

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 5044 of 1994

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

re Clause 7 - Definitions

DEPUTY PRESIDENT ROBINSON

HOBART, 10 June 1994  
continued from 27/5/94

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: Thank you. I will take appearances, please?

MS R. HARVEY: MS R. HARVEY, and I have with me MR CHRISTOPHER BROWN appearing for the Health Services Union of Australia, Tasmania No. 1. Branch, if the commission pleases.

DEPUTY PRESIDENT ROBINSON: Thank you.

MR W.J. FITZGERALD: If it pleases, I appear on behalf of the Tasmanian Chamber of Commerce and Industry, MR W.J. FITZGERALD.

DEPUTY PRESIDENT ROBINSON: Ms Harvey, what stage are we at?

MS HARVEY: Well, Mr Deputy President, I thought - I conferred with the advocate from the TTCI and we thought the best way of proceeding this morning was if we outlined our submissions in terms of the application that the HSUA is making and also what we intended to present in terms of submissions in these hearings and then have a short private conference, chaired by yourself, if that is acceptable, to discuss procedural matters so that hopefully we can facilitate these hearings and make them as quick as they possibly can.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: So, fundamentally, we do not have any agreement and we would seek to proceed with arbitration.

DEPUTY PRESIDENT ROBINSON: Yes. You did write to the commission and supply a - - -

MS HARVEY: Yes, Mr Deputy President, on the - - -

DEPUTY PRESIDENT ROBINSON: - - - proposed amendment to your application and I assume that you have also supplied the same documentation to Mr FitzGerald.

MR FITZGERALD: We acknowledge receipt of that.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: Mr Deputy President, I would formally seek leave to amend the application of T5044 in terms of the correspondence forwarded to yourself and to the TTCI on 31 May and I would seek leave for that.

DEPUTY PRESIDENT ROBINSON: Any objection, Mr FitzGerald?

MR FITZGERALD: No objection.

DEPUTY PRESIDENT ROBINSON: Well, leave is granted to amend the application and I suggest we identify the document as HSUA1.

MS HARVEY: Actually, Mr Deputy President, if it is acceptable in terms of exhibits I intend to go through and outline the sections of my submissions and I think it would make it easy for everyone if we number the exhibits according to the sections, and given that they start from 1 perhaps if we could name the amended application. Is it possible to give it another name?

DEPUTY PRESIDENT ROBINSON: Well - - -

MS HARVEY: Like HA?

DEPUTY PRESIDENT ROBINSON: - - - all right. Just - H1, if you like.

MS HARVEY: H1.

DEPUTY PRESIDENT ROBINSON: H for Harvey.

MS HARVEY: Thank you very much.

DEPUTY PRESIDENT ROBINSON: I am anxious to make sure that we are all looking at the one - at the same document and it is headed Amended Application T5044 Welfare and Voluntary Agencies Award Division B. It starts off by saying delete the definition in 7C replacement and so on. It is made up of - how many pages?

MS HARVEY: Mr Deputy President, I have also included the amended application in one of my exhibits so that we can be sure that everyone will have the same document.

DEPUTY PRESIDENT ROBINSON: Right. It is seven numbered pages and then the supplementary page number 2, is that right?

MS HARVEY: It goes to page 21.

DEPUTY PRESIDENT ROBINSON: Well, that is not what I have.

MS HARVEY: Perhaps if I handed up an exhibit which actually coincides with section 4 of my submissions. It has got the total amended application in it and that way we would be sure that everyone was working from the same document.

DEPUTY PRESIDENT ROBINSON: All right. That sounds sensible.

MS HARVEY: If I could ask that - it is the blue document.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: If we could make that HSUA4.

DEPUTY PRESIDENT ROBINSON: All right.

MR FITZGERALD: So what is the status of H1 then, sorry?

DEPUTY PRESIDENT ROBINSON: H1 is no longer an exhibit.

MR FITZGERALD: Okay.

MS HARVEY: H1 was - - -

DEPUTY PRESIDENT ROBINSON: And this blue covered document, which I assume is the same inside for everybody, is HSUA4.

MS HARVEY: Mr Deputy President, there is also one typographical error in the amended application I forwarded to both the commission and Mr FitzGerald on the 31st and so I would also seek leave to make a minor amendment. It is a typographical error and it has been included in HSUA4. So if you go to level 7 in HSUA4, which is on page 17 - - -

DEPUTY PRESIDENT ROBINSON: Page 17, yes.

MS HARVEY: In the second paragraph there, and I quote:

*An employee will be placed at this level who applies skills acquired through the successful completion of a relevant degree or diploma.*

DEPUTY PRESIDENT ROBINSON: Sorry, you went a bit fast for me.

MS HARVEY: Actually I am quoting the wrong section. If I could just - the section that has been added is the third paragraph, the first dot point, and I quote:

*Exercise a degree of autonomy with organisational goals and outcome requirements responsible to senior employees for outcomes.*

End of quote. Now, that has actually been added because it was not in the amended application I sent you on 31 May.

DEPUTY PRESIDENT ROBINSON: Right. Well, it is the amended application in toto and thanks for telling us how it differs from your earlier correspondence. Any queries in relation to this? It is so very important to make sure that we are dealing with the right application.

MS HARVEY: If I could just outline what we seek in this application, Mr Deputy President. Through this application I am seeking from the Industrial Commission an arbitrated decision to insert a classification structure in the Welfare and Voluntary Agency Award, otherwise known as WAVA, in terms of the amended application. HSUA reserves its right to review the classification structure when a national disabilities competency project is completed, and indeed I will be providing more submissions and evidence to the commission on this particular point. I will be going through the application in detail in due time in my submissions, however at this stage what I seek to do is to outline the submissions for the five days of hearings that have been allocated to the HSUA at this stage, and if I could just hand up an exhibit which the commission has got. It is the purple coloured one.

DEPUTY PRESIDENT ROBINSON: This one?

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: Well, you had better tell me. Is that HSUA5?

MS HARVEY: That is HSUA1.

DEPUTY PRESIDENT ROBINSON: HSUA1, is it?

MS HARVEY: Yes.

DEPUTY PRESIDENT ROBINSON: I am starting to feel I am at home.

MS HARVEY: HSUA1, Mr Deputy President, outlines the - has two sections, one an outline of submissions and the second a proposed time table so that these will assist to make it clear about how we intend to run our submissions to you and to the commission. So if I can just run through it fairly quickly in terms of the outline. I am currently doing the introduction. We then intended in section 2 to outline the industry and the type of issues we will look at is the number and type of services, number of employees, funding arrangements, purpose and functions and services, and staff profiles. We will be presenting evidence in exhibits to support those submissions in relation to documenting services, funding arrangements, legislation and policy. We will also be presenting a witness to overview the industry including current issues.

Then in section 3 we would be seeking to present submissions on the history of award restructuring in this award, in particular the history of the State negotiating committee which is an employer union committee that is overseeing these negotiations, the commitment given at a very early stage to metal industry relativities, and a skills analysis that was undertaken by the SNC. I will be providing exhibits which are a broad sequence of events supplemented with appropriate extracts from the Industrial Commission transcripts and hearings that have obviously occurred along the way over the last three years in these negotiations.

In section 4 I intend to outline the claim in terms of both the classification structure - and I have already handed up HSUA4 which relates to this section. We will be presenting both the application itself and also a summary of the critical points in the classification structure. In terms of argument in support of the application, we will be presenting evidence in relation to section 5.1 in terms of the wages fixing principles and why our application is consistent with that. In particular we will be providing evidence and exhibits that have reference to the structural efficiency principle, in particular skill base career paths and appropriate relativities when setting wages in this concept.

In section 5.2 we will be directly addressing the appropriateness of the relativities in the classification structure, and we have prepared detailed exhibits in relation to this that cover both the skills analysis undertaken by the SNC, a comparison of the HSUAs application, the SNC skills analysis and the Metal Industry Award relativities, a comparison with comparable awards for relativities from both Tasmania and nationally. So we will be providing a cross-section and referencing the classification definitions and relativities with reference to those factors.

We will be presenting evidence in the form of witnesses to further support the submissions we will have made, and in particular we will be looking at level 3 of supported employment, level 5 in supported employment, a witness from accommodation services, a witness from independent living services and a witness in relation to levels 6 and 7 of the proposed classification structure. And if I could just make a note that witnesses in relation to this will be presented at the end of section 5; in that way we will have had the technical data, then the witnesses, so that that will facilitate questioning and support in terms of the information we will have put to you.

In terms of 5.3 this is a very important issue and that is consistent with the training reform agenda. Both employers and the union have had some difficulty in restructuring this award because there has not been a lot of precedents for us to rely upon, and therefore we need to be careful that we are consistent with what is likely to happen in the future, and in particular

through the training reform agenda. So we will be looking at competency standards and the training reform agenda with specific reference to the classification structure that we propose.

We will outline the system and the principles of the training reform agenda, the national disability competency project, the Australian Standards framework and a link with HSUAs application to demonstrate consistency and the recognition of qualifications framework and the link with HSUAs application. Evidence presented will outline the terms of reference of this very important national disabilities competency project, exhibits on policy documents, guidelines and structures related to the training reform agenda and also an exhibit comparing HSUAs application with the Australian Standards framework. We will also be calling witnesses to support our submissions in this regard. In 5.4 we will provide evidence of other awards that have a provision for annual increments, which is also included in our application where movement is - on the basis there is some provision for movement on the basis of years of experience.

Junior rates, there is a slight change in the junior rates which I will go into in more detail later. We will be providing evidence that junior rates are not consistent with the wage fixing principles, that the HSUA intends to negotiate training clauses consistent with the Australian Vocational Certificate. It is not appropriate to have junior rates where there is no direct supervision and we see this application as a phase step towards removing junior rates altogether. In terms of evidence and exhibits we will be presenting to you the full bench decision on junior rates in T2399 which supports the submissions we will be putting to you, and also exhibits on relevant training policies and guidelines that are being pursued both nationally and at a state level.

In terms of public interest we are required to demonstrate that our application is consistent with section 36 of the act. We will be presenting evidence in relation to the funding arrangements for the industry and the very important issues that that throws up, the impact on employment directly linked to the funding issue, furthering the objectives of the Commonwealth and State Acts, supporting the objectives of the community integration program, improving the quality of service provision, facilitating planning for governments, gender equity and indeed the access to incapacity to pay principle for employers. And we will be referring you to the exhibits we have already presented in section 2, we intend to call a witness as a consumer representative, also we will be referring the commission to the department's outcome standards and the full bench arbitrated decision in T2457 which would support our submissions in this regard.

In terms of the process for translation, we will present a document that outlines the process that we propose for translation to the new award, were we to be successful, and we will also address the issue of an operative date. In section 7 we will address the issue of cost implications very directly, in particular the wage fixing principles and the issue of incapacity to pay principle. We will look at precedents of incapacity to pay cases in the sense that the commission has made it quite clear that that sort of case can only be made once the decision has already been determined and that that avenue is open for employers who are in financial difficulty.

We will also be referring the commission to changes to conditions that have already been made to the award as part of the structural efficiency principle exercises. We will be presenting evidence to support these submissions in relation to the wage fixing principles, Department of Community and Health Service budget figures and the full bench arbitrated decision on incapacity to pay, T2457.

In section 8 we will be outlining future issues and reserving our right to address these in future hearings, in particular the issue of scope, the issue of junior rates, as I have already indicated, training clauses to facilitate the training reform agenda, extending the award to higher classifications than already exist and if I can just add one other that is not there, is removing division A from the award, is a matter that we would seek to reserve our rights to seek to vary. We will be actually providing an exhibit of issues of concern so that it is clear to all parties in terms of what the issues are.

And in section 9 we will be concluding and having a summary of the submissions and the evidence. Finally, Mr Deputy President, at this stage we have not planned to do work place visits; I think there are particular issues in this industry in relation to confidentiality and privacy that make it difficult for us to undertake work place inspections. However, we do reserve our right to put forward such a proposal if we deem it necessary and following further discussion with the employer advocates.

In terms of proposed timetable, it may well be a little ambitious, but on page 5 it sets out, day one is today's hearing date, we intended to cover sections 1, 2, 3 and 4, and that is in particular the introduction, the outline of the industry, the actual claim and the progress to date and our experience through the, of the negotiations to date. Day two we would be presenting the witness in support of section 2, that is in relation to the outline of the industry. We will be presenting section 5.1 and 5.2, although not the witnesses on that day, 5.1, 5.2 being the wage fixing principles and the evidence on relativities and appropriate skill standards.

I day three on 22 June we will be presenting evidence in sections 5.3, which is the training reform agenda; 5.4, which is junior rates and 5.5,



which is public interest, and in addition we would hope to have our witness for section 5.4 on that date. Actually that should be section 5.3 rather than 5.4. The witness is in relation to the training reform agenda not junior rates. In day four we would be seeking to present witnesses for section 5.2 and also to present section 5.6. On day five we would be presenting section 7, 8, 9 and 10. Now, as I say it is only a proposed timetable and we will just have to see how we go as to whether we will achieve that.

