

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 5044 and 5110 of 1994

IN THE MATTER OF applications by the
Health Services Union of Australia,
Tasmania No. 1 Branch and the Tasmanian
Chamber of Industry Limited to vary the
Welfare and Voluntary Agencies Award

re Clause 7 - Definitions and restructure
of the award

DEPUTY PRESIDENT ROBINSON

HOBART, 19 October 1994
continued from 13/10/94

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: Thank you. Any change in appearances?

5 MR FITZGERALD: No, we would not be so lucky. Mr Deputy President, on the last occasion, just to take you where I was previously, we had in fact completed the industrial history and we got up to the point, to the stage of the HSUA application and we had extensive argument in respect to the wage fixing principles and now we are looking at issue differences, but prior to that coming out of some questioning which occurred on the last occasions, we did undertake to complete an exercise on costing and that has been done, and I think it would be appropriate if we went to that first, Mr Deputy President, rather than proceed as - as per our outline. And I have an exhibit which Ms Harvey has a copy of and if I can present that as an exhibit to you today, and I will take you through that exhibit.

10 DEPUTY PRESIDENT ROBINSON: Thank you. Well, I think it will be TCCI.10, Mr FitzGerald.

15 MR FITZGERALD: If I could just make a change - oh, well, can I say that we - it was all stops out in the last occasion this matter was before you and those involved in the service have spent a deal of time putting this document together, and as a result there may be some slight inaccuracies in terms of figures. I do not think there are, but one thing which we did miss out on which was fairly essential, the first page, it is in fact - should be a heading: Employment services. So what we have got is, just to take you through it, page 1 is employment services and page 2 which goes with it and is also related to employment services.

20 The next page, which is also headed page 1 is independent living training and the next page, page 2 in fact, is with that - is with that document, independent living training. And the next page is in fact community living program and the final page, in fact - sorry, not the final page, the second last page goes with that document as well. It does look a bit confusing with all the figures, but I will do is take you through it and answer any questions which you may have as we go through, but that is an attempt to quantify the differences between the HSU and the TCCI applications, and I think - - -

25 DEPUTY PRESIDENT ROBINSON: Yes, well congratulations on getting the - the figures prepared, Mr FitzGerald and - - -

30 MR FITZGERALD: Well, I would think that - - -

DEPUTY PRESIDENT ROBINSON: - - - and for those behind you, no doubt.

35 MR FITZGERALD: - - - I think that should be, I notice you were looking at Mr Black and Mr Byrne rather than myself when you said that, and I think they are the ones who put most of the effort in. But it is a difficult process,

Mr Deputy President, in that the translation schedule, and that is what is based on, in the TCCI application is very clear and specific. In respect to the HSUA translation schedule we say it is not so clear, and we have had to make assumptions particularly in the - in the combination services area which I will come to - to lately, in respect to where people translate in - in the - in respect to the HSUA application.

Now, Mr Deputy President, in respect to the first page, which is in fact the employment services, if I - just as a general guideline there is - there is dark lines in the middle, the first column is in fact the current classifications within the award as they are stated. The - going past the double dark line then we look at where they translate in terms of the TCCI application with the next one being the percentage relativities of the base - base rate with the new wage and the total per annum cost and the final cost - cost per annum, and they are all on a per annum basis, which - which is the cost to the TCCI - cost per annum which is the overall cost.

Any figures in brackets are in fact a negative situation, and we have assumed by the savings approach to these award making process that there would not be any actual reduction in rates, but when we have actually come to extrapolate the costs out that will show as - as a nil figure. Now, the next - next column is in fact the effect of the HSUA application and again I just highlight that it is a translation process and I am sure Ms Harvey - Ms Harvey will respond to it in her right of reply, but it is only as we are able to interpret the translation process and in terms of the HSUA application.

However, we feel that the two translation schedules shown in this document do resemble each other greatly, and we feel it is a realistic approach to - we have not overstated, in other words, the translation process. And you will see that a similar approach has been done in respect to the HSUA application where we have - where we have included the base percentage figure with the new wage, the total per annum costs, and the - sorry, the new total per annum wage and then the costs per annum, the increased costs per annum.

Now, we have done that in respect to all services covered by this award - sorry, all sectors covered by this award. Of course it is based on award rates, of course also that we have not utilised actual pay rates, it is the award rates which we have utilised, so it is not a particular service we are looking at here it is the current award rates as they would translate into - into the - into both the TCCI and HSUA application.

DEPUTY PRESIDENT ROBINSON: So that means that if anybody is receiving an overaward payment the assumption is that that would be absorbed by any award increases?

MR FITZGERALD: Yes, I - that - I would submit that, Mr Deputy President, that that is the general overall thrust of structural efficiency increases and yes that would be the case, and you would have to take that into

account but again we are not able to present a survey of rates, but we are just showing the implications of the overall cost of the various applications.

DEPUTY PRESIDENT ROBINSON: I make no statement about the question of absorption, I am just seeking to better understand your documentation.

5 MR FITZGERALD: Yes, okay, that is fine, thank you. Now, Mr Deputy
President, we have sought to quantify them in percentage increases and I will
state the percentages as we go through. If I can just start at supervisor grade
1, which is a current rate under the award, and just indicate the impact of -
10 and I just take you - highlight the major figures if I could, I do not want to
go through every figure I think that would be a laborious task and indeed
unnecessary, but in respect to the supervisor grade 1, which is current
classification, in respect to the TCCI application which is the top level, the
maximum level, and is consistent with our approach in terms of the wage
fixing principle argument which we put to you before, it is 115 per cent level,
15 there is a very slight increase, as you see in the second column there, cost per
annum of \$61.

As in - in converse to the HSUA application where the percentage relativity
there is higher, 125 per cent which gives an increase of \$2200-odd and to the
top of the increment being 130 per cent which gives an increase of \$3378.
20 Now, I make the point here, Mr Deputy President that we only look at these
within the terms of the five levels. Now, there are, as you would be aware
to and we put extensive argument in respect of this, two other levels contained
within the application up to the maximum of 160 per cent, that being a level
6 and 7 and it may be that in terms of - again we are assuming - making
25 assumptions in respect to the HSUA application and translation process - it
may be that positions from HSUA perspective do translate into the higher
level 6 and 7. So that in our - in our submission is an additional cost impact
which - which we are not able to take into account in this exercise.

30 So we have made assumptions but we did not make too many more
assumptions in respect to 6 and 7.

DEPUTY PRESIDENT ROBINSON: Right. So to that extent, in your
words, your estimate is conservative?

35 MR FITZGERALD: We would say that, particularly in respect to that
aspect, yes, Mr Deputy President. Now, in respect to the lower levels, that
the trades classifications which is supervisor grade 4, the differences are not
quite so great, and we have displayed these figures honestly, you know,
without highlighting any, you know, without trying to highlight a difference
which is not there, but you will see at supervisor grade 4, which is the current
classification, that in fact, if you look at the TCCI translation process, at the
40 first increment, there is - the current trades rate, in other words, is \$446.10,
which is, in fact, above the level 4, which is the 100 per cent figure, then you
would see, of course, a reduction of \$1087 which of course, would not take

into - would not actually come into place from a practical point of view, we say and we have said in respect to the Commissioner Gozzi decision, and I just do not want to harp on this, but we say that the current trades level within the award, which is \$446.10, is significantly above the trades level recognised within the award, that being 425.20 and has been already rewarded for that additional responsibility of having to supervise disabled employees.

Now, much of that was made during the inspections process, and we say that even though it is an additional responsibility, we submit that in fact, the additional responsibility is not that great and has, in fact, been already recognised by the way it sits currently within the award, that being \$21-odd above the current trades rates within most other awards of this commission.

DEPUTY PRESIDENT ROBINSON: When you say 425.20, is that the base rate for a tradesman in most awards, you say?

MR FITZGERALD: Not - I think it is not the base rate, I think, it is the total all-up rate that they can get.

DEPUTY PRESIDENT ROBINSON: Well, yes, I used the wrong expression then.

MR FITZGERALD: Yes, I think it was \$417-odd and we got the 8 - the first \$8, I think, it now translates to \$425.

MS HARVEY: Could I perhaps just clarify one point? There is actually a trade rate in the award which is identical to 100 per cent for trades only persons at \$425. The supervisor rate which is trades qualified is the one that has the extra level, if you like, going to the 105 per cent. I just think the clarity it might help.

MR FITZGERALD: Okay. Now, in terms of that particular grade, Mr Deputy President, you will see that the cost impact of the TCCI application is indeed, minimal, \$19 per annum increase, the same translates to the HSUA application but what the TCCI application - where the TCCI application differs is that we do not add the further 110 per cent increment and that would amount to an additional \$1124 per annum increase in respect to the HSUA application.

DEPUTY PRESIDENT ROBINSON: Right. Just to clarify what I was talking about before, Mr FitzGerald, by expression, base tradesman, refers to the classification rather - - -

MR FITZGERALD: Yes.

DEPUTY PRESIDENT ROBINSON: - - - rather than the base rate, which is now a - - -

MR FITZGERALD: Okay.

DEPUTY PRESIDENT ROBINSON: - - - component of the way.

MR FITZGERALD: I understand that, yes I understand that.

5 DEPUTY PRESIDENT ROBINSON: It means an A grade electrician, or something like that.

MR FITZGERALD: Yes, I understand that. And then you look at the non-trades classifications of supervisor grade 5 and 6, and you will see the effect, and again the difference at this level is not that great. However, there are some slight differences in the HSUA application. The TCCI application is, there is no doubt, there is some cost in that but it is minimal compared to the overall effect of the HSUA in this part of the industry, and you will see that in respect, let me take the example of supervisor grade 5, where there is a 1206 increase in respect to TCCI application and 1648 in respect to the HSU application.

15 If I could take you over the page, it basically, I have tried to make it a summary document which summarises the front page in respect to the savings which would apply. In respect to, just to quote some percentage increases, in respect to the supervisor grade 1, which translates to level 5 within the TCCI application, the first one, the \$61 is, in fact, a point - a very minimal increase of .24 per cent increase whereas the increase which would result from the HSUA application, \$3378 is an increase which equates at 13.3 per cent. Now, the next levels down, you will see the increases there, grades 2.1, 2.2 and grade 3, in fact are minimal. There is no increase in respect to the TCCI applications and a very small one in respect to the HSUA application.

25 Now, if we go down to the bottom grade, the difference between the HSUA and TCCI application, of 1260, which is the top of the increment at level 3, is 5.89 per cent increase for the TCCI application, and an 8 per cent increase for the HSUA application. So that completes the employment services sector. It is, as I said, it was a fairly long exercise but hopefully that answers some of the questions you might have raised on the last occasion.

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DEPUTY PRESIDENT ROBINSON: I find the figures very interesting.

MR FITZGERALD: Fine, thank you.

DEPUTY PRESIDENT ROBINSON: And subject to what Ms Harvey has to say, the information will be useful to me.

35 MR FITZGERALD: Good, I am pleased it assists the commission. In respect to the next page, which is the independent living and training services I think if you relate those to Multicap at Burnie, I think that was the only service we inspected in this area, and we had evidence from Mr Rolley, from

OTAS, I think, in the other area, we see in respect to the current position within the award, the functional programmer grade 1, that the effect of the TCCI application is minimal, where there is only a very small increase, and amounts to .24 per cent; that is \$61 per annum.

5 In opposition to the position which would translate because of the higher
relativities in the HSUA application, there is - and again it relates back to our
argument relating to the ceiling, which we submit is the 115 per cent currently
contained within the award, and you will see that the increases which amount
10 from the HSUA application in the first instance, the additional increment of
125 per cent, 2270 per annum or - and at the top of the increment, 130 per
cent increment which is \$3378, which equates to 13.3 per cent. And if I can
take you to an area where, just to highlight the differences again, programmer
assistant grade 1, in the third classification which is within the current award,
15 the increases are not quite so graphic here, or the differences in the increases
are not quite so graphic here, and we have an increase of \$1106 in respect to
the translation of the TCCI application, which is a 5 per cent increases and
exactly double that in respect to the HSUA application, which of course, is a
10 per cent increase, that figure being \$2211.

20 So again we submit that there is a greater impact in respect to the HSU
application compared to the TCCI application. And quite significant increases
flowing from that, particularly the top level, that being 13.3 per cent. Again,
just to highlight our earlier submissions that we have been through a minimum
rate and broadbanding exercise, the intent of the structural efficiency principle
as indicated in my earlier submissions is to translate to the new levels at
25 minimal cost.

Now, the next page, is in fact the summary document in respect to the savings
aspect where any negative aspect would not be taken into account, if I can just
correct, make a correction in respect to the second classification currently
contained within the award, the functional programmer grade 2 to grade 1,
30 that should, in fact, be grade 2. We just seek to correct that exhibit.

DEPUTY PRESIDENT ROBINSON: Very well, correction shall be made.

35 MR FITZGERALD: The major areas of impact are at the current functional
program at grade 2 where we see increases - there is effectively a very small
increase, a \$19 increase, which I think we have been through already, that
shows - it highlights the difference there. And the next level down where
there is, in fact, double the increase proposed as a result of the HS - TCCI
application. We would say, Mr Deputy President, that in respect to the TCCI
application is that obviously it will have a cost impact and it will require the
seeking of additional funding. We say that it is a realistic translation process.
40 It is a fair and just result particularly in terms of the responsibilities and -
which are exercised by the employees and also the training support which we
will go to later. And we say that it is a final outcome as a result of the
structural efficiency increase process - structural efficiency process, I am

5 sorry, and it is consistent with our submission in - the early submissions relating to the barrier, if you like, or the maximum point, the 115 per cent currently contained within the award and the need to work value those positions which seek to impose relativities in excess of those currently contained within the award.

10 And finally, Mr Deputy President, perhaps the most contentious area where we have had to make an assumption in respect to the HSUA application, and that is the community living program, the accommodation services which is the final page, and the major, and we will come to this point later, but the major assumption we have made is that any individual within the HSUA application who works alone in the accommodation services cannot translate any lower than level 4. And that is borne out by examination of the HSUA application and I think we will need to do that later. But it is our contention that, and I would be interested in the HSUA response, that the script as
15 contained within the HSUA application of level 4 is such that anyone working alone, and we saw evidence of this both in formal evidence and inspections, cannot translate to any level below level 4. Whereas the TCCI application and translation process clearly indicates that those particular individuals would translate to level 3. So we see significant differences in respect to that.

