

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 4014 of 1993

IN THE MATTER OF an application
by the Health Services Union of
Australia, Tasmania No. 1 Branch
for the making of the Community
and Health Services (Public
Sector) Award

COMMISSIONER WATLING

HOBART, 18 February 1994
continued from 17/2/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

MS R. HARVEY: If the commission pleases, MS HARVEY, R., and I have with me **MR MICHAEL HALL** appearing for the Health Services Union of Australia, Tasmania No.1 Branch.

COMMISSIONER WATLING: Good. Thank you.

MR P. AIKEN: If the commission pleases, PETER AIKEN representing the State Public Services Federation of Tasmania.

COMMISSIONER WATLING: Good. Thank you.

MR M. WATSON: If the commission pleases, MARK WATSON. I appear on behalf of the Minister administering the Tasmanian State Service Act and with me is **MR JAMIE BONE**.

COMMISSIONER WATLING: Good. Thank you. Right. Well who wants to lead? Ms Harvey?

MS HARVEY: Yes, Mr Commissioner. Believe it or not, we're ready to proceed. We thank you -

COMMISSIONER WATLING: So it's like Christmas? So that thing that - I think Mr Stevens raised the question yesterday of Mr Rundle going down the street in the Father Christmas uniform, so he's been by your way, has he?

MS HARVEY: He certainly has. Yes. We thank the commission for the adjournment yesterday and I just it didn't create too much inconvenience, but yesterday did allow us to resolve these outstanding issues and some differences between ourselves, so that we now are in a position to proceed. What I intend to do is to first hand up an exhibit that outlines the submissions that we will be making today.

COMMISSIONER WATLING: Now what exhibit are we up to here? We'll mark this exhibit HSUA.6.

MS HARVEY: HSUA.6. Just before I start, I'll ask the commission to bear with me at times if I need to refer to other documents. You'll understand, as I pointed out yesterday, that I'm not normally the advocate who deals with this matter so not having been involved in all the negotiations, I have a little bit more difficulty than I'd normally expect to have on the matter, but I trust it will go smoothly.

Okay. In terms of Exhibit HSUA.6, I intend to just make some introductory comments in a minute; then to go - well what I'm doing is outlining the submissions that we intend to make today. In terms of 3.0, we will hand up an exhibit that outlines the professional, admin and clerical and technical streams which I can indicate are the same as the decision of

the 29th of November 1991 in T.2399. Then in relation to 3.2 which is really where the most substantive submissions need to be made, we'll be handing up an exhibit indicating the agreement between the parties identifying differences from the operational stream contained in the decision of the full bench in November 1991 and in the rates. We'll also be indicating a couple of areas that require refinement through the process of implementation.

I'll then go to a rationale for why we seek the commission's endorsement of the agreement that the parties have reached and indeed, we intend to address the T.2399 interim decision of the 29th of November, T.2399 the further interim decision of the 23rd of April 1993 and the Memorandum of Understanding approach. We'll also address the wage fixing principles, the public interest test required under section 36 of the act; we'll then turn to issues of the operative and the issuing of orders and in conclusion, just summarise where the submissions that have been made and also give a brief indication of future activity in relation to the finalisation of this award.

So, if I can turn to my introductory comments. It's sort of with a degree of - it's fairly incredulous to some of us that we've actually finally reached agreement on this matter. It is has been a laborious process and it's not been an easy task and I think that by way of indicating the sort of problem we've confronted, we are in fact, by this application today, seeking to replace over a thousand salary points currently applying in this agency with the new integrated four stream approach and indeed replace over 17 awards, so it's not an easy process. Indeed, the four streams - what we're hoping to do is to put in place an integrated career structure on skill based career paths.

As I said, no-one's pretending it's been easy, and I'm sure my colleagues from the department will attest to that. And I think we should also say that particularly public hospitals are a particular example of traditional work organisation and almost in the most extreme area of that form of work organisation in the public sector. It is one that has been characterised by fairly closely guarded demarcations and this - the finalisation of this award will in fact represent a fundamental efficiency gain for the department. I'm sure that some of our members would probably be sceptical of the cost that it has been to them in terms of their involvement in the process, but as a union, we are confident that we have taken the right approach, that we are in the long term, that we'll be putting in place a structure that will benefit both the department and our members and that the cost and the work that's gone into it will be justified at the end of the day.

So having made those introductory comments, if I could now turn to 3.0 of our submissions as outlined in Exhibit HSUA.6, and I intend to hand up an exhibit in relation to - and I will

guided by the commission on this - I was thinking it might be easier if I hand up professional, that gets and exhibit number; technical that gets and exhibit number. It might be easier in terms of referring as we go.

COMMISSIONER WATLING: Yes. I think you're right. We'll mark this document which has a heading on it 'Administrative and Clerical Employees Stream' as HSUA.7.

MS HARVEY: The next exhibit I'll hand up is in relation to the Professional Employees Stream.

COMMISSIONER WATLING: We'll mark this Exhibit HSUA.8.

MS HARVEY: Technical employees - one more.

COMMISSIONER WATLING: We'll mark the Technical Employees Stream as HSUA.9.

MS HARVEY: Mr Commissioner, just in terms of explaining these exhibit, HSUA.7, 8 and 9, they are not draft orders and indeed, before I turn to address them, I want to stress there will be a need to reformat these in terms of draft orders and in particular, the way they're currently before you is as an integration between the definitions and the actual wage rates. Now the way that we intend to proceed is to actually separate the definitions into Clause 7 of the new and to have the salaries in Clause 8. Now largely that's just a drafting exercise and for the purposes of today, that's why I indicated that I'd be handing up as exhibits rather than as draft orders.

COMMISSIONER WATLING: But certainly we can take the classification standards as being definitions for the levels as described in the salary part of the document.

MS HARVEY: That's correct, and what I anticipate would happen is that the parties would confer with yourself and your associate in terms of issuing appropriate orders to reflect the agreement between the parties at a later date.

COMMISSIONER WATLING: Thank you.

MS HARVEY: Also I just put a rider on it that they subject to omissions and errors and I particular have a view to the department who hasn't had time go through them with a fine tooth comb, so they are subject to that rider.

COMMISSIONER WATLING: But in any case the intention of the parties is for them to precisely reflect the full bench decision on the streams.

MS HARVEY: Well I'll now turn to address that matter in relation to the content of HSUA.7, 8 and 9, if I may, Mr

Commissioner.

In terms of HSUA.7, 8 and 9, they are taken directly from the full bench decision of T.2399 and the decision of the 29th of November 1991, so that is clearly the intention and the agreement between the parties.

That - I'll deal with the rationale for it when I get to section 4.0 but if we just get all the documentation up and explain what it is before we go to the rationale.

COMMISSIONER WATLING: Thank you.

MS HARVEY: So that's all I intend to say in - at this stage in relation to those first three streams. I'll now hand up the next exhibit which is the operational stream.

COMMISSIONER WATLING: Right. We'll mark this HSUA.10.

MS HARVEY: Mr Commissioner, obviously HSUA.10 is the big ticket item in this proceedings and so what I intend to now do is to identify the differences between this and the full bench decision which issued a version of an operational stream and then I'll go onto the rationale for why we are putting forward this document later on in my submissions when I address the issue of the rationale.

So if I could turn to the issue of the differences. This document actually represents, if you like, and divisible package and it's difficult to take you to each change and compare just with the wording of the full bench's operational stream because what we have done through the process of negotiation and seeking to adapt the full bench decision to our industry has required a review of some of the classification definition, so it is a bit tricky to, say, compare one sentence with - from this package, with a sentence from the full bench decision because it needs to be taken as an overall package, but I will attempt to indicate and take you to the places where it is in fact different, if you could just keep in mind it is part of an overall settlement of the issue.

The two critical differences as far as we're concerned in relation to this operational stream agreement as opposed to the full bench one is that we have focused on two issues, one is the issue of functional areas. Now, as I indicated in my introductory comments, this industry is characterised by a high level of demarcation and a high level of segregation between different jobs and segmentation, so given that factor, particularly in the operational stream, we've sought to address the issue specifically of functional areas and the issue of multiskilling throughout the operational stream because clearly that's the direction in which we're moving with job redesign.

Into the second - the major changes reflecting that are really in the levels of 2 and 3 which is not surprising given the high number of employees that are concentrated in those two areas within the operational stream.

So if I can now turn to HSUA.10. In terms of level 1, the parties have agreed that at this stage we would indicate that we would not be putting in a formal classification definition in level 1. The intention of the parties is in fact to put together a structured training program to address proper induction and proper training level within the award. Now obviously we haven't had time to do that at this stage, but it is a clear intention of the parties to do so. At this stage we would not see level 1 as being used within the award.

In terms of level 2 -

COMMISSIONER WATLING: Can I just - and I don't want to really interject - but in terms of the definition of how someone gets on to this level if they were to get on to this level, are you saying that an employee at this level has - has to participate in a training program to be jointly developed?

MS HARVEY: We're saying that we haven't finalised the classification definition for level 1. The anticipation - it is the intention of the parties to develop that classification definition having in mind developing a structured training program rather than just a general induction program, an actual structured properly formulated induction and trainee program for that level.

COMMISSIONER WATLING: Right. So is that a request for an adjournment on that point?

MS HARVEY: If that's the appropriate way to proceed, yes, Mr Commissioner, that we would not include that level at this stage.

COMMISSIONER WATLING: So you want some indication to say that that level hasn't been finalised?

MS HARVEY: That's correct, Mr Commissioner.

COMMISSIONER WATLING: Right.

MS HARVEY: In relation to level 2, the general points that I would make is that there is not a great deal of inconsistency with the full bench decision and the three critical points, if you like in the full bench decision are that it's a level of direct supervision, that it's a routine task and that you're operating basic equipment.

Now in the level 2 definition that the parties have agreed in the case of this industry, those three critical issues are still in there. What we've done is - is sought to define it in a way that is more applicable to the industry, and again, I take you to point 1 of level 2 which talks about - involves work at a basic level in one functional area, and I'll come to the definition of functional area in a minute, but that's really reflecting this issue I alluded at the beginning about having to - to deal with the fact of the way the industry is structured and the way we see - see ourselves going.

So other than that I'd contend that it's not really very much different to the full bench decision because it has those three critical elements in the level of skill and responsibility.

In terms of 3, essentially the level of supervision is the same as the full bench decision. Again in the second dot point there we've got requiring one functional area - within one functional area. Again that reflects this issue of multiskilling and work organisation.

The third dot point is the same. The fourth dot point is the same. The fifth and sixth dot points are in fact different because what we've added in is, it may be required to assist a less experienced employee and exercises good interpersonal communication skills.

Now the reasons the parties have put that in is that - that it isn't uncommon in the industry to actually assist someone when they start on work - start at work, but that's not really a level of supervision which comes in at level 4, so we just thought it would be clear that we stipulate that there may be some sort of assistance rather than as opposed to a supervisory type relationship.

In terms of the final dot point, really we're just indicating that there is a need really at this level to have good interpersonal and communication skills.

If I can now turn to level 4. The first dot point is essentially the same; the second dot point goes to the issue of again of functional areas, and what we're putting in at level 4 which makes it very clear is that we would be expecting employees classified at this level to perform a variety of tasks across more than one but no more than three functional areas, and again it goes to this issue of multiskilling.

The third dot point deals - is the same as the industrial - the full bench decision.

The fourth dot point - the wording is slightly different but it reflects the full bench decision where level 4 was the first level of supervision in that more technical sense.