So, Mr Deputy President, having outlined our submissions to you I think we are now in a position to have meaningful discussions in terms of a private conference about what aspects of our submissions may or may not be contested to see whether we can facilitate a speedy resolution to this matter. If the commission pleases.

DEPUTY PRESIDENT ROBINSON: Before you sit down, Ms Harvey, could I just ask whether or not your claim document, if successful, would have a radical effect upon what is already in existence in establishments covered by that part of the award that we are dealing with? Would it, for instance, lead to the creation of new classifications not already filled, for instance?

MS HARVEY: In our submission, Mr Deputy President, it would not. There is a problem with the award in the sense that it is very oldfashioned and there is no skill based definitions in the award whatsoever. We have members throughout the levels that we are proposing to you who are currently being paid under the award. So, really it is just a standard exercise of the structural efficiency principle of looking at skill based career paths and setting appropriate rates of pay; a similar exercise that has been gone through numerous awards in this jurisdiction and federally.

DEPUTY PRESIDENT ROBINSON: So, if I understand you correctly, what you are saying to me is that in your view there are classifications, people occupying positions which are under-classified at the moment in terms of skills and responsibilities and so on.

MS HARVEY: Well, we will be presenting evidence and I do not want to pre-empt that in a way, Mr Deputy President, but certainly if you look at the wages clause and the definitions clause in the award there is just names of classifications and people are, in some of them have got sort of marginal definitions but a lot of them are fairly vague.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: And people are classified, it is a minimum rates award.

DEPUTY PRESIDENT ROBINSON: At the end of the day, making all sorts of assumptions, but at the end of the day if there was a decision comes down in your favour then there would be the need for a translation of the new award into the old - - -

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: - - - with some effect upon establishments and individuals.

MS HARVEY: That is correct, Mr Deputy President, and indeed in section 6 of the submissions we will actually put a translation document to you about how that should be handled and without pre-empting that, because of the particular ways that people are classified at the moment, which is pretty higgledy-piggledy, we would actually be looking at proposing that the employers examine existing duty statements, existing tasks and skills and then translate the employees to the new award.

DEPUTY PRESIDENT ROBINSON: Sure. Yes, I have, that is exactly what I am asking, but I really am asking also what is likely to be the net effect, maybe I am crossing bridges before we come to them, but it - - -

MS HARVEY: Yes, I think we are.

DEPUTY PRESIDENT ROBINSON: - - - would be handy for me to know exactly what the implications are of what I have got before me.

MS HARVEY: We do not walk away from the fact that there are implications in terms of funding and in terms of cost implications of this; without seeking to pre-empt my submissions, if I can just say that during discussions we have had over the years we would expect, as I believe the employers would expect, that the major impact would be in accommodation and independent living services, and we will be presenting evidence in relation to this.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: But also I suppose the issue that is before the commission is that we really need to separate the issue of what is consistent with the wage fixing principles and what is really a cost implication and an issue about what the community decides it is prepared to fund and support in terms of services. And, indeed in the very first State Negotiating Committee meeting and minutes, which I will be presenting to you, there was a decision by both the employers and the union on precisely that matter; that we would seek to deal with the industrial issues in a way that

was consistent with proper principle and separate that from the funding issue.

Certainly my organisation has made it quite clear, and I believe that we have a very good record in supporting employers in getting funding where we have been in action that has increased the wages and the cost on services, and, indeed as recently as the increase in the \$8 and the sleep-over in the award we went with the employers to the minister and to the department and were able to get the funding supplemented to these services so that they would not be adversely affected, and we remain committed to do that and will do anything within our power to ensure that that occurs.

DEPUTY PRESIDENT ROBINSON: Yes, and I do not want anyone to get the impression that I am making any assumptions on the result; I mean your - anything is possible, obviously. I mean your claims might be totally unsuccessful.

MS HARVEY: That is correct, I might lose terribly.

DEPUTY PRESIDENT ROBINSON: They might be wholly successful or they might be something between - - -

MS HARVEY: Well, Mr Deputy President, I assumed your question was on the basis of a scenario of if I was successful and so - - -

DEPUTY PRESIDENT ROBINSON: Of course.

MS HARVEY: Yes, I understood that was only speculation.

DEPUTY PRESIDENT ROBINSON: But our conversation then, I might have led people to the mistaken belief that I had not said that word, if you are successful.

MS HARVEY: I appreciate the clarification.

DEPUTY PRESIDENT ROBINSON: I hope everybody else does too. Would you like the opportunity to respond on what we have done thus far, Mr FitzGerald?

MR FITZGERALD: Just very briefly, Mr Deputy President, yes, I will only respond very briefly. In terms of Ms Harvey's submission relating to simply covering people within the industry at the moment we, our instructions are to refute that; we believe that the proposal does in fact bring new employees who are not covered by the existing award within the structure, it elevates existing employees to a higher level and brings in new classifications, so, at this stage, at this time we just simply put that on the

record, that we do not find agreement with Ms Harvey's submission in that regard.

And the only other procedural point that could be raised in record, for some reason although the people I represent have the indication of the 16th as a date it was not one of the dates which I had in my diary; if it is the commission's date I have in fact another commitment with Commissioner Gozzi on that day, but I had only the 22nd, 23rd and 24th and then following that, 7 and 8 July. I am just wonder whether I could seek some clarification in respect to that?

DEPUTY PRESIDENT ROBINSON: Well, I have marked Thursday, 16 June in my diary.

MR FITZGERALD: Well, so be it if that is the case. So, I am surprised I did not raise it at the last hearing because I have, as I said, a meeting involving Commissioner Gozzi but that is going to cause a bit of a problem which I will have to work out somehow.

DEPUTY PRESIDENT ROBINSON: I am sure you can handle that situation, Mr FitzGerald, I have every confidence in you. The suggestion was that we have some sort of conference procedure at this stage to see how much of a feel we can get for what is necessary and what is unnecessary. Is there any objection to that procedure?

MR FITZGERALD: No, we are certainly happy with that course of action.

DEPUTY PRESIDENT ROBINSON: Very well. We are still on record and I take it that it is probably appropriate that we do remain on record on a matter of this substance.

MS HARVEY: We are quite happy with that.

DEPUTY PRESIDENT ROBINSON: But by the same token a conference enables us to be a little bit less formal than, for comments to come from the floor, as it were.

MR FITZGERALD: Sorry, I am not quite clear: are you suggesting that the conference be on record?

DEPUTY PRESIDENT ROBINSON: Yes.

MR FITZGERALD: I think it would, if I could make a suggestion, Mr Deputy President, that it be off record so it can involve those other representatives here today, it might be useful.

MS HARVEY: I have no objection to the other representatives being involved if it is on record, Mr Deputy President, all I assume it would require is - - -

DEPUTY PRESIDENT ROBINSON: Yes.

MR FITZGERALD: I just wonder whether that is really a sensible use of transcript, it is really procedural matters, and I do not really see any real need for it to be on record.

MS HARVEY: Well, I think - - -

DEPUTY PRESIDENT ROBINSON: Well, if it is mutually agreed that we go off record I will do so but in these days you have got to be pretty careful about things - use which is made of things said on or off record and maybe I was starting to tread on eggs a bit, but, however, we will go off record.

#### OFF RECORD

MS HARVEY: Mr Deputy President, thank you for the adjournment. We have reached an agreement with the employers on procedural matters only, in terms of how to deal with the application that is before you. As I indicated earlier, we still to this date do not have any indication of the employers position, which makes running our case somewhat difficult in the sense that we may unnecessarily take the commission to points that could in fact be agreed. However, at the same time we were reluctant to agree to an adjournment, given the history of this case.

However, we have reached an agreement that we reluctantly entered into in the interests of that we hope that it will actually expediate the hearings. First of all we agreed, subject to your approval, of cancelling the hearing of 16 June, provided that - and this is subject to an agreement from the employers on a time frame, and that time frame is that they will provide to the HSUA and the commission by close of business 16th of the sixth 94 and their own amendment, which they will seek to have joined to this application, and a difference document. So therefore we would continue the hearings on the basis of seeking arbitration on the differences without of course prejudicing our right to put whatever submissions we see fit to put.

In relation to 3, that there would be no further procedural adjournments on this matter in terms of how the case is actually being run. And finally that an extra hearing date will be set to compensate the cancelled 16 June date, and I would suggest that we do that probably at the next hearing rather than this hearing because it is possible that without knowing what the employers position is - but if it is substantially similar to our own then obviously we may not need the full five days that the HSUA had anticipated. So one thing I will clarify is that we understand that the employers may in fact seek adjournments, for example at the end of our submissions, and that we would argue the case at that time that there would be no further adjournments in terms of how we proceed in terms of the respective positions, if that makes sense.

DEPUTY PRESIDENT ROBINSON: Well, we did put a gap in-between - - -

MS HARVEY: Exactly.

DEPUTY PRESIDENT ROBINSON: - - - what your anticipated end of your case and the case in response.

MS HARVEY: That is correct. So if Mr FitzGerald is correct that it will expediate the hearings then we should still be able to adhere to that time frame because we will save a day. But I notice he did not make any promises, so the proof will be in the pudding.

DEPUTY PRESIDENT ROBINSON: Is that a fair report on the position reached?

MR FITZGERALD: I think I can indicate that is a fair report, Mr Deputy President. We would certainly undertake to hand to Ms Harvey and the commission a document which would indicate the position of employers, together a document outlining differences between the employer position and the union position. We would undertake that those two documents be given to both the union and the commission by close of business on 16 June. And as a result, that further date would be abandoned but we would seek that the matter would proceed on the next scheduled day.

We would seek to make no further - or we would seek no further procedural application for a further adjournment in respect to this matter. I am happy for extra hearing dates to be set down if that is necessary, but I think, given the position which we have put to the commission today, in fact that will not be necessary. But if the commission wants to reserve dates then we are happy for that to occur.

DEPUTY PRESIDENT ROBINSON: Right, okay.

MS HARVEY: Mr Deputy President, I assume that that arrangement is acceptable given it involves your diary as well?

DEPUTY PRESIDENT ROBINSON: Well, I do not think there is any need to check my diary at this stage. But, yes, I will fit in with that schedule and those other arrangements and give that priority above any other commitments.

MS HARVEY: Thank you. We will put the agreement in writing, Mr Deputy President, and send you a copy of it as well.

DEPUTY PRESIDENT ROBINSON: Thank you.

MS HARVEY: In terms of the rest of the hearing for today, we intend to proceed with sections 2, 3 and 4 as they do not really go to the relative merits of the two cases as such and we believe that we can proceed with that and have discussed that with Mr FitzGerald who has concurred that that would be appropriate.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: I have already outlined the submissions that we intended to make, and if I can now turn to section 2, which is an outline of the industry. I think that this is in fact fairly important to do, so that we are all clear about the sort of industry that we are talking about, prior to proceeding to actually consider the claim, because I think it will expediate the process. So I will hand up an exhibit which I believe you already have; it is the green coloured document, the large one, which if we are being consistent would be HSUA2.

DEPUTY PRESIDENT ROBINSON: HSUA2, yes.

MS HARVEY: The first matter that I refer to, Mr Deputy President, is in fact the scope of this award. You will note before I do that there is actually an index behind the cover page which refers to the tabs. So I will be referring to tabs throughout my submissions in this section. So if we can just turn to the scope of the award which is in tab 1. The scope of the Welfare and Voluntary Agency Award is set out there and I quote:

*This award is established in respect of the industry of  
..... sensory handicapped persons in establishments  
created for those purposes.*

Now, if I could just say that in relation to section (a), that has historically been - that section of the scope has been division A of the current award, and the parties had some problem in trying to find anyone who was in fact covered by it, and so you will notice that most of the activity of the parties over the last few years has been in sections other than that division A. However, I understand recently that someone has unearthed the fact that Roland Boys Home in fact is covered by this section of the award.

MR FITZGERALD: I am sorry, which boys home? I missed that.

MS HARVEY: Roland Boys Home. So that that is a matter that perhaps we will have to look at in the future.

DEPUTY PRESIDENT ROBINSON: Yes. Where is that located in the state?

MS HARVEY: I understand it is in the north, but I would not swear to it.

MR . . . . . : Sheffield.

MS HARVEY: Sheffield.

DEPUTY PRESIDENT ROBINSON: Right, thank you.

MS HARVEY: Now, in relation to (b), providing residential care, that primarily in this award is the group homes and hostels that are not subject to the Hospitals Award, so they are small sort of institutions typically for residential clients staffed on that basis. Now, (c) in providing sheltered workshops, activity therapy centres and day training centres: sheltered workshops, that is fairly self evident although currently the terminology has changed a bit and they are often referred to as supported employment now. So, we use that terminology for sheltered workshops. And I will use the terminology of independent living services for activity therapy centres and day training centres. That is the terminology I will be using throughout the hearing.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: Now, virtually all employees covered by WAVA and RN community funded services, they are funded either by the Commonwealth or the state government. Roughly, the state administers accommodation and independent living services and the Commonwealth administers supported employment services.

DEPUTY PRESIDENT ROBINSON: What was that last one?



MS HARVEY: The Commonwealth administers the supported employment; the sheltered workshops - - -

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: - - - and the state administers accommodation and independent living services.

DEPUTY PRESIDENT ROBINSON: I see.

