



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. **9325 of 2000**

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

Re: by varying Clause 7 - Definitions
by amending the definition of "Security
Officer Level 5"

COMMISSIONER ABEY

HOBART, 30 January 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING COMMENCED 11.05am

COMMISSIONER: I'll take appearances, please.

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

COMMISSIONER: Thank you, Mr Tullgren.

MR P. MAZENGARB: PAUL MAZENGARB, representing the Tasmanian Chamber of Commerce and Industry Limited. If it pleases the commission.

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

MR TULLGREN: Thank you, commissioner. Commissioner, this matter is an application under section 23 of the *Industrial Relations Act 1984* to vary clause 7 of the Security Industry Award, to vary the definition of Security Officer Level 5 to include persons involved in
15 emergency response functions who are employed at the Pasminco Hobart Smelter.

In the original application which was dated 8 December 2000 the statement of particulars included the proposed wording of the variation but it was cast in wider terms than it is now proposed in that
20 there was not a specific reference to the Pasminco Hobart Smelter.

Formally, for the record, I'd seek to tender a revised copy of the application to vary, which contains the amended statement of particulars. I have simply reproduced the original application instead of cutting and pasting but there's no change. It still contains the date
25 of 8 December 2000 but the statement of particulars has been amended.

COMMISSIONER: Thank you. Do you have any objection to the amended application, Mr Mazengarb?

MR MAZENGARB: Mr Commissioner, there were discussions
30 between myself and Mr Tullgren. I haven't actually seen the amended application but he did advise me that he would be requesting to change his original application so I'm just looking at it now. I have no objection to the application, thank you, commissioner.

COMMISSIONER: This application will replace the original. Thank
35 you, Mr Tullgren?

MR TULLGREN: Commissioner, subject to any preference the commission might have, it would be our intention in these proceedings now to seek to call Mr Chris Patchett to give evidence. Mr Patchett will be our only witness. I understand my friend is proposing

to call a witness. After the witnesses have been disposed of, we would then seek to make submissions in support of our application and in response to anything that my friend might put at some stage.

5 COMMISSIONER: It's proposed that we hear both witnesses first, is that correct?

MR TULLGREN: I would think so if my friend is agreeable to that, yes.

COMMISSIONER: That's a sensible way of dealing with it.

10 MR TULLGREN: In that case, commissioner, I seek to call Chris Patchett.

CHRIS WAYNE PATCHETT, sworn:

MR TULLGREN: Mr Patchett, for the record, could you state your full name and address, please?..... Chris Wayne Patchett. I reside at 290 Nicholls Rivulet Road, Oyster Cove.

15 Where are you currently employed?..... Pasminco Hobart Smelter.

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

What is your classification, as you understand it, at the Pasminco Smelter. What are you classified as?..... Emergency response officer.

20 How long have you worked for Chubb at Pasminco?..... Since April 1996.

In that time, have you always been employed as an emergency response officer?..... That's correct.

25 Prior to you commencing work at the smelter, where were you recruited from?..... I'm a New Zealander - from New Zealand.

You were recruited from New Zealand?..... That's correct.

You were recruited from New Zealand to work at the smelter for Chubb?..... Yes, that's correct. No, that was for MSS at the time.

30 Subsequently, you understand, MSS was purchased or taken over by Chubb?..... I believe so.

But there's been no break in continuity in your employment out there?..... No.

35 What were you told about the work that you'd be performing when you were recruited by MSS?..... I was told that I would have a multi role, one being security, firefighting and first-aid.

Was the term, emergency response, used as far as you can recall?..... I don't think so, not at the time.

5 You said that you were advised you would be performing security work as well as fire and ambulance work. Is that correct?..... Yes, that's correct.

Are they still, in general terms, the type of work that you perform?..... I believe so.

Are there any other emergency response officers, apart from the Chubb employees on the Pasminco site?..... No.

10 I wonder if the witness could be shown this document. Do you recognise that document, Mr Patchett?..... I do.

At this stage, commissioner, I'd seek to tender that.

COMMISSIONER: **EXHIBIT A.1.**

MR TULLGREN: Sorry, I've only got the two copies.

15 COMMISSIONER: Does the witness need to see it?

MR TULLGREN: It would be helpful if he could.

This document is known as the Pasminco Hobart Smelter Emergency Response Plan, is that correct?..... That's correct.

Have you seen this document before?..... Yes, I have.

20 How did you come to see it?..... That's on our quality work bench. A copy was extracted from that via the computer and we have it.

Do you understand that this document has any relevance to the work you perform on the site?..... Yes, I do.

25 What do you understand the relevance of the document is?..... The relevance is that we do have a role in emergency response plan, as stated in this document.

If you can go to page 2 of the document, there's a flow chart. Do you see that?..... I do.

30 On the second part of the flow chart, that below the dark line, it says the team leader notifies the emergency response officer stating the location, nature and severity, et cetera, to ensure details are confirmed before hanging up. Is that your understanding of the involvement of emergency response officers to an emergency on the site?..... Well, a team leader or anyone else can notify us, it's not specific to a team leader.
35

If an emergency occurs then you are notified, that is, the emergency response officers are notified?..... Initially, the first phone call is to us.

5 Regardless of the emergency, you get the first phone call?.....
That's right, yes.

If you go to the third page of the document, again, the flow chart above the dark line, it provides that there are certain actions that you take in relation to an emergency response. Do you see that?..... I do.

10 It provides that emergency response officers will investigate with the
team leader in relation to the emergency and you deliver information,
plans and drawings. Can you explain what you understand that role to
be?..... Basically, once we get the initial call, we respond to the
15 area and between the team leader we discuss what action we take and
basically there's a set role of things that we do. I suppose it varies
slightly from team to team, depending on the interpretation I suppose
but it really depends on the emergency, what type of emergency it is.

But you would have a primary role in consulting with the relevant team leader about the emergency and how to deal with it?..... Yes.

20 On the same page, at the bottom of the flow chart, it provides that one
of your actions is to be involved in site evacuations. That's
correct?..... That's true.

Can you explain what that role precisely involves?..... It's up to the wardens to ensure that all personnel are clear of an area and then it's our role to ensure that those wardens have done that job.

25 How do you ensure that they've done their job?..... We've got
various evacuation points around the site and those personnel will
assemble in those areas.

What's your role after the personnel have assembled in those areas?..... To assist any outside services that are required on site.

30 Do you assist in the physical evacuation of employees from the
site?..... Yes, we can. It depends on the area and what area we've
got to cover. Each department is different and unique.

35 If I can take you to page 5 of the exhibit. At the top, under the
heading, Introduction, it lists emergency situations such as gas
emissions, power failures, chemical spills, dust fires, et cetera. You
would agree that they are a selection of the type of emergency
situations that you face on a site?..... Yes.

You have faced emergency situations in relation to all of those matters?..... That's correct.

If I can take you to page 7 of the exhibit, under the heading, Emergency Response Officer, it lists your responsibilities including, proceed to the affected department and assess the emergency in consultation with the response coordinator. Do you agree that that's a responsibility that you have?..... That's true.

It requires you to deliver a copy of a sight information pack to the response coordinator which includes a number of items and you agree that they're what you're required to do?..... If they're available.

You're also required to ensure that you have a duty card and that it's maintained - that's correct?..... Yes.

Over the page, there's a requirement for you to notify external neighbouring facilities in any other departments if appropriate. You agree that that's your job?..... Yes, that's true.

What do understand, external neighbouring facilities, to be?..... Immediate neighbours. Basically, there's three businesses outside Pasminco within the immediate vicinity and that vicinity is over the fence, basically.

So if there's an emergency situation, you're required to advise them that there is an emergency?..... We are.

It also says, other departments if appropriate. Are they other departments inside Pasminco?..... Sure, yes.

Further, there's a requirement to notify the emergency commander and the senior safety adviser. Who is the emergency commander? Not their name, but who are they within this plan?..... Emergency commander is a senior safety -

Is that person an employee of Chubb?..... No, Pasminco.

Similarly the senior safety adviser, is that a Pasminco employee?..... Yes.

The next one is, to notify the relevant combat agency of agencies. Do you know what combat agency or agencies are defined as?..... Tas Fire and Tas Ambulance.

So it's what we would know as the traditional emergency services?..... Yes.

It doesn't include the army, for instance?..... No.

It says further, that you ensure that combat agencies are met at the entrance of the site and directed to the affected department and assisted as required. You agree that you do that?..... Yes.

That you notify external resources, e.g. pump, vac truck, scaffolders, et cetera?..... That's right.

What do you understand that notification is for?..... For external resources?

5 Yes?..... If we've got a spill, whether it be chemical, then we're advised by the team leader that that's required and we call them in.

If you go to page 9 of the exhibit, under the heading, Mobilisation, it requires that the assistance from the fire and ambulance is initiated by the response coordinator in consultation with the emergency response officers. Who do you understand is physically responsible for contacting the fire and ambulance?..... We are.

15 Do you do that upon direction of someone else or is it expected that you'll do it once you become aware that there's an emergency?..... We can, from the response coordinator being the team leader or a senior person in charge, can ask us to bring an agency in.

But there's a discretion there for yourselves as to whether - ?..... For sure, yes.

You don't require an instruction to do that?..... No.

20 You're respected to make a judgment about that?..... That's correct.

Going to the bottom of the page under the heading, Tasmanian Ambulance Service, at least information that you're required to provide to the ambulance service, such as the type of emergency, the location of the emergency, the type of injuries and the relevant rendezvous point. You agree that you provide that information?..... I do.

In relation to the type of injuries, are you expected to make an assessment about injuries?..... Sure am.

And that you pass on that assessment to the ambulance?..... That's right.

30 Would I be right in putting to you, that your role is not only to tell them that there's an emergency and whether for instance it's a fire or a gas leak - the physical location of that emergency, but if people are injured and what those injuries may be?..... We advise them.

35 And that's so they have that knowledge before they arrive on the site?..... That's true.

You can be expected to assist the ambulance when they arrive?..... Yes.

Does that happen?..... It does, yes.

Above that, on a page - I jumped one, there's the Tasmania Fire Service, again you perform similar duties to that with the ambulance service?..... Mm.

5 You do that on the basis of providing them with as much information before they arrive?..... Yes, that's correct, through Firecom.

Would I be right in putting to you that the Tasmania Fire Service and the ambulance would rely heavily on obtaining accurate detailed advice from you before they arrive about the emergency they're coming
10 to?..... We try and supply them with as much information as possible. I suppose there is an expectation, particularly from Tas Fire, that they could be going to anything so we supply them with as much information as they need.

If you go to page 11 at 8.4, it makes reference to Duty Card No. 4 and
15 then if you go to page 16, is that the duty card for the emergency response officers?..... That's correct.

In relation to the log part of it that appears at the bottom, what's that used for?..... That's used for recording the incident itself. That's all conversation in regards to the initial call until the conclusion of the
20 incident.

Every action that you take, conversation you're involved in, you need to log?..... That's right.

That disposes of that exhibit, commissioner, I have no further questions in relation to that. Turning to the issue of qualifications, Mr
25 Patchett, can you tell the commission what qualifications emergency response officers have?..... We have Level 3 First-Aid - Occupational First-Aid, Tas Fire Training Level 1 and Confined Space Level 2, Hazardous Materials Level 1. That's it, I think.

Do you have any qualifications or required to have any qualifications
30 in relation to the use of a breathing apparatus?..... Yes. A BA ticket.

All of those qualifications are mandatory?..... Yes.

Would you have a look at that document, please. Do you recognise those documents?..... I do.

35 I'd seek to tender that.

COMMISSIONER: **EXHIBIT A.2.**

MR TULLGREN: Mr Patchett, going to that document, that starts off by listing some information by Tas Fire in relation to Fire Fighting

Level 1, Breathing Apparatus (open circuit), Confined Space Operations Level 2 and Hazardous Materials Level 1, is that right?..... That's correct.

5 Is that a summary of the courses that emergency response officers are required to undertake?..... Yes.

Then there are, following that, a number of photocopies of various certificates and attainment and qualifications for emergency response officers including Arthur Crampton, Karinda Jacobson and Mr Geoffrey Gjocaj. These qualifications, you have the same or similar
10 qualifications?..... The same.

These certificates are, as far as you are aware, ones that all the employees have, all the emergency response officers have?..... That's correct.

15 That is all I wish to address this witness over in relation to that document. Those qualifications are in addition to any qualifications required to perform the straight security function part of your job, aren't they?..... I believe so.

How many emergency response officers are there?..... There's nine, including the relief.

20 How many are on duty at any one time?..... Two.

Those two officers provide the first line response to any emergency?..... That's correct.

25 Do emergency response officers have any role in ensuring that individuals or contractors comply with any policies or procedures at Pasminco, that apply on the site?..... We have a responsibility for a safety issue.

30 Can you explain what that responsibility is?..... I suppose really, with the induction that we do which is something that everyone has got to do to work on site, it's an induction that requires some - basically, we need to know the hazards and problems and procedures on site and one of those procedures is safety and really, it's everyone's responsibility on the safety side of things. If we see something that's
35 amiss, hard hats not on, ladders not propped up properly, various bits and pieces like that, then we feel it's our responsibility to ensure that that's rectified.

It's expected that you will rectify those things?..... It is.

I want to turn now to the issue of the emergency response work. We've seen in exhibit A.1 reference to the Pasminco role that you have. Part of that provides that you get notified by a team leader if there's an

emergency. I want to show you another document. Do you recognise this document?..... I do.

Can you explain what it is?..... It's a questionnaire that we ask those people that call us a series of questions.

5 I'd seek to tender that.

COMMISSIONER: **EXHIBIT A.3.**

MR TULLGREN: That document seeks a series of information including details of the caller and the particular type of incident and the injury?..... That's right.

10 That is filled out by emergency response officers whenever they receive a call?..... It's the responsibility of the receiver of that call to fill that document out.

15 You've said that the plan provides that you respond to emergencies. Is there an understanding of the response time in which you are expected to respond?..... There's no expectation for time. It's really up to the individual and what they're doing at the time. There's not two guys sitting in the control room waiting for an emergency. Although there is one in the control room at any one time, response times may vary depending on their colleague, where they are and what they're doing.

20 But would I be right in putting to you that when an emergency call comes in, an emergency response officer attends to that as quickly as they can?..... That's correct, yes.

25 Is there any particular order of priority in which matters are to be dealt with on the site in relation to, say, your security work as opposed to emergency response work?..... Priorities are the life threatening situations. They take number one priority.

If there's an emergency, that takes priority over everything else?..... That's right.

30 I want to show the witness two documents. Do you recognise these documents?..... I do.

I seek to tender those, commissioner.

COMMISSIONER: Are these to be marked separately?

MR TULLGREN: Or together, commissioner.

35 COMMISSIONER: We'll mark them separately. The ambulance response sheet - **EXHIBIT A.4.** The next one, fire response time - **EXHIBIT A.5.**

MR TULLGREN: Mr Patchett, these documents set out the response time for both emergency response officers to particular incidents and that of the ambulance and the fire service. Is that correct?..... Yes.

5 They've been obtained by what method?..... They're been gathered from information that we store within our office.

The ambulance response time shows that the response time on average for emergency response officers is 1.8 minutes and for the ambulance 19.4 minutes?..... That's correct.

10 In relation to the fire service, it shows again that the response time for emergency response officers is 1.8 minutes and for the fire service 16.6 minutes?..... That's right.

15 There's a significant difference in the response time between yourselves as emergency response officers and the combat agencies as they're called. Would I be right in putting to you that your ability to respond immediately or effectively immediately is significant in providing assistance to people who have been injured or where there's a fire or other emergency?..... I believe so.

20 You showed us this morning on the inspection, the ambulance that is operational on the site and you indicated, as I recall, that emergency response officers man that ambulance?..... That's true.

You maintain that ambulance?..... That's correct.

Do you recognise this document, Mr Patchett?..... I do.

I'd seek to tender that document.

COMMISSIONER: **EXHIBIT A.6.**

25 MR TULLGREN: Mr Patchett, the document is headed, Pasminco Hobart Emergency Response Vehicle Daily Gear Check. What's that document used for?..... That document is used to - it's a check-off list for both vehicles actually, for our emergency response vehicle and for Pasminco's ambulance.

30 You showed us both vehicles this morning, did you not?..... That's right.

Each day you're required to check all the gear that's listed here to determine if it's in the ambulance and the emergency response vehicle?..... And to ensure it's serviceable.

35 In relation to the operation of the ambulance, in what circumstances is the ambulance used?..... If we get a 333 call which is a local on-site number that's called in an emergency, then we respond to it with the ambulance in a medical emergency.