The fifth dot point is basically the same and we've added a sixth dot point which says: Exercise specialist skills over and above those required in level 3.

Now the reason that that has been included in - and I'll give you an example which might make this a little bit clearer, is that there is a differentiation in the level of skill in the operational stream between, for example, a - a cleaner who is cleaning within hospital environment and a cleaner that conducts infection control. Another example would be, say, in a laundry where you have a general laundry worker - laundry hand worker - but there is some specialist skills in terms of, for example, mixing chemicals. They're only undertaken by certain peoples.

So what we've tried to do is to ensure that that's reflected in the operational stream that we actually clearly identified, that there are some specialist skills that operate above that level 3 - 3 - classification.

COMMISSIONER WATLING: So infection control people would come in at 4? Is that what you're saying?

MS HARVEY: People who are exercising infection control skills - yes - that's correct. Infection control is in fact a very specialist type skill in terms -

COMMISSIONER WATLING: I appreciate that. I've heard a separate case on them before.

MS HARVEY: Oh, have you?

COMMISSIONER WATLING: Mm. I think I gave them money for that reason.

MS HARVEY: Well you'll be glad to see that we've insisted on protecting their - that decision - previous decision, Mr Commissioner.

In relation to level 5, the first dot point is - is - essentially is the same. The second dot point again specifies the issue of multiskilling. The third and fourth, fifth and sixth are basically same as the full bench decision.

Level 6 which is the trade rate - we added one addition to the full bench decision and that's in relation to the fourth dot point and it says: Supervises a large number - and we've specified non trade staff or a number of non trade work teams that may be multiskilled in function.

Now I'd contend that was always the intention of the full bench that that level of supervision would be for non trade people, and so really all we've done is clarify that in the definition.

In terms of the next dot point down - exercises independent judgment in deciding how tasks are to be performed, we have deleted just a sentence that was in the - sorry - a phrase that was in the full bench decision, and that is: have authority to adapt work methods dealing with non standard problems. Really, the reason it's been deleted is just that it's redundant in the sense that we thought it basically covered it by what was there and it's not really a major change, I suppose, in these processes of going backwards and forwards. You can end up with some fairly minor variations at times.

If I can then go from 7; 7, 8 - 7 and 8 are virtually identical - or I understand that they're identical, give or take a minor word here or there.

Level 9 - we have added on page 5 on the - one, two, three, four - fifth dot point down - we've actually just specified a dual qualified tradesperson - so that's someone who we would expect to hold certificates in more than one trade - or in fact in two trades - being dual. And there are some employees in that position in the industry.

Level 10 is the same.

Level 11, which was contained in the full bench operational stream has not been contained in the agreement between the parties in relation to this award and it - the reason that that has occurred is that it's the intention of the parties that once you get to a management level within this stream that it would be more appropriate to classify somebody within the administrative and clerical stream, and the reason for that being is that once you get to a fairly senior management level or a management level - significant management level, really, the vast majority of your work is in fact administrative and clerical nature in the sense that you'd be doing tasks such as computer scheduling, management, information monitoring, budgetary control and they are essentially catered for within the administrative and clerical - clerical streams and any operational type tasks, if you like, would be peripheral to their major function which would be an administrative and clerical function.

If I can now take you to page - the next page over - it's actually - sorry - it's page 7 of HSUA.10, which deals with the definitions. There are some changes here. In relation - and I'll run through them as quickly as I can - in terms of administrative supervision which appeared in the - the - the full bench's operational stream, that doesn't appear in these

definitions, the reason being is that it doesn't appear in any of the classification definitions and therefore is - is actually redundant, and I think that reflects partially what we were talking about, about the senior level, level 11 not being contained because really that administrative supervision is in fact applies at a very senior level and we would see those sort of people being within the administrative and clerical stream.

Direct supervision - the definition is essentially the same, however we have reworded the second paragraph, but the intention is pretty much the same and we've taken out the final paragraph.

Do you wish me, Mr Commissioner, to go to each of these paragraphs or are you happy for me just to indicate it?

COMMISSIONER WATLING: I'm just happy for you to indicate.

MS HARVEY: Okay, in that case I won't get out my other document.

Regular supervision - that's not actually in the - in the decision. We've actually included that, and regular supervision occurs in a definition at level 3 and regular definition - and I quote:

Means employees working under regular supervision are given broad instructions. Employees would exercise limited judgment on how to complete tasks and priorities.

The employee has competence in a range of tasks within one functional area.

Supervision is generally provided at the commencement at the completion of tasks. Employees are capable of working alone.

Again it reflects this notion that's in the entire operational stream agreement in relation to functional areas.

Limited supervision is the same.

Limited direction is essentially the same, however we've left the third paragraph out of the definitions from the full bench decision.

Now functional area which is a fairly critical new definition that's been added, and if I could just take you to that, and I quote:

"Functional area" Refers to a work unit providing a distinct service, eg cleaning, catering, kitchen,

attendants, hospital aids, stores, workshops,
laundry etc.

Now as I indicated when I first started addressing this operational stream, this functional area concept is quite critical because what we've sought to do is to - to build into this structure a - so that it is able to deal with workplace reform and job redesign that will break down existing - that possibly will break down existing demarcations.

Now if I could just in relation to the hospital aides, I'm of the understanding the department may be making some comments in relation to this issue and their concern, as I understand it, is that the duties of a hospital aide and cleaners may in some way overlap.

I wish to make it very clear from the point of the HSUA that the duties of the hospital aides would be 95% different from that of a cleaner, and whilst a cleaner clean on a ward area, the actual functions of cleaning for a ward - sorry - functions of cleaning for a cleaner and the function of cleaning for a hospital aide are quite different, and to give you an example, a hospital aide may in fact be involved in things such as cleaning sputum mugs, stripping beds once a patient has been removed - has left the ward - and other duties that involve cleaning of a very different nature to that of just general cleaning, and indeed that distinction is in fact recognised by the department who refuses to give our members who do cleaning, nauseous linen allowance on the grounds that hospital aides do precisely those functions.

So we would contend that certainly the duties of a hospital aide are 95% different to a cleaner and that there may be a couple of minor examples, and the department cited one to me where they say a cleaner is cleaning a basin and a hospital aide is cleaning the tap of the same basin. We would contend that that would be a very, very minor examples, and that in the main the functions are quite different, and therefore we believe that it's important that it be reflected in the definition of a functional area.

COMMISSIONER WATLING: I think at the end of the day one's got to look at the indicative nature of the work between a hospital aide and a cleaner, not just pick out one isolated incidence.

MS HARVEY: I do concur with you on that.

COMMISSIONER WATLING: And if there's one isolated incident, then really the employer should take the necessary steps to make sure that, you know, hospital - the work done by hospital aides is indicative throughout all hospital aides, I suppose. If they pick out one hospital aide and say, well one cleaner -

just say that this particular cleaner does this or this particular cleaner does that and that's out of line with the norm, well I suppose management prerogative is that they can get them to do the norm for a cleaner or a hospital aide. If they choose not to do that, well it's not a very good example is it?

MS HARVEY: Mm.

COMMISSIONER WATLING: At the end of the day if it comes to any dispute about it, I'd want to be looking at the - the - well - I'd want to look at what a hospital aide would normally do as opposed to a what a cleaner would not normally do and not look at an isolated incident - incident or sort of practice. Because I think if - you can take it to a ludicrous stage if you don't pick out one odd example and say this is what they do.

MS HARVEY: Mm.

COMMISSIONER WATLING: Maybe the odd example that's picked out is not indicative of their task at all.

MS HARVEY: Well, I'd certainly concur with you in relation to that and that's precisely why I made the comments that I did because that's the area that it has been raised in relation to, and quite clearly the vast majority of the functions of a hospital aide are very different to a cleaner.

COMMISSIONER WATLING: Have the parties sort of decided to look at - or put down in writing what they think the - the work of each might be?

MS HARVEY: Mr Commissioner, there is already a fairly extensive body of evidence in relation to this in terms of position descriptions that currently exist. We really are - so that there is that to rely as far as the HSUA is concerned. There's also a lot of custom and practice with which we could, you know, bring evidence to - to - to indicate to the commission if we were ever in dispute over this matter.

In the sort of exercise that we're going through, one of redesigning every single job in line with the full bench's 1991 decision, it's inevitable that through this implementation process that these issues are going to have be flushed out and discussed and negotiated -

COMMISSIONER WATLING: That's right.

MS HARVEY: - and we just can't cross every bridge before we get to it.

COMMISSIONER WATLING: But it has the potential when you get to classifying people within the new streams and the new standards to create some disputation, I would think.

MS HARVEY: Certainly, yes. We - you know -

COMMISSIONER WATLING: It's an accident waiting for a happening.

MS HARVEY: - I don't think either party thinks that this process is going to be easy and that once we get these streams in it's quite likely that we go through the translation process. There will be areas of dispute and - but I do think that there's a history and a goodwill between the parties in relation to this matter to try to resolve it and ultimately if we can't I imagine the commission will - the employers will drag us back in.

MR WATSON: With chains.

MS HARVEY: With chains. If I can now -

COMMISSIONER WATLING: Oh well, there's certainly no job redesigned on that point anyway.

MS HARVEY: Let me now take you to the issue of the rates. If I can just say in relation to the rates, again it's very difficult to compare this to the previous decision because overall what you really are looking at is a package that has particularly seen differences in the levels 2 and 3 and - and the way that even it's been structured at 4 and 5 means that it is industry specific. However, I will run you through the rates as they currently stand. I don't know if you wish to go to the comparison with the full bench rates.

COMMISSIONER WATLING: Well, whatever you want to do.

MS HARVEY: Right. Well, essentially what we have done is put in - put in increment points which weren't contained in the full bench decision and - and put in new rates, but they are linked back, if you like, to the old - to the old rates of the full bench decision.

The level 1 rates are the same.

In relation to level 2, the rate in the full bench decision was 18,849. Obviously the rates in level 2 there are different but it's in the same ballpark.

Similar comments I'd make in relation to level 3. The rates of the full bench decision were 20,027.

In relation to 4, the full bench rates were 21,205 - again, they're all in the same sort of ballpark.

Level 5 - the rates in the full bench was 22,383.

Level 6 - was 23,561; 7, 8 and 9 are identical to the full bench decision as is 10, and 11 we don't have.

Now I'd urge some caution in terms of making that direct comparison because the way that we've structured the operational stream means you're not really comparing apples with apples, but at the same time having said that, you know, we're in the same ballpark, we're not completely - completely different.

And indeed, I think it reflects the bona fides of the parties to the Memorandum of Understanding in that the agreement always was that we would seek to introduce this at minimal cost but to address some problems of the full bench decision in terms of implementation back into our particular agency which we believe we've now achieved.

So that 22,891 is that the 5th year rate is it?

MS HARVEY: Twenty two -

COMMISSIONER WATLING: The level 6 - the 23,981.

MS HARVEY: That's the 2nd year of service. The full bench trade rate is in fact 23,561.

COMMISSIONER WATLING: Yes, I appreciate that, but I - the 23,981 - is that the 5th year of service.

MR HALL: Yes

MR WATSON: Yes, that's actually the top of our career range trades people at the moment.

COMMISSIONER WATLING: That's right - the 5th year. Right.

MS HARVEY: Thank you. Now there's a couple of additional issues which I need to go to in relation to this operational stream and I want to hand up an exhibit which reflects an agreement between the parties on this matter.

COMMISSIONER WATLING: Right. We'll make this exhibit HSUA.11.