MS HARVEY: Now, there is what is called a Commonwealth/State Disability Agreement. That sets out funding and administration arrangements for the various disability programs, and I will just run through that. First of all there is the community integration program, which is 100 per cent state funded and administered - both state funded and administered. Now, that encompasses services that are both accommodation services and independent living services, and it is specifically for the institutionalisation of Willow Court clients.

Next is the Commonwealth/State Disability Agreement Services. Now, they are 100 per cent funded by the Commonwealth, but administered by the state under the Commonwealth/State Disability Agreement, and that covers accommodation and independent living services, but they are community clients rather than clients from - ex-Willow Court. Now, there is a little bit of overlap around the edges, but roughly speaking that is how it works. There is also a program called the Disability Services Grants, which is 100 per cent state funded and administered and this is fairly small amounts of money, and I will be showing evidence later that there are few services funded under this that are actually affected by WAVA.

MR FITZGERALD: Sorry, Disability Services what? I missed the last word.

MS HARVEY: There are few - - -

MR FITZGERALD: No, sorry, the title of the service? Disability Services - - -

MS HARVEY: Disability Services Grants.

MR FITZGERALD: - - - Grants. Right. Thank you.

MS HARVEY: So, they are 100 per cent state funded and administered. Supported employment, which is the final category, which is 100 per cent Commonwealth funded and administered: the submissions that I will be presenting in this section will cover the two systems, both the

Commonwealth and the state, and I will present evidence in relation to the legislation, the outcome standards and the policy framework, because this is the context in which these services operate and it does set some expectations about standards which clearly reflects the skills that are required by staff who work in these services.

So, if I can first turn to the state government programs, the budget for the state in 92/93 is set out in the exhibit in tab 2 as an extract from the annual report, the 92/93 annual report, the 93/94 annual report not yet being available. If we go to page 2 of the second tab, you can see there on page 2 under the community living services heading about two-thirds down the page:

*Community Integration Program, \$9.426 million. The Commonwealth State Disability Agreement, \$9.023 million, and State Disability Grants, \$421,000.*

So, really, what we are looking at is approximately \$20 million, which is equivalent to 3.2 per cent of the overall Department of Community and Health Services budget, which is approximately \$622 million. Now, of that 3.2 per cent of that overall budget for the Department of Community and health Services, that is not all on wages. There is also costs, for example, of acquiring houses, capital costs, running costs, that are completely separate from wages. Now, I could not get very clear figures from the department about the split up of that, but what I am trying to indicate is that it is a small percentage overall of the complete Department of Community and Health Services budget.

Now, if I could look at relative mixes, if you go to the third tab, the relative mix of services between group homes and independent living services. Now, this document, Mr Deputy President, was provided to the union and the employers when we were negotiating for the extra funding for the \$8 and the sleep-over funding when that was increased in the award - those provisions in the award were increased. Now, the reason I have included - and I add a note of warning that the department itself says that these figures are not exactly firm, I must submit their management information systems leave a little to be desired when it comes to this sort of information, which makes it difficult to present you with accurate data.

However, the interest of this is that it does give you at least some idea of total wages costs so that of that 3.2 per cent of the overall Department of Community Health Services budget we can then extrapolate to work out what is in fact spent on wages as opposed to other capital non-recurrent expenditure. So, if we actually look at these figures, it is broken down into organisations, those effected by the \$8 per week increase, so those are

the services that are covered by WAVA, that we can identify as being covered by WAVA.

The second is organisations, first those effected by the \$8 per week increase and the sleepover changes, therefore we can deduce if they are effected by the sleepover changes they are therefore accommodation services as opposed to independent living services, because they are the only services that are effected. Now, just going across these figures, working off the 93/94 data, you can see the figures are actually provided there in that third row of figures on the total salary costs prior to the \$8 per week increases.

Now, having added together all those figures to find out the total wages cost under this program, I then divided it by an average wage of \$25,000 for the purpose of trying to get an idea of how many people are employed in the industry funded by these services. And it comes out at 172 full-time equivalent, so that is the magnitude of employees in this section funded by the State Government. However, I hasten to add that is full-time equivalents and there is a high prevalence of part-time work in this industry. The department itself indicates that it estimates that there is probably about 300 to 350 people employed. So, I intend to actually move on from that Mr Deputy President unless there is any questions about those services.

DEPUTY PRESIDENT ROBINSON: No.

MS HARVEY: Right. The next tab, which is tab 4, I have included for the commission's information, although I do not intend to go through this service by service, a list of services provided to the HSUA from the department to services it funds under these three programs. And there was an attempt on the part of the department to indicate which of those services were covered by WAVA and they are the ones you can see have the grey over the actual title. For example, on page 1, it says: Organisations. St Michaels Association.

Now, having gone through this, I would actually urge caution because I do not think they are actually right and, for example, Northern Residential Support Group as far as I know that they are actually covered by WAVA so I am not sure why that was not included. However, it is a bit hodgidy podge but it gives you an indication of the number of services that are actually covered by this award.

Now, as you can see in pages 1 to 7, which list the community integration program services, those services - the majority of those are covered by WAVA according to the department. I would say that just about all of them are, but I am not quite sure how they have come to this green

highlighting that they use, but it would be our contention that virtually all of them would in fact be covered by WAVA.

In terms of the CSDA service listing, again it would be our contention that all of those are accommodation group homes and independent living services would be, but there are a couple that may not be because of the nature of the service that they actually provide. For example, some that are just straight personal care, personal support workers without a group home facility are in fact covered by the Community Services Award because personal carers are in that award rather than this award.

And, finally, just if I could refer you to page 28, which is the sundry grants program. These are the services that a very few are in fact covered by WAVA because generally if they are not running a group home there is small amounts of funding that are provided for, for example, for advocacy services. Now, if I could use the example of the advocacy on page 32, the Willow Court Centre Parents and Friends Association, for example. Now, they may have a fairly small grant that helps them with their administrative costs rather than actually providing a service. So that is the sort of magnitude we are looking at.

Again on page 36 the Disabled People International, again it is a sort of an administrative grant rather than providing an actual service under the scope of this award. So, Mr Deputy President, that is the information I intended to provide to you in terms of staff mixes. The overall picture you can guess is, is as I say, that we are looking approximately 172 FTE in the industry or about 300 people who are funded by the state department working in the accommodation - particularly in the accommodation area. And that there is a mix predominantly in state funded services between group homes and independent living services.

Now, in terms of staffing profiles, this is very difficult to get accurate information on. The department is currently, I understand, doing a study to try to get an idea of staffing profiles in group homes. However, we were unable to get appropriate responses to our requests about - from the department about staffing profiles. So I can only really give you anecdotal evidence which would then be supported by witness statements later.

And in terms of accommodation, there seems to be two types of models that are operating. First of all where an organisation has a single group home it is common that there would be one co-ordinator employed and four part-time staff plus casuals, and generally speaking you would have four residents in that sort of group home. The other model is where an organisation runs more than one group home, so it runs multiple group homes. That again you would have a co-ordinator across those groups homes and then you would have the four part-time staff, if there were four

residents, plus casuals, but one of those staff in the group home is often designated as a senior staff member. So that there is - that there is some sort of hierarchy actually within the group home.

Now, as I say, it is difficult to get clear staffing profiles on this so it is really presented to you as, sort of, an indication of the sort of structure we are looking at. In terms of independent living services, again the service type varies immensely. We will be presenting evidence in terms of witnesses about these independent living services. But generally again, you know, you are looking to four to five staff, different mixes, but that you would have a co-ordinator, what is called a functional programmer, which is a level 1 or 2, which is currently in the award, and then program assistants.

Now, a functional program of the sort of work that they do is looking at the training needs of clients in terms of the skills that they need to acquire to have independent living and would design programs and be involved in implementation of those programs with other staff, so, that is generally speaking. But again, as I say, we will be presenting further information on it.

DEPUTY PRESIDENT ROBINSON: What is the fundamental difference between group homes and independent living services?

MS HARVEY: The fundamental difference is group homes, they live there.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: And independent living services are services that clients go to during the day.

DEPUTY PRESIDENT ROBINSON: Oh, I see, day-care centres.

MS HARVEY: So, there is no residential component.

DEPUTY PRESIDENT ROBINSON: Yes, right.

MS HARVEY: I intend now to turn to the legislative framework for these services that is provided by the Disability Services Act unless there are any questions in relation to the matters which you want discovered?

DEPUTY PRESIDENT ROBINSON: No, keep going.

MS HARVEY: Okay. Legislative framework is provided in the state system by the Disability Services Act 1992 and that is, extracts of that are

reproduced at the fifth tab in HSUA2. If I could just refer you to the relevant section.

DEPUTY PRESIDENT ROBINSON: Tab 5, you said?

MS HARVEY: Tab 5.

DEPUTY PRESIDENT ROBINSON: Yes, right.

MS HARVEY: Now, in relation to section 5.2(a) it says that, 2(a) and (b) is the section which in effect allows the department to enter into funding arrangements with services so (a) says that:

*The secretary must not make a recommendation to fund a service  
..... under section 6.*

And (b):

*Satisfied that the services or research and development activity  
..... and (iii) the standards set out in schedule 3.*

Now I will actually come to these standards in a minute but I think it is fairly important to note that this is the framework under which services are funded, that they have a legal obligation to meet this requirements of the Act.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: Now, if I can refer you now to schedule 1, 2 and 3 which is on page 3 of tab 5 HSUA2.

MR FITZGERALD: Sorry?

MS HARVEY: Page 3 of tab 5.

MR FITZGERALD: Thank you.

MS HARVEY: Now, I intend to go through these objectives because I think that they are very very important in that they set the framework for which the industry operates and I would also say that the Commonwealth legislation adopts virtually the same objectives. So these are very important in terms of the framework for the industry. So, I will actually quote them, and it says there:

*The objectives to be furthered in respect of persons with disabilities  
are as follows: (a) ..... and (e) to provide a system to*

*administer funding in respect of persons with disabilities that is flexible and responsive to the needs and aspirations of those persons.*

So, Mr Deputy President, that is the objective that underpin both the state and federal system.

Now, in terms of schedule 2 it goes on to outline a series of principles and I do not intend to go through each of these one by one but I think suffice to say that the principles support the objectives in that they recognise the rights of people with disabilities to be treated with dignity and also to have equity in terms as members of our community.

Schedule 3 sets out some standards. Now, it is not possible to go through every single one, well it is possible but it would take a lot of time, but I would like to draw your attention to some key areas as they effect staff and these standards are in fact reinforced by outcome standards that are published by the department which give more detail about how these are to be met. So the ones I would particularly like to draw your attention to is (1), and I quote:

*Services are to be designed and administered . . . . . and integration into the community.*

Now this standard is about having pro-active services that actually interface with clients and provide the level of support and assistance that they require to actually meet this requirement of increased independence, education, employment so it is setting down a standard for pro-active services. (3) says that:

*Services are to be provided as part of local co-ordinated service systems . . . . . to members of the community wherever possible.*

Now the importance of this in terms of these proceedings is that we are talking about services that do not operate in isolation, there is a requirement on the staff that they network and be part of a broader type of community of services, if you like, for people with disabilities and the community generally. (4) that:

*Services are to be tailored to meet the individual needs and goals of persons with disabilities.*

Now this is a fairly high standard in terms of what is required to be able to individually design programs to meet all of these objectives and that

services are required to do and to have staff that are able to in fact do that and implement it. (7):

*Programs and services are to be designed and administered . . . . . through maximum physical and social integration into that community.*

And, again this, I think if we draw the comparison with what is required of staff that these are fairly tall orders in that they are the primary deliverers of the service to be able to meet these standards. If I could now turn to the actual outcome of standards which is - sorry, if I could now turn to the standard grant format, which is in tab 6.

DEPUTY PRESIDENT ROBINSON: Before you leave tab 5, the standards required by the Disability Services Act are not backed up in any way, are they, by a type of registration, for instance, of employee services providers? I mean, eg, with hospitals where you have got nurses registration and - so there is nothing complimentary in this particular area of employment?

MS HARVEY: Not in terms of formal registration, and in fact the direction seems to be by both Commonwealth and states to deregulate professions, and in fact under the mutual recognition framework that has been developed by the state and federal governments that covers all occupational groups. There has been a fairly big push to deregister and deregulate occupational groups in the sense of the legislative registration. So there is not actually any registration at the moment. I think there is unlikely to be. However, there is a different form of regulation in the sense that there are funding agreements reached between the state and the service, which is what this next tab relates to.

DEPUTY PRESIDENT ROBINSON: Right. And is there a monitoring of standards of service provided on an ongoing basis?

MS HARVEY: My understanding is there is a monitoring in the sense that each year when the grant is re-negotiated the adherence to standards is looked at. They then may say, "Well, you fall short in this area. This is the program we would expect for the next 12 months", so that you would, you know, build up in this area. So the department contends that there is this sort of feedback mechanism through the grant application system that monitors compliance. Now, there is debate in the community about the adequacy of that and certainly in terms of nursing homes, which is a comparable sort of model; there is standards outcome monitoring committees and inspections done.



DEPUTY PRESIDENT ROBINSON: So they must have some sort of ruler which they measure with.