Do you use the ambulance for transporting injured employees or contractors?..... We sure do.

5 You showed us this morning that the ambulance is fully equipped, it has a variety of stretchers and breathing apparatus and oxygen in it?..... Yes.

All of that is what would normally be found in an ambulance, as you understand?..... A normal ambulance. I haven't actually looked in the back of a normal ambulance to do a comparison, but it's adequate to do the job.

10 The ambulance is supplied by Pasmenco?..... That's correct.

In relation to the emergency response vehicle, that vehicle you showed us contained a whole variety of fire fighting equipment?..... Right.

All of that you're expected to use?..... We are.

Do you recognise this document, Mr Patchett?..... I do.

15 Can you tell the commission what the document contains?..... This is a course of action once it's been initiated we'll identify that we've got an SO₂, which is sulphur dioxide or SO₃ leak.

I'd seek to tender that document.

COMMISSIONER: **EXHIBIT A.7.**

20 MR TULLGREN: This document provides that if there's an SO₂ or SO₃ leak the emergency response personnel are notified by dialling 333?..... That's correct.

Part of your responsibility is to conduct a search for missing persons if any are found to be missing?..... That's correct.

25 How would such a search be conducted?..... The search would be conducted once we've spoken to the warden and it's been established that there are persons missing. We need to go to the control room and check for those persons who may have signed on to do work around that particular area or department.

30 If they can't be found, are you physically required to conduct a search for those persons?..... Sure. Yes, we are.

It says underneath that entry on the first page: *If it is necessary to wear a BA set* - BA means breathing apparatus?..... That's correct.

- then people must remain in pairs. You showed us this morning a collection of breathing apparatus, is that the apparatus that's referred to here?..... Yes, that's right.

5 So if there was an SO₂ or SO₃ leak, you would attend the relevant area with a breathing apparatus?..... That's right.

Wearing all the protective clothing that you showed us this morning?..... That's right.

10 Commissioner, subject to any objection from my friend, I don't seek to go to in detail, all the particular items of clothing. We would rely on the observations that were made this morning.

COMMISSIONER: Yes, certainly.

MR TULLGREN: And the comment that the witness made during the inspection. So the responsibility is that of an emergency response officer to conduct that search?..... That's right.

15 On the second page of the exhibit, it talks about if there's a fire - if there is a fire are you involved in trying to extinguish the fire?..... Yes, we are. We've got a set series of ways of dealing with the - not only with the environment but with the environment inside, whether it be personnel or whatever and if we've got the time or if we're asked by Tas Fire, once they turn up, to assist, we do.

20 There can be different types of fires on the site, can't there?..... That's right.

25 Could you just indicate what the different types of fires are?..... We've got structural fires which are ordinary structures as we've got here. We've got chemical fires and we've got zinc dust fires.

You showed us this morning on the inspection a number of sub stations, electricity sub stations and you indicated that you had had fires in some of those?..... That's right.

30 Is that a different type of fire or does it fit into one of the categories that you've already identified?..... It's classified as a structural fire with particular note that it is full of electricity and does need to be de-energised before one can fight fire.

For those of us who are not up on the - does de-energise mean, turn off the power?..... That's right.

35 You could be called to any one of a variety of types of fire?..... We're called to all fires, regardless of type.

And you're expected to deal with those fires at least either to extinguish them or to deal with them until Tas Fire arrive?.....
That's correct.

5 If I was to say to you that in fact the emergency response officers have an integral role in dealing with emergencies on the site, what would be your view of that comment. Would you agree with that or not?.....
I would. The departments don't have any trained personnel to deal with their own problems. We're solely and simply there to do that for them.

10 Do you recognise this document?..... I do.

It deals with incident follow-up procedures to emergency responses, doesn't it?..... That's correct, yes.

I'd seek to tender a copy of that.

COMMISSIONER: **EXHIBIT A.8.**

15 MR TULLGREN: Mr Patchett, I want to take you to part of that document. I think perhaps the graphic on the front does speak volumes for the document. If you go to the fourth page of the exhibit it provides that the purpose is: *To define the procedures for EMERGENCY SERVICES Control Room Officers in the event of an emergency situation.*
20 Is an emergency services control room officer, an emergency response officer?..... That's correct.

Over the page, it lists a number of emergency situations and all of those are ones that you agree are ones that are emergencies on the site?..... I agree.

25 Under the heading, 5.4.1, at (b), it says: *Emergency Services to contact additional resources as required.* Would I be right in understanding that that means the judgment is yours - by 'yours' I mean for any questions, commissioner, emergency response officers in general. If I singularise it, I'm referring to all of them - that there's a discretion there for EROs as to whether they call for additional services?.....
30 That's right.

The judgment's yours?..... That's correct, yes.

If you go five pages further into the document, it has as its Purpose: *To define the procedure for treatment and reporting of injuries and illness to Pasmenco employees, contractors and visitors.* Does that apply to
35 emergency response officers?..... Yes, that's right.

What role do you have in relation to treating of injuries and illnesses on the site?..... Involvement?

5 Yes?..... Direct involvement, we treat persons regardless of whether they're visitors, contractors or Pasminco employees and then we treat as the level 3 occupational handbook dictates and we either - it depends on the injury. If it's serious enough or we believe it's beyond our capability, then we sent them to hospital.

The level 3 first-aid certificate is the highest level of first-aid certificate, isn't it?..... It is in the industry.

10 It covers training in relation to dealing with more complex injuries, more serious injuries and illnesses?..... It allows us to use certain pieces of equipment that perhaps a senior first-aid certificate wouldn't allow.

What's sort of equipment is that?..... Oxygen, therapy and re-sus and Entonox.

15 You can use equipment that's involved in the resuscitation of people?..... That's right.

You showed us this morning the first aid room on site and that is operated by the emergency response officers?..... That's correct.

It's not operated by any Pasminco employees?..... No.

You do all the treating of injuries and illnesses?..... That's right.

20 Over the page there's a document headed, Incident Notification. This one has been filled out, it looks to be an example. There's a standard form that you use?..... That's the current form.

25 Part of the document also deals with incident investigation and follow-up procedures, which is about eight pages from the end of the document. It provides that the purpose is: *to investigate and follow up undesired events such as injury, damage or near misses to people, equipment or environment*. Does that involve emergency response officers?..... The investigation is conducted by OH&S on site.

30 Do the emergency response officers have any involvement in the follow-up or debriefing about incidents?..... They are involved in debriefs.

They can be asked for their opinion or comments about what's happened?..... Yes.

35 Can emergency response officers be asked for their opinion about how remedial action might be taken to avoid a similar incident in future?..... If they're involved in a debrief, then our input is included in any recommendations.

That's the end of the examination in relation to that document, commissioner. I now want to turn to the issue of first-aid and I wonder whether the witness could be shown this document. Do you recognise that document, Mr Patchett?..... I do.

5 I seek to tender that.

COMMISSIONER: **EXHIBIT A.9.**

MR TULLGREN: This document, Mr Patchett, contains some statistics of the number of patients treated in the first-aid room in the period June 2000 to January 2001 and also patients sent to hospital
10 in the period from 29 June 2000 to 17 December 2000, that's right?..... Right.

This document has been prepared by emergency response officers?..... That's correct.

15 It sets out the statistics, as it says, the number of patients you treat and the number who have been sent to hospital?..... Mm.

It says that the average number of patients you treat per day would be three?..... That's right.

They are treated in the first-aid room that we saw this morning?..... That's correct, yes.

20 Do you recognise this document?..... I do.

I seek to tender that, thank you.

COMMISSIONER: **EXHIBIT A.10.**

MR TULLGREN: These are orders in relation to the first-aid and accident response room, is that correct?..... That's right.

25 Going to the first page of that, it says: *All injuries must be reported to the First Aid as soon as they occur.* The 'First Aid' is emergency response officers?..... That's right.

30 Over the page there's a Hazard/Incident Notification. Commissioner, the name of the person has been wiped out but the rest of it is the detail but the person can't be identified. This is a standard form filled out by the emergency response officers?..... That's correct.

That sets out the detail of the hazard or injury that's been dealt with?..... That's right, yes.

35 Going over two pages, there's a memo head to emergency response officers called, Incident Reporting Procedure. That's the procedure that's to be followed for reporting all incidents. If you go over another

four pages, it's headed, Emergency Service First Aid Protocol. That first-aid protocol, do you know who produced that?..... That was produced by the then superintendent of OH&S.

The superintendent is a Pasminco employee?..... He was.

5 That sets out that you provide a very high standard of service and then it sets out in 1 to 4, that you assess the patient's injuries. Do you agree you do that?..... That's right.

You consult with other officers to confirm the initial assessment?..... That's correct.

10 If you're in doubt about the assessment, you refer to the Calvary Hospital?..... That's right.

Where a patient is assessed as not requiring treatment, you have to note that as well?..... That's right, yes.

15 It says at the bottom: *Entonox may be administered without a medical practitioner's approval*. Can you tell us what Entonox is?..... It's a pain reliever, a gas, in a gaseous form.

You administer that to a person if they're in pain?..... Not all pain, no. There are exclusions. So that's really up to us to ensure that it's administered in the right way for the right reason.

20 Obviously, if someone had a splinter in their finger, they wouldn't get a hit of the Entonox?..... No.

But if they had, for instance, a dislocated shoulder or broken ankle, they might be - ?..... It's a possibility, yes.

25 The decision about administering the gas is up to you, not the patient?..... That's right.

If you go over the page, there's a document headed, Daily Log Sheets. Are you familiar with these logs sheets?..... I am.

30 If you go half-way down the page, commencing the time 13.53, and through to over the next page to the time 15.06. This sets out a series of entries by, as far as you understand, an emergency response officer?..... It does.

35 Without going to the detail, is this the type of information that an emergency response officer would record when dealing with an injury or an accident?..... This would run in conjunction with the standard 333 form.

There would be two forms to be filled out?..... Yes.

But what's put here, that each action or the conversation is recorded?..... Yes, that's right.

That's the usual - ?..... That's the usual protocol.

5 I won't go to the detail of that because I think it's self-evident. I wonder if the witness could be shown a further document. Do you recognise this document?..... I do.

I would seek to tender that.

COMMISSIONER: **EXHIBIT A.11.**

10 MR TULLGREN: Mr Patchett, you showed us this morning the first-aid supply room. This document deals with the ordering of supplies. If you go to the third page of the document it says: *That all Emergency Response Officers become familiar with the whole range of stock carried in the First Aid Room.* That's a requirement?..... Yes, it generally is.

15 Are emergency response officers responsible for ordering and stocking the supply room?..... That's correct, yes.

You're also involved in, as it says here, preventing double ordering and by rotating stock?..... That's right.

20 That work is not performed by Pasminco employees?..... No-one else except ourselves.

Over the page it says under, Responsibilities, that the EROs have the responsibility to order medical supplies and that is the case?..... That's the case.

25 Turning to the next page, it's got an example of a first-aid order form. You'd agree that that form or a similar form is the one that you use to order stock?..... That's true.

Going over to the last page, that's got a first-aid order form and that again is the form or a similar form to the one you use?..... That's the current form.

30 You mentioned this morning during the inspection that there are various departments and sections within the Pasminco smelter and that you're required to undergo an induction for each of those so you're aware of how they operate and the safety aspects and responsibilities. That's correct?..... That's correct, yes.

35 I will just show the witness a further document. Do you recognise this document?..... I do.

I'd seek to tender this document.

COMMISSIONER: **EXHIBIT A.12.**

MR TULLGREN: Is this the standard operating procedure for the casting department of the smelter?..... It's the current induction, yes, it is.

5 That's the induction that the emergency response officers would be required to go through for the casting department?..... That's right.

Do you recognise this document, Mr Patchett?..... I do.

I'd seek to tender this document.

10 COMMISSIONER: **EXHIBIT A.13.**

MR TULLGREN: Is this the induction document for the purification plant on the site?..... Yes, it is.

That, again, is the induction that emergency response officers would have to go through?..... Yes, that's correct.

15 These are examples but are there similar documents for other departments on the site?..... Every department on site has its own induction and they're all completely separate but there are aspects about it which are the same.

20 But emergency response officers have to undergo all of the inductions?..... That's right, correct.

Do the inductions have to be renewed? For instance, are they taken in a prescribed time?..... Twelve monthly.

Every 12 months. So every 12 months, all emergency response officers have to do all the departmental inductions?..... That's right.

25 That's so they are aware of how each department operates, the dangers in that department, the safety procedures and so on?..... Yes, correct.

30 Also this morning, you showed us the breathing apparatus. I want to show the witness a further document. Now do you recognise these two documents?..... I do.

I tender those. I'll put them together. There are two; one is a flow chart and one is a document, commissioner.

COMMISSIONER: **EXHIBIT A.14.**

35 MR TULLGREN: Now the first page of that is headed 'Procedure for Issuing SCBA - that's the breathing apparatus, isn't it?..... Mm.

And this document provides for the emergency response officers who have involvement in exchanging breathing apparatus and issuing breathing apparatus - is that correct?..... That's right, yes.

5 Now apart from the breathing apparatus that you showed us this morning, is there any other breathing apparatus - both in the first aid room and in the emergency response vehicle - are there any other breathing apparatus on the site?..... There are - up at the roast - the roast control room.

10 And apart from the emergency response officers, do you know how many other employees on the site are qualified to operate the breathing apparatus?..... We don't have a list of every single person who is BA qualified. We've got a general idea of what departments utilise the BA's - but no, we do not have a list of those people who are BA qualified - not currently qualified anyway.

15 And would I be right in putting to you that if there is a situation that requires breathing apparatus, then the expectation would be that the emergency response officers would attend because they know how to use the apparatus?..... That's correct. Yes.

20 The second part of that document on the second page says that Pasminco Emergency Services will maintain the SCBA. Pasminco Emergency Services means emergency response officers?..... Right.

25 I think I have to apologise; I think the second document has been stapled upside down to the first one. I think I changed the mode of photocopying.

And over the page there are breathing apparatus check lists. Now they are check lists that you're required to complete - the last page?..... Yes, that's on a weekly basis.

30 So that's another responsibility of emergency response officers?..... Yes, that's right.

Do you recognise this?..... I do.

I seek to tender the document.

COMMISSIONER: **EXHIBIT A.15.**

35 MR TULLGREN: This is the post orders in relation to your gate duties, is it not?..... That's correct.

Now the first page of that is headed, Post Orders for Emergency Response Officers Gate Duties, and that document sets out the various responsibilities you have in manning the gate?..... That's right.

Now you said to us this morning that the gate duties is the principal part of the security work during the day - that's correct?..... That's right.

5 Is that also the case in the evening and night?..... Sure is - 24 hours.

I think I recall you saying that it's - there is one entrance to the plant and that's where the boom gates are?..... There is more than one entrance to the plant but that's the only entrance that employees or all persons are to enter through.

10 I don't seek to go into any detail to the list, commissioner, I think it's self-explanatory in the broad sense. In the document - towards the end of the document - in fact four pages in from the end - there is a series of post orders for the security and control room duties - do you see that?..... I do.

15 And you'd agree they are an accurate summary of the duties?..... I believe they are.

Now duty three says: *To patrol site randomly, checking for any unusual anomalies.* You said this morning while we were out there that patrolling the site is a function performed in the evening not during the day?..... It's done during the day. It is done randomly during the day but it's really based on the time we've got to do the job and we don't tend to have too many problems as far as entry from external people apart from the Christmas holidays when the kids have got nothing better to do - but generally we do do checks during the day but they are increased at night.

20 Would I be right in saying that most of the security work you do during the day is checking the entry and exit of individuals and vehicles - ?..... Yes, that's correct.

30 - through the control post we saw this morning - and you monitor the closed circuit television as well that we saw?..... 24 hours, yes.

Now it provides that among other things you enforce the speed limit on the plant with the aid of a radar gun?..... Which we have, yes, that's right.

35 And do you do much speed enforcing?..... We do random testing and we do radar control on request.

40 Having driven around there this morning and looking at the interesting road system, is there much speeding takes place on the road system?..... Can be. Can be. It seems to be that 30 k's is not fast enough for a lot of people who have got little time on their hands to do the job so we do get requests from various people. Once a

complaint has been made to OH&S we get the orders to go out with that radar gun.

So in that sense you perform the same duties as a member of the Tasmania Police force sitting on a road?..... I would say so, yes.