MS HARVEY: Mr Commissioner, I indicate at the beginning of my comments about the operational stream, that it is an extremely difficult process when we're looking at trying to collapse all - well to change all these traditional relativities and salary points and there are couple of areas that the parties agree will require further work as a result of implementation, and as we go through the translation

process we expect that a number of problems may be flushed out, so - that we're foreshadowing to the bench that we may need to come back to you if that doesn't in fact occur.

So if I could just go to exhibit HSUA.11; there's two matters dealt with there; one is the administrative and clerical stream, and I quote from the agreement:

The parties acknowledge that as a result of the implementation of the administrative and clerical stream, that it may be necessary to review levels 10, 11 and 12 and the parties foreshadow this possibility to the commission.

This need arises from the absorption of the SES level 1 and 2 into the administrative and clerical stream and program management. Both these factors have occurred since the 29 November 1991 decision T-2399.

Now simply it is exactly as it's put there - that we may have a problem in relation to that area particularly because the old SES agreement, as I understand it, has been very fundamentally changed so that the old SES level 1 and 2 that used to be in a separate registered industrial agreement will now drop down into the administrative and clerical stream. Now that wasn't the case at the time of the full bench hearing and it is possible that we may need to revisit those particular levels in the process of translation.

COMMISSIONER WATLING: What - yes - that agreement though - that - that would be out of time now, I take it - the party -

MS HARVEY: My understanding is, and Mr Watson may be able to assist me with this, is that it's been in fact renegotiated so that the level 3 has been retained but levels 1 and 2 -

COMMISSIONER WATLING: Is being or -

MS HARVEY: Is being, but I'll rely on Mr Watson in relation to this because I'm not familiar with it.

MR WATSON: Commissioner, my understanding is that 3, 4 and 5 are - are being retained but level 1 and 2 are probably, well, we say, maybe extinct - that - that - I mean I'd have to say that -

COMMISSIONER WATLING: That's in the SES agreement?

MR WATSON: Well that those - those salary points, I guess -

COMMISSIONER WATLING: Yes.

MR WATSON: - in terms of classifying positions, but -

COMMISSIONER WATLING: Yes. They were very rarely used, as I understand it - levels 1 and 2. That's in the SES agreement.

MR WATSON: Well those - those salary points, I guess in terms of classifying positions.

COMMISSIONER WATLING: Yes.

MR WATSON: But -

COMMISSIONER WATLING: They were very rarely used, as I understand it - levels 1 and 2.

MR WATSON: Well, we do have a number of SES level 1s and 2 in our agency. I don't know about other agencies, but definitely it is under review but I'm not sure that we've actually come to a final position, but it is likely that 1 and 2 are going to disappear, so I can't give any more definite statement than that at this stage.

COMMISSIONER WATLING: So does that mean that will have effect on 10, 11 and 12?

MR WATSON: Yes, that's right, because in the decision 10, 11 and 12 don't actually go to management functions as such -

COMMISSIONER WATLING: No they don't.

MR WATSON: - and therefore we - bearing in mind that - well if SES 1 and 2 are not there we're going to need to be able to classify management positions particularly for our programs on - well, I would say at the top of the scale 10, 11 or 12, depending on the complexity and the size of the program.

COMMISSIONER WATLING: Right.

MR WATSON: So that's why that that's been put up and we foreshadowed that we might need to come back at a later date. Now if we can translate and there's no problem then I guess we won't have to change it, but -

COMMISSIONER WATLING: No, but you're foreshadowing that, you know there is something else in the wind. Right, thank you.

MR WATSON: - it is a possibility.

MS HARVEY: Yes, Mr Commissioner, that's why it is - has got the wording 'may be necessary' because we - we just haven't resolved it.

If I can now turn to the issue of specialist attendants, and I quote from exhibit HSUA.11:

The parties agree that attendants exercising specialist skills have not been adequately addressed in the operational stream structure. It is agreed that the translation of attendants exercising specialist skill will need to be dealt with as part of the implementation. Accordingly the parties indicate to the Commission that it may be necessary to modify the operational stream structure as a result of that implementation.

Now, Mr Commissioner, this again is one of those areas where it's not a huge number of employees but it's an area that presents some difficulty for us and that we need to discuss, to be honest with you, both the parties to this stage have felt that we can't really adequately address it till we actually get to the job redesign and the PD's been written and seeing where it all lines up and how we have to deal with it at that stage, so again it's an issue of foreshadowing to you that we may have a problem in that area, but the parties are agreed that the best way of dealing with it is to allow the workplace change process to continue and to see what falls out in terms of how we deal with this particular group of employees. It's a relatively small number of employees and it would seem to us a pity to hold up or to not facilitate the process because of this particular problem that we have.

COMMISSIONER WATLING: Should we put level 1 of the operational stream into this agreement as well - is there an agreement that level 1 hasn't been finalised?

MS HARVEY: Mr Commissioner, it's probably more - yes - that is correct. It's an issue of how I suppose we're presenting to you the exceptions and I have got one more.

COMMISSIONER WATLING: Yes, well I'm going to have to highlight these exceptions in any decision because I don't want any argument about it later on, that, you know, when people say that we have an agreement on this and we haven't and then we have to send out all the researchers to go back through transcript, I want the decision to clearly state what we haven't finished.

MS HARVEY: Correct. Well I think that that would be a good way of proceeding and I apologise if the way of presenting it is not as clear as it possibly could be, but certainly there are these two exceptions, the one other is - is in relation to the trades and I'll come to that in a minute and there is one other in addition to that which I wish to make some comments on and that's in relation to a proposal from the department for a patient service assistant. So they're the four from the HSUA's perspective that we see as not being finally

resolved, but we also see them as being relatively minor in the sense of what we're trying to achieve now and that we don't want to - we would like to facilitate the process by allow - by getting the streams in and then being able to see where issues fall out, if you like, for the process of implementation.

COMMISSIONER WATLING: Right.

MS HARVEY: So there are those two.

COMMISSIONER WATLING: Right.

MS HARVEY: There does - the other issue that has presented us with some difficulty in relation to the operational stream is the issue of allowances for tradespersons. The - there are in effect in relation to tradespersons a number of allowances operating and if I can just go to them they're the wireman's license, the plumbing duty allowance, the lift industry allowance, the plumbing registration allowance and the special class allowance, the HEC nominee allowance and the plumbers nominee allowance. Now -

COMMISSIONER WATLING: Now just - I'm a bit interested in allowances.

MS HARVEY: I knew you would be.

COMMISSIONER WATLING: In fact I was more than interested in the full bench time about allowances because I think we've got to be careful with some of them and people should be classified at the appropriate level in relation to allowances and some of those allowances may well only reflect the job they do.

MS HARVEY: Mr Commissioner -

COMMISSIONER WATLING: It's just like saying to a truck driver, you - that you get a special allowance on top of your wage rate because you have to get a licence.

Mr Commissioner, if I may be allowed to just continue on this because it is an issue that we have addressed and I ask your indulgence to put my submissions and then have the discussion about it.

COMMISSIONER WATLING: Right. Especially plumbers nominee allowance because I'm very familiar with what that's all about. So you want to be a bit careful I would say on some of these.

MS HARVEY: I know it's an issue that is of some concern to yourself and it is also an issue I can assure you is of very great concern to our members. And if you like, what the

parties are trying to do is a very difficult process of looking at these allowances. So I'll just go through what we've agreed and the rationale for it.

So I'm referring only to skilled related allowances, okay. So these skilled related allowances are the ones that I've remunerated, are the ones that we see applying in relation to these trades area.

Now I'll just go to what the agreement between the parties is in relation to how to deal with these. And the problem arises because if we implement the rates specifically as they are, many of our people who have gone through a very extensive job redesign exercise under the auspices of the workplace change and transition agreement could end up going back in terms of their award rate and being frozen unless we - and being frozen in terms of the individual as a result of this process. Now I think there is an understanding between the department and the HSUA that that does not facilitate or assist in encouraging people to be involved in what is a very important process of looking at the way that they perform their work and trying to structural efficiency. So it's an issue that we do have to address.

So if I can just go to what the agreement is. Basically the parties have agreed to absorb all skilled related allowances in the award subject to the following provisions: a) to retain the HEC and the plumbers nominee allowances in the new award. These allowances would be paid in addition to the classification rate as amended from time to time. b) to abolish the special class allowance provided that all employees eligible for this allowance will be translated to level 8 in the operational stream unless classified elsewhere in accordance with the classification standards.

COMMISSIONER WATLING: So they'd go to level 8. So what percentage is level 8?

MS HARVEY: Level 8 is - bear with me for a minute, Mr Commissioner. I believe it's 115 per cent.

MR AIKEN: Yes, I think that's right.

MS HARVEY: 115 per cent which is the industry standard for special class. And it's in fact the same as the - as I understand it, as the full bench decision.

COMMISSIONER WATLING: Right.

MS HARVEY: So you'll be happy with how we dealt with that one.

COMMISSIONER WATLING: Yes. See, with something like plumbers nominee allowance you may well ask why aren't they

classified at the appropriate level, because a plumbers nominee really takes the place of the employer and has to take the brunt of everything with the local council and things like that.

Now those people that are required to act in the place of the employer -

MS HARVEY: Mr Commissioner, again I ask your indulgence to allow me to finish because we -

COMMISSIONER WATLING: Yes. I just don't want these things -

MS HARVEY: - I think you will be happy with our final intention.

COMMISSIONER WATLING: Right.

MS HARVEY: We're having an interim intention and a final intention.

COMMISSIONER WATLING: Right, yes.

MS HARVEY: I can tell you're very nervous about this matter.

COMMISSIONER WATLING: I am, I am because we've had disputes on this and plumbers nominee, I tell you - anyway you might convince me.

MS HARVEY: Yes, I'm sure I will.

COMMISSIONER WATLING: I hope you do.

MS HARVEY: The next point I wish to look at is that there is an agreement between the department to pay existing allowances as set out in the current award to eligible employees other than a special class allowance, in addition to the rate to which employees are translated to in the new Health and Community Services Award as amended from time to time.

For the purpose of the agreement the relevant allowances are defined, as I set out: the wiremans allowance, plumbing duty allowance, except any employee classified over level 6. So if they're classified over level 6, i.e. the multiskilled rate at 7, it wouldn't apply. But we do have some cases where there's a handy person, for example, who is attracting that allowance and we just don't want them to lose it because we haven't been able to deal with it in the structure, in an interim basis.

Lift industry allowance and plumbing registration allowance. Further the parties agree to consider options for adjusting the operational stream structure to create increment points to fully compensate employees for allowances in they are to be absorbed into the structure. Now, Mr Commissioner, I don't

want to go into this in a very big way today. I suppose what we're asking is an interim type arrangement but one that protects the operation of those allowances. Now indeed this is the very issue that took us many, many hours of negotiation yesterday.

We have instructions from our membership that if these - we cannot protect the allowances in the manner so indicated that we would have to take the whole operational stream back for a vote again on what they intend to do in relation to this issue, because our members are very clear that they will not see one group of employees disadvantaged for the sake of another group of employees. So we have very, very clear instructions in relation to this issue and the basis of which we are able to proceed today is on the basis that this particular provision is acceptable. Now the intention - this sentence that I just read to you in relation to: Further the parties agree to consider options for adjusting the operational stream, there has been some preliminary discussions about putting in certain increment points that could then allow us to abolish the allowances altogether on the basis of defining competency type standards.

Now I don't want to go into that in a lot of detail because indeed the parties haven't gone into it in a lot of detail, but I just wanted to indicate to you it's not that we're seeking to sidestep the issue but that we have a very, very real problem in that if we had an agreement that indeed allowed a group of our members to in fact be frozen whilst at the same time they're going through an extensive job redesign exercise and being expected to completely review what they do and the way in which they do it, that causes us very great problems.