MS HARVEY: Yes. We are coming to that, Mr Deputy President - - -

DEPUTY PRESIDENT ROBINSON: Right. Okay.

MS HARVEY: - - - because there is quite clear standards from the department.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: So in terms of agent disability support funding and service agreement which is the tab in 6, now, what this is is the standard pro forma for funding agreements between the state and services; that sets out their legal obligations. Now, if I could refer you to page 12, and what happens is this pro forma is adapted for each service so it is slightly different for each service but this is a standard one. If I refer you to page 12, and that is the roles and responsibilities of the grantee, that is the person receiving the funding, and if I can just quote from that at 29 at the bottom of the page, it says:

*It is agreed that the grantee has the following responsibilities: (i) ensure that funds granted . . . . . perform their duties.*

So the point of drawing your attention to this is - I think the questions from the questions that you are asking me indicate the issue, and that is that there is a legal binding on these services in terms of their relationship with their staff and that they are required legally to ensure that they have adequately qualified and experienced staff and that they are employed under the conditions of the award or agreement.

DEPUTY PRESIDENT ROBINSON: Yes. Do they define "adequately qualified"?

MS HARVEY: No, Mr Deputy President, they do not, and this really touches on some of the - in the sense that they have not defined a qualification but they have set standards which we will come to in a minute which indicate a level of skill required. Now, I think part of what the public interest argument of what we are trying to do is to start to set down a skill based career path which is going to facilitate this very issue for the entire industry.

DEPUTY PRESIDENT ROBINSON: Yes. Probably people need more than to be highly motivated in trying to provide an adequate service if

motivation of itself is important, but it is not always enough, is it, to deliver?

MS HARVEY: No. And indeed when we come to some of the outcome standards in detail you will see that the expectations of staff go far beyond motivation; they comprehend quite extensive skill. I think that it has been a real problem in this industry that we have not had a properly structured award that can give some indication of what those skills are and what sort of training we need to look at into the future.

DEPUTY PRESIDENT ROBINSON: Yes. You will obviously need to go well into this afternoon?

MS HARVEY: Certainly will, Mr Deputy President. I am just wondering procedurally if I just finish this little section here, and then after lunch I can go to the actual standards that the department has set out.

DEPUTY PRESIDENT ROBINSON: Yes, all right.

MS HARVEY: So bear with me about five minutes.

DEPUTY PRESIDENT ROBINSON: All right.

MS HARVEY: So I have taken you to the section about the grantee responsibilities in relation to staff. If I could just refer you to page 16.

DEPUTY PRESIDENT ROBINSON: Sixteen?

MS HARVEY: Sixteen. And again you have pre-empted my submissions in relation to your question because there in 38.1 it deals with assessment. And the second sentence - - -

DEPUTY PRESIDENT ROBINSON: I had not seen this document before.

MS HARVEY: No. 38.1 - I am sure you have not because I was still binding it this morning:

*38.1 - The grantee's management is also expected to from time to time review the progress of parts or all of the service program against the standards.*

Now, these are the standards I will be referring to after the luncheon adjournment. And 38.2 in terms of agreement:

*In response to the assessment the grantee and the disability support services staff . . . . . goals have been achieved.*

So, hence, this is the way the department monitors and enforces adherence with the legislation through its objectives, principles standards, and then in terms of making it real is what we will cover after the luncheon break because that sets out very clearly what it means on the ground in the service, what they have to do and what the staff are expected to do. So that may be an appropriate time for an adjournment.

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

#### LUNCHEON ADJOURNMENT

DEPUTY PRESIDENT ROBINSON: Right. Are we all ready?

MS HARVEY: Certainly are. I assume we are recording. Mr Deputy President, before the lunch adjournment I had taken you through just the broad outline of the industry, the type of services and we were discussing the state government funded services and we had just been discussing the legislation of grant requirements in the sense that - that services obligations as a condition of their grant in relation to standards and I am now going to take you to tab 7 in exhibit HSUA2 which deals with the outcome standards for accommodation.

DEPUTY PRESIDENT ROBINSON: Right. You have finished with tab 6?

MS HARVEY: Yes. So I have already said that as a condition of grant the services are required to show that they are furthering these standards and objectives and that this sets the framework under which the services are in fact funded. Now, they are quite extensive. The way they are set out is that there is a standard which then underneath it has - sorry, there is a principle and then there are standards underneath it supporting each principle. I do not want to take you to every one point by point but I thought I would refer you to some critical ones. The standards themselves I would like to be considered obviously as an exhibit in part of my submissions but I will try and take you just to the critical ones rather than spend a lot of time going through every word.

DEPUTY PRESIDENT ROBINSON: Yes. I suppose you will want to dwell more on the support services side rather than the accommodation?

MS HARVEY: Well, both. Oh, sorry, instead of the physical accommodation?

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: Yes, yes, that is exactly right. I would be focussing on the staff related issues.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: So if I could take you to page 4, which deals with the principles and personal freedoms of confidentiality and privacy and under that there are five standards and the first, 2.1, the staff encourage age appropriate and independent behaviour and then they have got some examples on the left-hand side of the sheet as to what that actually means in terms of concrete terms and if I can just quote from that little section underneath appropriate examples. It says:

*Interactions between staff and residents are balanced and age appropriate . . . . . speaking and listening.*

Dot point 2:

*Staff are consistent as to what behaviour is accepted from residents and other staff . . . . . wide variety of people.*

Now, I want to just keep drawing attention to a few critical ones because I think it paints the picture overall rather than looking at them in isolation of sort of skill levels that are required. So on the next page, if we go to page 5, under 2.2. The standard here is that there is encouragement and support for residents to maintain family relationships and to involve families in the life of the residence and, again, there are some dot points on the left-hand side that outline what that might mean and so it says that families are encouraged, presumably by staff, to reinforce the philosophy and aims of the residential service. There is a staff member nominated as a primary contact for the family.

Families are invited and encouraged to participate in appropriate activity. Day-to-day concerns over clothing, food, support, etcetera, are resolved promptly and directly with direct service staff. There is staff assistance given to residents to resolve conflicts with their family e.g. over increasing independence. Now, this does relate to accommodation and I ask you to keep in mind the sort of staffing profile that we are talking about, really

some - basically a pretty flat structure where the staff - they are working in the group home, usually one of which is a senior staff but all the staff would obviously be required, if these standards are to be met, to fulfil some of these functions.

DEPUTY PRESIDENT ROBINSON: Yes. These are long-standing standards though? Not new?

MS HARVEY: No, they are not new, Mr Deputy President. They were in fact put forward in July 1992 and I have had discussion with the department and they are reviewing them but with the view to extending them, not actually diminishing them. So if we go on to look at 6 - page 6, 2.3, social skills and friendships, and the principle that is set out there that:

*There is support for residents to learn social skills and socially appropriate . . . . . relationships in the community.*

And then that first dot point I think is fairly important and it says:

*Residents are taught through everyday interactions and formalised programming -*

so that the staff are involved in formalised programming the concepts which are then listed out there which are things like public, private in relation to places, parts of the body and behaviour, types and degrees of relationships and the appropriate behaviour to each, rights and responsibilities in relationships, self-protective behaviour and how to avoid exploiting others; that they are to have access - residents are to have access to a staff member for which they can discuss in private their personal concerns. A bit further down there:

*Staff link residents into community based social networks in accordance with . . . . . in the community covering -*

and it lists some points there and each resident is encouraged and assisted to assume chosen value roles.

DEPUTY PRESIDENT ROBINSON: Are the staff made aware of all these standards?

MS HARVEY: Well, again, in the grant application form it does refer to the standards and I think I already provided evidence to you saying that the staff are to be involved in the renegotiating of the grants in terms of working out what are the outcome standards and whether they are meeting them and that the grantee has a responsibility to ensure that staff are

adequately trained and qualified. So one would assume that if they are properly managed services that that is precisely what would be happening.

DEPUTY PRESIDENT ROBINSON: And would they have the sort of documentation before them that we have got?

MS HARVEY: That is something I would have to have clarification on and perhaps something that witnesses could assist with.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: I will just make a note of that. But I think the important thing in relation to this is there is an agreement entered into between a service and the department and so, you know, one would assume that the service indicating that it is going to meet these requirements tells their staff who are delivering the service that that is what is required even if they do not have this document.

DEPUTY PRESIDENT ROBINSON: Yes, that is right. I guess I am just asking you a question as to how far down the line these sort of requirements are made available. I mean, presumably it is one thing to have training sessions and to speak in broad terms, but it might be another thing, given the resources and the time, I guess, to have something that people could readily refer to or have in their own possession to peruse, perhaps in their own time even.

MS HARVEY: I think that is correct, but I think it does give us a good indication of the sort of skill requirements that are in the industry, and I think you probably find the reality is it is the lesser and greater extents about how well they are observed, but it is an indication that the industry requires these sort of skills of its staff.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: On page 9 there are some issues with personal privacy and I would just draw your attention to the fourth dot point down, and that is that there are steps taken to maximise safety and minimise intrusion where safety needs affect personal privacy, eg, epilepsy and bathing. Now, epilepsy is a big issue in this industry, and keeping in mind the profile that we have said is - that virtually all the staff need to have skills on how to deal with this sort of situation when it arises, particularly when you consider in residential that people are on sleep overs by themselves.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: On page 8 there is recognition and acceptance of residents sexuality and the important points that are required there are that:

*There has been involvement of residents family, advocates and staff in formulating a policy on sexuality. . . . . do not infringe upon the rights of others.*

And there is a value statement there at the bottom:

*Staff are able to accept any residents values and sexual behaviour which may be different from their own.*

It clearly is an expectation that staff are involved in policy formulation processes in addition to the other tasks that they do.

MR FITZGERALD: I am sorry, I am just lost. Which page was that on?

MS HARVEY: That was on page 8.

MR FITZGERALD: Sorry, I was on page 4. Thank you.

MS HARVEY: Now, if I could take you to - it does get a bit confusing with all these pages - page 10, which deals with health issues. Now, this general principle is to do with health, which is one of some concern in terms of responsibility that these staff have in relation to health issues, and the first dot point there on 10 is:

*There is satisfactory management of residents identified health problems. Residents and staff have access to information and education on healthy lifestyle.*

It has got those points listed down there. Very importantly that resident health records are maintained; that there is regular and routine information given to residents of the negative health implications of drug dependencies; that there is advice available for addressing drug dependencies. And at the bottom there someone I think said that there are lentil patties for tea. I assume that that is a joke from the draftsman who got frustrated with typing all this out. On the next page, on page 11 - - -

DEPUTY PRESIDENT ROBINSON: I wish we were all allowed such luxuries.

MS HARVEY: Yes. I apologise that this is drawn out, but I do think it is very important in terms of these sort of expectations. On page 11, 3.2, it comes to some advocacies requirements of skills of staff, and point 2 there it says - sorry, dot point 2 it says:

*There is support where standards are inadequate that there is advocacy for residents.*

And further down, two dot points further down:

*There are procedures where specific medical conditions may require planned or emergency medical support or hospitalisation. There is assessment of residents needs for services such as physiotherapy, speech therapy, occupational therapy, dietitian, stress management.*

DEPUTY PRESIDENT ROBINSON: These sorts of monitoring of health would be by a visiting medical practitioner or - - -

MS HARVEY: Well, certainly that is something that we would encourage in terms of ensuring - well, as legal requirements, particularly in terms of medication, but I think the important thing to realise is that there are not medically qualified people or nurses in these group homes, so therefore the staff have to have the expertise and I think that is why there is so much emphasis on plans and emergencies to be able to know how to deal with it.

DEPUTY PRESIDENT ROBINSON: And recognise some signs and call in aid of a doctor if it was thought appropriate.

MS HARVEY: Yes. I suspect, deputy president, that we could well - in fact the union is aware of examples where staff have perhaps exceeded what their legal rights are in relation to some of the issues surrounding medication. That is something that we view seriously and advise people very strongly not to do, and I think it is important in terms of getting these skill standards clear in the award that it is delineated out, and when I come to talking about our classification structure you will notice that there is nothing in there that infringes upon, for example, what is a nursing duty, to ensure that we do not have staff doing things that they are not qualified to do. But having said that, there are - they are required to deal with emergency situations fairly regularly and to be able to know what is the appropriate action and how to deal with it.

DEPUTY PRESIDENT ROBINSON: Give injections?

MS HARVEY: They should not be doing that, no, Mr Deputy President. They should also not be administering medication, and there has been some debate, and now what occurs in the industry is that systems are usually used where medication is put into a dosette form and the staff, when it is required, would assist a resident to take medication from a dosette form that the pharmacist had already put into that form. But still, even so, there is a level of - you would need to understand what you were basically doing. I mean, it is not a - - -



DEPUTY PRESIDENT ROBINSON: I see, yes; an informed consent. Is that - - -

MS HARVEY: Yes, I think we are treading on an issue of quite some contention, actually, about this issue about what the legal lines are under the Poisons Act and - - -

DEPUTY PRESIDENT ROBINSON: All right. You are running your case.