20 In respect to the current top grade within the award, we seek significant increases again as a result of the HSUA document as against the TCCI application. There is, as you can see, a supervisor grade 1 an increase at the top level of 3300 as a result of the TCCI application which is a 15 per cent increase. In contrast to the HSUA application where there is an increase of
25 6633 which is indeed a 30 per cent increase. Now, that in the context of the wage fixing principles, particularly to translate at a level with minimal cost, is in our submission not consistent with the principles. Thirty per cent in respect of that particular position, we submit, is not a minimal increase, a minimal cost.

30 DEPUTY PRESIDENT ROBINSON: Would there be any people who would immediately, do you think, translate to that?

35 MR FITZGERALD: That is something which I am not certain about. I understand from my instructions there are individuals at that level. Certainly there are fewer at that level than there are at the other levels. Yes, we would concede that. Yes, but there are individuals who - and again, again the unknown aspect about - from the HSUA application point of view is the matter of perceptions of where people fit within the HSUA translation schedule or translation process because it is not a schedule, if I can put it truly, and it may be that employees do or the HSUA see employees translating
40 to that level.

Now, that would, in my submission, result in an immediate increase, again, subject to any operative date considerations, an immediate increase of 30 per cent which is indeed considerable. May be if I could highlight the supervisor

grade 3 which is the area of difference and one which I think we need to clearly lay our cards on the table now because, again, it is unclear in respect of the HSUA application and again it is only our interpretation but I am sure Ms Harvey will respond. If we are wrong in that respect then our exhibit -
5 and in fact within the HSUA applications - application, they in fact should translate to level 3 then our exhibit will need some amending. But we have made that assumption that those working alone in community services - sorry, accommodation services will translate within the HSUA application at level 4. I was just going to say that time has dragged on this morning a bit. We
10 have not seemed to progress very much this morning. We seem to have said a lot in a very short amount of time.

DEPUTY PRESIDENT ROBINSON: Highly commendable.

MR FITZGERALD: I am not sure whether I can keep up that pace. Now, in respect to that particular position, if I can again just go down to the next
15 level, which is supervisor grade 2, and I think that would seem to have the most impact in the CIP services and the effect of that is a 1106 increase per annum within the TCCI application, which is a 5 per cent increase as against level 4 at the - within the HSUA application which is exactly double that, \$2211, which is a 10 per cent increase. Now, the major impact, as I said, are
20 those in - and I submit - and I think Ms Harvey indicated in her submissions that it was one of the major areas of difference between the two applications - but the major area of impact is the next area, supervisor grade 3 which is the current classification within the award and we see - you know, we feel in terms of the end of the structural efficiency process that because there are
25 a number of services who grade at different levels, there is no consistency within the current award.

That there is a very good opportunity to provide some consistency, and I think that is one of the major tenants of the structural efficiency principle that they are based on consistency and fairness and equity, and we feel that those who
30 because of, and we will highlight some of the areas of difference in evidence, because of the adequate support which employees who work alone in accommodation services receive in contrast to the evidence of the HSUA, which I think Ms Brady particularly indicated that there was little support both from a personnel point of view and from a training point of view, but we feel that that is a fair translation process for the work which they do to translate
35 to level 3 which is - has as its maximum a 98 per cent relativity.

But it is, in our view, a very good opportunity to see some standardisation of that, and that will assist very much so in terms of funding considerations because at the moment there is, we would concede, a hotch-potch, and it is
40 very much a question of interpretation within the current definitions within the award and the new definitions as we propose, and we believe proposed clarity and will enable consistency of approach within the industry.

Now, just to highlight the different again, and it is quite a significant different, at supervisor grade level 3 where the TCCI proposed that that position, the working alone position, will translate to level 3. At the first level of course there is no increase, in fact again, there is a deficit that is saved as a result of the overall approach in this award. But the next level is, again, a deficit, but the final level which is 98 per cent, the final increment, sorry, an increase of \$1206 per annum which equates to a 5.89 per cent increase, in our submission a minimal increase as a result of our application and something which I believe can be encompassed within the terms of the wage-fixing principles. Contrast that to level 4, which is the transaction proposed, in our submission, by the HSUA, and you will see that with the variations in increments with the top mark being 110 per cent, which will result in an increase of \$3859, that is in fact translated to an 18.85 per cent increase, in our submission substantial and not consistent with the wage-fixing principles in terms of minimal cost criteria in the translation process.

So that is, and again, as a result of our evidence in inspections, this is the area where we see the most significant impact and I think the document is useful to highlight the quite considerable differences as a result of the increases which will flow from the corresponding applications. Just to take you further, the next level supervisor grade 3, level below, where we translate to the next level - sorry, to level 3, the differences are not quite so graphic because they only really reflect the very small difference at the top increment level, the 100 per cent level being the HSUA application which is the figure of \$1648, which is an 8.05 per cent increase as opposed to the 98 per cent level in the TCCI application, which is the figure of \$1260 which is a 5.89 per cent increase.

Now, the next document, or the next page is in fact again consistent with our other approach, the other sectors, is the savings - the impact of the savings provision and you will see ticked there - to highlight again the areas, the supervisor grade 3, you will see that the TCCI application, which is a third year, in fact just to explain it, at the level 3 within the TCCI application gives an increase of \$1206, which is the 5.89 per cent as against the third year in the HSUA application which is again, of course, at level 4, which results in the 3859 per cent increase.

Now, what we have also ignored in transposing these figures, Mr Deputy President, is the additional - particularly in accommodation services, the additional impact because they are seven day - often seven day a week 24-hour services, of Saturday, Sunday and additional penalties relating to outside hours, outside the normal hours. And as best we can, Mr Deputy President, the average cost associated with those factors is in fact additional 45 per cent. Now, of course that is not the result of a 45 per cent increase because we currently - those rates are currently, or those additional factors are currently being paid, but those - that cumulative effect of penalties will of course now be, depending on which application is successful, will not impact on the increased rates. So that is an additional factor.

Then in addition to that, Mr Deputy President, is the factor which is so often ignored in these costs impact exercises, is the impact of - and I will just take you to the next page - which is the impact of on-costs, so-called on-costs relating to superannuation, workers compensation, leave loading, etcetera.
5 Now, I am not sure what other factors would be taken into account but there may be staff facilities which would take into account tea and coffee, those sort of things, and in this particular sector those additional costs amount to an additional 18 per cent.

10 Now, again that will have some further additional impact because that 18 per cent, which is the average on-costs, will now apply or - sorry - could apply, depending on the success of the applications - could apply to the increased rate. And again I just make the point, the 45 per cent, which is the average for accommodation services, again will vary from service to service. We are not suggesting that it is the same in every service by any means but it will
15 again vary from service to service and take into account and will vary depending on aspects such as a roster, and is very much an approximation.

DEPUTY PRESIDENT ROBINSON: Yes. You are not arguing that the actual cost on translation should have added to it 45 per cent?

MR FITZGERALD: No.

20 DEPUTY PRESIDENT ROBINSON: You are saying that on average these Saturday, Sunday, etcetera, penalties, shift penalties, represent 45 per cent of the ordinary rate of pay?

MR FITZGERALD: That is right, yes, so it is an additional 45 per cent, and that factor will now apply to - or could apply to increased rates.

25 DEPUTY PRESIDENT ROBINSON: That factor will still be there but on a different rate?

MR FITZGERALD: That is right, yes, but it is a factor which we submit should not be ignored in this overall exercise. Again I just emphasise in
30 conclusion with this exercise, and I have taken longer than I expected with this although it should not be the concern in terms of completion today, but there are those other factors which are the unknown factors of potentially employees currently within the current award structure translating within the terms of the HSUA application to level 6 or 7, which we have not taken into account. So we hope, Mr Deputy President, just to finalise this aspect, Mr
35 Deputy President, the current wage of course has been a result which has shown in each of the areas of - each of the industry sectors - is as a result of the first stage of the structural efficiency process, and that is minimum rate adjustment and broadbanding, that takes into account those processes, so I think we should make that particular point. That really completes my
40 submissions in respect to that exhibit unless there is any further question.

DEPUTY PRESIDENT ROBINSON: Let us hope I am not being greedy, but it is useful indeed, as I have already said, to have TCCI.10 which refers to costs on assumed translation for individual classifications. An extension of that would be the number of persons employed in each of those classifications and then a total figure per sector.

MR FITZGERALD: For the industry?

DEPUTY PRESIDENT ROBINSON: Per sector.

MR FITZGERALD: That would be a fairly big exercise; however, if I can just - Mr Bacon reminded me that that is an exercise which has been undertaken by the Commonwealth and is in fact being done at this very moment.

DEPUTY PRESIDENT ROBINSON: I see.

MR FITZGERALD: So in other words, it is something which we addressed at the early part but it will take some five to six weeks at least where each service has been analysed and actual costs will be eventually assessed.

DEPUTY PRESIDENT ROBINSON: Yes.

MR FITZGERALD: Now, that is an exercise which is involving professionals in the area and takes into account all the aspects including on-costs. But that, unfortunately, Mr Deputy President, will not be available for some time. We have only been able, in the short time we have had since the last hearing, to assess it on the current award positions and how they would translate. But, yes, I agree, it would be an interesting exercise, and again

- - -

DEPUTY PRESIDENT ROBINSON: Well, that is right. I mean, it could be a different picture if those who would be affected - those employees already who would be affected would be at the lower end of the potential percentage increases as against another scenario where most people would be the beneficiaries of the higher percentage level increase. But, however, as I said, I felt that I was being a bit greedy.

MR FITZGERALD: Well, that exercise will be complete but the timing of it is not perfect by any means but that unfortunately is somewhat out of our hands. As I indicated, even as late as this week we were aware that those professionals are within the services at the moment doing that costing exercise and that should be available - well, four to six weeks is our best estimate. I will not make any further comment.

DEPUTY PRESIDENT ROBINSON: Neither will I.

MR FITZGERALD: It does present somewhat of a difficulty but, as I said, Mr Deputy President, it is out of our hands. What the services are doing, and I can just state for the record, I know that they are co-operating with that request, they are spending considerable time and effort in providing material,
5 information, clarifying questions which those professionals who are undertaking the exercise might require. So it is a massive exercise and that involves those professionals travelling throughout the state but it is well and truly under way now and we would hope to see a result within that time frame, but I can only say hope.

10 DEPUTY PRESIDENT ROBINSON: Yes, all right. Thank you, Mr FitzGerald.

MR FITZGERALD: Okay. Thanks, Mr Deputy President. It has just been raised whether it is possible - and I know this may not help in terms of the ultimate determination of this matter, but in determining this whole matter,
15 which is a very difficult matter for you to determine, I am sure you are aware of that, given the mass of information which has been supplied to the commission - it may be useful, Mr Deputy President, that it be provided to the commission. That again may not fit in terms of your time frame. If required, we are happy to provide it to the commission, and to Ms Harvey, obviously. I am not sure how you would see that, Mr Deputy President.
20

DEPUTY PRESIDENT ROBINSON: Well, I do not think it would be appropriate for me to give an absolute guarantee that I will not issue a decision until such time as that information may be available because that would be just operating on the basis of hope and the unknown.

25 MR FITZGERALD: Yes. Well, as I said - - -

DEPUTY PRESIDENT ROBINSON: Certainly if the information becomes available and it is within a reasonable period of time I would naturally welcome receiving it, and at the same token, of course, if I am to receive it at an appropriate time when this can be taken into consideration before a
30 decision comes down there would be the opportunity for both parties to have access to it and have the ability to comment on it even if it was to be accompanied by written commentary rather than necessarily calling a hearing.

MR FITZGERALD: Well, I appreciate those comments, Mr Deputy President, and it is probably appropriate at some stage for Ms Harvey to reply to them, but if I could - depending on whether she wished to take up that invitation - if I could say that I think it will be in the interests of employers to wherever possible attempt to expedite the process by co-operating with those professionals to get that information.

40 DEPUTY PRESIDENT ROBINSON: Yes. I mean, I do not see that it would be critical of itself given the amount of information that is already provided in relation to costs and translation material, and given our own broad

picture that we have got now through receiving witnesses and having inspections.

MR FITZGERALD: I think Ms Harvey - - -

5 MS HARVEY: If I could just say two points: one, is that my organisation is not involved in this process, we have not been consulted, and I would be extremely concerned if the document was provided to the commission without the assurance that you have given in relation to the opportunity to comment. I am very concerned that we have not been involved in that and I think that it undermines the validity of the process and what it is seeking to do particularly when it relates to our application and certainly assumptions are being made which I will respond later to in relation to the costings by Mr FitzGerald and if that is an indication of the type of thinking, then I have got grave concern.

15 So that is the first point I would make. I would be extremely concerned if any document was taken into account without a formal process allowing for us to comment on it and I am heartened to hear the comments that you made, Mr Deputy President. The second point, I would be extremely concerned again if the process was allowed to be delayed and a decision was delayed waiting for documentation which may or may not be available in six to eight weeks. This department federally has reputation for not meeting time frames and I do not expect that to change. Also, we have been aware of the application since April and to have this matter now brought before us at the death knell, you know, in the eleventh hour, I think is a little inappropriate and if the employers were serious about this they would have started their discussions an awfully long time before this and I would be extremely concerned if it was used as a way of delaying a decision.

25 DEPUTY PRESIDENT ROBINSON: Well, I have already made it clear, I think, that I will not be depending upon the time that is - that information is released. If it comes forward it will be taken in proper context as to what assumptions have been made and what have not and what ought to perhaps arguably and that it is - to the extent it will be relevant to the consideration, it will be something that I can only decide after I have seen it and after I have given all parties the opportunity to comment on it officially in one way or another.

30 MR FITZGERALD: Well, I think I can just answer very quickly by saying that we are not suggesting necessarily that you wait for that to occur, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Well, I have made it clear that I will not give a guarantee that I will wait on it.

40 MR FITZGERALD: Certainly, no. Well, I do not think that was inherent in our submission and, secondly, in terms of, you know, the untimeliness, if

I can say that, you know, it really is out of the employers hand. They did impress on the federal department to act sooner but it is really out of our hands and, thirdly, Ms Harvey complains about the lack of involvement in terms of this process. The steering committee which has been set up - we can say that employers also are involved in that.