COMMISSIONER WATLING: Yes, but aren't you saying to me that you don't want any order arising out of this decision until such time as the job redesign has been completed?

MS HARVEY: Mr Commissioner, it's not possible to complete the workplace change and translation process or indeed - perhaps if I put it in a more positive light, that process would be very much facilitated by having a clear indication from the commission about the most - of the most significant aspects of these four streams. Bearing in mind, the department informs us that there are only eight employees actually affected by this issue of allowances, right.

COMMISSIONER WATLING: Yes, but what I'm saying is that the award will prevail, won't it? This agreement won't - any decision arising out of the hearing today will not prevail until such time as the commission issues an order.

MS HARVEY: That's correct, but we are asking the commission in the hearings today to indicate in decision, if not in

order, that what we've basically agreed in relation to the four streams would be endorsed. Now the actual technicality of the order may follow, but once that decision has been made it facilitates the workplace change and translation process because that process indeed involves employees drawing up their position descriptions, considering where they translate to, so that we need to have those rates fairly clearly determined in terms of what will apply even if they don't apply at that point in time.

So indeed without that it in fact makes things fairly difficult in terms of progressing the matter.

COMMISSIONER WATLING: Yes, but I still say that you might get an indication that the people will still only get paid their current award rate and the allowances that prevail in the award until such time as an order is issued.

MS HARVEY: That's correct, in fact, what we're indicating to you is the agreement that we have basically reflects what operates in the award but I suppose we're foreshadowing, in the same way that we foreshadowed in relation to those other two matters, that it may be that we're going to come back to you and -

COMMISSIONER WATLING: And alter this, and alter the operational stream.

MS HARVEY: In a very minor way, possibly.

COMMISSIONER WATLING: So it's nowhere -

MS HARVEY: To address this problem.

COMMISSIONER WATLING: So it's nowhere finalised yet.

MS HARVEY: No, I think that's totally incorrect. It's finalised in - I would believe if you did it on an employee basis - I'd be guessing but I would say 99 per cent.

COMMISSIONER WATLING: Yes, but -

MS HARVEY: And the department says to us -

COMMISSIONER WATLING: I'd have to say when we make awards we don't count up the number of employees that we deal with. We're looking at an award structure. So what you're saying to me is that you haven't completed the operational stream at this stage because you want to revisit in relation to further points, further levels.

MS HARVEY: No, that's not correct. What I'm actually saying is that it is finalised, that through the process of implementation - and this is not a unique situation - that

through the process of implementation that we anticipate that we may have some problems that we're going to have to address. Now that's happened in many awards before in terms of the process of implementation, of having to come back and refine. I mean, we could call it a trial period but I think that that would be misleading.

COMMISSIONER WATLING: I don't disagree but there are a couple of fundamental things there, for example, a plumber with a plumbers nominee allowance. Where would the plumber with a plumbers nominee allowance that's currently in the system now fit in your new system?

MS HARVEY: They would be translated on the basis of their skills, under the workplace change and translation agreement, to the new operational stream as agreed. But the plumbers nominee and the HEC nominee allowance would be retained both in the - obviously in the current but in the new award as well. That is the agreement of the parties.

COMMISSIONER WATLING: Mm.

MS HARVEY: And that's what we're asking you to endorse.

COMMISSIONER WATLING: So all those people -

MS HARVEY: A pregnant pause.

COMMISSIONER WATLING: Yes. We might just go off the record.

OFF THE RECORD

COMMISSIONER WATLING: So let the record show we've had some off-the-record discussions and the parties during the luncheon break are going to look at the issues that they have yet to finalise in relation to the operational stream and those issues which may need to be revisited at a later date.

MS HARVEY: Mr Commissioner, there is one other issue that is - that we should indicate to you that there - it isn't a problem currently because it doesn't exist, but - so in that sense we are not reserving in a technical sense, but the issue that I wanted to just spend a few moments is a proposal by the department to put in place a completely different client interaction level within the health system which is called a 'patient support assistant' I think the department calls them, and it is a fundamental change in the way services are currently delivered.

Now I don't intend to go into any detail because at this stage it's only a proposal by the department. Our members have not agreed to it. They have not in fact even authorised

negotiations on it and in fact it's an issue they feel very strongly about. However I'm just foreshadowing to you that the department indicated they have a desire to pursue that issue. It's not a form of work organisation that currently exists. It's not one that's been considered currently in the workplace change and translation process in terms of this issue, but if it were to come about as a result of the department's desires, if you like, that it is possible that because we're dealing with what exists now and putting in place skill based structures, that we would have to come back, if you like, and address it, and I'm only reserving my right - it's not an agreement between the parties to reserve the right, so I'm just foreshadowing to you a potential problem.

COMMISSIONER WATLING: No. So I take - well that maybe something during the luncheon break you want to - you may want to put on your foreshadowing list of - for revisiting because I want to understand whether or not we're dealing with that issue as part of this particular application. If we're not dealing with it then it should be clearly identified that it's not part of the deal.

MS HARVEY: Yes. It's difficult to put on the reserved list because it doesn't exist -

COMMISSIONER WATLING: No, I know, but you've -

MS HARVEY: - and it's not even sure if it's going to exist.

COMMISSIONER WATLING: No, but I think - I don't want someone telling me in 18 months time that that was all taken into consideration during the time of award restructuring.

MS HARVEY: Well, that's why - yes, that's why I raise it with you.

COMMISSIONER WATLING: We want to make our position very clear.

MS HARVEY: Righto.

COMMISSIONER WATLING: If it is part of it and if the employer believes that it is part of it, well maybe we should have an indication now, but - or during the course of submission, but -

MS HARVEY: We'll deal with it in the adjournment. We'll take your advise on that, Mr Commissioner, and we will discuss it with the employers during the adjournment, so what we would hope to come back to you after the adjournment is: (a) an indication of whether indeed we can proceed and secondly, on what basis given the issues we may or may not be able to reach

agreement on, what we should be foreshadowing is issues that haven't been resolved.

Mr Commissioner, I do - in terms of HSUA.6 which I handed up to you, I was going to address the issue of the rationale for what we've sought today and to address the issue of operative date and conclusion. I think that in some ways it may be a little premature because I indicated to you earlier that we had very clear instructions in relation to this whole issue from our membership and unless we can resolve those matters satisfactorily, if you like, we're not in a position to proceed, so therefore, it would seem silly to waste the commission's time in terms of going to rationale and operative date and conclusion if that's not in fact what we're doing, but I take your advice on it.

COMMISSIONER WATLING: Well what are you saying to me?

MS HARVEY: I am saying to you that we had an agreement which I put to you in relation to trades. We - I put to you a - a foreshadowing about patient support assistants and you've asked us to go away and discuss it with the department over the adjournment. Now if we can't get some agreement with the department, the instructions from my membership is that we wouldn't proceed. We thought we had agreement. You're now asking us to change that. Well, that's fine, but we - it may not be something that's acceptable.

COMMISSIONER WATLING: Well I'm not asking you to change it. You can stick with your agreement. You're entitled to stick with your agreement.

MS HARVEY: But if you're -

COMMISSIONER WATLING: I don't - I'm not ordering you to change it whatsoever.

MS HARVEY: I understand that, Mr Commissioner, but you've - that if - if you were to indicate to us the - which I think you have quite clearly done -

COMMISSIONER WATLING: Well do you want to go over all the things off the record and now put them on the record?

MS HARVEY: No, what I want to suggest that we do is take an adjournment now so that we can deal with them in discussion -

COMMISSIONER WATLING: All right. Because if you want to raise now the things that were raised off the record, well, you'd better raise them.

MS HARVEY: Well I raise them on the record to you in the submissions that I put, that we have an agreement in relation

to the trade allowances, but the instructions are that we can't proceed.

COMMISSIONER WATLING: But of course the record doesn't raise, at this stage, all the things that I raised with you off the record. Now do you want to go into that?

MS HARVEY: No, I want to - I was going to suggest to you - and I'll take your advice - is that we actually adjourn now to allow discussions so that I don't waste your time in proceeding in relation to rationale if we're not in a position to proceed.

COMMISSIONER WATLING: Righto. That's fair enough.

MR WATSON: Just before we do, if we are going to adjourn. The issue of the trades allowances is obviously something that we'll need to have discussions about. As far as we're concerned, any discussion on PSA's - Patient Service Assistant classification - is not part of any deal that's going up today. It's certainly on our agenda and we have been discussing it with the other parties for some time, but as far as we're concerned, if they are to be classified, then I guess they will be classified on the operational - or somewhere within the operational stream, but that is something that's presently under discussion. Now we don't want to get bogged down in anything hinging on that with this stream. If there's an argument that we need to have later on about where they translate to or their functions or whatever, then we'll have that, but as far as we're concerned, it shouldn't hold up anything that goes up today.

MS HARVEY: Well Mr Commissioner, on that basis I think it's fine to proceed because Mr Watson has clearly indicated it's not part of the deal and that's what we were asking.

MR WATSON: Yes. Well can I just clarify. When I say it's not part of the deal, I just want to stress that these positions, in our view, will be classified in the operational stream and if there is a dispute as to where they get classified, well then I guess we'll be back here or somewhere else. So I just don't want it to be thought that they're completely off the agenda and they're nothing to do with the operational stream or whatever, but there's definitely - it's clearly on the agenda and just like any other position or positions which may be classified in future, we have four streams to classify them in and we'll pick which one we'll go with, but I just don't want to let it pass and think, we'll we're forgetting about it or its off the agenda because it's definitely on the agenda.

COMMISSIONER WATLING: Righto.

MS HARVEY: Mr Commissioner, I feel more comfortable with the comments now tht Mr Watson has made and I think clarified the issue in the sense that, you know, it's not part of the deal. It's an issue that they're proposing. It's not something that's been negotiated. It's not something we can negotiate because we have no - in fact, as I have idicated, our members are very much opposed to it, so I think on that basis, I'd be happy to proceed with the submissions.

COMMISSIONER WATLING: I think he's clearly indicating that people will be classified within one of the four streams.

MS HARVEY: Yes, and that it's not part of - it hasn't been part of these discussions and that therefore it's not part of the deal. that's the critical issue.

If I can continue now to the issue of the rationale, and we'll come back to you after the adjournment with a very clear list of what I've already touched on in relation to reserved matters and exceptions. In terms -

COMMISSIONER WATLING: Well we've already got two, so during the break you're just going to add the other things.

MS HARVEY: Yes. We've got this specialist attendant - in Exhibit HSUA.11 we've got the Administrative and Clerical Stream, the Specialist Attendants, the trainee level, and the tradespersons' rates. That's the four, but obviously I will need to confer with department representatives over the adjournment and we'll come back with a very clear position to you on what is actually reserved.

COMMISSIONER WATLING: Well it must be obvious that in going into any sort of argument on the allowances, it won't take place until such time as the award is up and running. they won't be affected now.

MS HARVEY: That's correct.

COMMISSIONER WATLING: They won't be affected by - because we'll still be using the old award.

MS HARVEY: That's correct.

COMMISSIONER WATLING: It's foreshadowing where they fall in the new one will be the problem.

MS HARVEY: That's correct. And the whole thing wouldn't I suppose be such a big problem if we didn't want to facilitate the workplace change process which we really do and that's a commitment - very genuine commitment from both sides

because we really don't want to see it bogged down because we would be worried about losing momentum and credibility of the process amongst the participants and I think it's very important in the future about people feeling confident about being involved in a process that they see it continuing and being resolved.