MS HARVEY: If we can turn to page 12 and it - then comes this medication issue that medication is prescribed by a qualified doctor, regularly reviewed and monitored and administered strictly according to medical instructions. And some practices there that residents, where possible, are encouraged and given the opportunity to manage and administer their own medication. There are clearly defined responsibilities which are accessible to all involved staff for the management of the residents medication and we will be presenting, when we present our evidence with witnesses, they will be able to provide you more information about all of this.

That legal liabilities and the management of drug therapy for the residents are clearly documented and accessible to all involved staff. There are medication records, including details of safe drug administration which are maintained and used. Medications are stored in a safe, secure place and in accordance with the recommendations and requirements of the manufacturer. Staff know the circumstances and procedures under which drugs are administered to residents and understand the management and monitoring responsibilities involved. A hefty responsibility.

DEPUTY PRESIDENT ROBINSON: Yes, I assume it is vitally important for some clients to regularly receive the correct dosage of prescribed medication.

MS HARVEY: That is correct, particularly with the number of behavioural disorders and epilepsy where there is - - -

DEPUTY PRESIDENT ROBINSON: Oh, quite, particularly if people coming from other establishments like Willow Court, where they might have had access to regular supervision from doctors.

MS HARVEY: And nurses.

DEPUTY PRESIDENT ROBINSON: And nurses, yes.

MS HARVEY: It is a hefty responsibility and one certainly that our organisation believes needs to be addressed as part of a longer term agenda about training.

DEPUTY PRESIDENT ROBINSON: Yes, yes. We keep on promising ourselves we will not go down that track but I suppose the recognition of known side effects would not go astray either.

MS HARVEY: An issue I - a difficult issue.

DEPUTY PRESIDENT ROBINSON: Of course.

MS HARVEY: I think we need to be careful to ensure, certainly the union is not advocating that people take on nursing duties.

DEPUTY PRESIDENT ROBINSON: No.

MS HARVEY: And it is very difficult in these sort of non-institutionalised arrangements where those lines are.

DEPUTY PRESIDENT ROBINSON: Well, most people in the community at sometime or other have to take some medication in their own home or work or - - -

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: - - - whatever, so I guess it is a question as to what, if any, greater responsibility would rest upon those who are assisting in the keeping of such medication and the supervision of the times at which such medications are to be taken or were not taken or with what, and yes, we will not go that track.

MS HARVEY: No, we could be here a long time, but I think it is important to say that there is a clear duty of care for - these staff have a duty to care to the residents or the people within their service. And as with - - -

DEPUTY PRESIDENT ROBINSON: It may be - may be the same sort of broad parameters would apply to schoolteachers with schoolchildren in their care during school hours.

MS HARVEY: Except the difference is that in this sort of environment particularly is it that it is unlikely that there is associated disabilities and medication requirements.

DEPUTY PRESIDENT ROBINSON: There are, as I understand it, and I have had some involvement in the education industrial portfolio, is that more and more there are pupils in ordinary schools with sometimes quite severe disabilities, these days.

MS HARVEY: Yes. I certainly do not seek to denigrate that because I am sure that that is correct, particularly community integration but I would emphasise that you are looking at a fairly - it is very usual for people to have multiple disability.

DEPUTY PRESIDENT ROBINSON: Yes, yes, and I am referring to both physical and intellectual. Sorry to interrupt.

MS HARVEY: No, that is fine. Page 13, we are looking at possessions finances and there - that there is a requirement that there is encouragement for residents to take maximum control in managing their own financial affairs, and some dot points there that there is training for those who require assistance to budget and manage their own money. Again provided by the staff. There is a system of accountability for staff assisting residents to manage their money. Again, a fairly hefty responsibility in the scheme of things.

14, that residents have and control their own supply of clothing, etcetera, and some dot points there that give examples of what that means. At the bottom 3 there, that:

*There is training to increase the independence . . . . . as hair care, cosmetics and personal grooming.*

Now, this issue of training in the way that that is defined is important because throughout these standards, what is talked about is individual training which implies that you set goals, that you have methods of achieving it that you work through and monitor it and assess. It is not just a matter of providing it for people.

DEPUTY PRESIDENT ROBINSON: No. Yes.

MS HARVEY: On page 16, aids and equipment.

DEPUTY PRESIDENT ROBINSON: You cannot tell which way you are going with these pages.

MS HARVEY: My pages are not out of order are they? No.

DEPUTY PRESIDENT ROBINSON: No, no, no, it is just that they are not horizontal rather than vertical, I suppose.

MS HARVEY: You would not believe how difficult it was for our admin staff to get this so that both the bottom of the page was in the middle of the spine because they kept - well, every time we photocopied being upside down.

DEPUTY PRESIDENT ROBINSON: Oh, I am not complaining.

MS HARVEY: So, on page 16, which relates to aids and equipment, that increase in dependence and community participation, that in some dot points there, that:

*There is instruction for staff and residents in the use of specific aids and equipment. Aids and equipment are regularly checked and maintained and evaluated as to their effectiveness.*

If you could turn over the page to page 18.

DEPUTY PRESIDENT ROBINSON: What sort of aids and equipment would you be able to instance as examples?

MS HARVEY: For example, wheelchairs, assistance - aids for mobility, aids for, sort of, independence in using bathrooms, that sort of thing.

DEPUTY PRESIDENT ROBINSON: Oh, I see. Walking frames and whatever. Okay. Sorry, what was the next page?

MS HARVEY: Page 18.

DEPUTY PRESIDENT ROBINSON: Good.

MS HARVEY: I mean, it may be hearing aids, I mean, there could be a whole variety of aids.

DEPUTY PRESIDENT ROBINSON: Yes, yes.

MS HARVEY: 18, and this is again dealing with hygiene:

*That there is encouragement for residents to unders the social and health implications . . . . . e.g. bell and pad and expertise for toilet training programs.*

On page 19, again there is indications of the types of training that is expected in the third dot point on the left-hand side, it says that:

*There is in-service training for residents and staff in meal preparation, hygiene and menu planning.*

Obviously the in-service training would be so that the staff could then provide that training to the clients.

On page 20:

*The Service co-operates with other services that the client uses or may require access to.*

And the third dot point down:

*There is co-ordination, where necessary, with the client's informal support networks, ie. family, friends, advocates.*

The next one:

*The service works with the client's service co-ordinator in identifying changes in the client's needs.*

And the following, the final dot point, at the bottom of the page:

*There is referral and follow-up for clients needing and using generic services.*

So again there is skills required in co-ordinating with other services providing individual plans and following up individual needs and requirements.

Now, the next page, on 21, it deals with everyday interaction and the standard there in 8.1 is:

*The service ensure staff use positive and valuing interactions in their day-to-day relationships and teaching roles with clients.*

And the dot points down the left-hand side:

*Staff are aware of the individual client goals set out in the Service Coordination Plan and their role in pursuing them. . . . .  
Staff meetings/consultation are used to regularly monitor and review client progress towards objectives.*

So again it is this whole thing about a structured approach to client need.

This is reinforced in 8.2 about individual programs and this is particularly important that - and the standard here that:

*Staff recognise that the use of formal individual programs will only be effective when placed in appropriate social context.*

And then it lists down on the left-hand side some of the examples of the practice at support standard. That:

*Staff recognise that no amount of formal training will assist the client to acquire a skill . . . . . review progress against individual service coordination playing goals to update formal developmental programs.*

DEPUTY PRESIDENT ROBINSON: At the top of that page 22 it talks of that staff recognise certain things. There would be varying responsibilities upon different staff, would not there, for this realisation.

MS HARVEY: That is really - - -

DEPUTY PRESIDENT ROBINSON: It would have to come from the top and I suppose somebody with - just coming into the establishment without any prior training would need to pick these things up over a time period.

MS HARVEY: That is correct, Mr Deputy President, it is that factor that we picked up in our classification structure - - -

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: - - - of requiring direct supervision.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: And particularly in the level 3 of our classification structure which we will come to in a minute. What the union has put in it is that whilst these range of tasks are very broad and they certainly could not be described as routine, that there really should be direct supervision until such time as people have developed a competency to be able to do it without that supervision.

DEPUTY PRESIDENT ROBINSON: Yes, right. And without some sort of proper instruction or training a person could hardly be expected to realise there is so much involved in client care would presumably obviously pick up on the immediate requirement at the time.

MS HARVEY: Certainly - - -

DEPUTY PRESIDENT ROBINSON: You know, on the basics of feeding, washing type situations.

MS HARVEY: I think that we are getting into the area which certainly Chris Brown will addressing you on about competency and skill. Whilst we agree that there is a real need for training in the industry and it is something that once we have got the classification structure out is going to make a lot easier, once that is determined however it is determined.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: And there are people out there who have worked in the industry for a long time who do have the skills, have acquired it through informal mechanisms or in their own time or through interaction they may even have had with their own family member they have been caring for, and that is why we need to be very careful when we set the structure that we talk about the skills that are acquired and that the training is a proxy for those skills. Now, into the future what we would like to see is a situation where formalised training is available for each level of the award.

DEPUTY PRESIDENT ROBINSON: An accreditation.

MS HARVEY: Yes, an accreditation. I think until we have got that some of these standards - there is a real public interest in trying to get them clear.

DEPUTY PRESIDENT ROBINSON: Yes, sure. I mean they are fine and obviously they have been accepted by those who have the responsibility for setting such standards.

But again it is another thing to translate them right through the whole, to permeate the whole of the work force who have got their hands on responsibility for it on a day-to-day basis.

MS HARVEY: It certainly raises an important issue because if these standards are not being met, which, you know, I am not suggesting that they are not - - -

DEPUTY PRESIDENT ROBINSON: No.

MS HARVEY: - - - but the reason they were set was because if you are going to have, if the objective of community integration, of moving people out of places like Willow Court are to be met, and to talk about integration into the broader community it is very important that people do get these every day skills, because without them - - -

DEPUTY PRESIDENT ROBINSON: Yes, but I guess my query goes to whether or not it is fair enough for a supervisor, or other person in charge, to be fully aware of the sort of detail that has been put here today, and they

take the responsibility for a lot of those requirements themselves and encourage staff to, and indeed require staff, to pay attention to those sorts of details. But it begs the question as to whether or not in the absence of direct supervision by a busy supervisor, as to whether or not the basic staff, if that is not an offensive term, would of their own initiative and without supervision realise what is required of them rather than them just attending to the more basic physical nursing type day-to-day requirements.

MS HARVEY: Well, most services do have a plan for each individual so therefore the staff would be aware of that plan and their role within that plan.

DEPUTY PRESIDENT ROBINSON: Yes, right.

MS HARVEY: So, I think that they would provide some of the planning mechanism to ensure that the staff, or the basic staff, as you have termed them, are actually aware of an overall requirement of what each individual needs and it is in a structured plan.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: That is my information about the way that it works and there is a lot of care in independent living skill services and also in accommodation services to try and structure that in to an individual plan.

DEPUTY PRESIDENT ROBINSON: Yes, and I do not want to open up other areas, but perhaps it might be, the level of care and the detail of care might be related also to the availability of staff at any particular establishment and the availability of funds to provide enough people to be able to go beyond providing basic elementary supervision and care to get in to the more complex - - -

MS HARVEY: I think that is exactly right and I mean in this aware the base grade for residential workers is actually currently less than what a shop assistant is paid and given that fact it is not surprising that we have difficulties in this industry with retaining suitably qualified staff and that in, I mean I think it is an inescapable fact is that if you have not got a skill based career path and you have not got recognition and reward for skill that you are going to have problems with retention.

DEPUTY PRESIDENT ROBINSON: Yes. Without prejudging anything I guess as a general situation it is a demanding profession to constantly look after clients who are unable to look after themselves adequately.

MS HARVEY: Sorry, would you just bear with me, I am just making a few notes at the same time?



DEPUTY PRESIDENT ROBINSON: All right.

MS HARVEY: Unfortunately the union's resources do not go, we spent all our money on plastic binders so I cannot have someone sitting here next to me taking the notes.

DEPUTY PRESIDENT ROBINSON: Perhaps you are under-staffed, are you, not properly resourced?

MS HARVEY: Yes. Now, I was talking about - - -

DEPUTY PRESIDENT ROBINSON: You were on page 22, I think.

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: And I said staff recognise certain things and then I sort of asked questions about whether all the staff or some of the staff.

MS HARVEY: Well, actually that very question is related to the next page, on page 23.

DEPUTY PRESIDENT ROBINSON: Again?

MS HARVEY: Yes.

DEPUTY PRESIDENT ROBINSON: I really have not seen this before. Page 23, is it?

MS HARVEY: Page 23, and the second last dot point, it is talking about the service, the overall is that the service delivery is made formal in an agreement between each client and the service, and this goes back to what I was talking about before about plans for each client. And the second last dot point it says that:

*The agreement specifies that people who are responsible for working with the client to achieve goals.*

So, of course, this sort of standard and practice means that people would be aware of what their roles are in that overall plan.

DEPUTY PRESIDENT ROBINSON: Yes, so, they actually sit down and contract with one another as to what their respective obligations and responsibilities are, yes, client staff, client - - -

MS HARVEY: Well, this is the desired standard, and these are given examples of how to achieve it but that is not - the best practice services are in fact doing that.