5 Are you as popular as members of the Tasmania Police force when you enforce that?..... Well, yes, probably not, no.

Now if you go to the last page of that document, it contains a document, Procedure for Silver Escorts, and this document sets out generally your involvement in silver escorts?..... That's right.

10 I don't seek to go into any detail to that. Now you also this morning showed us work in relation to the fire alarms and so on out there and I'd seek to show you another document. Do you recognise this document?..... I do.

I'd seek to tender this document.

15 COMMISSIONER: **EXHIBIT A.16.**

MR TULLGREN: Now the first page of this document lists the fire alarm monitoring system for the site, is that correct?..... For most of the site.

20 Does this list all of the devices - the monitoring devices - in the various buildings?..... It does.

Now I think you explained to the commission this morning that some of the alarms are directly connected to Tas Fire and some are not. Is that correct?..... That's correct. Yes.

25 Are the majority connected directly to Tas Fire or to the control room?..... All these shown here are hooked up to Tas Fire - all of them.

Are they also ones that show up in your control room?..... Yes, they do.

30 Now if one of these alarms was to sound, for instance, if we look at device number 11 which is in the cadmium rectifiers, if that alarm was to sound what would be the role of the emergency response officers?..... To respond. There's two alarms we get, a primary and a secondary alarm. A primary alarm will activate at Tas Fire Service and they will roll out. A secondary alarm they will not respond, so
35 we've got to determine - well, it's colour-coded on the monitor which one is what and basically if there's a secondary alarm we'll go to that site and investigate.

And you make a judgment about whether then the fire service is required?..... That's right.

But otherwise if it's one that doesn't fit into that category, the Tasmania Fire Service come out to the site?..... Automatically.

5 And once they arrive, do you have a role?..... Basically what happens is if we get a primary, we instruct our effluent treatment officer to assist them on site meeting them up on the road system and they escort them down to the site while an ERO is investigating where the problem is and then taking their action in relation to what the
10 problem is and following that chain.

So that while the fire brigade is on its way, an emergency response officer is attending where the alarm is?..... That's right.

15 And that the fire service rely on advice from that ERO as to a) whether there is a fire, and b) what type it is and the severity?..... That's right. The person investigating the alarm will go back on the two-way or the phone to the control centre to our control room and then if there's information needs to be relayed back to the Tas Fire through Firecom then we do that.

20 So the fire service is reliant upon advice that it gets from you?..... They can be, yes.

Now going to the last page of the document there's a form - Emergency Services Fire Report - do you see that?..... I do.

That's to be filled out by emergency response officers?..... That's filled out for every single fire call.

25 And does that include alarm or just a fire?..... That includes all alarms and all calls made in regards to fire.

So one of these has to be completed by the emergency response officer?..... That's right. Yes.

Do you recognise that document?..... I do.

30 I'd seek to tender the document.

COMMISSIONER: **EXHIBIT A.17.**

MR TULLGREN: This document sets out, does it not, incidents where you've not been required to call the fire service?..... That's right.

35 But it shows the type and variety of calls or responses that you're expected to make to deal with fire matters and so on?..... That's right. Yes.

Do you recognise this document?..... I do.

I see to tender that.

COMMISSIONER: **EXHIBIT A.18.**

5 MR TULLGREN: This is headed, Romtec Fire Monitor Calls - could
you explain what this document sets out to indicate?..... This has
got primary and secondary alarms. The primary alarms are the ones
that automatically go to the Tas Fire Service and the secondary alarms
Tas Fire do not respond to these secondary alarms. They could be
10 faults - faults within various zones - and the isolations are we're
required to isolate areas if there is work done in those areas. We would
get a request from workman X at purification, for instance, that they're
doing some hot work and they require that smoke or thermal monitors
be isolated and we act on that request.

15 And it also lists the frequency of calls per day for those areas and you
deal with those. Now, Mr Patchett, currently you get paid a composite
rate, don't you?..... That's right.

Now that's not as a result of any award variation or industrial
agreement but some local agreement, isn't it?..... That's correct.

20 And you had reason to have a look at how that composite rate was
established?..... We believe we had from a workings-out - from a
previous employer - how that rate was come about.

And that rate which you based using a base rate for a level 2 security
officer, wasn't it?..... Yes.

25 Now would you say that the work you do is equivalent to a level 2
security officer?..... We don't believe so.

Do you believe that the work that you do is principally emergency
response-type work? That that's the larger portion of your
work?..... We think so.

30 And the company has - that is, Pasminco - has an expectation that
you'll provide that high level of service?..... Yes.

And do you also believe that that's the view that your employer,
Chubb, has that you'll provide that high level of service?..... We
believe so.

I have no further questions for this witness at this time.

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

MR MAZENGARB: Thank you, Mr Commissioner. What I may do if it assists the witness and the commission as well, is work backwards from those exhibits and take it from there. Mr Patchett, if I can refer to exhibit A.18 - that's headed up, Romtec Fire Monitor Calls - you were saying there are primary alarms and secondary alarms; the primary alarms, as I understand from your evidence are the ones that go straight to the Tasmania Fire Service?..... That's right.

Why don't the secondary alarms go direct to the Tasmania Fire Service? Why aren't they connected up?..... They're not basically - well, you'll have to ask the person who installed the system, I suppose, but basically they're minor alarms, they could be faults, they could be alarms that are going off that don't require the Tas Fire Service to turn out. In other words, they are not involved with the thermal smoke or pressure fluctuations and the sprinkler systems.

So who actually identifies those secondary alarms, do you know?..... Well, it's just a system. Whoever put the system in identified the differences between the two.

So in relation to those secondary alarms, are they recognised or identified as emergencies?..... They can be, yes. Well, they are. We respond to them in the same manner as a primary.

But they may not be an emergency. I mean it could be just something that's relatively minor. The potential could exist for an emergency but in a lot of instances one would assume because they're secondary alarms that they're not emergency situations that need the fire service?..... Yes, that's true - not necessarily - but, yes, we still respond to them in the same manner.

I'm not denying that?..... Yes.

In referring to A.17, headed up, Calls that we had to Respond to Not Involving the T.F.S. - again, the same question, are these incidents regarded as emergencies?..... They are actually. These are incidences that aren't monitored; things like scrub fires, LPG leaks, chlorine leaks - we classify them as emergencies.

So the classification of emergency is the responsibility of the ERO?..... Yes.

Or someone else within the plant?..... No, there are other people that will - that believe that there is an emergency going on and they still report to us and we still investigate it.

Yes?..... It's up to us determine whether either use the resources we have or use outside resources to resolve the problem.

If I can refer you to A.14 - Procedure for Issuing Self Contained Breathing Apparatus - got that?..... I have.

On the first page it says the emergency services responsibilities involve the exchange of used for an unused set?..... That's right.

Is there an actual procedure followed for this?..... For an exchange of gear?

5 Yes?..... There is. Basically once if the gear is used by someone else other than us it's our job to recondition that gear.

So the exchanges depend upon the use?..... The exchange - yes - we recondition it whether they use it or not.

10 So the reconditioning could be after a period of time, so you would have notification of the breathing apparatus and you'd know where they were and you'd know over a period of time they would have to be replaced or recharged, is that right?..... If the gear is issued outside the normal areas, i.e. our control room or roast, then the gear - if it's been issued then its issued for its immediate use. It's not stored
15 anywhere else.

Just as a question, how often would you believe you would be required to use breathing apparatus, say, within a year? If you want to, you can go over the last year and say how often you've been required to use that apparatus?..... It's hard to say, we use it ourselves and test
20 case and practice once a month - a minimum of once a month.

I'm talking about the real live situation in an emergency?..... Well, it's hard to say. I mean two weeks ago we used it for a changeover in a chlorine tank but it's not as often - probably not that often - once a couple of months an action would probably be on.

25 The changeover for the chlorine tanks, that was known beforehand that that was going to happen, so that was foreseen, that wasn't actually an emergency?..... No, that was something that was asked by the department team leader for us to do on the spot at three o'clock one morning.

30 If I can refer you to exhibit A.12 which is headed up, Casting Department Standard Operating Procedure, and referring to A.13 also which is the Purification Plant Induction. So in relation to the casting induction and the plant induction, is this documentation provided to just emergency response officers, security officers at Chubb - oh,
35 sorry, at Pasminco employed by Chubb - or is it supplied to all employees in these areas?..... This course for these inductions, whoever works on these departments has got to do one of these inductions.

40 Right. Yes. And what your evidence is, as I understand it, I'm not disputing it, but you have to actually have a knowledge of all departments as distinct - ?..... That's right. Yes.

What would the length, for instance, say, taking A.13 the plant induction for purification, what length of period are we looking at?..... To do the induction?

To do the induction for that?..... Sixty minutes for this one.

5 And for the casting inductions?..... Similar.

So are they sixty minutes on average?..... Yes. They tend to be around about an hour. The electrolysis one - it's probably two, two and a half hours. It's a bit more involved.

10 A.10, which is headed up, Post Orders for Emergency Response Officers, under the heading - and this copy is not all that good - Emergency Services First Aid Protocol, it's a little bit more than halfway through the document, I think you said this was produced by the first aid officer for the plant, is that correct? There is no actual date on it - there is a signature - I just didn't quite - ?..... That was produced by the superintendent of OH&S at the time.

15 It states on the document of the first dot point: *All treatment must be strictly within the limitations of the Australian First Aid Handbook for Level III Workplace First Aid. Any treatment that is outside these limitations can potentially compromise Pasminco, Chubb, The Emergency Response Officer and their co-workers.* Is that protocol adhered to strictly?..... It is.

20 The next dot point says: *The treatment of injuries such as burns and eye injuries are in most cases outside Level III capability and should be referred to a doctor. However, if such an injury is deemed to be minor, the following assessment process will take place.* Is that protocol followed?..... It is.

And then number 3 says: *If in doubt about the assessment, refer to Calvary Hospital.* Is that protocol also followed?..... That's right, yes.

30 The situation is, there are fairly strict protocols which are to be followed. As I understand from that protocol if there is any doubt with regard to an assessment you are required by the protocol to refer to Calvary straightaway. Is that correct?..... That's correct, yes.

35 Thank you. Exhibit A.9 is a breakdown of the - I was going to say use, but that may not be quite correct - the number of patients per day in the first aid room, there's no indication there as to what sort of first aid we're looking at. What is the range of first aid?..... First aid is basically from all injuries regardless of type are reported to us for notification - all injuries. No exceptions. So that's from basically
40 somebody's banged their head, a cut, a splinter, right up to the more serious cases. It's a requirement on site that through the SGS

induction, which is the initial induction - heavy industry induction - that all injuries are reported to us.

I'm not flippant in this question; say if someone has got a cold and wants a headache pill or something like that, do they come to you?..... They do. They can do, yes.

So it's not injuries, it could be illness someone has suffered?..... Yes, we get people with headaches and so forth and the whole lot - the whole range.

If I can refer you to exhibit A.7 which appears to be a process flow chart for emergency preparedness, Mr Tullgren took you to your expectation or the requirement of yourself and your colleagues to do searches for individuals, be they employees or others - how often would that occur? How often would you be required to do a search for an individual?..... Quite often. We get - on my particular shift we've had a few problems up - I call them problems - up at roast which require those searches to be conducted. So it's quite regular. And it tends to be not so much Pasminco employees, but those people that are working - contractors - working on various jobs within that department.

So if you could just give an idea of frequency? You say quite frequent?..... Once a month.

And who actually manages such a search? Who coordinates it? Who requires it?..... It's a requirement under this protocol for us to - for the wardens to do the initial search and ensure that all personnel are assembled in evacuation areas. It is our job then to ask those wardens whether all persons are assembled and whether they have a visitors or a work document stating that other people are within that area.

So would it be correct if I go and say that the search is managed by the wardens? You do the physical search but the warden manages it to ensure that it's done correctly?..... The warden is supposed to have a radio which connects us with him and to let them know what's going on. You know, someone might wander in after we've actually - in the middle of a search.

So the coordination of that is done through the warden? The management and coordination is done through the warden. You could be in there doing the search, the warden could radio you and say, look, the person that we actually thought was missing is out here now?..... That's right. That's correct. Yes.

If I can refer you to A.4 which is the Tasmanian Ambulance Response Time. With regard to number five - what I call number five - that is, the incident on 19 January last year and looking over it, Tasmanian Ambulance Service called at 20.43, Tasmanian Ambulance Service

arrived at 21.43 and it looks like the ambulance was diverted and because of that the period in relation to the response time was 60 minutes which in relation to the others appears to be out of the norm?..... That's right.

5 Can you elaborate on that particular incident? Are you aware of it?..... I am aware of it. The circumstances around that slow time to get there; basically once we initiate a call to Tas Ambulance, they require - well, they ask us what the injury is. Apparently on this case a more urgent case came up and we took - we were second priority. We
10 were down the order in priorities and that is why they rang back - apparently rang back and said that they were going to another call. So what we've done - or what the guys did was describe to Tas Ambulance what the injury was and then they would prioritise it when something else has come in.

15 That assessment and description is within that level 3 capability isn't it in relation to your training for first aid?..... If it's outside - if we believe that we can't help the patient then we refer it to an outside agency - being Tas Ambulance or Calvary.

20 So in relation to the information that's been provided there where it's indicated the average time for the ambulance response time is 19.4 minutes - ?..... Yes.

- would it be correct if I indicated if that diversion was taken out of there that the response time would be less than the 19.4?..... That would appear to be the case, yes.

25 That would be a particular incident that was negotiated and discussed with those on site at the time. And that is an unusual event or it appears to be an unusual event from the information that's been provided on A.4? Is that correct?..... Yes, it is an unusual case.

30 If I can refer you to A.2 which is the fairly thick document in relation to - headed up, Firefighting Level 1, and then it goes through breathing apparatus. Can I just get you to confirm that the time period in relation to these training courses are as on the documentation? Firefighting Level 1 is four hours? Is that correct?..... That's right.

Breathing Apparatus is eight hours?..... That's correct.

35 Confined Space Operations Level 2 is one day?..... Mm.

And Hazardous Materials Level 1, is, I understand the level you have, is three hours - is that correct?..... That's right.

And the Fire Fighting Level 1 has a shelf life of two years, breathing apparatus has a life and validity of one year?..... That's right.

The confined space operations has a validity of two years - is that correct?..... Correct.

And the hazardous materials also has, they say in this document, a shelf life of two years?..... Also correct.

5 Exhibit A.1, the Emergency Response Plan - I must go and say that my observation in relation to the documentation that's been provided is that Pasminco appear to have everything down in pat in relation to incidents in your particular area. I presume they have it in other areas too, but it seems to be fairly well regimented and documented as to the
10 procedures that are to be followed in various circumstances. Would that be a correct observation of mine?..... Under their quality work bench which means that each department has their own SOPs, I would say this was fairly involved, yes.

15 In relation to that document, am I correct in assuming that the emergency response plan is a document that's provided to a number of the employees of Pasminco?..... Under the quality workbench, if this is on the system, it's available for everyone.

If I can refer you to page 2 which is the flow chart for emergency response, it indicates that the: *Team Leader investigates and makes area safe if practical* - is that still the process and procedure? That's at the top of the page on the right-hand side under, Departmental Actions?..... That's correct.

25 It then says under the line through the middle of the page: *The Team Leader notifies the Emergency Response Officer, stating location, nature, severity, etc. (Ensure details are confirmed [by presumably the response officer] before hanging up).* Then says: *At this point the Team Leader is referred to as the Response Coordinator.* Is that the process and procedure that you still follow?..... Yes, that's correct.

30 And then the second-last sentence in that box says: *All personnel must follow the directions of the Response Coordinator and Warden(s).* In relation to emergency procedures and processes when there is an emergency going on, is my assumption correct that all personnel including security officers, emergency response officers, are under the direction of the response coordinator and/or the warden?.....
35 That's correct.

Is it also my understanding that the response coordinator or warden has the responsibility of managing that emergency?..... The response coordinator has the sole responsibility of managing that incident.

40 I'm not in anyway denying your integral component of that. I'm not trying to deny you that. On the next page which is page number 3 of 22 pages, going to halfway down the page, it says - or a third of the way down: *The Emergency Commander at this stage is the Senior Safety*

Advisor who shall be contacted to assess the situation. This decision may have already been made dependent upon the situation. In relation to evacuations, what is the responsibility of wardens to ensuring that the job is being done. If we're looking at an evacuation, what is the responsibility of the warden?..... Of the warden? To ensure that all personnel within his department is evacuated to the evacuation areas.

So that's the responsibility of the warden?..... Yes.