DEPUTY PRESIDENT ROBINSON: Yes. What is the name of the department concerned in that exercise?

MR FITZGERALD: It changes regularly so - I do not think I have got any documentation which will assist on that, we are guessing. It might have changed today.

DEPUTY PRESIDENT ROBINSON: It makes it difficult to make a note of something.

MR FITZGERALD: But our best guess is - the Department of Health - Federal Department of Health and Human Services.

DEPUTY PRESIDENT ROBINSON: Health and Community Services?

MR FITZGERALD: Human Services.

DEPUTY PRESIDENT ROBINSON: Yes, right. Well, if that is not their name - it was not their name before it is now.

MR FITZGERALD: We will proceed, sorry. Do you want us to proceed with the rest of our submission?

DEPUTY PRESIDENT ROBINSON: Yes, thank you, Mr FitzGerald.

MR FITZGERALD: In respect to the outline which we presented we now will look at the issues differences. We have chosen to adopt this approach rather than a precise analysis which the HSU have presented in their differences document and I think it highlights we need to look at this in the context of the review of the evidence and inspections which we will proceed with during the latter part of our submissions. Again, in terms of the - one of the major issues which we see, Mr Deputy President, which has already been alluded to is this issue of working alone in residential services and I am not sure how I interpret Ms Harvey's comments about our interpretations of her application.

May be we may have misinterpreted them but we will wait and see about that but it is our view in terms of the TCCI application that individuals - or persons working alone in residential services will in fact translate to level 3. Now, our - and I do not think I need to take you to the full document - but our disability services worker level 3 contained within our application, the general description, and I quote:

This level of employee shall work individually or in a team environment.

5 So it is quite conceivable in our application that an individual can work at that particular level. Now, it is - our translation schedule in fact supports that notion, Mr Deputy President, where the supervisor level 3 and 4 within the translation schedule, the current award translate to level 3 within our new structure. Now, in terms of the HSUA application, again, it comes down to a matter of interpretation. I welcome any contrary interpretation by Ms Harvey.

10 DEPUTY PRESIDENT ROBINSON: Well, I guess you can really speak only to what your view is in relation to - - -

MR FITZGERALD: That is all I can say, yes.

DEPUTY PRESIDENT ROBINSON: - - - what should happen?

15 MR FITZGERALD: Yes, okay. Now, in terms of Ms Harvey's description within her application at level 3 we are of the view that that does not encompass in any way the working alone situation. However, at level 4 - and if I can just read the general description contained within the application:

*An employee of this level performs work above and beyond
..... individually or in a team environment.*

20 Now, this is the first mention that - at this particular level and again it comes back to the definition of general supervision which as - and I quote within the terms of the HSUA application - and I quote means:

*The general instructions are given a task or undertaking to
..... is expected and encouraged.*

25 Now, again, it is our perception, Mr Deputy President, that this is one of the major areas of difference in that the description contained within the HSUA application translates those working alone to that particular level and no lesser level and we would submit in terms of the application - sorry, in terms of the evidence, that there is adequate support and in terms of policies and
30 procedures which have clearly been indicated are in place in many organisations, there is indeed a structure of support and there are procedures, particular in emergency situations, which can be invoked and are well known to employees which clearly indicate that there is a level of support outside the particular house but available at short notice and we saw in evidence a whole
35 host of modern technologies being utilised, I think pagers, mobile phones. There was, indeed, in looking at the evidence of Mr Rodwell, a structure set up where if a supervisor of a particular house required support then they could - there was a network set up where they could call on support from fellow supervisors.

I refer to the evidence of Ms Di Thomas from Euphrasia where she indicated maybe it is not always desirable but she indicated that she was on call via means of a mobile phone. We also saw, Mr Deputy President, situations where quite clearly in emergency situations there was use of generic services, doctors, ambulance services, etcetera. Now, we see that that is a major area of difference between the TCCI case in terms of the evidence and inspections and the HSUA case, and in summary we would submit, Mr Deputy President, that the supervisor in accommodation services working alone properly and fairly translates to level 3.

Now, simply because there is a range of services, support services, and structures within organisations which will enable the employee to call upon those services and take care of situations which may be out of the ordinary, it is not, Mr Deputy President, as suggested by Ms Brady in her evidence - I think she used the words that the staff do the best they can without any support, it is not - that is not the evidence which is clearly shown within the industry. There is another area of difference, Mr Deputy President. We say that there is support offered through services, through training, which exist within organisations, specific areas of training need, whether it be behavioural management or specific to those specific services.

There is counselling offered, and I again refer to the evidence of Ms Thomas where difficult situations occur counselling is offered by herself and a range of professional services to assist in that process. We saw in the evidence of Mr Snadden a situation where the vocational trainer can offer support not only to disabled employees - that is not what he called them, I just cannot recall what he calls employees receiving - no, my recall is not very good but they were not called disabled employees at that particular site - but there was support - - -

DEPUTY PRESIDENT ROBINSON: They were just called employees, were they not?

MR FITZGERALD: They might have been called employees but I think they distinguish them by receiving a - - -

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: DSP.

MR FITZGERALD: That is right. Thank you. But there was a range of support offered at that particular organisation where the vocational trainer could also assist employees, able-bodied employees in their work situation. Mr Deputy President, the other area, support area, of difference is of course - and I do not think I need to highlight them any more - the existing positions within the award, in our submission, are encompassed within level 6 - sorry - the existing positions within organisations, and I am talking about management-type positions, are encompassed within level 6 and 7 of the

HSUA application. Now, again in terms of award restructuring, Mr Deputy President, we see that awards should be appropriate.

5 The evidence given on behalf of employers is that there was a need for flexibility required in terms of particularly the hours, in terms of those positions being outside the award. There is no doubt, particularly within the HSUA application, that the structure which is based on the broad automatic progression criteria, and I will address that later, that if those positions are within the award then current employees will aspire to them. Now, there is nothing wrong with that necessarily but it may be that they have a perception with the general descriptors contained within the HSUA application that they could be more appropriately classified at the higher levels, particularly levels 6 and 7.

15 Now, that, in my submission, will see a further cost implication as a result of the HSUA application. The industry clearly indicated that it was inappropriate that the award encompass levels 6 and 7; there was no demonstrated need, apart from some very simply - sorry, simple is the wrong word, I am sorry, I retract that - some very basic evidence from Ms Joanne Dickenson that she might have perceived herself at that particular level, but there was no demonstrated need whatsoever by the union's application to indicate that the award should encompass those positions.

20 Now, again, because of the nature of those positions, management requires that flexibility, and if they are encompassed within the award as contemplated by the HSUA application then in my submission that will be unduly restrictive and in my submission therefore is contrary to both the spirit and the intent of the structural efficiency principle which is of course to enhance flexibility. So, in my submission we would say in that regard that the HSUA have not made out a case or demonstrated a need that those positions should be encompassed within the award.

30 Now, the other major difference, Mr Deputy President, is this notion of skills required, skills acquired, and we say in fact the position from our point of view is that it must relate to the skills required, that it then comes down to what is relevant in the job. The basis of the HSUA application is that skills acquired through training - and I again refer you to the evidence of Mr Rodwell, who says that some skills acquired in fact were not able to be utilised within his service, but the HSUA say that skills acquired - although the position to me is not very clear there - it seems that the HSUA have attempted to cloud the difference by saying that if you do not accept skills acquired then the compromise is skills utilised.

40 Now, I would submit, Mr Deputy President, that the HSUA approach of utilising either skills acquired, which in our submission is unsustainable, or, as an alternative, skills utilised, is something which is very subjective. Some employees - in other words, some employees may feel they are utilising the skills, and it is going to be a real source of disputation if employees have

some perception that they are utilising particular skills whereas the employer may in fact feel that they are not. So in that regard we would submit, Mr Deputy President, that it must come down to skills required.

5 Now, regrettably - and I would seek to just, if I could, reserve my position, and I hope it does not cause any inconvenience. I am aware of a decision by Commissioner Merriman which I did allude to previously. It has been manifested in the Timber Industry Award, which I will present to you shortly, but I have had considerable difficulty in obtaining the decision by Commissioner Merriman, it was at the end of 1992, early 93. In fact, I was
10 involved in part of that case. There were a number of issues involved, and one of them was in fact the progression criteria.

If I could reserve - and I am aware of the comments you made in respect to coming back in a process of to-ing and fro-ing, and I do not wish to do that, but it is a fairly simple exercise, I am very much aware of this decision by
15 Commissioner Merriman, it is a matter of getting hold of it, and unfortunately we could not locate it within our files. Mr Sertori, who handled the matter, was not able to assist. But if I could present an exhibit which goes to, if you like, the implementation of the Commissioner Merriman decision.

DEPUTY PRESIDENT ROBINSON: TCCI.11.

20 MR FITZGERALD: If it pleases. Now, if I can say - and I will clarify it and I will hope to be able to receive a copy of the decision very shortly - well, I will not present the full decision, but only that relating to promotional criteria, which is on the second page of TCCI.11, and if I could just quote:

25 *Promotional Criteria: An employee remains at this level until capable of effectively performing through assessment or appropriate certification the tasks require of the next level so as to enable progress as a position becomes available.*

And I just stress that, highlight that "as a position becomes available". So, it is not automatic progression as is suggested within the HSUA application.
30 Now, as I indicated, this aspect was the subject of arbitration before Commissioner Merriman, and Commissioner Merriman in fact determined in favour of the employer. I think there were about ten matters and I think the ledger was about all square at the end of the day, from memory.

35 DEPUTY PRESIDENT ROBINSON: Is this an extract of an award printed by the Chamber of Manufactures, is it?

MR FITZGERALD: Yes, if I could explain that as well: it is a copy of one of our sister organisations in Melbourne who have this particular service, looseleaf service of the Timber Industry Award. If you are unhappy with that, Mr Deputy President, I am happy to get the actual print, but I can
40 indicate on record that it is in fact an exact copy of the commission's print

copy. And I can indicate also on record, Mr Deputy President, that this is just but one of the levels contained within the award, and that promotional criteria, which is one which is tacked on to every level contained within the award, so it is not something which I have just extracted at one particular level. It is something which exists throughout the award.

DEPUTY PRESIDENT ROBINSON: This would not be the only example of pronouncements made in relation to classification of employees and promotional criteria based upon skills acquired or required.

MR FITZGERALD: No, I am certain it is not.

DEPUTY PRESIDENT ROBINSON: It has been debated many times.

MR FITZGERALD: Absolutely, yes, and I will present some local - sorry, some state award exhibits where there are agreed matters - and the Clerical and Administrative Employees Award is one which I think follows the same line. However, I present this, Mr Deputy President, as I understand it is one of the very few arbitrated decisions - - -

DEPUTY PRESIDENT ROBINSON: I see.

MR FITZGERALD: - - - so in that respect it has - it is of more persuasive value than those which are simply agreed. But I will undertake to - and if it is appropriate it may be just a simple matter of, rather than reserving for the next occasion, posting it to both yourself and Ms Harvey, whether that is acceptable or not.

MS HARVEY: I just want to say that it is totally unacceptable to me to have a series of documents provided after the date that Mr FitzGerald has nominated which he will finish by. I mean, if one used such a rule, we would never finish a case. It is only fair, I have got a limited time to respond as it is, that he finish and provide documentation that he had for today. He has known for a very long time this was the date and I think it is totally unfair and prejudices my capacity to respond if I am going to have a flood of documents coming to me over - between now and then just to basically cover his position because he has not been ready today.

DEPUTY PRESIDENT ROBINSON: Well, if I can assist. It seems to me that Mr FitzGerald has produced as part of his case an argument upon the criteria for people to be classified and/or reclassified. His argument is illustrated by an extract of what is the Timber Industry Award 1990. He has told us that it comes from an arbitrated decision by Commissioner Merriman; that is his argument, and I guess - I am not quite sure what more is needed, save only for verification.

MR FITZGERALD: Well, it would be that - I have actually sighted the decision, which, as I said, went to about ten matters, and I did not - at the

time I did not take a great deal of interest in this particular aspect, because I was involved myself in another aspect of the union claim, but I am aware that the decision - and again this is probably just from other people - the decision in respect of this does have some explanation, reasons which may assist.

5 Now, I understand Ms Harvey being concerned, Mr Deputy President, and I apologise for not having it here. It has been difficult, and I have made some calls which now have - which have not really assisted, but I would submit that the subsequent presentation of the Merriman decision, for want of a better title, will not prejudice Ms Harvey. I would hope that that is in fact able to
10 be provided to her within the next few days.

DEPUTY PRESIDENT ROBINSON: I am wondering whether - - -

MR FITZGERALD: If that be the case, then she will be able to respond to it.

15 DEPUTY PRESIDENT ROBINSON: I am wondering whether - I mean, and it is your case - - -

MR FITZGERALD: Yes.

20 DEPUTY PRESIDENT ROBINSON: - - - and you must make the decision as to what you want to put forward, but given the problems of timing, I am wondering whether you need to put forward any more than that which you already have, with the assurances that you have given - - -

MR FITZGERALD: Well - - -

DEPUTY PRESIDENT ROBINSON: - - - that it is contained in an award; it is an arbitrated matter, and you believe it is consistent with what should happen in this matter as a question of general principle.

25 MR FITZGERALD: Well, if those matters are not contested - I think it might be difficult, because Ms Harvey would obviously want to check that - but if they are not contested, then I am happy to leave it at that, but I would suspect that Ms Harvey would want to verify that what I am saying is in fact correct.

30 DEPUTY PRESIDENT ROBINSON: Well, she might even believe you.

MS HARVEY: Unlikely.

MR FITZGERALD: Oh, right.

35 MS HARVEY: I certainly will be testing it and I will be seeking to verify it. My comment was not so much in relation to providing that particular decision. I mean, I am not so fussed about that. It was the reference to the

other awards that, you know, he was going to provide at a later date. I mean, that is what I am concerned about.

MR FITZGERALD: The other awards? I am sorry, which awards?

5 DEPUTY PRESIDENT ROBINSON: Public sector awards or something you mentioned.

MR FITZGERALD: No, I make no - private sector award - I am intending to produce those today. Is that the concern?

10 MS HARVEY: It certainly is a concern and, I mean, I am happy for Mr FitzGerald to provide the Merriman decision to myself to verify, and if it is as he says then there will not be any problem, but I suppose I am foreshadowing I have great concern - we have already had at least two documents that are going to be provided in the future - - -

MR FITZGERALD: No, no, I am intending to produce those today, very soon.