COMMISSIONER WATLING: Yes. As I say, the only thing that I may be a bit toey is when you - say, if you've got a level and then on top of that level they're going to get a work related allowance on top of the level, well that seems to indicate that maybe they're in the wrong level then.

MS HARVEY: Mr Commissioner, you've made your views extremely clear on this matter and we undertake to consider them in the adjournment.

Okay. If I can now just turn to the rationale as set out in - I'll follow the outline as set out in HSUA.6. In terms of the first three streams which are set out in HSUA.7, 8 and 9, the parties are merely implementing the decision from T.2399 of the 29th of November 1991 and if I can just take you to the section in that decision and it occurs on page 5 of T.2399 of the 29th of November 1991 and I will quote because I think it is very important. So I quote:

We now determine that there shall be a 4 model awards to cover the operational, clerical, professional and technical stream. These model awards shall have application across the state public sector in the award areas subject to these proceedings. They will be known as the Administrative and Clerical Employees Award, the Operational Employees Award, the Professional Employees Award, and the Technical Employees Award.

The classification standards, definitions and levels of pay determined in respect of these new awards are set out in the attached appendices in the form of model awards.

The model awards will provide the parties with the essential framework to enable the appropriate classification and translation of existing positions and employees. In the meantime the commission will continue to hear submissions in relation to those conditions of service matters which remain for the parties to develop standardised conditions in the public sector. In addition, we will also hear matters dealing with the agencies' specific agendas which have been deferred since the August 1990 decision.

End of quote. Now the Full Bench did in fact issue subsequently a further decision on the 23rd of April 1993 when indeed the process envisaged by the November '91 decision broke down in relation to the entire statewide public sector approach. But the reason I have turned to the November 1991 decision and read the section that I did is that the three streams - the admin and clerical employees, the professional employees, and the technical employees - although they were expressed as awards we have just purely picked those up, the appendices, from that decision and they are what is contained in HSUA exhibits 7, 8 and 9.

So if I can now turn to the 23rd of April 1993 Full Bench decision, and in particular on page 2. Now it was this decision where the full bench in fact I suppose decided against continuing the state public sector wide approach and encouraged the parties to proceed down the track which indeed we now have, which is to pursue enterprise awards and department specific negotiations.

So again we quote from that decision on page 2, and I quote:

In the circumstances, we consider that the parties should now feel free to exercise options which could include arrangements designed to suit individual agency circumstances, whether this be by way of enterprise or agency awards, industrial agreements or enterprise agreements. As the Commission is excluded from dealing with enterprise agreements, the Commission may only deal with the parties in relation to awards or Section 55 industrial agreements.

The classification standards, set out in the decision of 29 November 1991, which were derived, in the main, from standards proposed by the Minister have been work valued by the Bench. In the event that these standards remain fundamentally unaltered the rates of pay previously determined obviously will have relevance. It will be up to the parties, in the context of applications for awards or industrial agreements, to satisfy the Commission that a departure from the standards, or the rates determined by the Bench, is, or is not, justified.

Now I'll skip a paragraph and then go on to the next paragraph:

This approach has the advantage of facilitating the agency-by-agency procedure favoured by most of the parties and will ensure that the work that already has been undertaken by the employee organisations

and the employer in the award restructuring exercise will continue to be of use. To that extent the process of workplace reform and rationalisation of conditions of employment should be finalised more expeditiously than otherwise might have been the case.

End of quote. Now the reason I go to these particular parts of those full bench decisions is to indicate that the agreement that we have reached in the Department of Community and Health Services in fact is totally supported by those full bench decisions. In the case of HSUA exhibits 7, 8 and 9 there can be no doubt that both the decision of November '91 and the decision of April '93 support what the parties have in fact agreed.

Now the issue is perhaps a little bit more complex in relation to the operational stream. However I believe that the April '93 decision of the full bench does in fact support and give - encourage the very process that we have in fact embarked upon, and in particular it has said that we would need to satisfy the commission that a departure from the standards or the rates is or is not justified. And we would do that on the grounds of the submissions that we've already put to you, that there is not substantial change between the operational stream determined by the full bench to what we have determined. Indeed the only thing that we are doing is really making it industry specific and overcoming some particular implementation problems in our own agency.

In terms of the memorandum of understanding, the memorandum of understanding was in fact tabled to the full bench hearings in relation to T.2399 on 18 September 1992. And if I can just turn to that document, the memorandum of understanding, and on the second page of that document - unfortunately I don't have a copy here to present to you, Mr Commissioner, but it has been tabled before and I will quote verbatim from it.

That document, the MOU, was in fact, as I say, tabled on 18 September 1992 and on page 2 of it under section (b) it reads, and I quote:

The Health Industry Award will contain the clerical, technical and professional streams determined by the Tasmanian Industrial Commission in its November 1991 award restructuring decision.

End of quote.

And then in point (c) it says, and I quote:

The Health Industry Award will contain an operational stream involving the broadbanding of

classifications. In determining the appropriate operational stream the parties during the negotiations will have regard for the following: (i) the appropriateness of the 100 per cent benchmark determined in the November 1991 decision; (ii) the introduction of the operational stream at minimal cost, (iii) the minimisation of translations involving absorption of salaries and/or allowances.

Mr Commissioner, I would submit to you that what we have presented to you today in terms of the operational stream agreement has in fact the de facto endorsement of the full bench hearing the matter in relation to -

COMMISSIONER WATLING: Can I say it didn't. All I say is that we noted it and continued - asked the parties to continue discussions. In fact we went out of our way to make sure that we didn't get into the debate of endorsing it.

MS HARVEY: I said de facto

COMMISSIONER WATLING: Well de facto. Don't even give it that status.

MS HARVEY: The point I was trying to make, Mr Commissioner, is that undoubtedly we're -

COMMISSIONER WATLING: It was never rejected by the bench.

MS HARVEY: No.

COMMISSIONER WATLING: And the bench would make - even after being requested to make some ruling on it, the bench wouldn't. Right? And the bench said that they would - all they would do and as far as they were prepared to was to encourage the parties to continue discussing the issues.

MS HARVEY: Yes. I take on board what you're saying, Mr Commissioner. The point I was trying to make was that in the April 1993 decision in the section that I quoted to you, the full bench did encourage people to - the parties to go away and to look at implementation of the decision on an agency-by-agency basis, that we had indicated throughout those hearings in T.2399 that that was our intention. We tabled documents outlining our intention. We made it clear that in fact in relation to the operational stream we intended to modify it to apply to our particular industry circumstances, and that is indeed what we have done. And in that sense I would argue that, and submit to you that we are not diverging significantly from that full bench decision. We're merely in fact implementing it in the way that was intended in the April 1993 full bench decision.

I might also say on that point, Mr Commissioner, that we are in fact the only agency that has been able to take steps to implement what I believe to be the intention of the original full bench decision and in respect of that, I think that the bone fides of the parties have been very clear and that it's something we would ask, I suppose, your support for in endorsing the approach that we have taken which we consider to be very responsible and in fact an implementation of the decision as originally intended by the full bench.

I now - in terms of the rationale - wish to address the wage fixing principles. This matter has been progressing, both through the vehicle of 2399 and the current application 4014 under the wage fixing principles that currently operate in this commission, and in particular were commenced under the wage fixing principles when the structural efficiency principle was first introduced into this jurisdiction, so we see what this - the application - the request that we're making from in terms of this decision to be completely consistent with the structural efficiency principle in terms of establishing skill based career structure career paths and skill based definitions and structured career paths.

In that sense, we would submit to you that the decision that we are requesting from you does not contravene the wage fixing principles and in fact is fully consistent with them.

In relation to section 36 of the act which requires me to address the issue of the public interest, we would submit that

COMMISSIONER WATLING: Well, can I just say, apart from that, you might even take further comfort from page 2 of our decision of the 23rd of April which did say that would be processed as special cases, these matters.

MS HARVEY: We certainly do, Mr Commissioner, because we've always interpreted that to be a freeing up of the process, if you like, in a sense that really what the full bench was saying to the parties is that we could go away and assess individuals, their classifications and positions, and allocate them to the new streams on the basis of the new classification rates determined and in a sense that is - was a freeing up of the process in that we wouldn't have to run individual special cases.

So if I can turn to the issue of section 36 in addressing the public interest, we submit that this request before you is in fact in public interest that there is huge structural change which will lead to direct benefits to the delivery of services to the community and health and community service is obviously one that is very important in terms of the public interest and community interests to the people of Tasmania.

By superseding 17 awards, replacing over a thousand salary points with a clear four stream structure we believe this will deliver significant benefits to the community when that is accompanied by the extensive workplace change process that is now occurring in the agency.

In addition, the decision of the 21 of November 1991 did indicate that the - those wage increases would be accessible after the 1st of December 1992. The operative date that we will be putting to you is 1st December 1993 and certainly there's been a full year saving in that sense if - although I'm probably drawing a long bow there, but certainly we would see that as also being in the public interest.

If I can now turn to the issue of the operative date and implementation. The parties have always agreed on the 1st of December 1993 as being the operative date. The workplace change and translation process is proceeding and there is agreement there will be a common translation date as opposed to an operative date, and that there would be a common translation date for two groups of employees, one is the ex Department of Health employees and one is the ex Department of Community Services employees. Now this arose because we entered into agreements before the two agencies were in fact amalgamated and there was a delay of nearly 12 months before the ex DCS people came on line. So accordingly, not want to disadvantage the ex DOH people - Department of Health people - there's been this sort of two translation dates, if you like, agreed between the parties. Therefore, whilst the operative date of the 1st of December 1993 -

COMMISSIONER WATLING: Can I just ask you a question? Do you mean the operative date of the 1st of December or the first full pay period to commence on or after? There is a difference.

MR WATSON: I think, from memory, the MOU says no later than 1 December 1993, doesn't it?

MS HARVEY: That's correct, it does.

MR WATSON: Which, if you take the literal wording, means that -

COMMISSIONER WATLING: Right.

MS HARVEY: That's correct. I can confirm that, Mr Commissioner. Therefore we would ask that that operative date be endorsed and whilst we anticipate that there will be some - need to be some delay in relation to orders because we need the old award to continue to apply whilst we finalise translation, we'd ask that that operative date be endorsed and that we would also ask a clear indication from you today as to whether you intend to issue a decision supporting the

submissions that have been put to you today as this would certainly facilitate the workplace change and translation process and provide a degree of certainty to our members and employees which is in the interests of both the parties in the proceedings before you today.

I've already indicated to you that we would see the actual implementation process being one where the parties would confer with yourself and your associate on the appropriate orders and the date on which those were to be issued.

So, in conclusion, the HSUA is proud to have led the way in award restructuring in the public sector. We have bitten the bullet and we remain the only agency and the only union that has taken the plunge and has implemented the full bench's decision. We believe that that should be supported by the decision of the commission today.

There is much work ahead of us in the workplace change and translation process and in the finalisation of the conditions matters which form a part of this package, however, we are confident that the result will justify the effort and we believe that it is appropriate that the commission issue a decision endorsing the exhibits 7 to 8 that we have put to you, plus for - plus identifying those exceptions which we - those issues that are foreshadowed which we intend to clarify after the adjournment- with the operative date of 1 December, 1993.

If the commission pleases.

COMMISSIONER WATLING: Good. Thank you. Mr Aiken?

MS HARVEY: I know what you are going to say.