DEPUTY PRESIDENT ROBINSON: Yes. So sort of goal setting and  
- - -

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: - - - and so people are clear, have an understanding of what they should or should not do.

MS HARVEY: Yes, well then I would be surprised if you found a service that met every single example in these but I think it is an indication of the direction of the industry.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: 24, that staff into challenging behaviour doing that prevention, that staff interact with clients in ways that prevent the development of challenging behaviour. Now this is a standard that is fairly important and a common problem and some examples there is that there is staff training in basic behavioural principles, including antecedents, behaviour and consequences, reinforcement strategies, limitations of punishment, and there are activities that encourage the clients development and abilities. So, really we are talking about behaviour modification responsibilities.

It goes on on page 25:

*The responsibility being on staff to adopt positive approaches to challenging behaviours which develop skills and strengthen alternative behaviours.*

Down the dot side there are examples of this:

*that staff know how to analyse behaviour . . . . . coping positively with challenging behaviour*

On the next page:

*Restraint and seclusion and aversive therapy are used as a last resort.*

DEPUTY PRESIDENT ROBINSON: Page 26?

MS HARVEY: Yes. And again some examples down the side there that there is written evidence to show that all other alternatives have been explored first. Guidelines for the use of restraints, seclusion and aversion therapy as documented in the individual service co-ordination plan and include the consent of the client and/or guardian. Reports are completed and forwarded to management and the client service co-ordinator as soon as possible. Staff have been trained in how to restrain clients in emergencies in ways that minimise harm to the client and staff member.

And we will be providing evidence through our witness statements, Mr Deputy President, of how prevalent this problem is. It is a serious occupational health and safety issue for us, but it is one that is very common in terms of the needs of staff to deal with violent behaviour, and the responsibility of that fits on them in terms of not only their own physical safety but also safeguarding the safety of other residents or other clients of a service.

DEPUTY PRESIDENT ROBINSON: Yes, I understand.

MS HARVEY: That, Mr Deputy President, concludes the section on the outcome standards for accommodation. There are another set of standards that deal with general services, and that is presented in the eighth tab. Some of them are reinforced and I will be quicker running through these than I was through the accommodation because some of them are already contained, or reflected equivalents in the other standards. But, I mean, the basic principle is the same in the sense that what we are looking at is an individual approach to service delivery that looks at really behaviour modification, providing independent living skills and capacity for people with disabilities to be fully functioning members of the community.

So if I could just run you through a few of them. In 1.2 on page 4 in tab 8:

*There are maximum opportunities for the physical and social integration of clients into the general community.*

Now in the second dot point down on the left-hand side there are support and training given to clients to use community facilities. Again, the emphasis is on support and training. Over the page on page 5, the organisational control:

*The service ensures that it does not exercise control over all or most aspects of a client's life.*

And some of the examples are that there are regular staff appraisals which include examination of their role and influence in the client making their own decisions. So again, we come to this point we are talking about where staff are aware of what their roles are.

On page 6, which deals with the protection of clients, in the second last dot point on the left-hand side:

*The duty of care owed to clients and their rights to be free from abuse and exploitation are conditions of both paid and un-paid employment.*

Page 7, client control and independence. The emphasis here is that, again, to enable clients to have some control that staff need to be able to communicate and maximise their involvement in decision making in that first dot point there which relates to staff skills, on the left-hand side:

*Staff know how to use the communication mode of all clients they work with.*

And when we come to our classification structure and skills analysis we will document the sort of different types of non-verbal communication that are required by staff to use.

Page 8, client satisfaction. There is regular monitoring of client and family satisfaction with the services received and the information is used to improve operations. And the first dot point on the left-hand side that:

*There are regular surveys of clients families satisfaction with the service. That clients families are informed of procedures for making comments about the service.*

So members and staff have also got to be interacting with the broad community and the family, which can be difficult in terms of the level of responsibility and conflict resolution in those sorts of environments.

Privacy and confidentiality on page 9. The third dot point down, an example of practices support this standard in relation to clients rights to personal privacy. That clients are supported where necessary in understanding the procedures on their entering the service. Three dot points down: staff seek consent before attending to the physical needs of a client; that there are steps taken to maximise safety and minimise intrusion where safety needs affect personal privacy - and the example in accommodation was epilepsy. The last dot point:

*Clients and their families and advocates are advised if there is a need for the clients privacy to be limited.*

On page 10, in terms of advocacy skills that there is access to advocacy support when needed or requested for clients to participate in making decisions about the service. And some examples down the side there on the left are:

*That there is encouragement and support for -*

presumably from staff -

*for clients to advocate for themselves and others.*

And the final dot point:

*The service refers the client where necessary to advocacy services.*

So there is obviously a role in advocacy and referral required. I will skip a few pages.

Page 13, and this is the standard that deals with policies and procedures, and there has got to be a whole series of policies and procedures documented and written in the first dot point on the left-hand side, which indicates the sort of skills that staff are required to have in terms of policy development and establishing procedures. And the bottom dot point:

*Clients and families, advocates, guardians, staff and committee members are involved in the process of developing and reviewing policies and procedures.*

On page 20 we are just drawing attention to the standard that there are - at the top of the page there - is that there are appropriately skilled staff employed under relevant awards who are provided with ongoing training and support. Now, in terms of page 21, this is more a management responsibility but I just wanted to draw your attention to it because it will be relevant when we come to the issue of translation.

I have already indicated that we will be putting a proposal about translation which allows the employer to - when we get to that stage - allows the employer to indicate where they think someone should translate to on the basis of their duties and skills. The second dot point on this page says that staff are given an up to date duty statement on employment with the service, so certainly that should facilitate that proposal that the union will be putting to you at that time.

On page 22, which deals with orientation - for staff, that is - there is a series of requirements down the side on the left-hand - well, examples of practice that support the standard, that staff are briefed on their specific duties and responsibilities; in the second dot point, that the service provider ensures all direct service staff have a basic level of training; that on the second last dot point, staff work at least one shift in a new facility with an experienced staff member before working on their own. That one in particular, Mr Deputy President, indicates that working on your own is quite prevalent in this industry, or people taking on responsibility, otherwise - I suppose I am postulating that it would not be in there if that was not a common practice.

Now, in terms of on page 23, the service assessment provides for staff training needs. Now, this is an area when we come to the issue of public interest in arguing for our classification structure that we think it lends particular weight to that public interest argument because basically this standard sets our really requirements about the need for training, for career counselling, for recognition of external training opportunities, and there is a whole list of them down the side there. Certainly it would be our view that the provision of a skill based career path is going to make this a lot easier to be able to actually - in a structured way that is designed for the industry to be able to meet these sort of standards.

On page 25, at the bottom of the page on the left-hand side, and again this is going to staffing issues, the standard is that consistent staffing and staff/client ratios are adequate to provide for the client's safety and development. And the bottom point down there on the left-hand side, information is collected on the reasons for staff resignations, turnover, absenteeism and sick leave, which is used in improving operations. So I wish I had access to that, Mr Deputy President, because I think it would make very useful reading, but unfortunately it has not been collated by the department in any way but I think it would be very interesting research to do given the low pace status of this award and, I would argue, the lack of structured training that has existed has meant that there has been a lot of stress on people working in this industry.

DEPUTY PRESIDENT ROBINSON: Before you leave page 25, how do you establish objectively what is an adequate roster and an adequate staff/client ratio on various days in the first dot point under 5.2?

MS HARVEY: Yes. In terms of - are you asking that question in terms of client need or staff need, because there is a clause in the award on rosters and the way rosters are established, or are you asking the question in relation to client need?

DEPUTY PRESIDENT ROBINSON: Well, I guess the two are closely interrelated, are they not?

MS HARVEY: Actually it is a good point, Mr Deputy President, because there is - obviously there is some turnover of residents in homes so that you can get mixed levels of dependency - - -

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: - - - and that any particular staff member would have to deal with - - -

DEPUTY PRESIDENT ROBINSON: And you could have staff absences at short notice sometimes.

MS HARVEY: In terms of group homes, there tends to be a pattern of part-time employment with a pool of casuals in terms of meeting sort of short-term requirements. I think the important thing in relation to this in terms of the skill based career structure is that in any group home there can be varying degrees of dependency, and if there is turnover of clients the skills that someone would need to display can be quite broad even if at one particular time there is quite a low level of dependency because it does vary between group homes.

DEPUTY PRESIDENT ROBINSON: It would depend too also, would it not, upon the extent to which a client needed assistance?

MS HARVEY: Yes.

DEPUTY PRESIDENT ROBINSON: Presumably there must be a wide range of clients who would need - who are mildly disabled as against those who are, what is the expression, extremely so.

MS HARVEY: That is true; there is some variation but you can never be 100 per cent sure because residents do turn over but, you know, there is group homes where there is less staff.

DEPUTY PRESIDENT ROBINSON: Perhaps they have their good days and their bad days.

MS HARVEY: Yes. I was just going to say in relation to that point that - it has just escaped me for one minute. I must be getting tired?

DEPUTY PRESIDENT ROBINSON: Yes, you must be. It is Friday. We were dealing with my unfair question as to how would you ever really - - -

MS HARVEY: Oh, I know what I was going to say.

DEPUTY PRESIDENT ROBINSON: - - - properly assess the ratio of staff-clients - - -

MS HARVEY: I think that is a thing I would have to leave to the professionals - - -

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: - - - in terms of the people with staff in this industry who actually do this.

DEPUTY PRESIDENT ROBINSON: Yes. We were just postulating.

MS HARVEY: Yes.

DEPUTY PRESIDENT ROBINSON: There could be a wide range of variables I think you would be summarising.

MS HARVEY: Yes. It is just that I remember now what I was going to say is that there is also a fair degree of difference between CIP services and some of the community clients. Remember I was talking about there being CIP services and CSDA which is the Commonwealth and State Disability Agreement that deal with community clients is that our experience from our members and the information that they have given us is that the CIP clients tend to have higher dependency levels.

DEPUTY PRESIDENT ROBINSON: Yes.

MS HARVEY: On page 30 - and remember that we are in this section that is general, not just accommodation - I will say - sorry, I will wait for you to catch up:

*There are safe working practices in both clients and staff.*

I have talked about safety and the prevention of accidents. I would just say before I go into this that when I say we are not just talking about group homes in support of employment, there are also - these standards are all supposed to be upheld and we are in some instances in a manufacturing environment with dangerous equipment - - -

DEPUTY PRESIDENT ROBINSON: Some of which will be covered by discrete legislation like Safety Health Welfare Act, or Machinery Act if there is still one.



MS HARVEY: There is a lot of work being done by the Federal Government in relation to trying to look at occ health and safety for clients, but it does put an onus on our members who are working in this environment where there is, you know, dangerous manufacturing equipment and where they have duty of care, that it obviously puts an added responsibility. So if I could just run down the side there on some of those points, that there are safe working practices including storing and administration of medication. Again, this includes non-accommodation services, so independent living services and supporting employment may also have this requirement:

*Storing and preparing foods; storing and using noxious substances; using and maintaining equipment . . . . . HIV infections.*

And then it goes on down here to list some of infection control, that there are minimum infection control standards, occ health and safety issues. And it lists that there is constant reinforcement at the bottom there, of the training. Again, I would argue that they are fairly onerous responsibilities. Over the next page, on page 31, emergencies.

DEPUTY PRESIDENT ROBINSON: Yes?

MS HARVEY: Fourth dot point down there.

DEPUTY PRESIDENT ROBINSON: Which one?

MS HARVEY: The fourth dot point down.

DEPUTY PRESIDENT ROBINSON: Fourth.

MS HARVEY:

*Staff/clients know where the closest casualty or emergency medical service is.*

And, after all, that is included because it is a common - it is, you know, something that happens with some regularity. That:

*Staff have had first aid training and know what procedures to follow in the case of an emergency.*

Skipping a dot point that:

*Where staff are working with clients with epilepsy or other medical conditions, they are trained in specific emergency procedures.*

And the final dot point that:

*Staff are aware of missing persons procedures.*

Again, this is an indication of the sort of problems that you are likely to encounter in these services. I want to take you to page 35, which is the final page of this standard.

DEPUTY PRESIDENT ROBINSON: Yes, I have it.

MS HARVEY:

*There are procedures within the service to orientate clients.*

The dot points down the side that:

*Service staff receive relevant information on clients before they start the program . . . . . initial transition stages.*

So, Mr Deputy President, the reason for going through this fairly long list is that I think that it is very important in these proceedings, as I said before I started discussing the standards, that there is a general understanding of the sort of - our standards are required and the sort of skills that are required. Now I am not suggesting for a minute that every single staff member who works in this industry has to have skills in every single thing I read out to you, but rather that when designing a skill based career structure that we have to be able to cover all those different skill levels and requirements in terms of putting together the classification standard. And we are confident that when we come to our application and go through it that we will be able to justify what is contained in it on the basis of some of the skill requirements are really implied in these standards.

DEPUTY PRESIDENT ROBINSON: Fine.

MS HARVEY: Now, if I can now turn to the Commonwealth Government - actually, Mr Deputy President, I realise I have just - I have made a mistake in my submissions which I should bring to your attention straight away though - - -

DEPUTY PRESIDENT ROBINSON: Do you want to amend your claim?