On page 9 of that document A.1, under the heading of 7.3 with regard to the fire brigade: *The Fire Brigade will respond to all direct brigade alarms [we are aware of that] (DBA's) at PHS and if they are required outside of DBA's they shall be called by the ERO with the following information: i. type of emergency ii. location of emergency iii. relevant rendezvous point.* Is that still the process that's followed?..... Yes, that's correct.

It goes on and says: *On arrival at Pasminco Hobart Smelters the Tasmania Fire Service will be met by the ERO or delegate and directed to the affected department.* It then says: *The Tasmania Fire Service will be briefed by the Response Coordinator/Emergency Commander on the nature of the emergency and the level of assistance required and will be escorted to the scene of the emergency.* Is that the situation?..... That's correct. Yes.

So that response coordinator/emergency commander is not the ERO?..... That's right. If the response coordinator, that being the team leader as a rule, he is the incident commander, I suppose you could say, and will work with Tas Fire Service to ensure that the situation has been dealt with amongst giving us orders to follow too, and that could be both of them.

Under 7.4 under the response - or the involvement, I should say - of the Tasmanian Ambulance Service it says: *If required, the Tasmanian Ambulance Service will be called by the ERO and provided with the following information: type of emergency, location of emergency, type of injuries [where possible].* What, again, role do you play in relation to the assessment of the injuries and to what level? Am I correct in assuming it is to level 3 first aid?..... Yes, it is. Yes. We make observations. We don't - it's stressed on us not to state what we believe or give opinion, it's just the facts; basically what we see, what we observe and not say, well it looks like he's got a broken leg; he's got a broken leg because it's twisted. Our observation is he's got a leg injury.

I think you said in evidence in relation to a question put to you by Mr Tullgren, that you assist the ambulance when they arrive. Again, to what level do you assist the ambulance?..... That's up to the ambo staff. If they want us to carry a stretcher around, then that's fine. But if they see we're doing a resuscitation and they might just continue

what they're doing in order to set it up and they may not necessarily take over straightaway.

Sorry, they may not?..... No.

5 If I can refer you - I'm now going to do what I said I wasn't go to do -
I'm actually going backwards - and I refer you back to exhibit A.15
which is headed up, Post Orders for Emergency Response Officers
Gate Duties, more particularly four pages in from the back under the
heading, Post Orders for Emergency Response Officers Security and
10 Control Room Duties, and there's a fair expanse of duties there, there
are 23 listed and I think a lot of them we saw in inspections today and
in actual fact you've given evidence on them. I mean there's issues like
- I don't think we came across the issuing of keys and ensuring their
return under item number 8; answering of all after hours phone calls -
15 number 9; we've talked about speed limits; the issuing of stores after
hours and weekends; maintaining the cleanliness of security vehicle
daily. I think there was a requirement under one of the exhibits for you
to clean and polish one if not both vehicles every Saturday - is that
right?..... That's right, yes.

20 I think we've covered things like the stringent checking of permit to
remove dockets; be the first line of defence in the case of
demonstrations and picket lines. Number 17: *To prevent media and
union officials from entering site at all times and/or escorting them off
site, unless authorised by PMEZ Management.* So we're aware of most
of those duties. Going back to duty number 1: *To man Control Room at
25 all times except for emergencies, i.e. fire or accident or if O.H. & Safety
Management authorise.* In relation to those list of duties 1 to 23, what
would be the percentage of time that you would spend in what would
be termed emergencies?..... I couldn't put a figure on that.
Percentages - there's no typical day.

30 No, look, I understand. I understand that. I mean you could have one
day in actual fact where the whole day was taken up with an
emergency. I could imagine that would be unusual?..... Well,
that's right, yes.

35 But in relation to the role and functions as outlined in exhibit A.15,
that appears to be a fair reflection and a detailed reflection of the
duties and the expectations and responsibilities of security and
emergency response officers. So for the information of the commission,
could you put some idea in relation to a percentage figure on how
much time would be spent doing this emergency-type work?.....
40 Yes, well it's something I wouldn't like to put a figure on. If I put a
percentage on it, it would be open to question.

Well, if I put a figure on it and said it was 90 per cent, would I be
right?..... Well, probably not.

5 If I put a figure on it and said it would be about 5 per cent would I be closer?..... Probably not either. It just depends. It depends on the day. We could have quiet days or quiet nights with not much going on or you could have an incident like I had on Thursday where we had a gas leak and it tied me up all morning. There's nothing typical about a day there apart from the general run of the mill things done at certain times.

10 I was trying to make an assessment in relation to the information you've provided to the commission and I've looked at somewhere between about 5 and 10 per cent, but I think the 10 per cent might be a bit generous but I'm also trying to be fair to you?..... I wouldn't like to put a figure on it to be quite honest.

15 In relation to the ambulance, I think Mr Tullgren indicated both on inspections and this morning that it appeared to be a fully equipped ambulance, and if you recall on inspections I had a bit of a quip at him to say that in my opinion it wasn't a fully equipped ambulance - and I have looked at ambulances, I am aware of what's in them - would I be correct in my observation that the primary purpose of the ambulance is for transporting patients and that's why it's got the spinal board, that's why it's got - I think you had portable stretchers and a solid stretcher - what I call a solid stretcher. Is it the primary purpose of getting the emergency response person to the scene of an incident and then utilising the ambulance to get the person from that scene back to the first aid area if necessary?..... Not necessarily. We've got resuscitation gear there which isn't involved in the transportation of patients.

25 Yes. That resuscitation gear is utilised by emergency response officers, security officers, to the level 3 training, no more?..... That's right. Yes.

30 How often would you use the resuscitation gear in the ambulance?..... I've never used it. Not on a patient.

All right. Thank you very much, I have no further questions. Thank you, Mr Commissioner.

COMMISSIONER: Mr Tullgren, do you have any?

35 MR TULLGREN: Yes, sir, a few questions in response. Going to the issue of the fire alarms, my friend asked you about whether you responded to them as emergencies and you indicated that you did. That's correct, isn't it?..... That's correct.

40 It's the case, isn't it, that you simply have to treat them as emergencies because you don't know till you get there what type, what the problem is that the alarm is actually indicating?..... That's right.

5 In relation to incidents which are classified as emergencies, the emergency plan as you understand it expects you as the trained emergency response officers to exercise the judgment and skill and discernment in determining what the emergency is and how it's to be dealt with?..... Yes.

10 And that that's the case in relation to the fire wardens or the team leaders who are involved in particular things; they have a responsibility of command in a particular incident, but when it comes to performing the emergency response work that you do, they don't interfere in that do they?..... No.

You are called and they rely on your judgment and your experience and your ability to perform that work?..... Well, under the duty card system the responsibilities for them are clearly marked out.

15 In relation to things such as burns, you also make assessments about burns, don't you?..... Yes.

And that again is something based on your judgment and skills and training about the level of the burn?..... Yes, very much on an assessment of the -

20 Yes - and based on your assessment as to whether then you then believe that the ambulance service should be contacted or the patient should be sent to hospital?..... Yes.

25 Now in relation to things like searches and so on, if people are marked as missing in action, then you go in and that's part of your - the demarcation of your work and the wardens, you go in to find those people and if he finds them first because they've wandered in late, he will advise you that that's happened?..... We'd expect so, yes.

30 In relation to the documentation, would you agree with me when I said that while the documentation is comprehensive, the documentation is there to clearly define each person's role and responsibility in relation to emergencies?..... That's what it is designed to do.

And that the emergency response officers are a pivotal part of that emergency plan?..... We believe so, yes.

Now emergencies by their very nature are not run of the mill, are they?..... They're not day-to-day stuff, no.

35 Would I be fair in putting to you that your training and responsibility and the expectation is based on things that might happen?..... Yes, that's correct, yes.

That Pasminco don't expect there to be regular zinc fires or gas leaks or people falling and breaking their legs and so on?..... No.

But that if, to use a colloquialism, it hits the fan, then you're expected to be there to deal with it first up?..... That's right.

5 So while you may not do necessarily any on one particular day or a lot on the following day, you are in the same position as the fire and ambulance that there's an expectation that if something happens you are the qualified responsible people to go in and fix it as the first line?..... That's right. Yes.

I have no further questions for this witness.

COMMISSIONER: The witness is excused.

10 **WITNESS WITHDRAWN**

MR TULLGREN: I have no further evidence I wish to call in this matter.

COMMISSIONER: Mr Mazengarb, Mr Milling is your witness. Would he be available at two o'clock?

15 MR MAZENGARB: Yes. I actually asked him to be available at twelve o'clock, so he's probably outside waiting but we can be back at two o'clock. That will be quite okay.

COMMISSIONER: We'll adjourn until 2.00pm

LUNCHEON ADJOURNMENT 12.57pm

20 **HEARING RESUMED 2.05pm**

COMMISSIONER: Mr Mazengarb?

MR MAZENGARB: Thank you, Mr Commissioner. As I indicated prior to the luncheon adjournment, it is the wish of the TCCI to call Mr Darryl Milling from Chubb Protective Services to give evidence to the
25 commission in relation to this claim by the union. Thank you.

DARRYL CHARLES MILLING, sworn:

MR MAZENGARB: Mr Commissioner, I just indicate again as we did on inspections this morning, unfortunately, because of a prior
30 commitment which Mr Milling couldn't get out of he wasn't available for those inspections this morning and from Chubb Protective Services we do put in our apologies for that but as I said, it was something that was unavoidable.

COMMISSIONER: Understood.

MR MAZENGARB: Mr Milling, could you please advise the
35 commissioner of the position you hold with Chubb Protective

Services?..... Yes. My position is state area manager for Chubb Protective Services Australia for Tasmania.

5 In relation to that position, are you familiar with the arrangements of the employment of Chubb Security staff at Pasminco?..... Yes, I am.

10 In relation to that, for the information of the commissioner, can you give an outline of the commercial arrangements and the relationship between Pasminco and Chubb Protective Services?..... Yes. We've actually got a contractual arrangement with Pasminco which we've had now for a number of years and the service is to provide the provision of security emergency response officers on a basis of 24 hours by seven days a week.

15 I understand that contract is currently being renegotiated. Is that correct?..... That's correct. That contract actually expires tomorrow.

20 In evidence that was provided this morning, it was indicated that prior to Chubb there was the involvement of another security firm. I think it was MSS Security, is that correct?..... That's correct. Wormald Security actually had the contract for a number of years, which was related but became part of Chubb and then MSS was actually successful in winning the tender as contracts go and then I think it was approximately six to seven months after that that Chubb's actually acquired through an acquisition of MSS and have continued the service since then.

25 Mr Commissioner, what I intend doing is referring you and Mr Milling to the actual contract in relation to the services currently provided by Chubb Protective Services. Obviously, for commercial purposes, I haven't copied the whole contract but I have copied part of the contract which is in relation to schedule 1, the services that are expected to be provided by Chubb Protective Services. With your approval I'd like to table that document now.

COMMISSIONER: **EXHIBIT R.1.**

35 MR MAZENGARB: Mr Milling, can you just advise the commission what this document, R.1, relates to, what it is?..... This document actually spells out the actual, in general, of the services that we actually provide in the terms of our contract to Pasminco, as in the contractual obligation, the services to be delivered.

40 Just referring to 1 under the heading of, General, in R.1, it says: *The Services to be provided by the Contractor extend over 24 hours per day, 7 days per week, 365 days per year and shall be performed in accordance with PHS Post Orders, from time to time, and other procedures as directed by the PHS Representative.* I don't think there's any need to elaborate on that. You've already indicated that is the

arrangement. Number 2 - Personnel: *The Contractor shall provide three licensed, trained and uniformed Emergency Response Officers to be on the site on duty at all times. Additional Emergency Response Officers may be required from time to time as requested by the PHS Representative.* Is that still the case?..... Yes, that is. The only difference there is, now we actually only have two officers by 24 hours which was the change by Pasminco themselves but, in general, as in item 2, apart from that, that's correct.

Under the heading, 3 - Security Services, it states: *The Services comprise responsibility for the secure operation of the Main Gate and include: Control of personnel access to the site including screening.* Could you just elaborate on that particular function, in brief?..... Controlling of access to the site is where we actually man the main entry gate to the premises and our personnel actually control the entering of persons coming onto site and therefore screening and seeing that they have the appropriate passes and so forth.

Those passes, I asked on inspection this morning, are determined by Pasminco as to who they will go to and what sort of pass a person will get. Is that correct?..... That's my understanding, yes.

Number 2, under the heading, Security Services: *Control of vehicle access to the site including vehicle searches and checking of outbound loads.* What's your understanding of the duties and functions incorporated in that?..... That's controlling an area of entry, to see that only authorised vehicles are actually coming onto site through the main gate and also on leaving, that the vehicles leaving are not taking anything from the site that they're not authorised to do so.

Number 3: *Maintaining a log of all vehicles and visitors entering and departing the site?.....* Yes. That's part of the routine of securing - like a gate check to maintain a log of vehicles entering and exiting.

Number 4: *Control of media access?.....* Yes, that again is an area of control to see that the media can only obviously enter the site when authorised to do so and cleared by Pasminco themselves.

The last one under the heading of 3 - Security Services 5: *Monitoring of surveillance cameras, fire alarms, fire equipment and other detection devices?.....* That's correct. That is a function that our people carry out within their control room.

Under heading number 4 - Mobile Patrol Services: *The Service comprise: 1. Regular physical checks of the site perimeter and all buildings and plant?.....* That's correct. These are security patrols that they carry out probably more so in the after hours situation and weekends and that sort of thing.

2: Immediate response to fire alarms and calls for assistance?..... That is correct, yes.

3: *Provision of a visual presence on site and the lawful questioning and reporting of individuals acting in a suspicious manner?.....* Yes, that's part of the security role that they perform.

5 4 - the last one under the heading there: *Responsibility for traffic control?.....* Yes.

10 Number 5 - Emergency Services - the contract states: *The Services are to be provided in accordance with PHS's and Emergency Management Plan and Procedures (as it exists from time to time) and includes: Front line emergency response to incidents involving fire, hazardous materials, rescue and evacuation.* What's your understanding of the role of the emergency response officers/security officers employed by Chubb in relation to that function?..... My understanding of that is, that our people are actually deployed to respond to any emergency situation that arises. Our main objective is to assess and to ascertain the percentage of the emergency and then to contact the proper authorities and while waiting for them, to act and take control of, say, that area as in crowd control and also assisting with the problem at the time.

20 Do the emergency response officers/security officers do this in isolation or do they do it in conjunction with Pasminco employees?..... My understanding there is, with our people, if it's a case that Pasminco people can't assist that our people do it, as in together. I believe that the operator in the control room is relieved from there by a Pasminco person and my other understanding is that there are people from Pasminco who also are trained up to assist in these matters.

30 The second item or task under 5 is: *Response to specific operational demands to prevent loss and damage.* What's your understanding of the expectation in relation to the contract for your employees at Pasminco on that task?..... Again, I believe this is the area of responding to, say, potential hazards or it could be potential fire or something, chemical spills and so forth and again, our people are the first response to attend those situations and assess.

35 What do they do in relation to the assessment? What's the expectation of the employer, being yourself?..... Our expectation in terms of the contract is that our people are to attend, assess, advise Pasminco's management or the authorities and then take the appropriate action in notifying the other services that are required.

40 Again, is this done in conjunction with the plans and procedures outlined by Pasminco?..... My understanding is that Pasminco themselves have in place an emergency set of plans and actions to be followed. It's my understanding that our people actually work in conjunction with that.

The last item under heading number 5 - Emergency Services, is task 3: *Coordination of and liaison with external emergency services including fire, ambulance and SES*. What is the responsibility or tasks of Chubb employees in relation to that particular aspect?..... Our responsibility there is to obviously report the situation to the outside emergency services that could be coming onto site or need to be notified. That's obviously advising them of the situation, advising them of the location and giving them any other information that will assist them for a quick response when attending.

10 Also, in that sort of situation, I understand from the evidence, there is normally a rendezvous point for the emergency services. Is that the responsibility of the emergency response officer or security officer?..... It would be our responsibility to meet those people and take them to the appropriate location.

15 Under the heading of 6 on the contract, First Aid Services: *The Services comprise responsibility for the competent operation of the First Aid Room and site ambulance and include* - before I go onto number 1 there - what responsibility do the employees have with regard to the operation of the first-aid room?..... My understanding there is that
20 this is an area that they're responsible for as in, obviously maintaining, cleaning, looking after, seeing that the appropriate items are there for treatment of someone with a first-aid or emergency treatment.

We have evidence that they are trained to level 3, the workplace first-aid certificate. Is that correct?..... That is correct.