MR AIKEN: I was going to say, Mr Commissioner, that I fully support the comments of my colleague from CHSUA, or the HSUA, but I think I will back away from saying fully support.

But, certainly the federation supports the inclusion of -

COMMISSIONER WATLING: You'd always support fact, though, wouldn't you?

MR AIKEN: Fact? Oh, always support fact, yes. I think there are some comments I would probably prefer to leave alone at this stage.

I would point out that the federation is actually in a number of discussions with other agencies, but that is irrelevant to this process, and certainly with public sector management we are involved in a number of discussions, and in one agency in particular I believe there has been significant progress.

But, for the purposes of this discussion, I think that's fairly irrelevant.

We fully support the implementation of the professional, technical and clerical streams as per the full bench's decision of 29 November 1991.

In relation to the operational stream we have conducted a number of meetings with members within the operational area, and whilst I think it would be fair to say there is a general disquiet with salary rates there is certainly a realisation that, No. 1, the bench work value be operational stream in 1991 and that, No. 2, there has been a significant amount of work done between the parties on an operational package.

On that basis, and the fact that the members of our colleagues, the HSUA, have endorsed the operational package, the federation accepts the proposal in relation to the operational stream and would seek your endorsement of the operational stream, together with the professional, technical and clerical streams as I mentioned previously, per the full bench's decision.

COMMISSIONER WATLING: Good. Thank you. Right, Mr Watson?

MR WATSON: Commissioner, I don't know whether or not it is appropriate if I proceed now, based on the fact that we need to confer over that issue specifically about the trade allowances.

Now, yes, anyway, I think it may be appropriate if perhaps we adjourn for lunch now. We can have that discussion and come back after lunch and I can put to you what I need to on the record.

COMMISSIONER WATLING: Right. Is everyone agreed? What time do you want to adjourn to?

MR WATSON: What, 2.00 o'clock, or come back earlier than that? 2.00 o'clock?

MS HARVEY: 1.30.

MR AIKEN: 1.30.

MR WATSON: Oh, well, if that's okay with you, commissioner, 1.30?

COMMISSIONER WATLING: Right, I'll have an earlier lunch. Right, 1.30 and then we will continue this afternoon. Right. Thank you.

LUNCHEON ADJOURNMENT

COMMISSIONER WATLING: Ms Harvey?

MS HARVEY: Yes, commissioner, I have just provided your associate another exhibit, which this will make it 12, I believe.

COMMISSIONER WATLING: Yes. HSUA.12, and shall we make a little note under it, 'replacing HSUA.11'?

MS HARVEY: Yes. I was going to go to that. It supersedes HSUA.11.

Now in terms of the difference, what we have sought to do during the adjournment, Mr Commissioner, is to take on board the comments you made and to have one document that clearly outlines the areas where we believe there is further work actually required, or a reserve list, if you like.

So, in terms of the difference to HSUA.11, 1 and 2 are in fact identical to what was contained in HSUA.11, and we've added, 3, the trainee level.

The parties agree to negotiate a structured training program and an appropriate classification definition.

Accordingly, this matter should be reserved.

COMMISSIONER WATLING: That's for the operational stream?

MS HARVEY: Sorry, yes, that's correct.

So if we amend HSUA.12 to a trainee level 4, the operational stream.

Now, in relation to 4 which is the trade staff and skill-related allowances, the wording included in HSUA.12 is:

The parties agree to absorb all skill-related allowances in the award subject to the following provisions:

(a) that all employees eligible for the special class allowance will be translated to Level 8 in the operational stream unless classified elsewhere in accordance with the classification standards, and;

b) for the purpose of this agreement the relevant allowances are Wireman's Licence Plumbing Duty Allowance, except any employee classified over Level 6; Lift Industry Allowance, Plumbing

Registration Allowance, Nominee Allowances,
Plumbing and ATC -

- just to make that clear.

And then finally, which is the most critical part:

FURTHER, the parties agree to adjust the operational stream structure to create increment points to fully compensate employees for allowances if they are to be absorbed into the operational stream, as agreed before the Tasmanian Industrial Commission on 18th of February, to go into the new Community and Health Services Award.

And that's the end of HSUA.12.

So, accordingly, we would submit that that does address the concerns of the commission in relation to those allowances and how they are absorbed and incorporated into the classification structure.

I believe at this stage it would probably be appropriate to get Mr Watson's endorsement, if you like, that the Exhibit HSUA.12 is indeed an agreed matter, and then at that stage I think we are probably in a position to proceed - provided that the commission, Mr Commissioner, you don't have any questions or problems with HSUA.12?

COMMISSIONER WATLING: Do you want a decision on that now?

MS HARVEY: Yes, I do, actually.

COMMISSIONER WATLING: So, do you want -

MS HARVEY: I would like an indication from the bench because, as I explained to you before, we are actually under instructions from our membership in relation to this matter, and if this is not acceptable, then we would be seeking an adjournment to reconsider our position as to whether we wish to proceed or to withdraw our submissions.

COMMISSIONER WATLING: Well, I will hear what the other side has to say first.

MR WATSON: Thanks, commissioner. Well, first of all, just in response to Ms Harvey's comments -

COMMISSIONER WATLING: I think you can address that when you address your submissions, I think. You can answer all the things -

MR WATSON: Alright. Firstly, commissioner, I'd just like to thank you for your patience and cooperation with this matter,

particularly in relation to the hearings that have been postponed, and in particularly in relation to yesterday.

I don't intend to go over the areas that have been covered by Ms Harvey, particularly in relation to the operational stream, except those areas that we believe require any further comment.

The Community and Health Services Award was made by the commission on the 7th of October last year, and effectively that decision gave the Community and Health Services Agency the enterprise or industry-based award, and the next step in the process as per your recommendations has been to put into the award the salary structure and also the classification definitions for the four streams.

The parties have been negotiating for some months to get to a position where we can present the commission with clause 7 and 8 as far as salaries and classification standards are concerned, and as a package in toto, and as far as we are concerned that's what we have today.

And, as far as we're concerned, we'd indicate that there is agreement to Exhibits HSUA.7, 8, 9 and 10 which, in effect, contain the four streams for the new award.

As per the memorandum of understanding between the parties we are adopting the full bench decision with no change at all proposed for admin. and clerical, technical and professional, and the operational stream that's been presented today is different to the full bench decision, mainly at Levels 2 and 3, but as far as we're concerned it does not in fact depart dramatically from that full bench decision, and neither do the rates to any great extent.

But they do represent a package that we have negotiated for the community and health services industry.

Ms Harvey presented a good summation of the changes to the full bench decision, and we concur with those comments.

There are a couple of things that I would just like to - or a couple of comments I would just like to make - particularly in relation to the hospital aides issue was raised, and I would just like to say that as far as we're concerned them being a distinct functional area is okay to the extent that they are distinct positions, but where they perform basic cleaning duties as far as we're concerned that matter is something that we might have to have further discussions on later on.

But we don't believe that basic cleaning duties that hospital aides may perform is necessarily a distinct functional area.

So, I would just make that comment.

As far as the titles go in that functional area definition it may be that we may have to come back and revisit those titles after the workplace reform process has been undertaken, particularly if there are any recommendations from the workplace reform unit groups to change titles, which obviously we may need to go back to the award to reflect those recommendations if they aren't accepted by the parties.

The other point about the streams that have been passed up today is that they don't have a part-time employees clause in terms of calculating rates for part-time employees.

So that's something we will also have to address, I would say, before the orders are done.

Now, just in relation to the areas that are on the reserve list that's been passed up, there's reference there to admin. and clerical 10, 11 and 12.

We also foreshadow that - well, I might say that first of all there is agreement to the A&C stream as proposed - but it will be no surprise to the union parties that we do have a couple of concerns about the Level 2 and 3 in the A&C scale, and how we may translate positions to those levels.

Now it may be in the wash up that we don't have any problems, but we just foreshadow that that is something that we have got in the back of our minds in terms of translation.

COMMISSIONER WATLING: Have the parties had a look at how we're going to deal with disputes in relation to translation, because, prima facie, if it becomes a question of whether it's an industrial dispute before us or a matter for the Commissioner of Review?

MR WATSON: That's a very good question, actually, commissioner, because I don't think we have actually decided where we think they should go - whether they should come here or go to the Commissioner for Review.

MS HARVEY: That's not true.

MR AIKEN: That's wrong.

MS HARVEY: I'm sorry to interrupt, but just in relation, it's a statement of fact that the workplace change and translation agreements clearly stipulates that the process is that if there is a disagreement within the W&CS it is to be tried to be resolved within the SCC, and if that can't occur then it comes to the commission - this commission.

MR WATSON: I will stand corrected on that.

COMMISSIONER WATLING: Yes, well I haven't seen this agreement that you have got, so -

MR WATSON: Yes. Okay. As far as specialist attendants are concerned, obviously there needs to be further discussions about those particular classifications, but that is a translation issue that we will have to address later on down the track.

There is no problem with the trainee - the point about trainees in relation to the program that needs to be developed.

As far as tradesman's allowances are concerned we have agreement and that's been reflected in HSUA.12.

I would say that in general terms it's been our position - or our position has always been - to absorb all allowances.

However, it hasn't been particularly easy, based on the classification structure in the present award and the present allowances.

However, we would hope that we can resolve that issue in the not too distant future, and certainly it will need to be done before the orders are issued.

Ms Harvey has gone to the full bench decisions of 29 November '91 and 23 April '93 from T.2399, and again we believe that our approach is consistent with those decisions.

As far as the wage fixation principles are concerned, commissioner, we believe that obviously our approach is definitely not in contravention of the principles.

As far as the public interest is concerned in relation to the cost, the position that we have put forward - and I acknowledge that it is not necessarily agreed - is that translation to the new structure will be cost neutral, and that that cost neutrality will actually be achieved through the workplace reform process.

Now, that's an issue that we don't know the answer to. There may be cost, there may not be, but we won't know the answer to that until work unit reports come in and we actually do the translations based on those recommendations, and we also go through the process that's been agreed through certain agreements with the unions.

COMMISSIONER WATLING: So, what are you really telling me? On the one hand are you telling me it will be cost neutral and on the other hand you don't know whether it will be?

MR WATSON: No, what I am saying to you is that our position is that we want cost neutrality for translation and we hope to achieve that through the workplace reform process. But I don't think by any means it is a certainty.

We would confirm that the operative date for translation in terms of retrospective payments, if they apply, will be the 1 December 1993.

However, the actual translation date, that is the date that we will actually tell people where they are and actually physically do the payments, is yet to be finalised.

Just for your information, commissioner, there is something like 180 workplace reform groups that have been set up around the State to undertake the workplace reform process.

At this stage we have approximately 60 of those work unit group recommendations in, and they have been held up because of our deliberations on the streams.

However, if we do get a general in-principle approval from yourself today for what's being proposed, then that will definitely speed the process of the rest of the work unit groups up, and I think that's probably in all of our interests.

The other thing is that we can issue a positive message to employees and to these other work unit group members that we are making progress, we do have the salary scales in, and they will be able to see that there is something there, except - or over and above what we have at the moment - which is just simply the title and scope of the award.

We believe that the task that we are embarking on is quite a massive one, as being the first agency to proceed with an enterprise, or an industry-based award, and therefore, you know, obviously there is going to be some teething problems but we'll certainly be putting all our efforts into that.

Ms Harvey stated earlier today that HSUA were proud to lead the way with award restructuring.

That's fair enough, but we would say that we'll take some credit as well, and we believe that the matter has been a three-way process between all the parties, and as far as we're concerned we're quite proud of our efforts as well.