MS HARVEY: No. I just - I realise that I said to you that those last standards I was going through, the general ones, covered support of employment; they do not. I am sorry, it is just an error on my behalf because they are covered by the Commonwealth department standards. So the general standards I went through actually cover independent living

services as well as accommodation services. So in tab 7 it is just straight accommodation. Tab 8 is independent living services and other services other than accommodation, but not supportive employment. I would hate to be accused of misleading the commission.

DEPUTY PRESIDENT ROBINSON: Commissioners sometimes get a bit tetchy about those things.

MS HARVEY: I do not blame you.

DEPUTY PRESIDENT ROBINSON: Some of them more than others.

MS HARVEY: If I can now turn to the Commonwealth government and the relevant agencies: the Department of Health, Housing, Local Government and Community Services. So at the beginning of this industry outline, the state administers accommodation and independent living services and the Commonwealth administers supported employment. Now, in terms of the Commonwealth government the budget for the Commonwealth funded and administered supported employment services in 93/94, so they tell me, is approximately \$2 million and this includes costs for salary, expenditure: for example, capital on lease and the department's rough estimate is that they fund approximately 50 to 55 per cent of wages costs.

The other part of that wages costs are in fact borne by the service, keeping in mind that supported employment usually produce products that are sold so that there is some capacity to raise revenue. So no doubt the employers will be putting submissions to you in relation to this particular issue. It is one that the union has not been happy with, the department's failure to fund all the wages costs because it does put a very big burden on employers that they have moved away from just funding wages. They used to actually fund wages completely and over time they have moved away from it.

Now, in tab 9 of HSUA2 there is actually a list of the supported employment services in this state. It is not a very extensive list. These are the supported employment services that are covered by the Welfare and Voluntary Agency Award and they do produce different sorts of things. For example, Tastex produces knitwear and jumpers. Summit Industry produces carpenter - goods that are - I am trying - you know, building, sort of cabinet-making type products, timber products. Tadpac is involved in printing. There is a whole - Tahune Fields is involved in the agricultural industry.

So there is a whole lot of different sort of manufacture that is carried on by these services but the thing that groups them together is that their

overall objective is to provide a supported employment service to give clients vocational skills to assist them in this broader goal of integration into the community. Now, the department has not been able to tell me how many non-clients are employed in supported employment. It is not possible to estimate the number of staff as the department cannot tell me the wages cost. So, unfortunately, I cannot actually give you figures on that.

Perhaps it is something that the employers may be able to assist with. Again, staffing profiles are extremely different because there is huge variety in supported employment, much more so than in the other two types of service and we understand from employers the major cost of restructuring of the award as it has been discussed over the last few years is likely to be in accommodation and in independent living services rather than in this supported employment area, and that may well be as a result of the fact that the current award actually has a trade rate classification, so it has always provided a bench that has been able to move along with the rest of awards.

I do not know whether that is the reason but certainly our estimation, and that of the employers, is that most of the cost is not in fact in this area, it is in the accommodation and independent living skills. The legislative framework for supported employment services that are funded by the department is provided by the Disability Services Act 1986 and in the exhibit in tab 10 you have an extract of that. On page 2 there is a list of the objects and I do not intend to go through that because they are essentially the same objects as under the state legislation which I have already read into transcript and, indeed, my understanding is when the Commonwealth/State Disability Agreement was negotiated it was one of the conditions that there be in effect mirror legislation in the state jurisdiction. Now, on the same page in section 5 of the act, the principles, objectives and guidelines, it says there, and I quote that:

*The minister may formulate principles and objectives to be furthered and . . . . . of this act.*

End of quote. Now, to that end - and then, sorry, on the next page, on page 3, it sets out the capacity, if you like, for the minister to make grants to services under section 10. Now, section 10(3) says that:

*The minister shall not approve the making of a grant under subsection (1) . . . . . subsection (1) of this section.*

End of quote. Very confusing but the long and short of it is that this sets out the legislative framework of which conditions can be applied on grantees in terms of the sort of service they have to provide and, indeed,

the next tab sets out those standards, the disability services standards. So that is tab 11. These - I cannot inform the commission when these standards were recently re-written. I am just anticipating the question you asked me about the other standards. However, I have been advised by the department that these are the current standards that apply. So if I could just refer you to (3) eligibility standards. It says:

*The eligibility standards to be observed in the provision of an  
..... supporting standards.*

At this stage I do not intend to take the commission to every single point: rather, I will do what I did when discussing the state standards of just directing the commission's attention to the ones that I consider to be most critical as they affect staff. I think it is fair to say that these standards are not quite as extensive as the state standards but they still are useful in that they give an indication of the type of skills that are required in the industry.

So, if I can just run you through - on page 6, and this comes back to a common principle under both the state and federal legislation that deals with individual need and this concept of having individual plans. So, under standard 2 it says, individual needs:

*Each person with a disability receives a service which is designed to meet in the least restrictive way his or her individual needs and personal goals.*

And then under minimum supporting standards:

*2.1(a) the agency has developed written policies and procedures  
..... and approaches for meeting those needs.*

And 2.4:

*The agreed approach for meeting each consumer's individual ongoing and changing needs ..... within an agreed framework.*

Now, this is a fairly onerous standard and I think it is actually quite important because there is often a lot of mis-information about supported employment describing it as sweat shops and that sort of thing and I think these sort of standards make it very clear that the aim, the primary function of these services is to ensure that there is a properly structured learning experience, if you like, that is designed to meet the individual need of clients.

If I could refer you to page 10, the participation and integration standard that each person with a disability is supported and encouraged to participate and be involved in the life of the community, and then they have got listed down there some eligibility supporting standards, halfway down the page. This is similar to the state standards in that they are providing guidelines of what is a sort of example that could be used. 5.2:

*That services are provided in a way that facilitates the integration  
..... similar to other members of the community.*

And 5.4:

*That the agency provides each person with a disability  
..... and involvement in the community.*

So, again we have got this idea of networking and with other services and the service having some role in ensuring that the individual, the client is part of a broader community. Valued status on page 11:

*Each person with a disability has the opportunity to develop and  
maintain ..... to achieve valued roles in the community.*

Again, going to this issue of individual skills requirements being addressed and under the eligibility supporting standards, 6.3:

*Each person with a disability has the opportunity to develop and  
maintain skills, capacity and life styles that are valued in the  
community.*

Now skipping a few pages to page 15, the standard there is that:

*The employment prospects of each person with a disability  
..... long term employment for each person with a  
disability.*

Now that is obviously not in the supported employment context. The idea is that people would be given the skills and be able to develop the skills to be able to enter into the broader community and this is interesting in the context of the recently reported ACTU ACI award variations in the federal jurisdiction where they have actually negotiated a framework for productivity based wages which should see a greater opportunity for people with disabilities to get employment in the mainstream workforce.

DEPUTY PRESIDENT ROBINSON: We have had licensing of employees who cannot earn full award rates of pay otherwise in the state for the last 40 years I think.

MS HARVEY: That is correct, that is true. It is not used very regularly, as I understand it.

DEPUTY PRESIDENT ROBINSON: Very rarely; it used to be, it used to be but I have not seen examples of it for some time.

MS HARVEY: Yes, I am not sure of the reasons for that. Certainly supported employment services in terms of the clients are exempt from award coverage.

DEPUTY PRESIDENT ROBINSON: Yes. The act has got some special mention, has it not?

MS HARVEY: Yes, it does, it explicitly excludes, I think it explicitly excludes unless there can be some demonstration of unfair competition or unfair advantage.

DEPUTY PRESIDENT ROBINSON: Well, it actually allows employment of a proportion of people with disabilities; I am talking about not a - - -

MS HARVEY: Oh, mainstream employment.

DEPUTY PRESIDENT ROBINSON: - - - not a sheltered workshop type arrangement.

MS HARVEY: Yes.

DEPUTY PRESIDENT ROBINSON: I am talking about in an ordinary industrial setting, so, maybe I am getting off the track a bit.

MS HARVEY: I probably started it by talking about the ACTU agreement.

DEPUTY PRESIDENT ROBINSON: Yes, well, you did.

MS HARVEY: On page 16, supporting standards is, again I wanted to reinforce this thing about individual plans, 10.2:

*The support activities of the agency are directed towards assisting . . . . . to meet the agreed ongoing and changing needs of each person with a disability.*

If I can just refer you to page 17, employment skills development.

DEPUTY PRESIDENT ROBINSON: At some stage we need to take a brief break for the purpose of in actual fact arranging an appropriate room with access to a witness that somebody wants to bring.

MS HARVEY: Yes, I need wheelchair access.

DEPUTY PRESIDENT ROBINSON: Yes, well, we need to attend to that.

MS HARVEY: I have only got two pages to go; perhaps that would make an appropriate break?

DEPUTY PRESIDENT ROBINSON: Yes. Well, I will just say at an appropriate time.

MS HARVEY: Yes. Employment skill development:

*The employment prospects of each person with a disability are maximised by effective and relevant training -*

this is on page 17 -

*and this comes with a training requirement in supported employment.*

In point 11.3:

*The agency provides a range of training and work experiences that is employment focused and directed towards developing and maintaining skills -*

of the clients, that is -

*which are relevant to the current and future labour market needs.*

11.6:

*That the agency in consultation with each person with a disability identifies and documents . . . . . to meeting those needs.*

Over the page, and I am nearly there, 11.7:

*That the agency ensures that the agreed approach to meeting the training . . . . . National Framework for the Recognition of Training (NFROT).*



Mr Deputy President, if I could summarise, I suppose, this section in relation to the standards. I emphasis again that we do not expect everyone to have the skills but that we are looking at what really the industry requires in terms of a broad range of skills to design a classification structure. If I can just wind up section 2 before the break. What I have sought to do is to give the commission an outline of the industry, the type of services, and we have outlined the three main types of services being; accommodation, independent living skills, and supported employment.

I have outlined the funding arrangements, the legislative and legal requirements on service providers, and I have gone through the standards for both the Commonwealth and the state administered services which indicate the sort of standards that services should be meeting. I trust that - unless there are any questions from the commission on this section I intend to now close it before I move to section 3.

DEPUTY PRESIDENT ROBINSON: I have been asking questions on the way through, thanks, Ms Harvey.

MS HARVEY: I am quite happy to take a break; in fact it would be very nice.

DEPUTY PRESIDENT ROBINSON: Well, thank you, we will then, just five minutes.

#### SHORT ADJOURNMENT

MS HARVEY: Can I just ask what time we are intending to sit through till?

DEPUTY PRESIDENT ROBINSON: Pardon?

MS HARVEY: I was just wondering what time we are intending to go through to today?

DEPUTY PRESIDENT ROBINSON: Well, it was not really so much up to me, I thought.

MS HARVEY: Well, we will just see how we go. I will see what we are up to when I finish this section. I was just wondering in terms of starting the next, but we will see.

DEPUTY PRESIDENT ROBINSON: I do not mind going all night, but of course I have got to think of other staff, you see.

MR FITZGERALD: It is Friday.

DEPUTY PRESIDENT ROBINSON: You see.

MS HARVEY: If I could now address section 3 of our submissions that deals with the process to date and the history to date of the award restructuring negotiations. I would like to preface my comments in relation to this with the view that I want the commission to be clear that there have been many years of work on this Welfare and Voluntary Agency Award and many years of negotiations and co-operation between both the employers and the union, and certainly I think to a certain extent it was pretty inevitable that this was going to come to arbitration.

I mean, we just see that as another step in the course and that there is a lot more work to go, and that once we get this hurdle out of the way that I am quite confident the parties will again be back on track to address the more longer-term issues such as training which obviously we are going to need to resolve. We have worked hard over the last four years to achieve the best possible outcomes for the industry in award restructuring both for employers, for our members, and also for clients, and the issue of clients has been, I believe, in the minds of both the employers and the union in all these discussions.

I think the history of the negotiations is very critical to where we are up to today because there has, as I say, been four years of negotiations and there has been an agreed agenda and framework through which we have been progressing which I believe gives some weight, should be given some weight in terms of the decisions that were made along the way. In that sense we are not starting from scratch; there is a framework, there are agreements that have been reached that form the basis and the framework for the hearing that we are now participating in. So if I could hand up the exhibit dealing with section 4 - sorry - with section 3. This exhibit - - -

DEPUTY PRESIDENT ROBINSON: Is this the red covered one?

MS HARVEY: This is the red covered one.

DEPUTY PRESIDENT ROBINSON: Which we have not marked, have we?

MS HARVEY: Apologise; HSUA3.

DEPUTY PRESIDENT ROBINSON: HSUA3 it shall be then.

MS HARVEY: Thank you. This exhibit contains on the first page, if you look at the index, an outline or a sequence of events, if you like, of the way the negotiations on the structural efficiency principle, there is some transcript from T2706, a decision from T2706, and a state negotiating committee process and terms of reference. The exhibit provides an outline of the process to date, and I emphasise that it is an outline.

There have been many more meetings and faxings to and fro between the parties, subcommittee meetings, but these dates that are listed in an outline of WAVA negotiations are ones for which minutes have been taken and have been documented. I have a full compilation of the minutes from the state negotiating committee but I have not reproduced it because I really do not think it is necessary unless any of the parties actually require it in terms of what I put today, if any of it is contested.