15 MS HARVEY: No, I was referring to - yes, so I suppose I am highlighting to the commission that I have strong objection to - you know, if I am going to have a flood of material provided to me after the event. If it is only that matter, then I am happy.

DEPUTY PRESIDENT ROBINSON: Yes.

20 MR FITZGERALD: No, it is only the Merriman decision, just to clarify it. It is only the Merriman - sorry, not the - it is the Merriman decision in respect to promotional criteria only, and, you know, I would - as I have said, I have had some difficulty because I was in another part of the state yesterday and I tried to make contact with one of my industry counterparts in Melbourne and that was not possible. I had hoped to have it within the next couple of
25 days, and that being the case I would immediately provide it to both the commission and Ms Harvey.

DEPUTY PRESIDENT ROBINSON: So we are only talking about one document.

30 MS HARVEY: Yes, and if I - I think I can make it quite easy. If it is provided with me by close of business tomorrow, I will not object.

MR FITZGERALD: Look, I cannot make any guarantees about that. I mean, that is - the particular person who is involved with this decision at an industry level in Melbourne has not been available and I have been trying to
35 obtain a - - -

MS HARVEY: Have you not heard of Fatext.

MR FITZGERALD: If I can just follow up, and I cannot - sorry, if I can just respond. And I cannot guarantee that I will have it, I will attempt to and I will endeavour to have it by the close of business tomorrow but there is no way I can guarantee that that will occur because I cannot take into account other people's commitments, but I would submit, Mr Deputy President, that Ms Harvey will not be prejudiced by subsequent production given that we had hoped to have it to her between now and the time she was to respond, in any event.

DEPUTY PRESIDENT ROBINSON: Well, on the one hand we have got an argument as to what the criteria should be in relation to appointments and promotions of people to positions, particularly new positions, whether or not we should be relying upon skills acquired, skills required or skills utilised. I understand the argument very, very well and an exhibit is being put forward to illustrate the argument and if - I am not sure, and I keep on repeating and I hope I make it clear, whether any further production of documentation will be critical to factors already been put forward and no doubt there will be perhaps a contrary argument as to the principle and there may be other documents put forward which will - today which will further cast light upon the authenticity or otherwise of this general principle.

MR FITZGERALD: Mr Deputy President, just further in support of document TCCI.11, I do not wish to labour the point in the decision, but clearly the promotional criteria determined in this award, the Timber Industry Award, and I quote:

An employee remains at this level until capable of effectively performing through assessment. -

Now, that, in my submission, if I can interpose, must mean assessment by the employer, that is one aspect which Ms Harvey objects strongly to in respect to the TCCI application -

or appropriate certification -

and I continue quoting -

the tasks required of the next level -

again, it comes, in my submission, that supports the argument which we are putting forward that it must be skills required and it must be those skills required as determined by the employer and clearly the next statement, and if I could quote -

so as to enable progress as a position becomes available.

It puts it beyond doubt that that is premised on the basis - - -

DEPUTY PRESIDENT ROBINSON: The promotional position?

MR FITZGERALD: That is right, yes. And it is premised on the basis of skills required and is very much - runs in opposition to this notion of automatic progression which is inherent, in our submission, in the HSUA submission. Mr Deputy President, the - as I said, I think the basis of the TCCI application is there is certainty there that their position, as required by the employer, can be defined within a job description or position description. Now, where there is inherent in the HSUAs submission there is uncertainty in that even if it falls down to the compromise, which is the position which Ms Harvey is suggesting, that is the skills utilised, it is going to be very difficult to assess whether in fact skills are being utilised or not, given the nature of the work which we have seen in the process of evidence and inspection and, in my submission, that is a very subjective test which will only cause discontent.

So, I would submit, Mr Deputy President, that consistent with the Timber Industry Award approach and consistent with the two awards, which I am about to produce, in any exercise relating to award restructuring it must, in my view, in terms of a practical approach to these issues, be based on the notion of skills required rather than the skills acquired or skills utilised and if I could present two further exhibits, just one by one, if I could.

DEPUTY PRESIDENT ROBINSON: I think it is TCCI.12, this one.

MR FITZGERALD: And this is - and again I would just say, a further additional copy, this is in fact from the Draughting and Technical Officers Private Sector Award, a restructured award and I have just in fact extracted an exhibit, and it is on the second part - or the second column or the second page, effectively, where it defines a principal supervisor, trainer, co-ordinator, means:

An employee when engaged at this level.

So, clearly, it is a different term but clearly there is a process when the employer actually engages a particular employee at a level. Now that, again, Mr Deputy President, is something which that criteria is set out within all levels.

DEPUTY PRESIDENT ROBINSON: It is an award of this commission?

MR FITZGERALD: It is an award of this commission, yes. Yes. So, the basis of award restructuring has been amazing, I know, that some awards which have been created that I have never heard of, involved by - or my other colleagues have been involved within but what has happened is, I think, an increased number of awards with this commission as a result of award restructuring and that is probably an appropriate outcome in that at least the awards are becoming more appropriate to the industry and one which Ms

Harvey produced was a Medical Diagnostic Award which obviously has a relevance to that particular sector of the industry, but, in my submission, no relevant in terms of justification of the HSUA application in this industry.

5 So, I would submit in respect to the approach taken and it was an award by consent in the Draughting and Technical Officers Award that clearly the word "engaged" means engaged by the employer and is consistent with the approach which we are suggesting that is the skills required. And, finally, if I can present an award which probably has more universal application, that is Clerical and Administrative Employees Award.

10 DEPUTY PRESIDENT ROBINSON: TCCI.13.

MR FITZGERALD: I thought it might be like the 13th floor in hotels, we might skip it and go to the next number, but.

DEPUTY PRESIDENT ROBINSON: 12A, do you want call it.

15 MR FITZGERALD: No, I think 13 will do. I do not think there is any suspicion - I do not think there is - we will worry about that too much, Mr Deputy President. In terms of this particular exhibit, this is again an exhibit which was an award by consent and it is in fact a major award of this commission, I would suggest. It has occupational award status, which is, as you would be aware, no further occupational awards can be made but it just -
20 well, its making was just prior to that legislative provision, and it has application to clerical and administrative employees where there are no industry awards set, so it has, in my submission it is a significant award of this commission.

25 And if I just take you, and again I will just take you to a particular section of the clerical assistant grade 1, and if I can just quote:

Grading. Employees shall be graded at this level where the principal functions of their employment, as determined by the employer, require the following:

30 And again the same approach is taken at grade 2 across the page, and that is again a common approach used within all grades within this award.

35 Now, again Mr Deputy President, I submit that that is consistent with the skills required approach and supports our argument that the structure contained within the HSUA - sorry, within the TCCI application which refers to appointments at particular positions is one which is consistent with the skills required approach and is one, which in my submission is the only approach which can be properly and practically utilised in the restructure exercise which we have before you and one which can be properly and practically implemented in terms particularly of the translation process where the jobs will be defined if they are not already defined by appropriate job descriptions,

and those descriptions are those functions which the employer requires to be done not the employee.

5 I will move off this area, Mr Deputy President, and move on to another area of difference which is the areas of standards which the general position of the HSUA in this regard is there are a number of standards which apply throughout the industry which in fact requires or imposes additional obligations on employees. Now, the difference with - in respect to this issue, Mr Deputy President, is that the TCCI case in regard to this aspect is that indeed there are standards imposed and for good reason, particularly where services have been put out into the community which were previously within institutions, particularly when funding providers require that moneys which are provided in terms of funding are accountable, and we say, of course, that those standards are important.

15 But the difference which we - we say applies in respect to the HSUA position is that those standards in many cases provide certainty, they provide the means of and often reflect policies within organisations which we have seen examples of, and I quote without going to it, TCCI.3, which is the Euphrasia Policy Statement, and those statements are - or those policies are those which have been developed keeping in mind the standards which are required of that service and are consistent with it.

25 Now, the position which we say - and again I think it comes back to this - as I call it, the pseudo or de facto work value case, and I have already addressed that aspect - but the position which we say, unlike the HSUA application where the HSUA say that it provides more responsibilities for employees, we say that in fact it provides a degree of certainty which in fact makes knowledge of the job easier and in fact assists employees doing their job. The other difference which we say, Mr Deputy President, is that the area of responsibility in terms of compliance with those standards clearly rests with management, and I would like to present an exhibit in that regard.

30 DEPUTY PRESIDENT ROBINSON: Thank you. TCCI.14.

35 MR FITZGERALD: If it pleases. I will be taking you to other aspects of this exhibit later, but there is one which was provided and if you - to a great degree reflects the submission made by Mr Jarman on the last occasion and if I could take you to - in fact my copy, I have had it there - yes, I have - sorry, I had it out and I - the second page of the document, if I could quote the last paragraph:

In implementing and subsequently assessing services against the Standards, management of organisations are and completes at least one annual self-assessment against the Standards.

40 And what we are saying, if I could just interpose, is that we do not say that the employees have no part in this process, but it - because in fact the

department does indicate that they are part of that process and encouraged to do so, but in terms of the overall responsibility that rests clearly with management. Now, further, over the page, the first paragraph about six or seven lines down at the end of the line, if I can quote:

5 *It is the responsibility of management to ensure that the service
 complies with the Standards responsible for the service
 complying with Standards.*

So that, in my submission, is a categorical statement which in my view refutes any suggestions that there are, even though employees have a part in this process, there is no additional responsibility imposed by the imposition of -
10 imposed by the implementation of standards and their requirement to be complied with as suggested by the HSUA evidence and submissions.

DEPUTY PRESIDENT ROBINSON: Mr Jarman does not seem to make it clear in his covering letter of TCCI.14 as to what is the source of the
15 information provided.

MR FITZGERALD: Yes, I can make that clear. Thank you for that. We were aware of this document some time earlier and we wanted to give it some official status by Mr Jarman in fact endorsing those remarks, if you like, by a means of exhibit. But the source of the information was, if I can quote, was
20 in fact prepared by the Age and Disability Support section of the Department of Community Health Services, particularly Ms Alex Schouten, who is the senior project officer in that division. Now, that document is indeed a useful document, not only in terms of the standards, but it neatly summarises fundings arrangements. It is consistent with, and in fact, almost reflective
25 totally, the submissions made by Mr Jarman and I would submit it to the commission for, not only in terms of standards but also the funding considerations which we will come to later.

DEPUTY PRESIDENT ROBINSON: Does not the large page of the document perhaps indicate that it is not only management that has the
30 responsibility for compliance with standards, but the department itself goes round and meets with management, it says in the first line of that last page, and where appropriate employees and consumers to review the assessment.

MR FITZGERALD: Yes.

DEPUTY PRESIDENT ROBINSON: I take it from that that it is part of
35 contractual arrangement between the department and employers for funding that they meet standards.

MR FITZGERALD: Yes. We are certainly not denying that employees are involved in that process but the overall responsibility for compliance rests with management and it is our submission that inherent in the HSUAs submissions
40 was that there is some onerous requirement on behalf of employees in that

process where we say clearly that rests with management. That is the difference which we see, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Yes, there is - - -

5 MR FITZGERALD: If we proceeded differently I would most welcome Ms Harvey's submission.

DEPUTY PRESIDENT ROBINSON: Oh, well, I will not dwell on it, but it is not perhaps like - you cannot make an analogous comparison with operators of aircraft, for instance, and the responsibility of the civil aviation authority.

10 MR FITZGERALD: Quoted as a current example. So that again is a major difference between the HSU and the TCCI application. Now, the basis of the TCCI application and other major differences that we see are clearly - and it is again, I suppose, consistent with the approach - the skills required
15 approach, and that is at each level within the TCCI application there is a requirement that there be a position available and we have in fact reflected the exact wording of the Timber Industry Award within our application. Now, there was great exception to this by Ms Harvey in her submissions and the essence of the HSUA application is that there is in fact automatic progression, and on page 19 of the HSUA application refers to accelerated aggression and
20 we would say that simply translates to the situation where employees can progress within the structure, whether there be a position there or not.

Now, clearly, the basis of the TCCI application is as required by the employer when a position becomes available, and that is a practicable approach particularly this industry where, particularly in small homes we have seen
25 limited promotional opportunities. So it is not possible for employees just to simply progress up the scale where we will see the potential for top heavy organisations. Now, we have seen in the case of Ms Thomas organisation, Euphrasia, a very flat structure where essentially herself was the manager of service and then another level of supervisor is the next level down. Now -
30 and that is consistent with funding provided to that organisation. Now, what the HSUA application does by means of automatic progression, create that expectation that employees will automatically progress and in my submission that is a source of discontent. So that again is a major difference between the applications.

35 A further difference, Mr Deputy President, is the responsibilities, particularly supervisory responsibilities of those for supervisors in employment services. Now, I have referred you already to those submissions which we have made in respect to Commissioner Gozzi's decision and we submit that those responsibilities have already been taken into account when that work value
40 case was conducted.

We would submit that even though there may be additional responsibilities, they are not as onerous as those made out by the HSUA and I will take you to some of the inspections later, but our inspections bear that out where generally, I would submit, particularly the employment services we visited, and I quote, Tahune Fields Walkabout, the forest industry aspect of Devonfield, where there was a very - in all instances, and I also quote, you know, obviously Summit Industries where in all instances there was a very peaceful and happy work environment. Even though there was some acknowledgment that there was an additional responsibility in respect to disabled employees that, in our submission, has been overemphasised by the union. We would submit that in respect to support services offered from management resources in most of those organisations, the impact of those additional responsibilities is diminished.

We are not in any way, and I can recall a discussion we had at Walkabout in respect to this, we are not suggesting that there is no additional responsibility at all but would submit that it is indeed minimal and has already been rewarded in terms of the Commissioner Gozzi work value case, and it is something which the union cannot, in my submission, use to justify their claim, particularly the claim - the nature of the claim particularly increases which we have contemplated within the terms of our exhibit this morning, which was TCI - TCCI.10. Again, another issue, and I have already touched on this, is the evidence of Ms Harvey via the witness Mr Singleton where there was a suggestion that work places are highly volatile and subject to frequent violence. We would submit, Mr Deputy President, that that has not been borne out in the evidence and in fact work places are controlled but in the case of behavioural problems there are regimes and strategies in place and it is not an uncontrolled environment as suggested by Mr Singleton.