That's stated under there: *Provision of Level Three first aid treatment to ill and injured employees*. Is there anything you need to add to that?..... No. That would be correct.

30 First Aid Services - task number 2: *Maintenance of first aid supplies (supplies provided by PHS)*. What's your understanding of the responsibility there?..... Again, that would be maintaining the first-aid room and seeing that the appropriate materials are there. That would also probably include them maintaining, keeping records that certain things are not being used, past the expiry date and so
35 forth.

Under contract number 7, it says: *Other Services: Routine services include: Management of the key register*. Is there anything you need to add in relation to that?..... No. That's a normal role which is basically for security of any site.

40 *Maintenance of safety equipment?*..... That again would probably fall in the lines of - if it's specific equipment for fire extinguishers and that sort of thing, checking on hydrants, that sort of stuff.

And 3: *Maintenance of Post Orders?*..... Again, that's pretty well a routine for all general sites to maintain their post orders are up to date and actually are in compliance to the actual post.

5 Part of the contract under 7 just simply says: *Other services will be required as directed from time to time by the PHS Representative.* Is there anything specific we need to know for the purpose of this case?..... No, not really. That's pretty well a general term that we use and most of our clients use where our people, within reason, can be requested to carry out other duties within reason.

10 Item 8 of the contract - Fire, Rescue and Emergency Training: *The Services comprise the development and conduct of training.* Do you provide training too?..... We actually supply the training, yes.

15 And 9 - Provision of New Firefighting/Emergency Response Vehicle: *The Contractor shall provide, operate and maintain a firefighting/emergency response vehicle set up to enable effective response to the various emergencies that could reasonably occur on the site. The vehicle shall be a late-model design and maintained in a good state of repair. It shall be equipped with a water tank of 1,000 litres minimum capacity, a pump of at least 1,000 litres per minute capacity and 200 metres of*
20 *64mm hose. It should also have weatherproof storage for breathing apparatus and similar equipment. Fuel for the vehicle will be supplied by PHS at no cost to the contractor.* What's the situation with regard to the provision of that equipment in relation to the contract? I understand there's been some changes to the contract?..... There
25 has been. This is actually a vehicle, in terms of the contract, that we've actually got on site. There has been some changes as per in agreeance with the client. It no longer carries the actual water tank capacity. The vehicle is mainly now fitted with a module on the back for carrying some general emergency equipment, fire fighting and first-aid and
30 various other items.

On inspections this morning we were shown the ambulance. From your understanding of the ambulance and what is provided in that, is that a full servicing ambulance as most of us would be aware of provided by the ambulance service?..... On my last recollection, I
35 would have to say, no - from the last time I saw it. My understanding is that the vehicle is mainly used for transporting of persons who are incapable of being moved or helping themselves down to the first-aid area to actually meet the outside emergency services coming on site.

In relation to the emergency services with regard to the employees -
40 I'm now looking at the contract, item number 5 - with regard to providing the emergency responses in relation to fire, hazardous materials, rescues and evacuations, would it be normal for other security officers covered by the Security Industry Award to do such functions or to carry out such functions?..... If we're talking in
45 terms of other security personnel who today may work a general site and have to respond to, and we use the term, emergency, i.e. a fire, a

fire in the storeroom or someone who has injured themselves and so forth, yes, they would. They would actually do that. They would actually respond to that situation.

5 They'd be security officers employed and engaged by Chubb?.....
Yes.

Are they paid at level 5?..... No, they're not.

Have you got any employees classified at level 5?..... No, we do not.

10 Would they be expected to coordinate and liaise with external emergency services, like ambulance?..... Absolutely. If we were to have an emergency situation today, say, at the Government Centre, the security personnel there would be expected to liaise with the fire brigade, to meet them, to take them through to show them where the situation is. The same with an ambulance. If someone was to have an
15 accident or have a problem, they would do the same.

In relation to the first-aid area. Is it normal for security officers under the award to look after a first-aid room by maintaining its supplies? Is that an abnormal duty for a security officer?..... It's most certainly not an abnormal duty. We do quite a few sites where obviously we use
20 those facilities for treating our clients' personnel and it's pretty well, a lot of the time, just a standard procedure or routine procedure that part of your duties is to also keep that room tidy, clean obviously, and see that the things are up to date and so forth, the reports are written out as in first-aid incidents.

25 Would there be other employees covered by the Security Industry Award that would be expected and required and be trained up to level 3 first-aid?..... Quite a few. We find within our industry that level 3 - one of the main reasons we go to level 3 is because of the quality of first-aid that you can actually deliver to someone far better than, say,
30 being on level 2.

Mr Milling, are you aware, say, in the last year, of the incidence of emergency responses that your employees at Pasminco have responded to?..... It's my understanding that for the last 12 months in regards to emergency situations - last year we actually had
35 a total of eight incidents.

Where did you get that information from?..... This actually came from our personnel at Pasminco, which we asked for a summary of emergency, and I must say, just emergency situations over the last 12 months.

40 Mr Commissioner, I'd seek leave to table the document that Mr Milling is referring to.

COMMISSIONER: **EXHIBIT R.2.**

MR MAZENGARB: So in relation to your comments, you're indicating that there were, as provided by employees of Chubb at Pasminco, that there have been eight incidences in the last year by the look of it, that
5 have necessitated the calling out of other services. Is that correct?..... That's my understanding, yes.

Is it your understanding that that document indicates that in the last year, and I'm talking about the year 2000, that six of those emergency areas required the attendance of Tasmanian Ambulance and that two
10 of those incidents required the attendance of the Tasmanian Fire Service?..... Again, that's my understanding, yes.

Mr Milling, the application is in relation to an amendment to clause 7, the definitions of security officer to incorporate, in effect, emergency response officers at Pasminco at that level. In relation to that, is it
15 your view that the emergency response officers at Pasminco actually have a traditional security officer role, or what's your observation?..... It's my observation that while we're employed as security and emergency response officers or personnel, that the majority of the work performed by our employees is actually a security
20 function.

Would you be able to put a percentage figure on the work that would be or could be designated as emergency response as distinct from security officer?..... I couldn't actually put an actual figure on it but if I had to put it in percentages, I would say that - this is myself, I
25 would say that we would do at least around 90 per cent of basic security work, of manning and control and access control and checking and patrolling and I would then say that 10 per cent would be in the area of emergency response.

Mr Commissioner, the union tabled a document, exhibit A.15, which had attached to it a document dated March 1996 which related to the
30 post orders for emergency response officers. I have, for your information, a more up to date document in relation to post orders for emergency response officers which goes into a little bit more detail with regard to the duties and functions of such employees and I'd like
35 to table that at this particular point in time, for your information.

COMMISSIONER: **EXHIBIT R.3.**

MR MAZENGARB: Have you got this document, Mr Milling?..... Yes, I do.

Could you just give an outline there in relation to the duties as listed. I
40 must say, Mr Commissioner, unfortunately, we're not quite sure of the date on this. Mr Milling, you might be able to assist in that?..... Commissioner, I believe this was actually put together about two years ago.

Mr Milling, is that a fair reflection of the duties, functions and responsibilities of emergency response officers employed at Pasminco?..... Overall, yes, it is.

5 Mr Milling, in relation to evidence that was provided this morning, it was indicated that employees at Pasminco employed by Chubb receive a composite hourly rate. Can you advise the commission, to the best of your knowledge, as to how that composite rate has been arrived at or determined over a period of time?..... It's my understanding that the actual composite rate was in place when we actually acquired MSS and it was from there that - Chubbs actually continued with that process. My understanding of it is that it was based overall on days worked including weekends and penalties and so forth and the rate at the time, I believe, was around \$15.40 at that time. The idea of it was that there was, apparently based on the fact that the employees were in agreeance to run with a four on four off shift - the idea of the composite rate, that it gave them a continuous level of pay every fortnight to where their pay wasn't actually fluctuating up and down and so forth, due to different shift changes, days, afternoons and that sort of thing. It was pretty well my understanding of when the people were actually interviewed coming onto Chubb that they indicated through their letters of appointments and through, then the state manager, they indicated that they wanted to continue with that process.

25 Just in relation to your comment about a four on, four off. For the information of the commission, could you just elaborate on that terminology, what you actually mean?..... The actual idea of that is, our people actually do four shifts on and four shifts off and in that process they actually work - they do two days and they then do two nights and then they have four days off in between and then come back on.

And for that they receive the composite rate. Irrespective of when those days fall, during the week or on a weekend or on a public holiday, they receive the same amount of money each fortnight in their pay packet?..... Yes.

35 Thank you, Mr Milling. Mr Commissioner, I have no further questions at this point in time.

COMMISSIONER: Thank you. Mr Tullgren?

MR TULLGREN: You have given evidence about your understanding of a number of matters in relation to the Pasminco site. How often do you visit the site?..... I would visit the site, probably on average, about every three months.

How long do you spend on the site?..... That would depend with the meetings I have with the actual client themselves.

5 You go out to the site to have a meeting with Pasminco - it's a regular thing - ?..... With the people we are contracted to look after, yes. With the client themselves.

How much time do you spend with your employees?..... On those meetings in relation to our personnel, I stop off with them and talk to them and see if there's any matters of outstanding concerns and so forth.

10 Do you know what Pasminco define as an emergency?..... As in specific or -

As an emergency?..... Well, I would imagine that they would define an emergency -

15 No. I didn't ask you that, Mr Milling, I didn't want you to imagine. I asked you, do you know what Pasminco define as an emergency?..... My understanding is -

No. Do you know, Mr Milling - it's a simple question, yes, or, no?..... Are we talking in terms of the contract, are we talking in terms of -

20 I'll ask the question again, Mr Milling. Do you know what Pasminco define as an emergency or an emergency situation?..... I would have to say, no, I don't, as what they specifically define.

25 Are you aware of the emergency response structure that Pasminco have in place?..... I'm aware that Pasminco have their own emergency procedures in place.

Are you aware what structure is contained in those procedures?..... Not internally, no, I'm not.

30 Are you aware of the interaction that emergency response officers have with employees at Pasminco when there's an emergency?..... In regards to treatment, or are you talking in regard -

Generally, the interaction of emergency response officers to employees of Pasminco when there's an emergency on the site?..... No, I would not.

35 Are you aware of the expectation that the Tasmania Fire Service has in relation to the information that is provided to it by emergency response officers in relation to an emergency on the site, on the Pasminco site?..... No, I am not.

Similarly, are you aware of the same requirement in relation to the Tasmanian Ambulance Service?..... No.

How many other sites do you have contracts with that use sulphuric acid?..... Specifically, I couldn't say.

5 How many sites do you have contracts with where the heavy metal cadmium is produced?..... Again, I couldn't say.

How many sites do you have contracts with where there can be the potential for oil fires?..... On that, I could probably name five sites.

10 If you wouldn't mind?..... Simplot, which is in Ulverstone; North Forest; Renison, which is a mine site that we look after and the other would be also North Forest at Somerset.

15 How many sites do you operate or do you have contracts for where your employees may be required to use a breathing apparatus?..... Officially at the moment, we have two.

They are?..... Pasminco in Hobart and the other one is Renison.

Renison is an underground mining operation, isn't it?..... Yes.

20 How many sites have you got contracts for where employees are required to undertake emergency control organisation training?..... I would say, two.

They are?..... Pasminco and Renison.

In relation to exhibit R.2 who asked for this exhibit to be prepared?..... I was asked by my operations manager.

25 Is that Mr Smith, the person marked at the bottom of the document?..... Yes, it is.

30 Carry on, what were you asked by him?..... I asked Mr Smith to get from Pasminco for the last 12 months a report of actions on emergency responses only, not just first-aid responses, I was talking about emergency responses where outside sources had to come onto site.

35 You say, from Pasminco, who at Pasminco?..... My understanding is that he spoke to Stephen George, I believe as the first person, because he actually had to ring up for it and the document wasn't ready and my understanding is, he then spoke to, I believe Geoff Gjocaj.

The evidence of Mr Patchett this morning was that emergency response officers are expected, among many of their other emergency

response duties, to conduct searches for missing employees and contractors on the site. How many other sites do you have where that's a company requirement, a written company requirement in your contract?..... I'm actually not sure if that's a written requirement within the Pasminco contract. I certainly haven't seen it but if we're talking about the unaccountability of persons on a particular site, if that's what you're referring to, a lot of the sites that we would actually do if we've actually got persons who can't be accounted for, those persons working that site, responsible for that site, would be required to try and find out where they are.

The client would be responsible?..... We would be responsible on behalf of the client.

Do you have any direct knowledge of the breadth and degree of illness and injury that's dealt with by emergency response officers at Pasminco as part of their responsibility to provide first-aid?..... I don't have direct knowledge.

You said in answer to a question by my friend, that you're aware that employees work a four by four roster and they get paid a composite rate?..... Yes.

You said that the composite rate, when you inherited it, was \$15.40. Is that right?..... I believe so, yes.

Do you know what the base rate was that was used to calculate that composite rate?..... Not at that time, no, I don't.

That composite rate is paid for all hours of work regardless of whether it's day, night or any day of the week, isn't it?..... That's correct.

In your contract, are you paid the same rate for additional work that's provided, say, on a Saturday, Sunday or public holiday?..... For additional work, as in hours over and above the contract?

Yes?..... No. That's what we term as a separate costing in terms of the contract.

Any additional work for work an emergency service officer might be required to do, say, on a public holiday, they would get the \$15.40 or the \$16.00 which it is at about now, that's right?..... Yes.

But your additional rate is not \$16.00 is it?..... No. If we're talking as in what our people do as in the set terms of the contract, when we talk hours over and above, that's normally for security personnel who work that site. I am not aware of any time that we've actually gone in with additional emergency response to use that as in to specifically carry out that task, as additional hours.

Leaving aside the additional hours component, the basic contract that you have, the contract that you have, how is payment made to you?

5 COMMISSIONER: Before you go too much further, Mr Tullgren, I'd caution you to question the witness on what would amount to commercial arrangements. The witness is not under any obligation at all to indicate what the commercial arrangements between Chubb and his client may be, if that's where you're heading.

10 MR TULLGREN: It wasn't particularly, commissioner. I would simply indicate in passing, commissioner, that if I were to head down that path I would, with respect, take issue with your observation but I'm not heading down that path. For instance, are you paid by the hour, the week or the day, the month, the year?..... No. As for the set term of the contract, we're actually paid as on hours worked for the duration of 12 months, on a permanent contract, on the set contract.

15 So you're paid an annual amount?..... Yes.

You said that you provide training to the emergency response officers?..... Yes.

In fact, the training is provided by people such as the Tasmania Fire Service, isn't it?..... That's correct, yes.

20 You organise the training, you don't provide it in that sense?..... Yes.

Commissioner, I have no further questions for this witness.

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

25 MR MAZENGARB: Yes, if I may, Mr Commissioner, just really by clarification. With regard to the question that was put to you relative to potential for oil fires in relation to other sites, you indicated there were a number of other sites. Do employees receive fire fighting training provided by Chubb through the appropriate body?

30 MR TULLGREN: With respect, that's new material. That's a matter that should have been put to the witness in examination-in-chief.

COMMISSIONER: I agree with you, Mr Tullgren. That's not a matter for re-examination.

35 MR MAZENGARB: I withdraw that comment. I should just clarify something, Mr Commissioner, we can do this through the witness we have before us. There were some comments made with regard to the hourly rate as it currently is for the composite rate and I think my friend referred to it being about \$16.00, as I understand, and I'll have

this clarified by Mr Milling - the current composite rate is \$16.40. Is that correct?..... That is correct, yes.

Thank you. I have no further questions by way of re-examination. Thank you.

5 COMMISSIONER: Thank you, Mr Milling, you are excused.

WITNESS WITHDRAWN

COMMISSIONER: Mr Tullgren, are you in a position to proceed or do you want a short break?

10 MR TULLGREN: I'm in the commission's and my friend's hands. I'm happy to proceed but if people want a short adjournment, I don't have a problem.

MR MAZENGARB: I'm certainly happy to proceed, Mr Commissioner.

COMMISSIONER: No one wants a cricket score, or anything like that?

15 MR TULLGREN: I was instructed about it before we commenced. I understand Zimbabwe have done remarkably well.

COMMISSIONER: Okay, Mr Tullgren.

20 MR TULLGREN: If the commission pleases. Commissioner, the claim that's being pursued for the variation of the award, the amended version of which we tendered this morning, is argued under principle 8 of the current State Wage Principles and we propose to address this in greater detail further in the case.