So in terms of the actual process if I just go through some of these critical dates that are on page 1. On 14 May we had the first proposal on the classification structure put to the employers by the then HEF, which was the name of our organisation prior to amalgamation and on 20 September, which is a fairly critical date, the State Negotiating Committee set out a process for restructuring the classification structure in WAVA including a skills analysis.

The State Negotiating Committee was set up as part of the process and consists of three HSUA representatives and three employer representatives, although I must add that the employers had a tendency to send more than three but we never objected. In terms of the HSUA representatives it was myself, our industry training officer and a shop steward representative who was elected from the statewide shop stewards to represent them at the negotiations. If I could refer you to page 10 of HSUA3.

MR FITZGERALD: Well, at that point, Mr Deputy President, I think I would have to raise an objection. I, personally, was not involved in the State Negotiating Committee but my former colleague, Mr Sertori, was and my understanding is that - and I have noticed also that there is at page 15 minutes of meetings which occurred on that particular date back in September 1991. My instructions are that the State Negotiating Committee was set up as the facilitative group between employees and employers or the union and employers; that any discussions which took place in that forum were on a without prejudice basis; that minutes were in fact confined to those people who were representatives - the nominated representative on the State Negotiating Committee and it was not intended that those minutes be distributed further afield than the State Negotiating Committee.

Now, for those reasons, Mr Deputy President, we would see that clearly any indication of agreements or otherwise which have been reached prior to this hearing and I think Ms Harvey has basically set the ground rules for this hearing. Anything prior to it really - all bets are off and we are into a fully arbitrated situation. Any indication or otherwise of agreement prior to that which occurred as a result of a without prejudice discussion in my view is inadmissible. The normal processes of industrial relations are that you should be permitted to discuss proposals on a without prejudice basis.

If it does break down then we are into a situation where an arbitration takes over and all bets and all other agreements, if they have been reached, are off. Now, we put this submission at this point of time not only in respect to these current proceedings but future negotiations with this union and any other union and that we should be able to rely quite strongly on the notion of without prejudice and we believe that if the commission accepts further submissions and, indeed, accepts this as an exhibit, a valid exhibit, it puts the whole issue of discussions - and I understand there are future discussions to occur in respect to award conditions for disabled people - it puts those discussions and any future discussions with this union and any other union at risk. So for those reasons we would submit that this exhibit and any further submissions Ms Harvey wants to make in respect to past discussions involving the State Negotiating Committee are in fact inadmissible.

DEPUTY PRESIDENT ROBINSON: Well, the commission obviously understands the admissibility or otherwise of matters which are clearly understood to be without prejudice. I mean, I am here to be advised as to  
- - -

MS HARVEY: Mr Deputy President?

DEPUTY PRESIDENT ROBINSON: - - - things which are admissible and the purpose of the negotiations or the discussions which commenced three years ago, 14 May 1991.

MS HARVEY: Mr Deputy President, I contest the view put forward by Mr FitzGerald extremely strongly. If I am allowed to continue perhaps with outlining the agreed process from the beginning it will be clear that there was at no stage any agreement that the State Negotiating Committee was an internal document that we could never provide access to any other body. It was never suggested that it was only without prejudice where negotiations have occurred. Where negotiations have occurred over particular award clauses, of course we treat those as without prejudice but in terms of a process I think it is extremely important for the commission to understand the process that is gone through over a three-year period and

I will rely not only on the State Negotiating Committee minutes - and the only minutes that I have reproduced are the first.

I have not reproduced any other minutes and, in fact, I can rely on documentation which is contained in this exhibit which was used as an information bulletin to our members about the agreed process. Now, I think it is important because negotiations have occurred. There has been a process which includes a skills analysis which was jointly undertaken by the parties which certainly we would seek to use in these proceedings because it is relevant.

DEPUTY PRESIDENT ROBINSON: Well, as I understand it there was an agreement stated on the record today that employers would have the opportunity to submit a document showing - outlining those things which would be accepted, those things which would not and those things, therefore, which would be opposed and the difference between the claim and the employers response.

MR FITZGERALD: Mm.

MS HARVEY: That is correct.

DEPUTY PRESIDENT ROBINSON: Right. And in that context I wonder whether or not the use of minutes and whatever else is contained in the exhibit before me, whether or not it is premature until you get that official response? I do not know.

MS HARVEY: I do not believe it is premature. All I am seeking to establish is the process of negotiations that have occurred to date. I think it would be extremely unusual if an advocate was not able to inform the commission of the sequence of events that led up to a decision on arbitration being made. There is nothing in the exhibit before you that has at any stage been marked without prejudice.

And certainly my organisation has always respected the requirements of without prejudice negotiations and we have not reproduced any such documents. Now, I think if the advocate is implying that something in here is without prejudice, the onus is on him to prove that it is, and certainly I do not think it is possible to do, and I seek the right to continue my submissions as I see fit.

DEPUTY PRESIDENT ROBINSON: Yes, well I guess a lot depends on what weight, if any, is to be put upon the history discussions and negotiations and whatever committees were formed. If I was to admit and put and accept as part of persuasive material stuff which is going to be contested as to whether or not it is available, and whether or not it has got persuasive weight in determining the outcome of the claims, then I suggest Ms Harvey, as applicant, you might be running the risk of allowing

something in which would do more harm than benefit to your overall case. So, I mean, that is without pre-judging it, without pre-judging it.

MS HARVEY: Well, I fail to see how a document can be considered without prejudice when it sets out, it sets out a procedure that was distributed widely in the field to the extent that the very first step of the agreed process was that we would hold two hour briefings on every site and contact every employer in the industry to inform them of the process. Now, that is hardly a without prejudice document internal to the state negotiating committee. Now, if Mr Fitzgerald has a problem with me using minutes, then I am happy to delete from the exhibit the last two pages, which sets out the agreed procedure, but I certainly am not happy - sorry, sets out the minutes of the first meeting. I am certainly not happy to withdraw any other aspect of my exhibit because it is, none of it is without prejudice. And I do not concede that this is without prejudice, either - - -

DEPUTY PRESIDENT ROBINSON: Well, look given - - -

MS HARVEY: - - - but if it facilitates the hearing I will remove the first, the minutes of the first meeting.

DEPUTY PRESIDENT ROBINSON: Given the time of day and the amount of material which has been put forward on the tape, it might not be a bad idea, I suggest, if we adjourn at this time rather than go for another half hour or so and that during that time perhaps Mr Fitzgerald might have the opportunity of conferring with those who instruction him on this very point, and it be made the subject of further submission on the next day of hearing, on the admissibility or otherwise, and the usefulness of what you propose in that exhibit.

MS HARVEY: Mr Deputy President, I am in a position to proceed. Perhaps if we could just go off the record for five minutes just to talk about this in terms of what we do. I am reluctant to - I mean, I could probably conclude the major part of my submissions on the outline and process within half an hour. I must admit I think it extremely unusual that an advocate is seeking to stop me from presenting the case that I see fit to present - - -

MR FITZGERALD: I object.

MS HARVEY: - - - when he has every right of reply to what I put.

MR FITZGERALD: Oh, look, it is just not the way it works, Mr Deputy President. So that means that an advocate from the other side can present any material whether it is admissible or otherwise. That is just absurd.

MS HARVEY: Well, the onus is on the - the onus, Mr Deputy President is on - if someone is seeking to claim that the evidence that I have presented is inadmissible, they have to prove that it was on a without prejudice basis. If I am allowed to continue my submissions in relation to this, I can, in fact, prove the opposite.

DEPUTY PRESIDENT ROBINSON: Well, you may well be able to but both of you have got greater - some advantage over me because I have not been involved in this award for a number of years. You have obviously been involved in a lot of work, Ms Harvey and Mr Fitzgerald's predecessor has been involved in the same sort of exercises and to that extent I am just suggesting that perhaps it might, given that we have not got much longer to go, wise to - for people just to check out what other people believe is the status of stuff which is contained in exhibit HSUA3.

MS HARVEY: Well, perhaps it would be useful if before we adjourn, Mr Deputy President, if Mr Fitzgerald could perhaps go through and indicate which sections exactly of exhibit 3 he has - HSUA3 - he has problems with. I mean, I assume he does not, looking at the index, have a problem with 2 or 3, which are - - -

MR FITZGERALD: I wonder whether I could speak to that rather than Ms Harvey assuming what I am going to say? It might be better if or more useful to the commission if I do make some comment on the document rather than Ms Harvey making the comments for me.

DEPUTY PRESIDENT ROBINSON: Yes, yes, Mr Fitzgerald. Yes.

MR FITZGERALD: We did - in terms of HSUA1, which is the outline of Ms Harvey's submission, we certainly notice with some concern about the history of the state negotiating committee, and it is difficult with a very brief time to be able to analyse what is acceptable and what is not. Now, there are references there to, in the chronological summary, of the parties accepting Metals Industry Award relativities. Now, that in my view is one example of those discussions which clearly are on a without prejudice basis. Now, I need to get some instructions from my members in that regard, but it would be my submission, Mr Deputy President, that any discussions prior to arbitration in an industrial sense are on a without prejudice basis.

DEPUTY PRESIDENT ROBINSON: Any discussions and anything that happens at all.

MR FITZGERALD: That is right, and so for me to be able to prove that they were specifically and expressly and explicitly on a without prejudice base, it may be difficult, but there is an understanding between employers and unions that those discussions, anything which is put, any offers which are put or agreements which are made, are clearly on a without prejudice

basis, clearly - particularly when it does proceed to arbitration. So, anything prior to arbitration must be considered on a without prejudice basis. And that is to maintain the integrity of the processes otherwise parties will not negotiate at all.

And, you know, for us to come forward and present a position which indicates agreement by the union, when we have actually proceeded to arbitration, would in our submission be wrong. So, I think your suggestion of at this time of the day to adjourn and even though the adjournment is somewhat briefer than I expected, it does appear to have some matters which unfortunately were outside my knowledge, because I was not involved in the State Negotiating Committee, and I think it would be appropriate that prior to the next hearing I be able to get some instructions in respect to the document.

In the interim I would seek that the document not be formally accepted by the commission until such time as I am able to put formal submissions in respect to it. We would be concerned if the commission did, even though it has been marked as an exhibit, we would ask that the commission not proceed to hear argument or submissions by Ms Harvey in respect to it prior to our response, nor indeed consider it prior to our response. So that would be our submission on the point, Mr Deputy President.

MS HARVEY: Mr Deputy President, I am prepared to accept that this matter be considered on the next day of hearing. I think that Mr FitzGerald has touched upon the issue that is precisely the issue which probably raises concern for him of why this is tabled, and that goes to the agreement, or otherwise - - -

MR FITZGERALD: Well, I object. If there is some reinforcement of some previous agreement, that is what Ms Harvey is going to say.

MS HARVEY: No, I am, if you would let me finish, if I were able to finish.

MR FITZGERALD: It seems that she is and I think at this point it would be best, with due respect to the commission, that the matter be adjourned to allow us to take that opportunity, as I indicated before.

DEPUTY PRESIDENT ROBINSON: Well, we are still just discussing the broad question. I am - - -

MS HARVEY: If I am able to proceed.

DEPUTY PRESIDENT ROBINSON: - - - not going to make a ruling until I have heard everybody.



MS HARVEY: If I may proceed on this matter. I said in my submission that I was happy to allow the matter to be considered when we reconsider, when Mr FitzGerald has had time to seek instructions.

DEPUTY PRESIDENT ROBINSON: Right.

MS HARVEY: Because he may well find the issue that is of contention is one that is contained not in without prejudice discussions but in fact in transcript, which was confirmed on transcript by the advocate at the time and recorded in the decision. Now, if that is the offending article the rest of the document in relation to one only deals with just dates of meetings and that is all. Now, I am happy to deal with the matter at the next hearing because once I have the employer's position I am assuming that they will be able to indicate whether they accept what their position actually is in relation to the appropriate relativities. But I certainly reserve my right to put argument on that day because I do not accept anything that Mr FitzGerald has said in relation to the inadmissibility of the exhibit that I have placed before you, and I reserve my right to put argument in that respect.

DEPUTY PRESIDENT ROBINSON: All right. Well, I will simply adjourn at this time until the next day of hearing, and that will be the first agenda item when we come back as to whether or not we continue wholly or in part with HSUA3 and in the meantime I repeat what I have just suggested, where necessary people clarify their instructions and talk to those who have had involvement in the developments prior to the making of formal application.

MS HARVEY: Could I also just request, Mr Deputy President, through you that I also be informed at the earliest opportunity as to whether the employers consider the skills analysis undertaken by the State Negotiating Committee to be inadmissible or otherwise?

DEPUTY PRESIDENT ROBINSON: Yes, would you check that out, the whole thing out, Mr FitzGerald?

MR FITZGERALD: I would be happy to do that.

DEPUTY PRESIDENT ROBINSON: Yes, all right. Okay, well, thank you, we will adjourn for today.

THE MATTER WAS ADJOURNED  
UNTIL WEDNESDAY, 22 JUNE 1994