I would submit, and I will go to the evidence of Mr Singleton later, the evidence, even though we officially did not cross-examine, as you probably recall, we had some malfunction with the tape at that stage, we would submit that in respect to Mr Singleton's evidence, that evidence lacked credibility and was in strong contrast to the evidence which - and also the inspections were presented by the employers, particularly the evidence of Mr Snadden, and if I can just refer to the inspection sites which we say where quite clearly it is not a highly volatile area at all but quite a peaceful and controlled work environment. The other area of major difference, Mr Deputy President, is - and again, it is an aspect which has been used by the HSUA to seek to justify the structure and relativities which they took to the commission through their application is the levels of stress, staff turnover and grievances which, in the submission of the HSUA, in my view, was seen to be higher and, you know, again I refer you.

Ms Brady's evidence, again, I will refer later to but Ms Brady's evidence indicated that I think that every service she went to she saw at least one person off with stress leave. Now, again, that evidence was essentially related to CIP services, however, we have, and I will present an exhibit shortly, to

refute we have done an exhibit, we have prepared a survey which indicates the contrary, that the levels of stress are low. That the staff turn-over rates are low and the level of grievances within structures are low and that reflects the high support structures which exist within services. It is not as Ms Brady's
5 suggests in the industry, an uncontrolled environment where staff do the best they can with limited resources. Quite to the contrary. There are, I support, given the nature of the industry, there are high support structures which services recognised need to be in place to achieve the outcomes which they are required.

10 Now, if I could present firstly an exhibit - and I am sorry about the scrappy presentation of this but it is as per - it is in fact a staff survey which - - -

DEPUTY PRESIDENT ROBINSON: Thank you. TCCI.15.

MR FITZGERALD: If I could just identify that document, Mr Deputy
15 President. It is in fact the compilation of a survey by Coastal Residential Services, and you will probably recall, Mr Deputy President, that was one of the services which we visited. One of the services which, in my view - which of course is the CIP, I just had a mental block there for a moment - a CIP project - service, sorry. It is one which, in terms of the inspections there, was structured organisations in terms of policies and I think, just reminding
20 you, we did actually view policy documents of that particular service. Mr Jones was the head of that particular service. And there was a questionnaire which, and you will see the name Coastal Residential Service which is the source of the facts, there was a question there which Mr Jones sought to put to his staff to gauge the level of satisfaction within his organisation. And if
25 I can just - and as I said, it is a compilation of all the surveys which I think every staff member completed.

DEPUTY PRESIDENT ROBINSON: Could you tell us when it was carried out, Mr FitzGerald?

MR FITZGERALD: That was carried out only early this year. I think it
30 was in about June, from memory. I am advised it was August/September but something which was introduced by Mr Jones to - - -

DEPUTY PRESIDENT ROBINSON: Around about that time.

MR FITZGERALD: It was about that time, yes.

DEPUTY PRESIDENT ROBINSON: Do you know whether the survey was
35 conducted on a face-to-face basis with employees or were they allowed to take the form away and fill it in?

MR FITZGERALD: No, they were allowed to - it was complete confidentiality involved and they were allowed to take the form back and complete it with confidentiality. That was stressed. Yes, thank you, that is

a significant point which I failed to mention. But the nature of the responses, in my submission, Mr Deputy President, clearly refutes the evidence and the submissions of the HSUA. If I can take the first question in relation to satisfaction out of work. Clearly, the majority, 12, in that instance do get
5 satisfaction. Frustration? I suppose if this exhibit had been distributed amongst TCCI staff I would hate to see how it would relate but I am not sure it would be a complimentary response.

DEPUTY PRESIDENT ROBINSON: You do not have to say any more, Mr FitzGerald.

10 MR FITZGERALD: I certainly will not. You know, it would be a great risk if I did. But the second question certainly might have some application and quite clearly there is an honest response there that, you know, the majority of staff do experience occasional times when they are frustrated. The next one, the environment, question three. The majority again obviously feel
15 frequently their work environment is pleasant. The next aspect about support by co-workers. Clearly, the majority, 13, do have support by co-workers. Again, in contradiction to the evidence of Ms Brady:

Do you feel support by management?

20 It is not quite so equivocal in this instance but at least there is no one in the never box but there is always, at least in the case of seven, frequently in the case of seven and occasionally in the case of eight, there is some evidence that mentions support. The next one I think is probably not particularly relevant but I will just skip over that one. The next one:

Do you feel work is noticed or appreciated?

25 Occasionally in the case of 12. Frequently and always in the case of four, four cases:

Do you feel comfortable with your work duties?

Which is the next question. The majority, the vast majority in the always or frequently category:

30 *Do you feel part of a team?*

And again, that was stressed as part of the process and I think - I refer you particularly to Mr Rodwell's evidence there where there is regular staff meetings to extract mutual support from staff. And again, in the service controlled by Mr Jones, there was, you know, obviously a very strong team
35 environment:

Do you feel enthusiastic about going to work?

Again, you know, obviously employees clearly favour the work they were doing.

5 DEPUTY PRESIDENT ROBINSON: Is that - do you know whether those people were married or single or what, whether they wanted to rather be at work?

MR FITZGERALD: I am not certain about that.

DEPUTY PRESIDENT ROBINSON: Did they have dogs and children at home?

10 MR FITZGERALD: I am sure that there would be a general representation of society generally there, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Huge lawns and gardens.

MR FITZGERALD: Yes, I know the feeling. But, in any event, in respect of that there is not this pattern of dissatisfaction which has been painted by Ms Harvey's evidence:

15 *Do you feel your skills are being fully utilised?*

Again, that is an honest response. In some cases 12 in, not the majority of cases, but many - particularly nine believe that they frequently are being utilised. The next one I do not think is really important. Question 13:

Do you feel that you are sometimes become complacent?

20 Again, probably not very important the context of the HSUA case and then the, if you like, the summary of what the organisation needs to do and these are a summary of the three most common - the most common comments and in the case of the work environment, question 14, more support and encouragement; second, more frequent visits from manager; and thirdly, 25 more flexibility with roster changes. And there is no evidence that there needs to be something radically done to lift the organisation. The first one, the next one, the 15:

What do you feel you could do to make your work place a better working environment and to increase your own motivation?

30 Then the first response:

Nothing, already motivated; more consistency amongst staff and better communication; more group discussions, reassessing and debriefing.

Now, again, I do think there is any evidence that there are any major deficiencies within this organisation.

DEPUTY PRESIDENT ROBINSON: They are the most frequent? They are they groups of the most frequent responses, are they?

MR FITZGERALD: That is right. There were other responses but Mr Jones, in this case, sought to group them into the most common responses.

5 DEPUTY PRESIDENT ROBINSON: I see.

MR FITZGERALD: And the same with question 16, obviously there is a sense of achievement or a sense of satisfaction in employees, feeling that residents clients can progress within the terms of their daily work, their daily life within the terms of that organisation and, secondly, feeling part of a team and being valued. Now, that, I would submit, Mr Deputy President, that is one organisation only and I cannot in any way pretend that it will be consistent with every organisation we saw but it is one which Ms Harvey sought to concentrate on, and that is a CIP area and I would submit that it has been the great thrust of the HSUA case, that it has concentrated on not only but principally on CIP services.

10

15

In the evidence of Ms Brady, which clearly indicated something quite different to that, I would submit does lack credibility and that and particularly in response to that survey, but I have a further survey in respect to the other aspects which the HSUA have strongly stressed and that is the area of stress and staff turnover.

20

DEPUTY PRESIDENT ROBINSON: Thank you. TCCI.15, I think - 16.

MR FITZGERALD: There is not many more exhibits to go, Mr Deputy President, so - - -

DEPUTY PRESIDENT ROBINSON: I am not complaining.

MR FITZGERALD: The paper warfare will end very shortly. Just by way of explanation, Mr Deputy President, we, in response to - as we saw an over-emphasis by the HSUA on these particular aspects we sought to survey as many organisations as we could and particularly those which were covered by our inspections. Now, if I could take you through each of these, the first one - and they have been completed as - well, we have actually displayed them as they have come back to us and it is a very recent survey, as late as October 94, 4 October 94, which is of course this month, so it is up to date information.

25

30

In respect to the first document, which is the Group Homes as Devonfield, Devonfield accommodation - excuse me a moment. If I can - we are not certain about the abbreviation there but it is certainly the Devonfield Accommodation Services, the Group Homes, which we did not see, Mr Deputy President, but we have included it because we have included all Devonfield services.

35

MS HARVEY: Sorry, could I just clarify, is this Devonfield Group Homes, is it?

5 MR FITZGERALD: Yes. Yes. And I submit we did not see those during inspections but what we have sought to do is include every aspect of Devonfield in this survey. Now, we have included a staff turnover, absentee rate and, for want of a better title, the rates of grievances and disputes and we have included percentages, a calculation to calculate the percentages and this particular home, particularly Group Homes - - -

10 MS HARVEY: Can I just interrupt, Mr Deputy President? I want to object to the exhibit and ask that it be withdrawn. None of these documents are actually signed and I have grave concern that it is being presented in that format if no authorisation or authenticity.

15 MR FITZGERALD: Well, there are - some of them have in fact been signed, in fact the majority, Mr Deputy President. That one was not, nor the next one, but if it is required we can undertake to get Mr Daley to sign those documents, but in fact following that there are a number which have been signed.

MS HARVEY: I do not object to the ones that are signed.

20 MR FITZGERALD: Well, I think that is being unduly difficult, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Well, look, the objection is noted.

25 MR FITZGERALD: Well, if it is a problem, Mr Deputy President, we are happy for them to be signed and authorised. It was done in somewhat of a rush in response to the HSUA position but I can assure you that and in fact - now, if it is just a signature which makes them authentic, in the case of Devonfield they are all coming from one source and that is the fax number at Devonfield, so I think that gives it some authenticity. In the case of Coastal Residential Services, that has been signed.

30 MS HARVEY: I am quite happy with the commitment that Mr FitzGerald gave, that is all I required.

MR FITZGERALD: Well - - -

DEPUTY PRESIDENT ROBINSON: We will move on.

35 MR FITZGERALD: - - - I am bit concerned that - well, if you would like us to get us Mr Daley to sign your copies when he is next down, that might be the best way, or get another copy re-faxed, but it is only the Devonfield ones which have not been signed and I apologise for that.

DEPUTY PRESIDENT ROBINSON: Well, you heard Ms Harvey's response though.

MR FITZGERALD: Okay.

DEPUTY PRESIDENT ROBINSON: She accepts your assurance.

5 MR FITZGERALD: Right, thank you. I will proceed with the exhibits and
you will see that in the case of the group homes at Devonfield, the staff
turnover rate in the past 12 months we are talking about, is nil. The absentee
rate is 2.04 per cent and there are no - and we have included in this, as broad
10 as we can, either informal or formal grievances. In that regard, the group
homes there are absolutely none which were registered either informally or
formally. In respect to the next document, which is the forest operations, and
you know, just to refresh your memories, that was our inspection out in the
bush near, I am just trying to recall the actual name of the place, between
15 Launceston in Hobart off the - oh, Launceston-Devonport on the Frankford
Highway - - -

DEPUTY PRESIDENT ROBINSON: Yes, I can remember.

MR FITZGERALD: You remember those inspections? And just to - we
will be going to those later but in terms of the supervision, you recall that at
20 times the employees were working in difficult circumstances, up ladders,
trimming and pruning trees in many cases without direct supervision in terms
of on - being able to sight their particular employees.

DEPUTY PRESIDENT ROBINSON: Yes.

MR FITZGERALD: And you recall when we actually walked to the road
when - with the supervisor and he, at that stage, was unable to see those
25 particular employees, but in that particular division of the operation, again a
very - and again, it only relates to one employee because there was only one
supervisor there but the absentee rate is the only thing which does register,
and that is very low. In terms of Devon Industries, which is a site which we
visited, the staff turnover rate in that case is higher, but again I would submit
30 not as - not consistent with the evidence given by Ms Brady. It is a very low
staff turnover still. The absentee rate is still low, 2.91 per cent, and there
have been a low level of concerns raised with management, which I submit
is consistent with any workplace.

DEPUTY PRESIDENT ROBINSON: When it says under staff turnover
35 section, total full-time equivalent terminated, does the word terminate also
include resignation - - -

MR FITZGERALD: Yes, yes, it does. Yes, thank you. And that was one
aspect of the high turnover in the next case, which is the OTAS services,
which is the evidence of Mr Rolley. We did not actually inspect the services

but we heard evidence by Mr Rolley, and in the case of staff turnover for the last 12 months, it is in fact is high, 50 per cent, but a note made there was that there is an employee retired, one went on maternity leave and didn't return, and another took up a position with Devonfield, which as these are
5 functional units, that would show as an absentee, I am afraid, so I submit that it is - even though the staff turnover is high in this instance, it is not something which relates to stress or workplace issues which has been suggested by the HSUA submission. Again, the absentee rate is low and
10 again there is no - there are no formal grievances, no formal or informal grievances registered with the employer.

In respect to Coastal Residential Service, which was the previous exhibit, the staff turnover rate there is still relatively low at 9.43 per cent. Absentee rate is very low, and again I just stress that the incidence of stress raised in the
15 workplace is very low; not, as suggested by Ms Hunt - Ms Brady, which she says is very high. Again, this is a CIP service, we must note that and there is only one issue there in the grievances where stress was specifically raised. And there were two instances where the formal disputes and grievance procedure was raised. Now that, in itself, I submit, is not damning in any way. It is a process which is available under the award in any workplace
20 whether it be in the disability services area or not, there are going to be instances where grievances occur by the very nature of the workplace that is going to occur. But in any instance - in any event, Mr Deputy President, I submit that they are very low.