25 In relation to the history of the emergency response officers, despite a diligent search, it's not been possible to obtain an adequate historical narrative in relation to the establishment of the work either in relation to Pasmenco or the various security contractors who have worked on the site. What can be said is that Chubb and its predecessor companies on site which were MSS and Wormald, have had employees performing this work at least for 10 years.

30 Matters relating to employees performing this work have been the subject of hearings in this commission, including matters T8282, 83, 84 and 85 of 1999 concerning severance payments and that was in relation to Chubb and that was heard by Deputy President Johnson and matter T6668 of 1996 in relation to Wormald and breaches of the
35 award in relation to overtime and hours of work.

In the second matter, again heard by Deputy President Johnson, he found that the 12-hour shift arrangements being worked which are the same or similar to those currently being worked were not made "in accordance with clause 17 of the Security Industry Award".

The decision of the commission which was dated 10 August 1999 made orders requiring the employees to be paid in relation to overtime and Saturday, Sunday and public holiday work as per the award.

5 Turning to the proposed variation, our proposal is to amend the definition of the Security Officer Level 5 to provide that any person required to be involved in "emergency response" duties at the Pasminco smelter will be paid at this level.

10 Under the extant state wage principles, varying the award classification is possible because their work is such a significant net addition to the work requirements as to warrant the varying of the award classification.

15 Further, we say, that because the work is performed under contract and the contract is subject to re-tender as is now the case, that varying the award to ensure that all bidders are bound by the same award terms, is a matter both of equity, good conscience and public interest and those matters will be addressed.

20 The involvement of employees covered by the award in emergency response duties were not widespread, is a reality and is to varying degrees applicable at least on this site, and as Mr Milling has conceded in relation to the Renison in north-west Tasmania.

The term "emergency response" has not been the subject of any precise definition but it can best be described for our purposes by quoting the emergency response plan of Pasminco which is exhibit A.2. In turning to page 5 of that document at paragraph one, it says that -

25 COMMISSIONER: A.2?

MR TULLGREN: I'm sorry, it is A.2 - A.1, commissioner, was that the revised application to vary?

COMMISSIONER: No, A.1 is the emergency response one.

30 MR TULLGREN: Sorry, yes, that's it, yes, that's the one I was referring to. But at page 5 of that document it says:

Departments have in place standard operating procedures and evacuation plans to deal with most emergency situations i.e gas emissions, power failures, chemical spills, zinc dust fires, etc.

35 And also, at page 5 again at paragraph 5.4, there is a definition of emergency response officer which says that they are:

Specially trained personnel who will assist the Response Coordinator and Emergency Commander in the performance of their duty.

At page 7, paragraph 6.6, the role of the emergency service officer is set out and I won't go to that in detail but to refer to that, and we say that the - and this is the uncontroverted evidence of Mr Patchett: that the emergency response officers are an integral part of the whole site response and have their primary responsibility concerning assessing the emergency and injuries arising therefrom and briefing the "combat agencies".

Now there is no evidence to the contrary in relation to that matter and the evidence of Mr Milling is singularly unhelpful in relation to that because he was not asked whether the similar situation applied in relation to the other site where he held a contract and therefore there is nothing to controvert the evidence in relation to - of Mr Patchett.

Over time as emergency response plans have become more elaborate, the involvement of the contract security employees at the site, particularly the more complex level of response has evolved to a level of sophistication and importance not normally expected. This is because there is a need to involve all those in the site in the response.

Therefore the application before the commission seeks to deal only with those employees involved in the complex emergency response activities, and that is to highlight it against the evidence of Mr Milling who says that if there was a fire in a storeroom and a person who was in another site may be required to be involved with that.

That is entirely different, with respect, to the evidence of Mr Patchett which showed that employees can be involved in gas leaks in relation to a whole variety of poisonous gases or in oil fires or zinc fumes - zinc dust fires which are fires that require specialist treatment, as was observed this morning during the inspections.

In reviewing the evidence, the union will say that this clearly describes the work performed. The commission has heard from Mr Patchett, an emergency response officer who worked at the Pasminco site since 1996 and who was specifically recruited from New Zealand for the job. He has worked all of the time as an emergency response officer. We will not go in detail to the evidence as that would be repetition, however, we say that the evidence is comprehensive, supported by documentation and importantly not challenged or shaken under cross-examination.

This is to be compared to the evidence of Mr Milling who heavily qualified all his evidence by saying that he understood x and y to be the case, but when it was put to him in cross-examination how often he spoke to the employees, the best was once every three months in relation to his visit, but only as an adjunct to his visit to the Pasminco site to discuss with the relevant contracting officer of Pasminco matters in relation to the contract. He had no idea of the precise work that was done by the officers on a day-to-day basis. He had not been with them when they performed that work. He was not able to say how

Pasminco defined an emergency, and as we've seen in the exhibits the Pasminco definition of an emergency is immense and it deals with clearly matters such as fire, explosion and gas leak, but it is not limited to those matters.

5 Mr Milling, in his evidence sought, at least in his evidence-in-chief, to try to reduce an emergency to one where an ambulance was called. Well, the exhibit evidence shows that that is not an emergency. For instance, a gas leak which can be dealt with on the site or may require the fire service is not, according to Mr Milling's evidence, an emergency
10 because it doesn't require an ambulance.

The commission has before it uncontroverted statistics produced by the officers about the number of times that, for instance, an ambulance has been called and the fire service has been called. But it is clear that there are a variety of situations where Pasminco, that is
15 the client, determines that it is an emergency that the emergency response officers have to be involved in, and that it's those officers who have to exercise skill and judgment and discretion to determine whether it is an emergency, and whether it is an emergency that can be dealt with.

20 The evidence of Mr Patchett was that there are situations such as fires and gas leaks which can be fixed on the site but for which they need to be involved.

Now that does not not - to use the double negative - make it not an emergency, it's simply that it is the client's definition of emergency which is important. With the greatest of respect, Mr Milling may have
25 a view of what an emergency is; Mr Milling doesn't work on the site and that it is clear that the client has a particularly wide definition.

Mr Milling was not able to say again what the expectations of the fire service or the ambulance service were in relation to the advice that
30 was provided by the employees; where Mr Patchett said that there was an expectation that that advice would be given and that the ambulance and fire service, instead of turning up cold, as it were, to the site were briefed so that when they arrive on the site they have detailed, or some detailed knowledge of what they're coming to.

35 Now these are major changes - major differences - and a quantum leap from the environment for which my friend was leading his evidence, one would presume, that this is all pretty run-of-the-mill stuff. And the uncontroverted evidence of Mr Patchett is that it's not run-of-the-mill stuff; that the expectation is there; that these employees are
40 highly trained.

On the best evidence of Mr Milling, he's got a number of contracts and at only two sites that he can name would people be required to use breathing apparatus. One of those is a heavy manufacturing site at Pasminco and the other one is an underground mine. Both of them

quite significant industrial sites in their own terms. We are not talking about the government centre or particular office blocks, we are talking about this particular site.

5 What is important to note is that it's the Pasminco evidence; that the documents that are in evidence are generated by Pasminco, they are not generated by Chubb; they're not generated by Mr Patchett. These are the expectations that the client, that is, Pasminco has and which it expects its officers to be involved in.

10 And therefore the evidence of Mr Patchett was constructive, sound and expressed reality and dealt with the issues, where, with the greatest of respect to Mr Milling, his evidence is all heavily qualified by 'I believe', but when it came to the test about what he knew to go on, what he understood was the expectation, he says he didn't know.

15 With respect, we say that Mr Milling's evidence is not to be relied upon simply because the evidence that he gives is based on hearsay and assertion; it is not based upon fact.

Mr Patchett is an employee who works there; he lives and works in the environment and none of his evidence was challenged in relation to these matters.

20 Turning to the issue of the skill level. In addressing this issue, one can search in vain for any completely satisfactory comprehensive description of the combinations of circumstances which will suffice to attract the label 'skill' for the purpose of assessment such as the one we're involved in. This is not surprising since any attempt to specify
25 exhaustively those combinations of circumstances which would be likely to introduce an inappropriately arbitrary element into an area which is not bound by such arbitrary constraints.

We submit that on balance the preferable approach is to treat the term 'skill level' as an intentionally imprecise one which involves not merely
30 considerations of aptitude, expertness, facility, adeptness, adroitness and proficiency which invoked the traditional notion of skill level but includes general determinants including discretion, discernment, perception, prudence and evaluation.

35 Using this approach the phrase refers to the totality of the circumstances in which the work in question is performed and the expectations upon those performing such work.

And we say, that an emergency is not something that is expected every day, as Mr Patchett agreed, but that Pasminco has set in train plans to deal with significant problems and issues that may arise.

40 Now the fact that - and even it if it was for - just conveniently my friend put to Mr Patchett that the amount of time was between five and ten per cent and surprisingly Mr Milling said that he thought at

uppermost it was ten per cent. Leaving aside that consequence in relation to the view that it is not in many ways a question of how often necessarily you do it because it's not a question of some mathematical tabulation, it is a question of the expectation and the training that is involved.

It's the same in relation to fire and ambulance. You have a fire service but you don't expect that everyone is going to - that pyromania is a practice where everyone is out all the time charging around lighting fires, but you expect the service to be there, and as I think I colloquially put it to Mr Patchett, when it hits the fan the emergency response officers are there; they are expected to respond and as the statistics show, they respond within one or two minutes, and that that's what it's about. It's not a question of saying, well how many times do they do it, and add it, tabulate it and then say, well that's worth this dollars or not.

If there was not the expectation or requirement that there could be significant emergencies - and we've seen it's an old site in parts, it's a site that produces a series of heavy metals, that uses acid in its processes, that all of these can lead to quite significant problems. Now Pasminco don't expect them to happen, but as Mr Patchett showed this morning, not too long ago a conveyer belt caught fire one evening and was completely destroyed. Or at a previous time a tank containing some 500 cubic metres of acid simply collapsed.

Now you don't expect that to happen but that's an emergency and that's what these people are there to do. They are to deal with those things and if you simply say that the test must be some mathematical tabulation then it debases, we say, totally the whole basis for having people trained because if they weren't trained to deal with it, when a situation arose they would be unable to deal with it and the expectation of the client - and that's contained clearly in exhibit R.1 - the schedule to the service - that they are there to provide an emergency service and they are there to provide it under the emergency management plan and procedures of the company.

In addressing this question of skill, we say that the skill level is at least equal to that of level 5. The award classifications are based on in general terms an increasing degree of skill and judgment being exercised. The level 5 is the highest level.

The emergency response officers are, as the evidence shows, an integral part of the Pasminco emergency operations procedures. They are expected to act as, in effect, a first response in time of emergency; emergencies which can be life threatening both in real and a metaphorical sense explosive. The expectation in relation to immediate response and then applying a high level of judgment and discretion in assessment of the degree of that threat and in the case of humans the degree in severity of the injuries, goes uncontested, as the evidence of Mr Patchett.

The evidence is clear that - and Mr Patchett agrees - evidence that wasn't shaken in cross-examination - that it's about skill and judgment that has to be exercised. And Mr Milling can't comment and couldn't comment about any of those things because he didn't know
5 what the plans were and the expectations.

It is not the fare of security officers, even at level 5, to undergo the training or be pivotal in a client's procedures including the first line advice to fire and ambulance services. So that we say that in relation to the examination of skills, that it is the skill that is imparted and
10 expected to be used.

We have heard from Mr Patchett that they do monthly courses in relation to the breathing apparatus, that is so they can be available to use it. Mr Patchett said that he'd never used it on a patient or a client but that doesn't mean he can't and that he isn't called out. And
15 clearly, he has indicated that gas leaks occur where breathing apparatus is required and expected to be used. This is not the skill of, and a common fare of, security officers.

For over twelve months the union has been attempting to negotiate an appropriate industrial settlement in relation to the payment for
20 employees to be required in this high level of response. Those negotiations have proceeded with Chubb who hold the current contract at the Pasminco site. The position of the union has been that the work of the security officers is not that of a level between 2 and 4. The employees concerned are expected to fulfil a role not encompassed
25 in the existing award classifications because they're required to be involved - actively involved - in site emergency response plans.

The parties have, despite attempts, been unable to reach a settlement and then the matter is now before the commission.

Currently, the terms of the award are ones which we say do not
30 encompass this work. At present, security officers are paid a composite rate of \$16.40 an hour. This included a base rate of \$10.41 when the rate was set which was the level 2 security officer rate in 1996. That base rate has not increased since that time, however the level 2 rate is now \$11.57 or an increase of \$1.16 per hour - or 11 per cent.

35 Clause 8(2) of the award prescribes that the penalty rates are a percentage of the relevant classification rate of pay and therefore the monetary amount of the penalty increases each time the rate of pay increases. That hasn't been the case in relation to these matters.

In no way can it be argued that the emergency response component
40 can fall within the skill levels of security officers level 2, or, for that matter, levels 2 to 4 inclusive of the award. It is these duties which we say bring the employees within the security officer level 5 and thus apart from the control room function requires the award variations sought. It is the training and ultimate judgment in relation to the

matters in evidence including relating to critically injured persons that puts the work at level 5.

At present the employees work a roster based on the two 12-hour shifts for which they're paid the composite rate that I've referred to.
5 This arrangement which is informal was entered into with previous contractors being MSS and Wormalds, and, as the evidence of Mr Milling confirms, Chubb continues to apply.

The exact method of calculating the payment was based on the 1996 level 2 rate and includes payments for shift penalties and first aid allowance.
10

We say that there was and is no agreement that the base figure, or for that matter, the monetary amount prescribed for penalties was or is to be frozen. Further, the base rate was and is an incorrect rate based on the duties performed.

15 If the award is varied then the base rate would be the level 5 rate to which the penalties and allowances would be added.

Further, we say that the employees have advised the employer that they are sanguine about the continued working of 12-hour shifts and that if it meant depriving them of an award pay increase, then they
20 will exercise their rights under the award to work in accordance with the terms of the award.

It should be noted that the position of Pasminco as set out at page 20 of their publication entitled, Special Conditions of Contract SC1- Site Works Conditions, paragraph 4.4.1 - compliance with awards or agreements, which says:
25

The Contractor shall comply with the terms of the appropriate industrial award or industrial agreement to which it is a party.

Pasminco only recognise industrial awards and industrial agreements both of which have a clear meaning under the *Industrial Relations Act*.
30 We stress that no matter what type of informal arrangement exists, an employee and an employer cannot, as a matter of law, contract out of the terms of the award and that the commission can only deal with the merits of the application to vary the award.

Turning to the application of the state wage principles, as we said, we
35 argue under principle 8 of those principles and I don't propose to read each of those principles and bore all of us I think immensely rigid, except to say that in relation to the principles, principle 8.1 talks about changes in the nature of the work arising because of changes in the skill and responsibility required or the conditions under which the
40 work is performed. The strict test is in relation to net additional work requirements.

Principle 8.2 provides that it is possible for a special allowance to be paid or the changing of the rates themselves.

Principle 8.3 sets the date for measurement which is from the second structural efficiency case decision on 30 October 1988.

5 Principle 8.4 deals with preventing in effect double counting.

Principle 8.5 deals with how you assess the quantum of any increase.

Principle 8.6 defines what is meant by "the conditions under which the work is performed".

We say that principles 8.7 and 8.8 have no application in this case.

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

15 We've heard and seen the heavy manufacturing environment using inherently dangerous processes and chemicals. We have heard evidence about the type of hazards and read about the type of emergencies that have been responded to. Further, the training required is far and above that required for employees performing straight security work.

20 Compared to Security Officer Level 2 in which the employees are currently being paid as a base, there has been no diminution of responsibilities, in fact the reverse is true.

25 There has been a major shift in the nature of the work being performed. The whole concept of security employees being so heavily involved in emergency response functions is new and different. At best, Mr Milling can name one other site in Tasmania where it might be the case.

30 The duties required take the employees far outside those of a Security Officer Level 2 as set out in the award and described by the witness. One cannot doubt the reality of the changes in the nature of the work, skill and responsibility required. These changes are in addition to any duties that may be required of security officers at levels 2 to 4 inclusive or level 5. ..(inaudible).. They constitute a net significant addition to the work requirements. The expectation placed on the individual employees is light years ahead of a Chubb employee working at levels 2 or 4 anywhere else, and that's clearly what the evidence shows.

40 It is to be remembered that emergency service work was and is an entirely new area of work bringing with it higher levels of skill and responsibility.

5 And you need to look no further than in the title because the employees are emergency service officers; that is their title, that is the nomenclature, that is what Pasminco refers to them. They're not security officers. They perform security functions which is not in dispute, but it is the other work that is far and away above the security functions.