As far as we're concerned the next step now is that if we do have your approval for what's been proposed that we would move to the conditions matters, and they are conditions which have been specifically identified in the Memorandum of Understanding as agreed between the parties.

Now, obviously I don't think it is any surprise that those matters will probably - or some of those matters - are probably going to require arbitration, so I guess that's the way it is going to have to be.

The other thing that I would foreshadow, commissioner, is that where appropriate we will be seeking the same operative date for conditions as for salaries - that is, 1 December '93.

Now I don't intend to go into any detail with that, but basically the argument that we propose to run is that we're not going to pay retrospective increases on the translated rates, but also have people remunerated through conditions which may have been changed.

So, as far as we're concerned it is a package.

COMMISSIONER WATLING: There's agreement on that, though, isn't there?

MR WATSON: No, there is not agreement on retrospectivity for conditions, as I understand it, anyway. I mean, that can be confirmed by the other side.

But that will definitely be our position.

COMMISSIONER WATLING: So there's only agreement on the operative date of wage rates?

MR WATSON: Yes, that's right.

COMMISSIONER WATLING: Is that what the Memorandum of Understanding says?

MS HARVEY: That's correct, Mr Commissioner. It's quite clear. I mean, there is an operative date for the new award rates of pay but not for the conditions. And I wasn't involved in the negotiations of that document. That was never raised by the employer, and we certainly would be strenuously opposing such a proposition.

But I think it inappropriate to go into -

COMMISSIONER WATLING: Yes. But, how does that sit then with the full bench decision that says wage rates and conditions should be dealt with at the same time?

MS HARVEY: Well -

COMMISSIONER WATLING: Which you're really wanting me then to bypass.

MS HARVEY: No, Mr Commissioner, I think that -

COMMISSIONER WATLING: Keeping in mind this commission hasn't endorsed the memorandum of understanding.

MS HARVEY: I understand that, but it is a document that has been reached, has been presented to you between the parties, and I mean it is a fairly - I think it has a very heavy weight within the whole negotiating forum on this whole issue.

And it is a document that has been endorsed by Cabinet; it's certainly been endorsed by our membership, and I think -

COMMISSIONER WATLING: Yes, well alright, you might say all those nice things, but I am just asking the question which you might want to address after I've finished with Mr Watson, but the full bench did decide that even when it fell down in the first round that the thing was a package, and the new streams did depend on the conditions, and that was part of the deal with the streams.

Now, I've just -

MS HARVEY: Mr Commissioner -

COMMISSIONER WATLING: Look, you will get a chance, but I am just saying -

MS HARVEY: You asked me a question so that was why I was on my feet.

COMMISSIONER WATLING: Well, I did say a minute ago I would give you a chance after I have finished with Mr Watson. But I am interested to address this question because the full bench did decide that the streams and the conditions were a package, and the commission has never endorsed the Memorandum of Understanding, so I want some clear understanding of what we're doing in relation to conditions.

Right, so you're telling me, in relation to conditions -

MR WATSON: As far as we're concerned, commissioner, where appropriate - and I guess you will have to take submissions on what is appropriate - we would say that the operative date for conditions should be the same as the salary rates new structure.

Now, I guess, just to give you a brief example, it's virtually impossible for us to have retrospectivity, say, for hours of work.

But, on the other side of the coin, the other example is in fact, say, well let's say call back.

If there is any change to the quantum of call back, well obviously that may require some retrospective adjustment.

But, without going into too much detail, obviously full argument would have to be put, but that would be our in-principle position.

COMMISSIONER WATLING: Right, but there is no agreement on it?

MR WATSON: No.

COMMISSIONER WATLING: Right.

MR WATSON: Now, just in summary, commissioner, what we're -

COMMISSIONER WATLING: Are you finishing conditions now, are you?

MR WATSON: Yes.

COMMISSIONER WATLING: Well, have you got some idea of the program for conditions?

MR WATSON: Yes, okay, well I think it is probably fair to say we did put a lot of energy into negotiating conditions before we were steered in the direction of salaries and definitions by yourself, so effectively we had some, well probably 3, 4 or 5 meetings on conditions, and I understand that both union parties have in fact been out to members regarding what we have proposed for conditions, so we are a fair way down the track.

So we will be seeking to - if we have this matter resolved today or whenever - then we will be seeking to move to conditions at the convenience of the commission as soon as possible.

And that is for ratification of the agreement or for arbitration if required.

COMMISSIONER WATLING: So you are prepared to go if I was to call it on after Easter?

MR WATSON: Certainly, certainly.

COMMISSIONER WATLING: Right.

MR WATSON: In fact, if you wanted to set dates today, that would suit our purposes.

COMMISSIONER WATLING: Right. And, in relation to translation you haven't any idea at this stage? Have you set yourself a plan or an agenda?

MR WATSON: Well, I guess it is difficult to say, because there is a process that we have to go through for translation,

and that involves I guess getting our position together, consultation with both the other union parties about where we see positions translating to.

We have got a state consultative committee set up to actually address the issue of translation. So it is a step-by-step process.

I don't know that I can actually give you an idea of how long it is going to take. Maybe we can report back to you when we start the process and just get a bit of an idea. But, I really don't know.

COMMISSIONER WATLING: So we are looking at a matter of months, I take it, even 6 months longer?

MR WATSON: Well, hopefully it won't take 6 months, but I guess - you see, we have around about 120 work unit group reports to come in - so I suppose the quicker they come in the quicker the process of translation will take place.

But, I don't know. In rough terms, I would hope that we would have translation done by, say, the end of May. I mean, it is very difficult to say.

COMMISSIONER WATLING: I appreciate that, but I am just trying to get some ball park figure.

MR WATSON: Yes. So, in summary, commissioner, what we will be seeking from you today is a general approval for what's been put up as an agreement between the parties, subject of course to those matters that have been reserved, and also subject to appropriate discussions on orders, and effectively if that indication is given, then we can actually commence the process of translation and kick off what's sort of been held, or been stalled, because of our deliberations on the salary streams.

If the commission pleases.

COMMISSIONER WATLING: Okay. Ms Harvey, you might want to address some of those things that have been raised?

MS HARVEY: Yes, I would like to do that, Mr Commissioner. I mean, on the understanding that I reiterate again that our support of this whole document and this whole submission before you is conditional upon the HSUA.12, and I suppose I am seeking to treat that in some sort of threshold type manner before we actually conclude these hearings.

COMMISSIONER WATLING: Well, look, I think if you just put your decision and let me deal with the decision. You tell me the story and then I will -

MS HARVEY: Yes, but what I am -

COMMISSIONER WATLING: Like, I am not in a bargaining position with you on this, right? If you want to run your submission you run your submission. I'm not in a bargaining position. I'm not going to give decisions on one aspect of the matter, I will give you a decision on the lot. But, I am not here to bargain.

MS HARVEY: I'm not suggesting you are here to bargain here, Mr Commissioner, what I am merely trying to do is to reflect the instructions that I have from my membership, and that is that if we don't have an acceptable package - and that's why I am seeking to treat it as a threshold issue - that we would withdraw from the submissions, because we wouldn't have agreement and I would have to report back to my members to seek further instruction.

Now, I am not seeking to put you into a bargaining position, I am just seeking to accurately reflect my instructions.

COMMISSIONER WATLING: Well, I have heard your submission on that. You've mentioned that a couple of times. But, you know, if you want me to go away and write a decision on this aspect of it, well, fair enough, we'll adjourn. But if you push me into a corner, I will have to do that.

MS HARVEY: I understand your difficulty. I'm pushed into a corner, too, by my membership's instruction on this matter.

COMMISSIONER WATLING: Well, put it this way, I am not going to be stood over by your membership. I understand your submission, right, and I understand what you have to do, but don't push me into a corner.

If you want to push me into a corner we'll adjourn now, I'll go away and I will consider your decision and I will convert to writing, and then you can come back and you can continue your submission.

Now, you have got to make up your mind whether you want to push me into a corner. I'm not here to be bulldozed.

MS HARVEY: Excuse me for just a minute?

COMMISSIONER WATLING: It's highly unusual, I would have to say, where people ask in the middle of a case when it is nearing conclusion to give an indication, even halfway through it, on one aspect of it based on one exhibit.

MS HARVEY: That's not fair, Mr Commissioner. I did indicate very early on in my submissions that it was part of a package, and you indicated you wanted to hear Mr Watson's response before continuing.

I indicated when we started these proceedings that we considered them crucial.

COMMISSIONER WATLING: Yes, but you are now saying that you want a decision on that alone.

If you do -

MS HARVEY: Could I suggest we just go off the record for a minute to address this, because we may be talking at cross-purposes.

COMMISSIONER WATLING: Yes, it may be appropriate. Right.

OFF THE RECORD

COMMISSIONER WATLING: Righto. On the record.

MS HARVEY: Yes, Mr Commissioner. I take on board your decision that you do not wish to treat my request that this to be treated as a threshold matter and that you would - unless you adjourn at this point in time, that you would like me to - that your view is that we should proceed and that you will issue a decision on the entire matters before you at that time. So that being the case, I wish to continue just to address a few of the matters that Mr Watson raised. First of all, in particular he -

COMMISSIONER WATLING: Well seeing as you've raised that, I just say to you that I am very mindful of your position and the position of tradespersons in this matter, right, and I understand that they want those issues discussed, and if it's going to fall down on that issue, then I'll only issue a decision on that issue and you can make up your mind whether to go any further with the streams, but I'll treat it as a threshold matter and I'll - and if I reject this aspect of it first, then I take it that the whole lot is rejected. So, I would take it that if I'm going to reject the proposal, that I'll only address this aspect of it because you tell me that it rises - stands or falls on that alone.

MS HARVEY: That's correct, Mr Commissioner.

COMMISSIONER WATLING: Right.

MS HARVEY: So, we accept what you are saying is a way of proceeding.

COMMISSIONER WATLING: If I'm not going to reject the proposal, then I'll issue a decision on the lot.

MS HARVEY: I think that would be - I'd appreciate your assistance in dealing with it in that manner because that's precisely what I am putting forward to you and that would resolve the issue from our perspective.

MR WATSON: Commissioner, I just make a comment - that reflects the agreement between the parties, and that's fine, and I understand the position of HACSU as far as their membership direction is concerned and the whole package, if you like, hinges on that. If your decision was to be that this rejected in some form, well then, I guess it doesn't necessarily mean that we believe that the whole thing falls apart, so, you know, it's -

COMMISSIONER WATLING: Look, all I say to both sides, don't go jumping at shadows, for God's sake.

MR WATSON: Yes.

MS HARVEY: Yes.

COMMISSIONER WATLING: But I'm only making the point that - to you that -

MS HARVEY: No, I -

COMMISSIONER WATLING: - in just picking up one aspect alone - I want to deal with the lot and - but don't force me to make a decision on one aspect of it in isolation.

MS HARVEY: Yes. I hear what you are saying, Mr Commissioner, and I think - this has been a difficult process, I can only repeat.

COMMISSIONER WATLING: Yes. Well, I think you might be jumping at shadows and I wouldn't be doing that if I was you.

MS HARVEY: Yes, Mr Commissioner. So if I can respond to what Mr Watson put to you in relation to him suggesting that the department may wish to in some way review 2 and 3 I can only say that obviously we would be opposing that if that ever came about and we're hopeful that it won't.

In terms of the cost neutrality, Mr Watson is quite correct when he said that it has never been agreed. Indeed it has not. In fact it has been explicitly ruled out by the HSUA because we do not accept that the translation has to be cost neutral and having said that, certainly our members are cooperating in every way possible to identify as many savings as possible and we've said to the department many times that if we can assist and facilitate that process, we will, but we cannot give a guarantee and indeed we would argue it's outside the wage fixing principles for the department to ask for such a guarantee.