In respect to the next exhibit, which is an exhibit by - on behalf of Multicap and signed by Mrs Subonj, again a witness and we did inspect the independent living services there in Burnie. The staff turnover is very low, being 4.04 per cent. She has differentiated the regular staff against job skill staff in respect to absenteeism the highest rate being 5.36 per cent, again very low. And in terms of grievances there is only one issue which has been raised with the
25 union which is of concern. In terms of the next exhibit, which is the exhibit of Summit, the staff turnover rate is low relatively, I would submit, 7.8 per cent. We did hear evidence from Mr Snadden that that does occur where - if the economy does uplift often employees will seek work in open employment, and when it does decrease they come back to Summit. So that could account for some part of that turnover although it is still very -
30 relatively low. The absentee rate is still very low. The grievances and disputes, we did hear some grievances which were formally indicated during the inspection - sorry, informally indicated during the inspection process, and they are at point (b) where there were six pay issues, one another wage - I cannot just quite read that - another wage earner, it looks like.
40

DEPUTY PRESIDENT ROBINSON: Award wage something.

MR FITZGERALD: Another award wage earner, it seems. I cannot make that out. Then three management conflict. But I would submit that there was no - in respect to that where it is relatively high, I would submit there is

nothing which has any implication in terms of stresses which come out of the workplace, particularly those associated with the supervision of employees with disabilities.

5 In respect to the next exhibit, there is this one of Euphrasia where we had Ms Thomas - Mrs Thomas, sorry - as a witness and also it formed part of the HSUA inspection program. Again, it is not a CIP program but it was a 100 per cent funded program, CSTA funded program. We saw that it was a very low, extremely low absentee rate, no staff turnover, and only one issue of concern raised. The next exhibit is from Mr Bye from Oakdale Lodge, and he has been specific in terms of the staff turnover rate which in comparison to some other surveys is relatively high. However, that is a result of - and you can see the notes made - that two part-time domestic staff were retrenched on the closure of Yalambee Hostel, and I think that was referred to even though Mr Bye did not give evidence. That may have been referred to during the inspection process. And also, we see that three part-time direct care staff are employed in the group homes, which were part of that organisation.

20 So again, I would submit that that is not something significant. Again, there is no indication that - in any way workplace related. The staff turnover low, again, and grievances and disputes, there were three issue, all non-award matters. It quite clearly indicates there were no stress claims. We did see that environment, Mr Deputy President, I just remind you of those inspections that they - there was an environment where, in fact, we were able to be there at a time of the day which was, in fact, in my submission, at peak time where residents were returning from their daily work activities and I would submit that the working environment at Oakdale was such that it was very different to that made out by some of the evidence presented by Ms Harvey.

30 The next exhibit is in fact Walkabouts and we can see that there is no staff turnover, little absentee rate, 1.4 per cent, and only one issue which has been raised formally with management. The next exhibit is in respect of the Mailhouse, which is part of the Oakdale - Oak Enterprises, which we visited. You will see there on the face of it staff turnover looks very high, but we had, Mr Deputy president, on the evidence of Ms Dickenson, she was one who in fact was in a previous - in a training development position and had resigned to go overseas, and the manager of that organisation also resigned and we saw a new - I think Mr Direen was the new manager there. So, that can distort the figure.

40 Again, I would submit, particularly in that particular area, which was more of a higher support in that area, that there is no evidence that - as suggested by Ms Harvey, that there is a higher level of stress, staff turnover and absentee rates are high, and again the level of formal grievances, in my submission is very low, only two issues raised: one with the union and one formally with management. And the final exhibit completes the Oak Enterprises organisation, and that relates to Tahune Fields, and it is a little difficult to work out their staff turnover rate, but it appears one person has

retired, and that would affect their staff turnover rate. Out of 16 staff - again very low.

5 The same with the absentee rate, and again there is no evidence of any formal grievances within the organisation, and again I just stress that that was one of the organisations which we inspected, and I think was very much evidence of a very peaceful, controlled work involvement. So, that completes that area of the differences, Mr Deputy President. I think probably at that point it may be a good point to complete the submissions and resume after lunch.

10 DEPUTY PRESIDENT ROBINSON: All right. We will resume at quarter past 2.

LUNCHEON ADJOURNMENT

DEPUTY PRESIDENT ROBINSON: Yes, Mr FitzGerald?

15 MR FITZGERALD: Thank you, Mr Deputy President. I will complete from here on hopefully very quickly, but I still think it is probably going to be probably the usual finishing time or something just prior to it.

DEPUTY PRESIDENT ROBINSON: That clock is not right.

20 MR FITZGERALD: No, I have been noticing that. Mr Deputy President, the point we were at in terms of our submission is the differences still, and I just wanted to point out one further difference in terms of issues, and that was the issue in terms of use of generic services, and the TCCI submission was that inconsistent with general thinking in terms of the area of the government requiring utilisation of generic service, particularly in respect to the normalisation policy, we have clearly shown in our evidence that that is a practice which is existing within the industry; that the generic services are indeed adequate and it is something which, as a matter of course, is a preferred option.

30 Now, in terms of the HSUAs submission - or more so the evidence is that the evidence of the staff and evidence of the HSUA - on behalf of the HSUA was that the generic services were inadequate, and there was - particularly Ms Brady's evidence, there was a need to engage - and I take that means employ - more specialised staff within the services. Now, again it comes back to this issue of the medical model, and I know Ms Harvey has strongly stated that she is not proposing the medical model, but that is not borne out by the witnesses presented on behalf of the HSUA, where Ms Brady quite clearly indicates there is a need for specialist medical personnel to be employed in the centre - in centres - sorry, in services.

Now, Ms Brady is in fact an advocate on behalf of consumers. She is - I think Ms Harvey actually attempted to, although we never conceded, attempted to state her as an expert witness. We say that she is far from expert in the area and her evidence, which we will go to later, is far from reliable and does not give a true indication of what actually occurs out in the industry. But that was the major plank, in my submission, of the HSUAs evidence, Ms Brady's evidence itself. So, there is quite a clear difference in terms of generic service and the use of generic services and the so-called medical model, even though - we say that even though the HSUA deny that they are pursuing a medical model, that is not borne out by the evidence given by HSUA witnesses.

The other area, of course, which is a difference is the cost implications, which has been addressed to a certain extent by Mr Jarman from the government funding point of view, where Ms Harvey alleges on pretty much a global basis of assessing costs that the government are saving money by the use of - or use of these services within the private sector, whereas clearly that was refuted by Mr Jarman. We are indicating that in fact there is a cost implication and it is not quite so simply stated as Ms Harvey has done in her exhibit marked Cost Implications.

The other area which is again borne out in the evidence more so is that there appears to be, on the part of the HSUA, an indication by the evidence that the whole environment is unstructured. There is little support. We, I think, have clearly shown, Mr Deputy President, that there are policies and procedures and structures in place within services which in the main reflect client needs and as such is quite contrary to what has been put by the HSUA. So, the HSUA - if the HSUA are seeking to use that to substantiate their claim, then we say that that has - their claim fails because there has been shown no substantiation of the situation which they present to the commission, that being an unstructured environment.

Now, I move on to the next part of my submission, which is the TCCI application. We have already indicated, Mr Deputy President, that it is in fact consistent with the wage fixing principles. It reflects the overall thrust of the structural efficiency principle in that structural efficiency is not a vehicle for general wage increases, as has been clearly shown in our exhibits relating to - our exhibits coming from the national wage case. We say that once negotiations broke down the application which we submitted was one which reflected the current boundaries of the award, that being the 115 per cent maximum relativity. That is consistent with the wage fixing principle.

We have restructured, and as you have seen this morning there has been some costs associated, although minimal, in the overall context, we would submit, relating to the TCCI application. We have provided a structure which enables the establishment of career paths and skill development, promotional skill development, and that is all within the boundaries of the current award and the relativities as stated in the current award.

Now, we have already put argument to the commission which we believe, particularly in respect to the additional levels is undeniable and that is that if Ms Harvey seeks to justify her claim, then it must be done in accordance with the principles, that being the work value principle, and we would submit that in that regard the HSUA application contravenes the principles, and in contrast to the TCCI application, which is clearly consistent with the principles.

There is, as you would be aware, Mr Deputy President, an absence of arbitrated matters in this area. Generally the - particularly in the private sector, generally matters have been presented to the commission by agreement and so we really have not got anything there to assist us in terms of the HSUA claim. However, they have sought to use a number of other industries to justify their claim and to draw some similarities. We would submit that that, given the submissions we have made in respect to the HSUA application and the need to refer to the work value case - the work value principles, that that approach is indeed not a valid approach.

So, that completes our submissions in respect to the TCCI application. What I would like to now move on to is a very brief review of TCCI inspections and evidence and I will be as brief as I can here, because I think, as I indicated before, there is no point, as I intend to in terms of responding to the HSUA evidence, there is no point in dissecting every little piece of evidence in an inspection. I think we would be here for a long, long time.

DEPUTY PRESIDENT ROBINSON: It is all there for me to read and recall.

MR FITZGERALD: That is right, and all I can do is point out the major areas of discrepancy, Mr Deputy President, and I would not wish to laboriously analyse every aspect of it, and I will not do that.

DEPUTY PRESIDENT ROBINSON: I did not say you could not.

MR FITZGERALD: I certainly undertake that I will not, anyway, but I will just point out the major areas of concern. But in terms of the inspections - in terms of TCCI inspections, there are a range of sites, both employment and accommodation, which we looked at. The range of accommodation services includes CIP and CSDA. It is funded services. So, we contrasted that in terms of the services which are funded by the government to 100 per cent against those CSDA funded services, which requires a percentage of sources - of internal sources - in other words, sources through other than those provided by a government.

If I could just review them very quickly, the Oakdale site, which we saw, was a large combination service. We saw, in my submission, a low level of volatility. It was a peaceful environment. There was a policy and procedural manual in place. We saw, I think, Mr Deputy President, that there are funding deficits which need to be funded from their own reserves as compared

to CIP funded services. In terms of Tahune Fields, which is, of course, supported employment and a division of Oak Enterprises, we saw low levels of supervision there. There was support through a management resource team officer. There are mild to low level support needs of the clients; very much a commercial focus, as we saw, and that was borne out by the use of industry-accredited training.

I again make the point that in the services we saw the training was channelled to the organisation's needs and in this particular service we saw use of the General Rural Industry Training Board for training purposes. It is a very labour-intensive environment. In our submission, even though it was principally work - outside work, it was a very pleasant environment. They had created opportunities in the Huon for employment, and particularly the opportunities for those disabled employees to work in that sort of environment.

Now, in terms of Walkabout Industries, which we saw as part of our inspection process, again a division of Oak Enterprises, again there was a management resource team, officer support, and we need to highlight that aspect because that is the one aspect which has been forgotten in terms of the HSUAs submission. I do not expect that it would be contained therein, but much of the support comes from - in services comes from management and they are positions which the HSUA seeks to cover by the levels 6 and 7 within the application.

In Walkabout we saw low to medium support needs. Again, very much a commercial focus; high usage of equipment. Again, very much a peaceful, not a volatile environment, as suggested by the some of the HSUA witnesses in other supported employment areas. Again the commercial focus was highlighted by the use, or the proceeding down the quality assurance paths, which is necessary for any commercial organisation these days, and so that particular industry - that particular service is no different than any other industries which is competing with, so it needs to be industry competitive.

Tadpac was another service which we saw which involved both intellectual and physical disablement. Again I can say that there was a commercial focus in competing against others in the printing industry. There is management resource team officer support there at that organisation. Rebecca House was a smaller combination service and again I would say in respect of that service that there is support, particularly in emergency services, and I will be talking about that later.

The Devonfield Forests operations we have already talked about that, but we saw that there is an area of mild support needs. There was a high awareness of health and safety issues. Again that, as we saw, there was competition which faced that organisation and there were private contractors who were involved in the planting of trees. We saw that there were few behavioural

problems and often the work is unsupervised in terms of being able to actually sight disabled employees working in it from time to time.

5 In terms of Summit Industries we would rely mainly on the evidence of Ian Snadden. This organisation - and there is some doubt in terms of whether it had sheltered employment status or not, but quite clearly it is a sheltered - a supported employment employer. It is indicative, in our view, of - as is Tahune - Tahune Fields - indicative of supported employment in the state; a high commercial focus. However, Mr Snadden indicated that it is primarily a human service. It needed to be competitive in the marketplace and was a highly-competitive marketplace as we saw, simply to provide those opportunities and to remain viable to provide those employment opportunities for both able and disabled employees. We saw in that organisation sophisticated mechanical production. Again, like other supported employment services, we saw a management resource team officer support, as well as a vocational trainer, and again I would simply submit, Mr Deputy President, it was a pleasant and supportive workplace environment.

20 That organisation of course also is proceeding down the quality assurance path which in our submission in terms of how the job is done makes the functions easier and it provides more structure and rather than create more onus responsible for employees, in fact, it provides more structure and employees in fact know how to do their job because they know exactly what the job is. In this service we saw a very small level of government funding, something like only 9 per cent of total income. Tension, which in our submission is something which the HSU tried to make play off, is - and there - I think the HSU indicated there was tension, a constant tension between the human service aspect of these services as well production aspects.

30 I would submit that in respect to this service and other supportive employment services it is just the normal production deadline tensions which are created in any workplace. There is nothing special or significant about it in supportive employment services. In terms of Coastal Residential, this is a smaller CIP accommodation service which provided evening and night support only. There was, as we saw in our inspections, high support for emergencies. There was a high structure in this organisation in terms of the policy and procedural manual.

35 There was a high utilisation of generic services and just by way of example challenging behaviour was referred to Mental Health for assistance there and I would submit that there is a higher level of employer satisfaction and that has been borne out in the exhibit which I presented to the commission this morning. In terms of Vincent Industries we saw two operations there: the Wynyard operations which was the clothing or, sorry, the material operation. Even though on the face of it it seemed to be a very simple and routine function, we saw again there were elements of competition where much of the material was in fact exported and they were competing against others dealing with the same materials.

5 There are minimal levels of supervision which we saw often and that was the case in many supportive employment areas. Often employees with disabilities were able to work completely unsupervised from time to time. In terms of the Burnie operation, which was the bottle and other materials recycling plant, they were routine tasks, minimum levels of supervision. The North-West Resident Support, and here again we would - North-West Residential Services and we need, I think, Mr Deputy President, to contrast the evidence of Mr Rodwell as against the HSUA witness.

DEPUTY PRESIDENT ROBINSON: Sorry, the North-West, what?

10 MR FITZGERALD: Residential Services.

DEPUTY PRESIDENT ROBINSON: Residential, yes.