And we note that Mr Milling was unable to advance a view or provide any information about how many other security officers drive ambulances on sites where he operates.

10 We also say that the employees are expected to assess the level of emergency as well as the level of injuries and in both cases brief the combat agency. Again, the evidence of Mr Patchett was that the assessment is theirs; they're not being told by the fire warden or the team leader in a particular area what to do, they're called to make the
15 assessment. They decide whether the fire service is called or whether the ambulance is called. These are significant matters of judgment and discretion. They are not the tasks that are expected of people much lower in the classification structure of the Security Award.

20 Being required to be involved in this high level of emergency response enhances, we say, the intrinsic worth of the job. The burden is placed squarely on the shoulders of the emergency response officers. The special skills required increase the work value of the employees, not reduce it or maintain it in some neutral fashion. We say that in assessing the work value argument, the proper consideration is based
25 on the different factors making up the job before and after the work in question is included.

Turning to principle 8.2, we say an allowance would not be appropriate because of the nature of the contracting out and the nature of the award. We say that in relation to principle 8.3 that the award was
30 subject to the operation of the structural efficiency adjustments in 1991; this is the datum point for measurement.

As for principle 8.4, we say there have been no previous work value adjustments.

35 Turning to principle 8.5, we say that the method of determining the actual rate is clear and unambiguous and therefore the union method is not surprisingly the correct one. It's based on varying the definition of level 5 security officer. We say that based on an examination of the skill, responsibility and risk that the level 5 is the more appropriate level. Our case is not based on some arbitrary calculation; it compares
40 the actual work at the various levels, the rates of pay for those levels and the nature and extent and duties of those employees.

In doing so we have relied upon a full bench decision of this commission in relation to a work value case covering teachers in

Tasmania which is reported in 1993 Volume 35 of the Australian Industrial Law Reports at item 55.

5 I don't take the commission in any detail to the decision except to say that the decision sets out a number of measures that were applied by the commission in looking at work value changes and their impact on the nature of employees' work, skills and levels of responsibility and that's -

COMMISSIONER: Before you go on, I'll just mark that **EXHIBIT A.19.**

10 MR TULLGREN: If the commission please. So the second paragraph of the report deals with the tests and then the decision sets out - turning to the decision, it addresses issues such as the nature of the work, skills, level of responsibility and conditions under which the work is performed. Addressing these findings we say the work of the
15 employees is different to that of other security employees to the point where they're not even called security officers. New skills had to be found and learned and applied. The conditions under which the work is performed have altered dramatically. The work is a significant net addition to that of any of the existing security officer levels in the
20 award. The evidence in inspection show that the work, skills and nature of the circumstance of the work are light years ahead of that for level 2, 3 or 4 employees.

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

Turning now to the question of the public interest test, under section 36 of the *Industrial Relations Act*, the commission is required to satisfy
30 itself that the making of an award which by virtue of the definition of an award in section 3.1 includes a variation to an award, such an award is consistent with the public interest. Public interest is not defined in the Act and therefore there is no statutory guidance on how to establish that the varying of this award is in the public interest,
35 however, it is a term with an accepted legal and industrial relations meaning.

The observation on public interest by their Honours, Justices Mason, Brennan, Dawson and Gaudron of the High Court in the case of
40 *O'Sullivan and Farrer* which is reported at Volume 168 of the Commonwealth Law Reports page 210 commencing at page 216 - and I'd seek to provide a copy of that judgment.

COMMISSIONER: **EXHIBIT A.20.**

MR TULLGREN: The judgment is worth noting. At page 216, their Honours say:

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

10 Ascertainment of where the public interest lies is very much a question of fact and degree as the High Court observed in *Re Queensland Electricity Commission Ex parte Electrical Trades Union of Australia* which is found at Volume 61 of the Australian Law Journal Reports at page 393 commencing at page 395, and I'd seek to tender a copy of that.

COMMISSIONER: **EXHIBIT A.21.**

MR TULLGREN: And looking at page 395 they say midway down the first column - and it's underlined:

15 *Ascertainment in any particular case of where the public interest lies will often depend on a balancing of interests, including competing public interests, and be very much a question of fact and degree.*

20 We say that the commission has power to deal with the issues raised by our application and to vary the award in the terms sought. In applying the concept of public interest, it is appropriate to look at all the facts and circumstances of the present matter. Doing so, the commission must find that the existing award classifications do not comprehend persons being involved in the sophisticated emergency response functions disclosed in this case.

25 The present circumstances do require the commission to vary the award in the terms sought by the union. The commission's statutory duty to make awards includes making and maintaining awards that are relevant to the activities covered by the award. Where the award classification structure clearly does not comprehend particular roles, functions and/or responsibilities, the integrity of the award has to be maintained by ensuring that the award reflects those changes.

30 In the recent past some employer organisations have alleged that awards are not relevant because they don't reflect the actual situation. While not agreeing with this view we say that our application is aimed at ensuring the award reflects the reality on the ground. This is not unfortunately the view of all in Tasmania, but that is not the law and until it is a party making an application and bringing sufficient supporting material is, unless it would not be in the public interest, be entitled to have the award so varied.

40 The commission should be satisfied that there have been reasonable negotiation between the union and the major employer, Chubb, over

the issue with settlement unable to be reached. This is for the reasons previously advanced.

5 The negotiations centred squarely around increased payment for the employees concerned. It is clear that there is no possibility of reaching the agreement. The inclusion of involvement in these complex and sophisticated emergency response functions in the day-to-day activities of this site fundamentally changes the work arrangements.

10 Further, there can be no danger of the decision impacting outside the award because it is drafted to reflect the unique circumstances of the matter.

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

20 Therefore, we say, that when considering the factual matters surrounding this application, there is no reason not to exercise the statutory discretion reposed in this commission. That also, we say, would support the equity and good conscience provisions of the Act.

Further, the commission would not be able to show that the public interest would be infringed by the granting of the application.

25 In conclusion then, we say that when all of the evidence, visual and verbal, is weighed and sifted, the commission should find that the work in question is not comprehended in the existing award definitions; the work in question falls within the application of principle 8.1 of the extant state wage principles; that applying the accepted work value tests, the nature of the work does constitute such a significant net addition to work requirements so as to warrant granting the claim, and that it does not offend the public interest. The employer has, with the greatest of respect, failed to counter our well-crafted and accurate and forceful case.

35 The employer relies upon the evidence of Mr Milling, evidence we say, with respect, is unreliable because there is a clear admission that Mr Milling is not aware of the basis upon which Pasminco judges the service and the day-to-day environment and the actual realities in which the emergency response officers live and work. Weighing all of these, we say that the commission should vary the terms of the award as per the amended application.

40 They are our respectful submissions in relation to this matter save for any right of response that we're granted to anything my learned friend might put.

COMMISSIONER: Mr Tullgren, the existing definition of a Security Officer Level 5, I find to be unhelpful. Are you able to give me any indication of the type of employee who could find themselves at a level 5?

5 MR TULLGREN: Yes. It's principally employees involved in the control room operation and the way that works, as I understand it, is that many security companies operate in particular places a central control room to which alarms are fed, so that if an alarm goes off - well, use this commission for instance, that an alarm may go off at
10 this commission, that may be fed back to a control room where the control room operator would become aware of the alarm and would then dispatch, usually a vehicle, to attend the building to determine the issue of the alarm.

COMMISSIONER: Well, correct me if I'm wrong, I, looking at those
15 definitions, had viewed that particular operative that you're talking about as probably falling at a level 4, and someone who in fact coordinated a group of operatives within a control room as a level 5.

MR TULLGREN: I would concede that that would also be the case. My experience in a previous life has been that it's a bit of a grey area
20 in relation to security awards, but at the top of the tree at level 5 is certainly someone who has the coordinating role, but there is a great deal of discretion and judgment reposed in that person because it's in a control room environment and they make judgments. And we say, that when you look at - you distil the skills that may be involved, that
25 what people like Mr Patchett do every day - or can be required to do every day - not in relation to every function that they perform but in relation to the emergencies, fits within that because of what is reposed in them to do. They're not controlled in the sense that someone is looking over their shoulder or directing them; they're called in and it is
30 their call, to use the colloquial expression. So I'm not sure whether that assists the commission or not.

COMMISSIONER: No, that does. It does. And if I can take you to - I don't know whether you have the award with you - but to Clause 16 -
35 First Aid Attendant - which basically says that someone who is required to act as a first aid attendant and who holds a current certificate is paid so much per shift. In the context of this current application, what account should I take of that particular provision?

MR TULLGREN: None, we say, because the employees that currently
40 are paid a composite rate which was based on a level 2 rate which, as I understand, does not contain a recognition or involvement in relation to being a first aid attendant as such, and that if clearly we say the commission was minded to vary the award in the terms that we say, then that would encompass - that variation would encompass the first aid work and would displace effectively the claim.

5 There would be no double counting because clearly we rely in part justification for saying that there is a high level of first aid required not only applied in the first aid room but can be applied on site as well and that - and it clearly would be for the commission to make that clear in any judgment or variation which could include potentially the commission of its own motion seeking to vary that clause to say that this allowance wouldn't apply to an emergency service response officer at Pasminco.

COMMISSIONER: Thank you.

10 MR TULLGREN: We're not proposing that it would be any form of double counting in the process.

COMMISSIONER: Thank you for that. As I understood your earlier explanation, I believe you did say that composite allowance did comprehend the first aid allowance.

15 MR TULLGREN: That was not my recollection, but if I did, I would have to seek -

COMMISSIONER: But your position is that your claim is not seeking a first aid allowance on top of the classification.

MR TULLGREN: No. No, it is that they would go to that rate.

20 COMMISSIONER: Thank you. It's understood. Thank you. Mr Mazengarb.

MR MAZENGARB: Thank you, Mr Commissioner. Our submissions in response to the comments made by Mr Tullgren, from our perspective we acknowledge that Chubb employees engaged as emergency response officers - what I'd call emergency response officers/security officers at Pasminco have a varied role. We're not disputing that.

As you've been advised they're required to provide a range of security officer functions, and I'll concentrate on that initially.

30 Such duties in relation to security officer functions are covered at exhibit A.15 tabled by Mr Tullgren and R.3 tabled by myself. As you are aware, those duties involve patrolling areas and guarding property, regular physical checks of buildings and plant, the control of vehicle and personnel access to the site, vehicle searches and checking of
35 outbound loads, control of media, and dare I say it, union officials, monitoring of various detection devices, traffic control, taking appropriate action regarding individuals acting in a suspicious manner, maintaining a key register, maintenance of safety equipment, response to fire alarms and calls for assistance. And there are a range
40 of other functions incorporated in the security officer role of the employees at Pasminco.

The foregoing tasks generally come under the headings of security services, mobile patrol services and other services under the contract between Pasminco and Chubb Protective Services as reflected in exhibit R.1.

5 The union is claiming as part of their application that the emergency and first aid services provided by the employees engaged by Chubb at Pasminco warrant a classification of level 5 under the Security Officers Award. We do not agree and we therefore oppose their application.

10 Our first ground of opposition is the current award structure and I think, Mr Commissioner, you alluded to this in relation to your questions of Mr Tullgren.

15 If I can take you to the definition of Security Officer Level 5 under clause 7. In our submissions it is quite clear that the intention of level 5 under the award is that such a level applies to a security officer who is required to coordinate the work of other security officers. A level 5 is the in-charge - what I would call - the in-charge security officer of a team of security officers. To quote from Clause 7 - Definitions of the award:

20 *'Security Officer - Level 5' - is an employee who performs work above and beyond the skills of an employee at Level 4, to the level of his or her training, and co-ordinates the work of Security Officers working in a team environment within a central station.*

25 It is our contention to incorporate a classification specifically applying to security officer/emergency response officers at Pasminco at level 5 would, contrary to the submissions made by Mr Tullgren, bring into serious question the integrity of the Security Industry Award.

30 Our second ground of opposition relates to the thrust of the union's arguments before you today. The union has generally argued that the work carried out by their members at Pasminco is of such a nature that it warrants the highest classification available under the award and that such is not sustainable. All of the duties can be and are covered by classifications below level 5 in the award. The watching, securing, guarding, protection of premises and property, the control of the movement of persons, vehicles and goods coming out of or going
35 into premises, response to fire and security alarms and the monitoring and responding to alarm signals are duties and responsibilities covered in the definition of security officer below level 5. The only task not covered may be the stocking and supplying of the first aid room and we would concede that.

40 The question is, what is the relative weight of the tasks argued by the union cannot currently be covered by something other than level 5 of the award? We need to examine the tasks as determined by Pasminco. In relation to the contract you are aware that in relation to emergency

services task 1, it is the front line emergency response to incidents involving fire, hazardous materials, rescue and evacuation.

5 From the evidence of Mr Darryl Milling - and I take objection to the comment made by my colleague on my right that his information is not reliable. I take objection to that. But from his evidence we are aware
10 this incorporates employing or deploying to responses to emergencies, assessing the situation, ascertaining the percentage of emergency, contacting the proper authorities, taking control regarding crowd control and other issues as required under the procedures laid down fairly clearly by Pasminco.

Mr Commissioner, from the union's own exhibit A.1 and the evidence, it is abundantly clear the response coordinator, that is the team leader, and the warden - all the wardens - have sole responsibility for managing the emergency incident.

15 With regard to emergency services task 2 under the exhibit, being the contract - R.1 - the requirement is:

Response to specific operational demands to prevent loss and damage.

20 From the evidence of Mr Milling, we are aware that such involves responding to potential hazards and fires being the first response and at that first response the employer is required to attend it, assess it, and advise the appropriate authority in line with the procedures and plans as outlined by Pasminco.

With regard to emergency services task 3, it is the:

25 *Co-ordination of and liaison with external emergency services including fire, ambulance and the SES.*

30 Mr Milling's evidence indicated that the expectation of the employers in that situation is to report the situation to outside services which involves the location of the incident and any other information that may be required including an appropriate rendezvous point. Now this is consistent again with the procedures determined by Pasminco.

35 From exhibit A.1 - if I can refer you to that - page 9 of that exhibit - and also the verbal evidence provided through the course of this hearing, it is clear that the responsibilities of EROs/security officers in emergency situations is to identify the type of emergency, location of the emergency, the type of injuries. If the injuries are apparent, for instance sake the information provided by the witness was that he's not required to assess the injury but only to give an information in relation to there has been an injury to the leg; in other words, he is
40 required to make observations and the relevant rendezvous point for the service.

5 If I can refer you, as I said, to page 9, you'll find that that is all reflected under 7.3 and 7.4. With regard to the Tasmanian Fire Service the expectation of the ERO through this procedure is to identify the type of emergency, the location of the emergency and the relevant rendezvous point.

In relation to the involvement of the Tasmania Fire Service, it goes on to say:

10 *The TFS will be briefed by the Response Coordinator/Emergency Commander on the nature of the emergency and the level of assistance required and will be escorted to the scene of the emergency.*

It is our submissions that in relation to an emergency, the overall management and responsibility of that emergency is in the hands of the response coordinator/emergency commander.

15 If I also can refer you to page 6 of that exhibit A.1, it is laid out a lot clearer there in relation to what happens if there is an emergency. Under the heading of, Emergency Responsibilities, particularly at 6.2, it states:

Notification of Emergency

20 *It is the responsibility of all personnel to notify the Emergency Services of an emergency or potential emergency. This will be done by telephoning 333 - [or that number].*

25 It then goes and outlines the responsibilities of the particular employees of Pasminco and the EROs in relation to emergency situations. And it states at clause 6.3 under the heading of, Response Coordinator:

30 *The decision-making and control during emergencies at PHS is the responsibility of the "Response Coordinator" whose authority and knowledge of the area involved allows that person to make informed decisions and judgments and have them acted upon. The Response Coordinator may, as the circumstances dictate, delegate that authority to the person/authority best suited to handle the emergency.*

It then goes on and lists the responsibilities including:

35 *Ensure the safety of his team, and others in the plant.*

Ensure the Evacuation alarm is activated, if required.

Ensure the ERO is notified stating location, nature, severity, etc. Wait for confirmation from the ERO to ensure the correct information has been received.

I think Mr Tullgren advised us of the documentation as provided in that sort of situation.

Ensure the plant is made safe and secure, as far as practical. i.e. shutdown, barricaded etc.

5 *Ensure Duty Card No. 1 is maintained and Duty Cards No. 2 and 3 are distributed.*

Ensure a minimal number of the team remain in the plant to make it safe, and for communication purposes, if practical to do so. Otherwise all must evacuate to the Marshalling areas.