In terms of the operative date - I was a little alarmed that Mr Watson used the words 'if apply'. It will apply because it is part of the memorandum of understanding. I take on board your point when you said the full bench didn't endorse it, but the MOU is in fact part of a registered industrial agreement before this commission in relation to the 5 per cent in the -

MR WATSON: Sorry, Ros, I don't want to interrupt, but I think what I said was, retrospective adjustments if applying, that is, that it may be that people don't adjust retrospectively because they don't get an increase. That's what I meant.

MS HARVEY: Oh, well with those comments taken on board, I retract what I was saying. I thought you were implying that somehow that wouldn't be the date.

MR WATSON: No, no.

MS HARVEY: But the point is still relevant in relation to the conditions matter where Mr Watson said the department would be requesting an operative - retrospective operative date and the issue of the MOU was raised about whether it was contained in that. Well it is not contained in the MOU, a retrospective operative date for conditions and the MOU does have status before this commission because it is directly referred to as part of the industrial agreement - the registered industrial agreement which facilitated the 1.5 per cent flowing.

COMMISSIONER WATLING: Yes. Look, that's drawing a long bow. You should know, as well as I do, agreements don't have the status of arbitrated decisions for starters, and that the commission has no right, under the legislation, to vary any agreement. It either accepts it or rejects it, and therefore they do have a different status.

The agreement - Memorandum of Understanding hasn't been endorsed by the commission as such. It probably appears in a registered agreement document for doing certain things, but of course that was to get a pay increase. But it's not -

MS HARVEY: I hear what you're saying, but if I could just read from that section of the registered industrial agreement that deals with the 1.5. It says: the parties to this agreement reaffirm their commitment to the progression of the MOU implemented on the 1st of August 1992 and in particular the expiation of those matters referred to. They reaffirm their intention to the creation of the award; reaffirm their intention to continue the workplace reform process and reaffirm their intention to commence negotiation on a range of contingents particularly those contained in the MOU for inclusion in the award; such negotiations to be concluded

expeditiously to enable award implementation to take place at the earliest opportunity et cetera.

Now, look, I don't want to go to full argument on this because obviously Mr Watson has a right to put anything he wishes to put in relation to those conditions matters. I'm just foreshadowing that we would certainly be opposing it, and that we would wish, at that time when the matter is raised formally in terms of requesting a decision, that we be able to put submissions to you on those matters.

COMMISSIONER WATLING: Should - seeing that you want to treat this as a package, should the commission treat the conditions and the wage rates as a package?

MS HARVEY: No, Mr Commissioner, they're not properly before you in terms of this hearing. It's never been part -

COMMISSIONER WATLING: Well, hang on, the application is.

MS HARVEY: What I'm - I suppose I'm saying to you, Mr Commissioner, is that we had an agreement in relation to the four stream package - the four stream, the packages of the streams to go into the award. We had not discussed the conditions matters. Mr Watson indicated to me - either it was this morning or it might have been late last - or yesterday evening, that he was just going to put it on the record. I'm prepared to put full submissions on it, and that I would prefer in the way of dealing with it is that if that issue then be raised at the time. I mean he's not prejudicing his right to put it later. We're not having orders on the four streams now, and I would, I suppose, request that the matter not be dealt with now because quite frankly I'm not prepared for it - to run the argument.

COMMISSIONER WATLING: Yes.

MS HARVEY: If the commission pleases.

COMMISSIONER WATLING: Mr Aiken?

MR AIKEN: If the commission pleases, I'd certainly like to endorse Ms Harvey's comments in relation to the conditions and the cost neutrality aspects, but turning to Mr Watson's points about the clerical stream at levels 2 and 3, the federation believes change wouldn't be required and that that would be based on a number of agreements and particularly the commission's decision of November 1991 and we would simply - I'm simply indicating to you that at some stage in the future we may want to talk to you about that issue or if the department raises that as a concern of theirs. If the commission pleases.

COMMISSIONER WATLING: Yes. Righto. Well with the conditions themselves, I just say to both parties that it is part of your understanding that you are going to come back with those and we are making a new award for this industry or for this enterprise and I take it that both parties are happy to then the wage - operative date of the wage rates for the purposes of this decision separated from the operative date of any future conditions, but you'll argue the operative date of conditions at some future date. Is that the position?

MR WATSON: Yes. Well our position, Mr Commissioner, is that as I said, you know, where we believe it is appropriate, so it may be that - obviously it's just not practical to have retrospective operation of a new condition or a rationalised condition, but yes, we'll certainly be making submissions but -

COMMISSIONER WATLING: But - well I'm trying to gauge whether you're trying to tell me that the conditions are contingent upon the four streams or not because I want to be able to clearly write a decision that says, this is the operative date of the four streams and when we get to the conditions, the operative date of the conditions will be run and won at the time.

MS HARVEY: That's correct.

MR WATSON: I oh, I guess that's where we stand, yes, -

COMMISSIONER WATLING: Right.

MR WATSON: - well - because it's impossible for me to say that we want the operative date of every single condition from the date of salaries because it's just not going to be possible, for example, as I said before, the hours of work - it just won't be possible, so - but - but - but I do say -

COMMISSIONER WATLING: No. But I - but keep in mind that I've got to override a full bench decision here which specifically stated that they were together.

MS HARVEY: That - Mr Commissioner -

MR WATSON: Yes. I think as far as we're concerned, commissioner, any condition that goes -

COMMISSIONER WATLING: I'm happy if you are putting a submission to me that - telling me that you're going to treat them separately, but I want to know what the clear picture is.

MR WATSON: Well as far as we're concerned, definitely - and I can say it now - that definitely any condition involving remuneration we will definitely be seeking the same date as the salaries.

If I understand what Mr Watson is saying, he's reserving his right to argue the issue of operative date on conditions - on each condition as they come up and in precisely the manner that you've put forward. And, you know, I ask him to reaffirm that because that is the basis of the agreement in which we're before you and I'd be most concerned if that was being changed.

The second point that I would make is that it is - is unfair to ask us to - for Mr Watson's action today to be totally unnotified to us to require me to argue operative date, and you've said about the full bench; I don't have the decision in front of me. I recall that there was something about that if conditions matters weren't resolved by the time that workplace reform was that people who go ahead and be translated but I don't have it in front of me, and I'm not prepared at this point in time to argue it.

COMMISSIONER WATLING: It was seen - it was always seen as a package and that's why it fell down because people who were happy to go along with the streams, wouldn't - would never come back with the conditions.

MS HARVEY: Well it has always been - as I say, this matter was not even raised with me till - I think it was last night, but it may even have been this morning, that this issue of the operative date of conditions was even going to be discussed and the agreement has always been that the operative date of 1st December would be reaffirmed and that Mr Watson would be reserving his right, which he always has anyway, to argue operative date when it comes to considering the conditions one by one, because he can't even argue for a common operative date on conditions because it's just totally impractical anyway.

MR WATSON: Just on another issue, I've just been looking through the workplace change agreement since Ms Harvey corrected me about your question about whether or not we come back here for disputes on classifications and our agreement does talk about, if I can just quote here: Further, this shall not prejudice the right of the relevant union to act on behalf of its member (members) in whatever manner and in whatever jurisdiction is appropriate. So I still say that whether we come here or the Commissioner for Review we're still up in the air.

MS HARVEY: I don't think this is really a threshold matter and -

MR WATSON: No, no, I'm just -

MS HARVEY: - and, you know, I don't have the agreement in front of me but I was on my feet before, Mr Watson, asking you

to - to reaffirm the position that I put to Mr - to the Mr Commissioner about the issue of operative date because I think you're being less than clear.

COMMISSIONER WATLING: Yes, well I'm not too sure either you see, and that's an area that I'm going to have to cover in the decision. So are we saying it simply as I've put, Mr Watson, that - that the agreement in this aspect of the case before me is not contingent upon the operative date of any conditions, however you reserve your right to argue a retrospective operative date on conditions?

MR WATSON: Yes, I've got - yes, that's fair enough.

COMMISSIONER WATLING: Is that an accurate reflection?

MR WATSON: Yes, yes, that's fine. Yes. Yes.

COMMISSIONER WATLING: Right. But we definitely have agreement in terms - from the parties in terms of the four streams for retrospectivity?

MR WATSON: Yes, that's right, commissioner,

COMMISSIONER WATLING: Because the act says that I can only grant retrospectivity if there's agreement of the parties.

MR WATSON: Yes, well I can indicate from this side of the table there definitely is agreement to 1 December '93.

COMMISSIONER WATLING: Right. Right, is there anything else that you want to put to me?

MS HARVEY: No, I think that that concludes the submissions that we wish to make today and I thank you for your assistance with the matter and we hope to resolve the outstanding matters as quickly as we possibly can and if we could get translation before Mr Watson's two to three months, we would be extremely happy and that's what we'll be working for.

MR WATSON: Commissioner, I guess I just have to ask you whether or not there is any possibility that you may be able to give us an indication today about the streams themselves and your general approval for the approach that we've adopted and what's been handed up or does that put you in a difficult position?

COMMISSIONER WATLING: Well look, can I say to you that obviously nothing - it doesn't mean anything at this stage in terms of the decision of the commission because the act requires us to hand down a written decision. But I'd have to say to you that prima facie I - I see myself endorsing the agreement, but there are - there will be a couple of things that I will need to address in the decision.

MR WATSON: Yes.

COMMISSIONER WATLING: But I'd have to say to you that I - I, like you, want to see the thing get up and running but in writing a decision I'm also going to be mindful of a few things that you have agreed to come back on a number of things and that you have made some alterations to the full bench decision and I'm going to sort of be careful in writing my decision in relation to that. But prima facie, I'd have to say to you that, you know, the application would be successful but I'm being a bit guarded because I want to dot my i's and cross my t's here on this matter.

MR WATSON: Yes.

COMMISSIONER WATLING: And I - and I do that because it's not only in this area, this particular decision has ramifications elsewhere in the public sector whether you like it or not. It's the first of its kind to actually go through and I think it would be remiss of all of us if we didn't take on board the fact that it will have an effect somewhere else down the line. And it's of such significance in my view.

MR WATSON: Yes, okay. Particularly I understand the difficulty in relation to the full bench decision and your position in actually being a member as well.

COMMISSIONER WATLING: It would be a lot easier for me to come - to be very forthright today if I didn't - if I was sitting listening to it alone -

MR WATSON: Yes.

COMMISSIONER WATLING: - without having any other matter hanging over my head.

MR WATSON: Yes. But do I take it, commissioner, from what you've said that we could in fact now embark on the process of translation.

COMMISSIONER WATLING: Well, if I - yes - I think you can - you wouldn't be disadvantaged in any way, shape or form by embarking on your program.

MR WATSON: Right, thank you.

COMMISSIONER WATLING: But I'll - as I say, I'll hand down a written decision in due course. It will be less the order and I'll wait to hear from the parties. I'd have to say that in any decision I will consider what we should do with the conditions and probably look at even setting up a program of hearings somewhere down the line for that.

I'd also have to take on board the - a few other questions in relation to when are you going to address things like part-timers before we do orders and those sorts of issues. So it's just not straightforward, but I think prima facie you can rest on the fact that it's my intention to assist you in achieving your goals as well. But I am going to be a bit careful in how I write any decision.

Right. This matter is now concluded.

HEARING CONCLUDED