15 MR FITZGERALD: That was the service of Mr Rodwell. I think, Mr Deputy President, you need to quite closely analyse the evidence of Mr Rodwell against Mr Medcraft. They were both, of course, from the same service and I would submit that many of the issues which Mr Medcraft raised in his evidence - and I will take you to some only by way of example - have been clearly refuted by Mr Rodwell, but we saw that it is a large CIP accommodation service. There was adequate support via the use of mobile phones. Just incidentally I think Mr Medcraft was even unaware that they were there and used by employees of the service, and there was an informal supervisor network set up to assist supervisors at times of need.

20 There were adequate staff facilities and I think it was the only home which we visited where in fact there were not separate accommodation services. I think two of the seven homes were services where there were not separate facilities but on site I would submit that the facility which we saw was indeed adequate. The evidence of Mr Medcraft was highly exaggerated in my submission and I will take you to some aspects of that later. And, again, in that service we saw a high use of generic services so, again, it is supporting our position.

25 Mr Deputy President, in terms of the HSUA inspection sites, as I indicated earlier, I believe that it was very much out of order. It did nothing to support the HSUA case. No conclusions were drawn from the HSUA inspection sites and I would submit that it was really very much an after thought and did not assist the HSU case in any respect and, in our submissions, the inspections generally supported the TCCI application more so than the HSUA application in terms of Euphrasia which we saw and again we would rely on the evidence of Mrs Thomas in that regard.

30 We saw quite clearly within that inspection site, and we visited three sites, proper policies and procedures in place which reflected the standards and client outcomes, clear job descriptions and it was very much a flat, non-hierarchal structure within that organisation. In terms of Ellison House we saw that there was employee support; that there was proper training in a

structured environment and there were position descriptions in place. In terms of the Mailhouse, which was an inspection site part of Oak Enterprises, in that area there was a much higher support needs but that was catered for by a structured environment where position descriptions were available; where
5 there was management resource support there as well - management team resource support there as well.

In terms of Multicap, the service we visited in Burnie, we rely principally on the evidence of Mrs Subonj. Again, we say there was a structured supportive environment at that particular service. In terms of the evidence - that
10 completes the inspections - in terms of the evidence we would submit that the TCCI evidence generally supports the application and confirms the issue differences which I have already put to the commission and, as I indicated, a case of this type generally stands or falls to a great extent on the evidence which has been presented.

15 In our submission, the HSUA have failed to discharge the onus of proof on them in terms of their application by failing to draw the conclusions from the evidence. There was much generalised evidence and, again, I do not want to labour too much, but the evidence of Ms Brady is the typical of the evidence of the HSUA.

20 The difficulty in the HSUA case, in my submission, is because the HSUA have presented somewhat of a de facto work value case. It is difficult to be very specific in terms of functions - in terms of the comparison which was required by the work value principle. The TCCI witnesses, in our submission, were highly credible. They were not broken down by any
25 cross-examination and I believe in - I would submit very strongly that the three witnesses whose credibility was broken down through cross-examination were Mr Medcraft, Mr Singleton and Ms Brady.

The TCCI - I will start with Mrs Subonj - she, in her evidence indicated that the - and I will just review it very quickly. The essential characteristics in her
30 service are empathy for the disabled and dedication. Training, she certainly concedes that it helps but it assists only by enhancing an understanding of the job and it's not a specific requirement as she stated in her evidence. Specialised training should be by specialists engaged outside the services. She indicated that in terms of the inclusion of level 6 and 7, which does include
35 specialist positions within the HSUA application, that that is not reflective of the industry needs in that it limits the client's choice of generic services.

Now, again, I refer to the policy of normalisation where, you know, a client should have the same choices we do in terms of choosing which doctor they may want to go to or whatever particular service they may want to access.
40 In terms of Mrs Di Thomas, her service is clearly based on the principles of normalisation, of social role valorisation, the position descriptions in her organisation reflect these principles. It is a 100 per cent funded organisation but only to a limited extent. Funding is at a minimum level hence the flat

structure within that organisation and they are funded for minimum staff hours.

5 Now, she stated that the CFDA funding agreement is in fact fixed till July 1997 and it is likely that Euphrasia will be unable to obtain funds given that situation. She also indicates that there is, by her evidence, that there is difficulties in restructuring the service. In other words, you know, the organisation is very tight and it really cannot - in terms of offering the service it does - have any opportunities to restructure in the event of increases which might flow from this application.

10 She indicated by her evidence that there are highly developed policies and procedures which provide certainty for staff. She provides appropriate external training. There is counselling and debriefing provided which again indicates that there is a high level of support from within the organisation. As we have seen by our exhibit this morning, there is minimal staff turnover, stress and sick leave. There is a team supportive environment, very much so, at Euphrasia. Now, she also indicates that she has used funding dollars which have been allocated for growth purposes simply to fund existing services.

20 Now, if that be the case and there is no room to move in terms of funding then it is logical to say, in my submission, Mr Deputy President, that if further increases apply that the same rationale will apply, and those dollars used, or principally allocated for expanding services will be used simply to maintain existing services. She also considered this issue of duty of care which she sums up very well, and if I could - excuse me for a moment - I may have to come back to that. But Mrs Thomas did address that issue and, yes, I will come back to it if I could.

30 If I move on to the evidence of Mrs Keating, again, I would submit that that evidence is on behalf of the consumer, if you like, her son was very sincere, straightforward evidence. The advantage of evidence of Mrs Keating was that she herself came from, or was very much in the medical model as a nursing sister and she was able to contrast the medical model approach against the current approach which is inherent in the industry. She was able to give evidence about the transition in respect to her son from a medical to a non-medical model and how that benefited her son in that respect.

35 She also gave evidence that it is the right of the individual to choose generic services. It is not cost effective to engage professionals in the service and there is a requirement in terms of staff engaged within the industry for caring people who understand social norms. So that is the major requirement. Now, in my submission, that is not reflective of the HSUA application. Mr Rodwell, was our next witness and he gave evidence from a CIP prospective. 40 Yes, I will come back to that. I think I should go back to Mrs Thomas because there is something which I missed.

In terms of the duty of care she very neatly summarised the duty of care into three components and I think it highlights that we are not trying to in any way, and I think the HSUA have, trying to emphasise the responsibility which goes with the supervision of the disabled. Now, she describes the duty of care as, in three ways in her evidence: the least restrictive alternative; what the client wants; and what is in the client's best interests. Now, given that situation then, there is an element of risk which will occur but that needs to be, in the terms of supervision of disabled, but that needs to be considered in terms of those three criteria. In our submission, the HSUA have over-emphasised that aspect because there is an element of risk which has to be accepted, but so long as there is an awareness of these three aspects which I mentioned.

Now, we will move onto Mr Rodwell who gave evidence in respect to a CIP service. We saw that he was also a TAFE teacher. We saw that in terms of his organisation there was a high support from within the organisation and there was backup support for employees to use professional generic services.

What he said in his evidence is that people with behavioural difficulties do not need staff with more skill, necessary, they just need more staff, and I think - I will come to this point later - but that is the basis or one of the major tenets of Mr Rodwell's evidence; that the requirements of the service are such that they do not necessarily require more skilled staff but, as I said, more staff to cope with the disabled. There was a structured approach to the complex behaviour; staff turnover, absenteeism, grievance level is low, as we have seen this morning in our exhibit, and that is generally reflective of the supportive environment within that service.

Our final witness, Mr Snadden at Summit, again highlighting the commercial operation and the highly competitive environment in which they operate within their particular market-place. The setting presents as a low support need area. There is a management resource team and vocational trainer who assist where problems occur. Extremely low levels of funding and the viability which - as in the last couple of years where we saw deficits in that organisation - is reflective of the economic environment. There was, as I indicated, in terms of the inspections the quality assurance path which emphasised the continuous improvement process.

Now, in terms of inspections and evidence, we would submit, Mr Deputy President, that the inspections and evidence generally supported the TCCI application and the issues which we have already previously identified as differing with the HSUA application and the thrust of the evidence of the HSUA. I will proceed further with the TCCI application, Mr Deputy President, I do not need to, I think, go any further in respect to the industrial argument which I put, but we would submit that the application reflects the needs of the industry by having a five-level structure.

5 Senior management positions should be subject to individual arrangement, in our submission, because of the need for flexibility. There is, in our view, a need - sorry - it is the most effective way of fulfilling these sort of positions to have that as an award-free position. There is a diversity of positions which is contemplated by the levels 6 and 7 of the HSUA application. There is, in our submission, a potential for role conflict, particularly those in management positions, to be covered by the award, and I would submit that the onus of proof is clearly on the HSUA to show the need that the award should extend to those positions.

10 Now, the only evidence I think was the evidence of Ms Joanne Dickenson, and we would submit that that evidence alone does not demonstrate or does not in way discharge the onus of proof on the HSUA to show that the award should be extended. In any event, Mr Deputy President, this is all subject to our industrial argument which clearly indicates that those levels cannot be included within any new award structure without regard for work value principles. In terms of other aspects of the TCCI application we would submit - and I have already referred to the promotional criteria - that it is essential that the commission embraces this aspect of our application. It is important, extremely important, in terms of funding considerations that there is a consistency of approach.

20 The HSUA application, where it does not refer to the appointment criteria, will, in our submission, lead to potential inconsistencies in matters of interpretations within services. Our application in terms of looking at the appointment criteria and the skills required aspect does provide certainty and that, in our submission, is an essential ingredient in terms of the funding providers. So, in other words, each service will be able to clearly identify where employees can translate, and there is a consistency of approach throughout the industry. At the moment we would submit that that does not occur and that is a source for funding inequities.

30 In terms of level 3, we would submit that the work load in accommodation services is a common approach by services which, as we have shown by our evidence, there is constant access to support and utilisation of generic and emergency services, and we would submit that that - employees that work alone in accommodation services are appropriately translated to level 3 with the appropriate level of remuneration as specified by the prescribed relativity. In terms of the translation process, we would submit that that is a clear and unambiguous process within the TCCI application that limits the potential for any disputes as opposed to the HSUA application which, in my submission, is laissez-faire and is a source for disputation and, in our submission, inconsistency of funding criteria.

In terms of the operative date, we have by our submission - sorry - by our application submitted that there should be a phasing in of increases over four financial years with four equal instalments commencing from the date of decision. Now, in terms of the TCCI application we submit that that should

apply there as well as the HSUA application. Now, the increases, as we have seen this morning, are far more significant in terms of the HSUA application and given the high increases which result it is important that services be able to plan for the future in that there be, as there has been in matters of this kind, a phasing in over an extended period of time.

5 We would see, Mr Deputy President, unlike the HSUA application, which in fact we have already seen, an application for an interim operative date which we have already made submissions on, that we would seek if - depending on which application you - we seek to endorse, we would seek an extended operative date over a number of, in our submission, four equal instalments over four financial years. In terms of the conditions matters contained within our applications, we would submit that the provision in respect to juniors is a reasonable and logical way to proceed in terms of rationalising the junior scales within the award.

15 The other specific issues which we have addressed, including annualised salaries, casual employees, overtime, rest periods, meal breaks, preference of employment, right of entry, shop stewards, deduction of union subscriptions and payment of wages and organisation restructure, issues or conditions matters which we would seek to reserve at this time, Mr Deputy President, and we will - immediately following the outcome of this case - proceed with further discussions with the union and in the event of not being able to reach agreement on these issues we would proceed with those issues by arbitration.

25 In terms of the specific issues which I now address and I think we have, to a certain extent, addressed some of these. In terms of formal training we would submit that there is an adequate level of formal training which are appropriate for the industry's needs. Again, it comes back to the skills required by the industry and I refer particularly to Mr Rodwell's evidence in that regard. Formal training, as we have indicated before, ensures that an employee is able to understand the job more but does not necessarily in our view enhance skills. In terms of supervisors in supportive employment, we would submit - as we did indicate earlier - that the additional responsibility has been rewarded back in 1985 by Commissioner Gozzi.

35 There is support within supportive employment services from the management resource team and that should be acknowledged and not lost sight of. We do concede that there is some additional responsibility but given the support within services that that is indeed minimal and is not in any way justification of the HSUAs position. In terms of specific formal policies we submit that they provide certainty. It is not an unstructured environment. There is - they reflect outcome standards which in turn reflect client needs. There is in our submission adequate training support for employees. They are structured for the organisational needs and have in many cases, particularly in supportive employment services, a business focus.

40 We would submit that in terms of the evidence which has been given on behalf of the employers that it is inappropriate for a medical model to be

5 imposed in this industry. The HSUA have via Ms Brady indicated - and also Mrs Dickenson - indicated that there is a need to employ more professionals. We reject that notion outright and submit that consistent with the evidence which we have put that is in fact in direct contradiction to trends within the industry.

10 In terms of the future training agenda we would submit - and there was quite a deal of time and effort spent by Ms Harvey on that, by Mr Brown particularly, as well, and the evidence of Mr Carney - we would submit that the evidence and submissions by the HSUA in that regard is purely speculative. The industry working group is still to meet and set competency base standards. In that regard we say that there is - even though the submission of Mr Brown was indeed well presented and the evidence was well presented, it is of doubtful value in this case and if I could submit a final exhibit.

15 DEPUTY PRESIDENT ROBINSON: TCCI.17.

20 MR FITZGERALD: This is a statement by Mr David Carter, who is the manager of human resource enterprises and he is in fact the past chair and now the deputy chair of the Tasmanian Community and Services and Health ITV and I think rather than read the whole lot into transcript, Mr Deputy President, which I think is unnecessary, it is clear from that report that in terms of the future training agenda there is still a lot more work to be done and there is by no means any certainty in terms of future training directions in the industry. In that regard I say, Mr Deputy President, that the evidence of Mr Carney - sorry, the submissions of Mr Brown in that regard really do not assist us in terms of justifying the HSUA application. It was a large amount of information which really did not assist the HSUA case in our submission.

30 The funding aspect is - was something which we - has been addressed already by Mr Jarman. Quite clearly the minister's statement is not unequivocal because the unknown aspect is the Commonwealth funding. We reject the HSUA argument that it is a fully funded sector and it is simply a matter of just picking up the funding and it will magically take care of all the problems. There is within the terms of our exhibit - and I am not sure which exhibit number it was, so I just - it is the exhibit which was from the Department of
35 Community and Health Services, I did not get a number I do not think - - -

MR BLACK: 14.

MR FITZGERALD: 14, was it.

MS HARVEY: 14, yes.