10 *Ensure you have a communication device and all communication is directed through the Communications Officer (except in the searching for unaccountable personnel where the Response Coordinator will take over the communication activity).*

15 *Ensure Combat Agencies are briefed prior to entry to the affected department.*

And lastly:

Ensure a Hazard/Incident Notification Form is initiated.

We then refer to page 7 of that exhibit. Under the heading of, Emergency Response Officer it says:

20 *Responsibilities*

Confirm details with the caller, if applicable.

Proceed to the affected department and assess the emergency in consultation with Response Coordinator.

25 And I emphasise the response coordinator in actual fact is managing the emergency. The next one is:

Deliver copy of site information pack to response coordinator, and these include - and I won't go through those.

Ensure you have Duty Card No. 4 and keep it maintained.

30 *Notify external Neighbouring Facilities, and other departments, if appropriate. Refer QWB Serial No. 1341.*

Notify the Emergency Commander, Senior Safety Adviser, or delegate.

Notify the relevant Combat Agency(s).

Ensure the Combat Agency(s) is met at the entrance of the site, directed to the affected department and assisted, as required.

Notify 'External Resources' (e.g. Pump/Vac Trucks, Scaffolders, etc).

5 So it is quite clear in relation to an emergency that the expectation of Pasmenco is that the emergency response officers are expected to be there - and we don't argue with that. But from the perspective of it being managed, it is managed by the warden or the coordinator, not the emergency response officer.

10 COMMISSIONER: While you're on that, Mr Mazengarb, if I can take you to 7.1?

MR MAZENGARB: Yes.

15 COMMISSIONER: It says: *Assistance from combat agencies will be initiated by the Response Coordinator.* And at 6.6 when it is defining the emergency response officer's responsibilities, at the top of page 8 - or towards the top: *Notify the relevant Combat Agency.* Whose responsibility is it to notify the combat agency?

20 MR MAZENGARB: Depending, as I understand from the evidence and the information that has been provided today, in relation to the actual incident, the overall control in relation to the incident is under the auspices of the warden or the coordinator. That may involve an expectation or requirement that the ERO contact the combat agency be it Tasmanian Fire Service, State Emergency Service or the ambulance services. We're not saying that it's not a duty or a task of
25 the ERO/security officer carries out; we accept that that person could and does contact the combat agencies, but that, in a number of incidences, is done in conjunction with a person managing the emergency. If it is the view of the ERO that that call should be made immediately and he hasn't got the opportunity to contact the warden
30 or the person managing the incident, then they have the authority to make that call direct.

COMMISSIONER: Thank you. That clarifies the point.

MR MAZENGARB: Well, that's my understanding of the situation.

35 I now want to refer to the first aid services. Under exhibit R.1, the contract - item 6 - under the heading of, First Aid Services, it states as a preamble:

The Services comprise responsibility for the competent operation of the First Aid Room and site ambulance and include - and I'll leave it at that.

In relation to this preamble Mr Milling's comments were that his understanding was that the employers were responsible for cleaning, ensuring the appropriate items are there and that there is restocking of items as they are depleted.

5 With regard to task 1 under that heading, it says:

Provision of Level Three first aid treatment to ill and injured employees.

Mr Milling's evidence indicated the provision of treatment is limited to level 3, and again that's reflected in the documentation provided by the
10 union in relation to the protocols.

Task 2 under the heading, First Aid Services, states:

Maintenance of first aid supplies.

Mr Milling in evidence advised that again this is a responsibility in relation to the maintaining of the first aid room, materials and keeping
15 of the appropriate records.

In relation to the question you asked of Mr Tullgren, it would be our submission, Mr Commissioner, that if the employees - I'm unsure as to whether or not the first aid allowance as reflected in clause 16 of the award is incorporated in the composite rate, but certainly our view
20 would be that if you were of a mind to grant an increase in relation to the matter before you today, that we would agree with the union's request that that clause 16 be excluded from payment in relation to the work carried out by emergency response officers/security officers at Pasminco because your decision may reflect - or if it does reflect the
25 work that is expected of these employees, then it would be double dipping and double counting if they were entitled to an additional 98 cents per shift in relation to the first aid work. I support my colleague in relation to his comments on that.

Mr Commissioner, it's acknowledged that the emergency response
30 officers and security officers at Pasminco are required to carry out some duties in the areas of emergency services and first aid services. I can't deny that and we accept that. However, it is contended by the employer that such tasks are a small proportion of their time. Whilst we had difficulty actually getting a proportional time from the witness,
35 it would be our submission that certainly no more than 10 per cent of their time is involved in this work. It is our submission also that other security officers below level 5 in other sites perform similar tasks and that those tasks are carried out at a level lower than level 5. And thirdly, that the levels in the award below level 5 cover such duties.

40 We therefore contend that the application by the union that level 5 of the Security Industry Award applies is unfounded and unsustainable. It should be noted that the training required to perform at this level is

15 hours every two years for fire fighting, confined space operations and hazardous materials, and a further eight hours per year for breathing apparatus. That is a total of 31 hours over two years.

5 The first aid protocol referred to in exhibit A.10 makes it clear that all first aid is to be performed within the limitations of a first aid level 3 workplace training. As Pasminco indicate, treatment outside such limitations could compromise all parties.

10 The treatment of injuries such as burns and eye injuries are in most cases outside the limitations of the security officer/emergency response officer and must be referred to a doctor. The protocol further stipulates that if there is doubt about an assessment, the person is to be referred immediately to the Calvary Hospital.

15 From the evidence, it is clear that the range of first aid treatment is determined by the protocol and is not outside the level 3 workplace training that is provided by the employer.

20 Mr Commissioner, in finalisation in relation to the Wage Fixing Principles it would be our contention that if the commission was of a view to specifically recognise the work of security officers/emergency response officers at Pasminco, we request that you bear in mind when making your decision, clause 8.2 of the Wage Fixing Principles as determined by the full bench of this commission on 6 July 2000.

If I can refer you to the principles specifically at principle 8.2

25 *Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.*

30

35 Commissioner, with the utmost respect to the union, we contend that the work carried out by the security officers/emergency response officers at Pasminco is only performed from time to time by employees covered by the Security Industry Award. If you believe some payment should be made, then we would contend that such should be by way of a special allowance which is payable only when task 5 emergency services of the current contract is undertaken. We do not believe it is appropriate nor in accordance with the Wage Fixing Principles to increase the rate as a whole as requested by the union.

40 Mr Commissioner, that concludes my submission. If the commission pleases.

COMMISSIONER: Thank you, Mr Mazengarb. Mr Tullgren, I may have missed it on the way through but in exhibit A.2 there is evidence in relation to various fire fighting and hazardous material training courses but I don't see anything in respect of first aid level 3. Did I miss something on the way through, or if I didn't, can you help me on what level 3 involves?

MR TULLGREN: Yes, if you go to the exhibit, in relation to those documents for Mr Crampton, there's a copy of the certificate issued by the Swinburne University of Technology which has the Occupational First Aid (Level 3) course, it's probably about 10 or 15 pages in.

COMMISSIONER: Yes, I have it.

MR TULLGREN: The second-last page of the exhibit also has the certificate for the other employees. Now all of the employees have those; they're included just as a selection to prove.

COMMISSIONER: Yes, I understand that they all have it. What I'm trying to get a feel for is what is involved in the level 3 in terms of time taken, et cetera. If you'd like to get advice on that.

MR TULLGREN: Yes. Perhaps if the commission - a brief indulgence, Mr Patchett might address the commission directly about the matter about what he understands that the course is save me repeating it, if that's - unless my friend has a violent objection to that.

MR MAZENGARB: I have no objection to that, Mr Commissioner.

MR PATCHETT: Level 3, commissioner, is a five day course and the difference between level 2 and a level 3 essentially is that you use oxygen gear for resuscitation and therapy and Entonox so it's about an extra day over a senior first aid level 2.

COMMISSIONER: And how does that relate to the parlance that I grew up with, was the old St John certificate. Does that still have any currency?

MR PATCHETT: Yes, sure. Basically it's a little bit more than a senior first aid.

COMMISSIONER: A level 3 is a little bit more than a senior first aid. Thank you. Yes, Mr Tullgren?

MR TULLGREN: Commissioner, just in addressing that matter, we would say that the evidence, not only the submission Mr Patchett made then, but the evidence clearly shows that these employees are involved in carrying gear to resuscitate people who are injured and resuscitation is fairly serious, it's not a simple matter if you've got someone who is injured to the level where they require to be resuscitated and that's not your common fare in relation to first aid,

neither in relation to the administration of the pain killing gas which I'd forgotten that Mr Patchett by the questions where again that's their discretion as to the administration of that.

5 Now I want to clear up one issue that my friend has been putting and which I think he bases his case around, and he says that the level 5 in the award is one where the person is responsible for coordinating the role of others. Well, that's currently what it says, but it talks about skills above and beyond the skills of the other grades in the award and that is what we are talking about. We are saying that the application is
10 not about a person who is coordinating in the sense, it is about seeking by applying the work value principles to determine where someone with particular skills and the level of skills should be placed.

15 We say that it doesn't corrupt or affect the integrity of the award because the specific variation seeks to recognise that at that level it would include a person who was an emergency response officer at the Pasmenco smelter. So that there's a fence built around it and it's not saying that there's any effect on the integrity of the award because what we're urging the commission to do is to find that it's the skills and training that push a person to that level.

20 We've made submissions about how you define skills and so on and it's imprecise. We don't say that there is a standard model. It's not a matter that's been subject to any proper definition. It's a matter of judgment by tribunals and members of tribunals and we say that when you look at the award and you look at it and you say, well if
25 they're from level 2 to 4 in the award, these are the security functions but these are the other functions and the skills that go with those, where do they fit? And that's where we say that the level 5 occurs.

I'm the first to concede that the Security Award perhaps was not designed for this sort of additional work. The award is very much a
30 traditional security and watching award. However, where you've got this type of work you can adequately examine the skills and the training and try to draw an assessment. Now clearly the commission might not think that the assessment that we draw is the appropriate one, but there has to be a drawing of that assessment and we say that.

35 My friend argues that all the duties that are involved are below or covered by the classifications below level 5. Well, that's clearly not the case. No-one else is involved in fighting zinc dust fires or dealing with acid spills; they don't drive ambulances and they don't use breathing apparatus. Now all of those matters are clearly different and simply
40 having those skills - and it doesn't matter whether the skill takes 30 hours in two years, that's the mastering of the skill, that is how long the experts have said you need to do that and you have to refresh that, but once you've got those skills you have to continue to use them and you have to continue to refine them.

My friend also relies upon saying that under the Pasminco plan the team leader has the responsibility for managing. Well, that's clear but the evidence of Mr Patchett was also clear; that when they turn up, the team leader is not telling them what to do, the team leader is respecting that they have - that is the EROs - have skills and responsibilities and that they go and perform those and they do those independently. It is clear that they're required to consult and in exhibit A.1, item 6.6, that the emergency response officer assesses the emergency. He may do that in consultation with the team leader because it would be silly not to, but there are two people who are making these assessments, and assessing the level of an emergency is not some simple mundane mathematical task, it requires judgment particularly in view of what we've seen and what we've heard, and the evidence is quite clear that the team leaders don't interfere.

Now my friend also relied on exhibit A.8 and we say that when you go to page 5 of that document - page 5 of 8 - under the heading 5.4 - Emergency Procedure, it says:

Emergency Services to contact additional resources as required.

Now that is again a company procedure for emergency responses and that's a discretion that Mr Patchett said reposed within the emergency response officers.

Equally in relation to exhibit A.10 it provides and the document was called, Emergency Services First Aid Protocol, which was prepared by the previous superintendent, that assessments of patients' injuries are to be made and has confirmed those initial assessments. Now that is within the level 3. No-one is suggesting that people act outside, but level 3 is the highest level. There is an additional degree of training that's involved and clearly the evidence is that if an assessment is made that a patient needs to be resuscitated then the emergency service officer resuscitates the person. They don't stand around and say, well I think they should do this and we'll call the ambulance, they're trained to do that. That is an intrinsic skill and ability that is required and it's an expectation, and we say that all of this is encompassed with respect in the work value principles because principle 8.1 says, changes in the nature of the work, skill and responsibility required, then we argue, and have always argued in this, that it's the skill and responsibility.

My friend says, well they don't do it often and that therefore it's a matter you could look in an allowance. Well, I'll deal with that, but what I want to say is, that we've never said that it's simply a matter of tabulating how many times they do it, because that's not with skills. It may well be if it was a particular mechanistic and mechanical skill that had to be mastered, but this is not the case, and my friend says, well, you could pay them an allowance.

5 The question is, how are you going to determine the allowance, because if you use my friend's argument, then what you do is you simply say, well, we have to add up what an emergency is and how many times. We've clearly seen in the evidence that Pasminco's definition of an emergency is immense and that an allowance simply would not be feasible because there is no way - and my friend advances no argument or explanation about how you would measure or apply that allowance.

10 It would clearly be a ground for endless litigation which might the commission as currently constituted and my friend and myself moderately entertained for a period of time, but I would think it would grate reasonably quickly if we were arguing about whether an allowance should be paid to Mr Patchett, for instance, because he did this function on this day.

15 And the evidence of Mr Patchett is, despite my friend's best efforts to inveigle him to somewhere else, was to say that on some days there may be no emergency and on other days it can be the whole day. And it's the nature of the beast of an emergency that's involved, and as we've said, Pasminco work on the basis that you don't have
20 emergencies but if you do then you've got people who are skilled and trained to do it and who can react.

We say that that's what the test is and that that complies with the Wage Fixing Principles and that my friend, with the greatest respect, is being slightly if disingenuous in suggesting the allowance because he
25 knows from the evidence that an emergency is something that cannot be foretold and which has to be dealt with when it arises and therefore we say that accepting the skills and responsibilities that are involved, and the training, that making them at level 5, with respect - putting the security officers at level 5 who perform these functions - will
30 provide that those skills are adequately rewarded and would not attack the integrity of the award or offend the Wage Fixing Principles. If the commission please.

COMMISSIONER: Thank you. I'll reserve my decision on this application.

35 The commission stands adjourned.

HEARING ADJOURNED 4.10pm

INDEX

LIST OF WITNESSES	Page
--------------------------	-------------

CHRIS WAYNE PATCHETT.....	2
WITNESS WITHDRAWN.....	34
DARRYL CHARLES MILLING	34
WITNESS WITHDRAWN.....	47

EXHIBITS	Page
-----------------	-------------

A.1 - EMERGENCY RESPONSE PLAN.....	3
A.2 - TAS FIRE TRAINING.....	7
A.3 - 333 EMERGENCY RESPONSE QUESTIONNAIRE.....	9
A.4 - TAS AMBULANCE RESPONSE TIME.....	9
A.5 - TAS FIRE RESPONSE TIME.....	9
A.6 - PASMINGO HOBART EMERGENCY RESPONSE VEHICLE DAILY GEAR CHECK.....	10
A.7 - EMERGENCY PREPAREDNESS	11
A.8 - INCIDENT FOLLOW UP PROCEDURES	13
A.9 - FIRST AID ROOM.....	15
A.10 - POST ORDERS FOR EMERGENCY RESPONSE OFFICERS FIRST AID AND ACCIDENT RESPONSE	15
A.11 - MEDICAL SUPPLIES FIRST AID ORDERING PROCEDURE .	17
A.12 - CASTING DEPT STANDARD OPERATING PROCEDURE.....	18
A.13 - PURIFICATION PLANT INDUCTION	18
A.14 - PROCEDURE FOR ISSUING SCBA	18
A.15 - POST ORDERS FOR EMERGENCY RESPONSE GATE DUTIES.....	19
A.16 - PASMINGO FIRE ALARM MONITORING SYSTEM.....	21
A.17 - CALLS WE HAD TO RESPOND TO NOT INVOLVING THE TFS	22
A.18 - ROMTEC FIRE MONITOR CALLS	23
A.19 - 1993 VOLUME 35 OF AILR - ITEM 55.....	57
A.20 - O'SULLIVAN and FARRER AND ANOTHER	57
A.21 - RE QUEENSLAND ELECTRICITY COMMISSION.....	58
R.1 - SCHEDULE ONE - THE SERVICES	35
R.2 - TAS AMBULANCE SERVICE ATTENDANCE AT PASMINGO .	41
A.3 - POST ORDERS FOR EMERGENCY RESPONSE OFFICERS ...	41