, isn't that the time at which you are supposed to take your next dosage?

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: And perhaps to observe that the medication in fact is taken for inclusion in some sort of report or in relation to knowledge of consequences later, whether it might be attributed to the taking of a correct dosage or the absence of taking the dosage.

MS HARVEY: It does - my understanding is it varies immensely depending on the client. Often medication is part of the life skills plan, ie, what is attempting to be imparted to the client is the capacity to be able to be very self-reliant. There are some clients who are quite okay and can self-administer in every respect. There are others who have greater levels of dependency where there is a bit more care required, and often that is part of an actual training program.

DEPUTY PRESIDENT ROBINSON: And, again, I should imagine that there would be medications and medications that some would have to be provided by perhaps visiting professionals and not left to anyone else.

MS HARVEY: Well, certainly, that is correct and, I mean, it is one of the skills that staff do need to have as to make sure that they are not in anyway going beyond their legal capacity.

DEPUTY PRESIDENT ROBINSON: Yes, yes.

MS HARVEY: In terms of where we go today I am mindful that it is 4.30. There was just one thing that I intended to raise right at the very beginning because of the turn of events taken and that was a factually - when I was reviewing my submissions after the last hearing I realised I made a typographical error in my notes and I just wish to correct it for it the record. I said that a typical staffing profile for a group home was that they would have four part-time staff. It should have been four full-time staff plus casuals and part-timers and, I mean, obviously there is some variation but I just thought I better correct that.

So where we go from here is we still have one threshold issue to run courtesy of the TCCI and that was the issue to do with the without prejudice matter which arose from the last hearing which we have not dealt with yet and I am not sure whether we should deal - I probably should deal with it first thing tomorrow morning. I am happy, if Mr FitzGerald is happy, to conclude this afternoon at this time and then perhaps we could recommence tomorrow starting with the threshold issue on without prejudice and then I could proceed according to the outline of submissions I have already provided.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: If the commission pleases.

MR FITZGERALD: That is fine. I am happy with that. I am just wondering whether we could get some indication how far we will be going tomorrow just as an estimate?

MS HARVEY: Actually that does remind me that part of our agreement was - from the previous hearing was that we would set extra dates. I think that is going to be necessary. We have covered to date, if I can just refer to HSUA1 - to date we have covered section 1 and section 2 and that is as far as we have got. We still have the threshold matter to run. Tomorrow I would anticipate, providing we can - depending on how long that actually takes - certainly that we cover the history of award restructuring negotiations and outline of the claim. Given the progress to date I would be hesitant to say we are going to finish 1.1 but I would hope to and then on Friday we would be looking at 5.2. However, in relation to 5.2 I have a witness who I wish to call in relation to 5.2 but she is actually about to go overseas and so whilst in the order of things it would be more convenient to have her later, or more logical, for her own convenience I would seek to call her first thing on Friday morning.

DEPUTY PRESIDENT ROBINSON: Well, it is up to you, I think.

MS HARVEY: Yes. So, therefore, by the end of Friday I would hope that we would have gone a substantial way towards finishing 5.2 but without the witnesses - the remainder of the witnesses. Then on the 6th we would be looking at 5.3 and 5.4, 5.4 we will not really require much evidence on because it is an agreed matter in the sense of principle because both applications include annual increments. However, there is a difference between the parties about the way that should be assessed. So actually it probably means that there will be some evidence required in 5.4 which means that we have still go - sorry, I was talking about the 6th.

On the 7th I intended to call - I have organised to have the witnesses for section 5.2 on the 7th, so then we would be looking to cover the remainder on the 8th, but that is obviously very ambitious and I suspectinaudible. to the day that has been set aside for the following week. So it is my view that we are going to have to set aside some more dates and if it is convenient I would prefer to do that now so we have got maximum notice.

DEPUTY PRESIDENT ROBINSON: I do not know whether you really need my involvement in the sitting dates.

MS HARVEY: Sure.

DEPUTY PRESIDENT ROBINSON: I hope.

MS HARVEY: One would hope not. Well, Mr FitzGerald said previously that he would need a couple of weeks to respond to our submissions, so perhaps if we look at - some dates have already been set with your associate and - - -

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: - - - perhaps if after this hearing we could confer with her about those dates?

DEPUTY PRESIDENT ROBINSON: I have every faith in you being able to find some dates of common convenience from my associate.

MS HARVEY: Well, if not, we can deal with it tomorrow.

DEPUTY PRESIDENT ROBINSON: Yes, yes, but in a formal sense we will adjourn until tomorrow at 10.30.

THE MATTER WAS ADJOURNED UNTIL
THURSDAY, 23 JUNE 1994