40 MR FITZGERALD: There is explanation within that exhibit TCCI.14 which clearly distinguishes differences - or clearly distinguishes the differences

between CIP, CSDA and funding for supported employment. We have - we saw, particularly in the evidence of Mrs Subonj that there was in many services a dependence on fundraising and donations and in the case of supported employment increased sales. All those have their limitations, and it is widely known that in - in any organisation the - the scope for fundraising in a very highly competitive area is - is indeed limited.

Donations is an unknown factor, and increased sales in supported employment services is in the context of what we have seen to be highly competitive market places. In our submission it is not valid for the HSUA to say that funding authorities can - well, the future incapacity to pay claims arguments cannot be sustained because funding agencies as an arm of government can simply reorganise their priorities, that is in our submission too simplistic an argument and also ignores the Commonwealth funding aspect, and ignores particularly the CSDA and supported employment sectors, or CSDA funded services and the supported employment sector.

Now, the position taken by the HSUA in our submission is essentially using the award as a political pool - political tool, I am sorry, to force governments to fund award increases. It ignores, in our submission, the costs which have to be absorbed the services themselves and the costs which may have to be - sorry, those increased costs which would have to be funded from other than funding provided by government. In our submission that could, in particularly employment services, lead to increases which may have to be borne by residents.

Now, that in terms of the public interest tests, as required by section 36 of the Industrial Relations Act, is a factor which must be taken into account by the commission. Another issue which we need to address is the issue of behavioural management, again we submit, Mr Deputy President, it has been overemphasised by the HSUA. There is evidence that organisations have preventative strategies in place and use generic services to handle behavioural management problems.

Again I think we have clearly proved that in the case of stress, staff turnover and grievances that the HSUA case has principally been related to CIP services without any specific evidence, and I will take you to Ms Brady's evidence later. We would submit that - and I think it is basically anecdotal evidence, it is her perception of - of what is occurring in those services, and we would submit that it is not borne out by the evidence and the exhibits in respect to stress or staff turnover and absenteeism. The TCCI exhibit reveals little stress, and the TCCI evidence is at odds with the HSUA evidence in that regard.

In terms of medication we would simply say that services follow set procedures by administering medication principally from a dosette. There is a structured process in place in most services, the dosette is prepared by pharmacists, it is a very simple and very normal process and the only

obligation which it places on employees in that respect, in our view, Mr Deputy President, is that staff are required to simply observe deviations from the normal pattern as a result of the administration of medication; no more than that.

5 Medical procedures in the main are handled by generic services. So in terms of medication all we would simply say, Mr Deputy President, that employees are assisting clients with their medication and that is consistent with the duty of care which has been outlined by Mrs Thomas in her evidence. Excuse me for a moment. Ms Harvey's submission in respect to the public interest in my
10 submission took a very broad view of the potential effects to the level of employment and she referred to the level of employment as a whole within the Tasmanian community.

In my submission that is too broad an approach to take. Section 36(2)(b) states:

15 *Considering the economy in Tasmania the likely effect of the proposed award with particular reference to the level of employment.*

Now, in that respect we would submit that it is not valid to say that this sector has only a very small part of the employment within Tasmania. There is
20 potential if large increases are granted in accordance with the HSUA application for reductions in the level of employment in this industry, and we would submit that that is not consistent with the public interest criteria.

The submission which we would make, Mr Deputy President, in terms of the varieties of settings and environments which we have seen as a result of
25 extensive inspections and evidence is that particularly consistent with the current wage fixing thrust, although the current national wage case has not been this time, although I understand there has been an application, transferred to this commission but the emphasis at the moment, of course, is on enterprise bargaining and the emphasis is about setting awards as safety
30 nets. Now, we would say in respect of that, Mr Deputy President, that given the variety of settings and differences in funding circumstances which we have seen, that the commission should take what we would term as the minimalist approach.

If services wish to negotiate in respect of their own particular situation then
35 that should be done as part of the enterprise bargaining process. So in that regard we would submit that to grant the HSUA application would, in our submission, limit the potential for enterprise bargaining and I would submit that that is not in accordance with the current thinking as in terms of establishing awards as safety nets only. In terms of the HSUA attempt to
40 validate their application by means of reference to other awards, we submit, Mr Deputy President, that in fact is not a valid approach. The essential thrust of the structural efficiency principle is to make awards relevant to a particular

industry but it is not relevant in our submission to impair this industry sector to the Medical Diagnostic Centre, for instance.

5 There is no, certainly not an apples-for-apples comparison. We are comparing that instance, a medical model compared, in our view, to a non-medical model in this industry. That being the case, it really does resemble a comparative wage justice type argument. Now, that is not, in our submission, consistent with the principles of structural efficiency. If I could just take you - probably what I can do, Mr Deputy President, in terms of the HSUA case, I do not want to take you to every piece of evidence and the statement made by Ms Harvey and her witnesses.

10 MS HARVEY: Really? We could be here for a long time.

MR FITZGERALD: We could be but I will only be taking you to a few. If I could just refer you to the pages and I think probably as a suggestion we will just leave it on record and Ms Harvey and yourself can go to it at some subsequent time. I think that would expedite it.

15 DEPUTY PRESIDENT ROBINSON: But you are going to refer to transcript, are you not?

MR FITZGERALD: Yes, if I could.

DEPUTY PRESIDENT ROBINSON: You are not going to actually take us to transcript or are you going - - -

20 MR FITZGERALD: Well, it might be best if I just give you a page number and you can, to expedite it, I think you can go to it later if that is suitable to you and both Ms Harvey. Ms Harvey, at page 342 of transcript, object strongly to the criteria which we include within our structure and that is particularly to the policies and philosophies of a particular organisation. And she states that at the bottom of page 342 that is in fact obnoxious. In our submission, we reject that notion and each organisation has a particular philosophy and that philosophy is generally reflective of the standards which exist within that - within that organisation and again generally reflect client needs. So we submit that it is a word which should stay within the TCCI application and should be endorsed by this commission.

25 I will now turn to some of the evidence of Mr Medcraft because we have referred to him on a number of occasions and I ask you to contrast that evidence with the evidence of Mr Rodwell. And at page 511 of transcript, just by way of example, Mr Medcraft talks about clients who have challenging behaviours and he says:

35 *One is chatting behaviour which irritates the other clients.*

Now, I think we have seen as part of our evidence that that is something which is quite the norm and it is not unusual - - -

DEPUTY PRESIDENT ROBINSON: What, people chatting all day?

5 MR FITZGERALD: Yes, as we do here. And, in fact, it is nothing which is unusual and something which is managed within the context of the home. Now, Mr Medcraft says at page 514 of transcript in respect to training at the top of page 514:

There is no structured training -

it says "my service", I assume, yes, my service -

10 *training is geared around the wrong way. We are training management with little training for hands on staff to professional support.*

15 Now, contrast that with the evidence and the inspections of Mr Rodwell in that regard. I would submit that the evidence that Mr Medcraft is evidence which should not be regarded highly by the commission and the commission should take particular note of the evidence of Mr Rodwell in that regard. Mr Medcraft even acknowledges at page 522 that he was unaware that there was any real use or the existence of mobile phones and it was clearly something which was part of that service and part of that supportive environment that in the case of need staff could utilise - employees could utilise mobile phones to access support.

20 Mr Medcraft, at page 524, refers to a seven day - sorry, a 21 day roster which requires seven days of sleep over and I think we saw Mr Rodwell clearly rejected that was one of the requirements in the particular service. Mr Deputy President, at page 609 I think you make a very pertinent point where you say to Ms Harvey and I quote you:

What you really are arguing for, so far as I am concerned, I take it, is better paid, better remunerated, better career service delivery.

30 And Ms Harvey says:

That is correct.

35 Now, I would submit that that does not necessarily follow, that the answer is not necessarily throwing money at what is perceived to be a problem. The answer, in our submission, in terms of improving the service is to change how the service is in fact structured and delivered, not necessarily by providing more money to staff, which in the HSUAs submission, will improve skills, that is not the case. In the case of levels of stress, which the HSUA say are

high, the answer is not simply to pay staff more so that levels of stress will decline and again the answer is about - and again we reject the notion that there are high levels of stress, but again the answer to that is in fact changing the way the service is delivered and structured. Ms Harvey says at page 610, and I quote, it is the first time Ms Harvey is mentioned on that page:

However, there is a need for structured training and an incentive to train and a skill based career path provides that incentive to train.

In our submission, the evidence which has been presented by employer is that training must be relevant to the particular service and that is the thrust which we submit and has in fact - there is evidence, clear evidence that that is the case within the industry. Ms Harvey says also, at page 611, that - she says:

It is quite clear that standards cannot be achieved -

it is in the middle of the page, I am sorry -

It is quite clear that standards cannot be achieved if you do not have this high level of skill amongst the staff.

Now, we would submit that if services have proper structures and management support in place that it is not necessary that high levels of skill be within staff to ensure that standards are met. Ms Harvey, again on this point of stress, at page 618, the second paragraph, she says:

Anecdotal evidence suggests that there is already a high turnover of staff because of stress and low wages in the industry currently and that will be supported by my witness tomorrow.

Who I think was Ms Brady. Now, quite clearly we have rejected and Ms Harvey - I will just make the point that it is anecdotal evidence only, but we have surveyed a representative sample, I would submit, of services and that does not - that point is clearly not proved by the evidence which she had presented to the commission, particularly that survey today. Ms Harvey, at page 619 of transcript, the second paragraph, says:

The employer application virtually leaves this wages situation unchanged. This is achieved by the lower wage benefits of the community.

Now, we would reject that statement in the first instance, Mr Deputy President, but quite clearly the application proposed by TCCI does not leave the wages situation unchanged. There are changes within the terms of the structural efficiency principle which sees access to career paths and the encouragement to participate in skill development. I take you to another point, Mr Deputy Commissioner, and I think, Mr Deputy President, there has been, in my view, a political overtone to the case of the HSUA.

And if I can quote at page 653, Ms Harvey says:

*In the event that the commission grants the HSUA application
..... would be immense.*

5 It is all very well to make that statement, Mr Deputy President, but we are talking about practical funding considerations and I would submit, Mr Deputy President, that a statement - a political statement such as that is not useful in terms of ultimately determining these two competing applications.

DEPUTY PRESIDENT ROBINSON: Well, I would have thought you would have realised what the commission's attitude to political matters would be.

10 MR FITZGERALD: Yes, I agree, Mr Deputy President, and it is something which is outside this environment and you should judge the application on the relative merits of statements such as that - even though a motive does not assist in the ultimate determination of this matter. Again, to attack the credibility of Ms Brady at page 691 she talks about stress, the second
15 paragraph in answer to a question by Ms Harvey, and she says:

*Yes, there is a lot of stress and not just with behaviour
responsibility placed on them.*

DEPUTY PRESIDENT ROBINSON: Sorry, I missed the page number?

MR FITZGERALD: 691, I am sorry.

20 DEPUTY PRESIDENT ROBINSON: 691, okay.

MR FITZGERALD: Just in the - and this is the evidence I alluded to in my earlier submission:

*Just in the last week or so visiting some services off on
stress.*

25 That, again, has not been borne out in the evidence which would present all this - the exhibit which was presented this morning. She says further towards the middle of the page in answer to a question by yourself:

*So you are not able to say whether there is a high the
area that you work in?*

30 That is your question, Mr Deputy President. She says:

*No, but I would - I could get you figures for other if
you would like to have a look at them.*

5 Again, it is not very useful evidence and I would submit and again not particularly relevant in terms of this state and mere speculation, in my submission, which does not in any way assist the HSUA case. At page 693, again, I ask you to consider this evidence in terms of the evidence given by employer witnesses. She says - - -

DEPUTY PRESIDENT ROBINSON: Still Ms Brady?

MR FITZGERALD: Yes, it is, I am sorry, the second paragraph:

Violence is common in the industry level of training that support staff receive.

10 Now, that evidence, Mr Deputy President, has been clearly refuted by the evidence on behalf of employer witnesses - by evidence given by employer witnesses. It quite clearly is an exaggeration of the situation which really exists in the industry. Again, there is a political slant in terms of funding by Ms Brady's evidence which does not really help and at page 709 she says, the
15 second paragraph:

In terms of points 6 -

this is my question:

In terms of point 6 you say that in terms of the fun raise, that they are properly funded.

20 Now, again, I think that distorted evidence or statement helps in the ultimate determination of this issue and that characterised much of Ms Brady's evidence. So in terms of the three witnesses, and I have just given you by way of example some extracts from Ms Brady's evidence, we would submit that the evidence of Ms Brady, Mr Singleton and Mr Medcraft lacks
25 credibility particularly compared to the evidence given by employer witnesses. So, in summary, Mr Deputy President, I am coming to the concluding parts of my submission, we would submit that the TCCI application is consistent with the wage fixing principles.

30 There can be a translation from the existing award structure into the award structure as proposed by the TCCI with the corresponding relativities at a minimal cost. That is indeed consistent with the overall aim of structural efficiency and that should be a minimal costs; that we do provide the essential features of the structural efficiency principles; that contrast that to the HSUA position where there are significant cost increases as was seen by our exhibit
35 this morning; that there are uncertainties in respect to the translation schedule; that in terms of the industrial argument which we would put to the commission there is in our submission a fundamental failure to address work value considerations which in our submission is an essential feature required for the HSUA to prove their case.

5 That in the event of there being lack of clarify, which is particularly in respect to the work-alone issue, which is an essential aspect of the TCCI application, which needs to be clearly identified by the commission, and that is why we say the TCCI application should be granted, that if it is not clarified, if it does provide uncertainty for funding, for funding providers, that it does provide a potential for inconsistency of approach by particular services. There is a need, in our submission, that there is a consistency of approach. The HSUA application does not provide that, however the TCCI application does provide that certainty which is required.

10 We would seek that the commission rule specifically in respect to that aspect, particularly the progression criteria, which is based on the skills required notion. We would seek that the commission endorse that particular aspect of the TCCI application. For all the reasons we have put to you, Mr Deputy
15 President, we would seek that the HSUA application be rejected and that the TCCI application, which has been put to you, be granted. If it pleases.

DEPUTY PRESIDENT ROBINSON: Thank you, Mr FitzGerald. There being no further business today, we will adjourn to the next day of sitting.

THE MATTER WAS ADJOURNED
INDEFINITELY