

TRANSCRIPT OF PROCEEDINGS

O/N 71095

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 13022 of 2007

**TASMANIAN FIRE FIGHTING INDUSTRY
EMPLOYEES AWARD**

**Application pursuant to the provisions of section 23(2)(b) of the
Industrial Relations Act 1984 lodged by the United Firefighters
Union of Tasmania to vary the above award re work value review
in accordance with Principle 9 of the Wage Fixing Principles**

HOBART

9.40 AM, WEDNESDAY, 18 DECEMBER 2007

Continued from 22.11.07

DAY EIGHT

**MR R. WARWICK appears for the United Firefighters
Union of Tasmania and the United Firefighters Union
of Australia (Tasmanian Branch)**

**MR P. BAKER appears with MS J. FITTON and
MR D. KILLALEA for the Minister administering
the State Service Act**

MS R. PEARCE appears for the Tasmania Fire Service

**This transcript was produced from tapes
recorded by the Tasmanian Industrial Commission**

THE COMMISSIONER: Mr Warwick?

MR WARWICK: Thank you, Mr Commissioner. I would just like to begin the day by
correcting a matter that arises from my undertaking to give written submission to the
5 parties in respect to the Fire Safety auditor, which I did by way of facsimile letter -
facsimile correspondence on 30 November, and there is a part of that correspondence
that I would seek to withdraw.

10 THE COMMISSIONER: Have we got that?

MR WARWICK: We did send it.

THE COMMISSIONER: Yes.

15 ASSOCIATE: What was the date?

MR WARWICK: 30 November.

20 THE COMMISSIONER: Yes. Yes, we do have it.

MR WARWICK: If I could turn to page 2, commissioner - - -

THE COMMISSIONER: Yes?

25 MR WARWICK: - - - and you see halfway down the page there's a paragraph that
begins:

We ask the commission to note that the Tasmanian Fire Service -

30 I seek to withdraw everything on that page.

THE COMMISSIONER: All right. Everything following those - - -

35 MR WARWICK: Everything following those words, and also going over to page 3 the
three paragraphs, first three paragraphs on page 3 and the last of those is:

Our further view is that this will create yet another inequity in the system.

40 Seek to withdraw all of that.

THE COMMISSIONER: Right.

45 MR WARWICK: And this simply comes about as a consequence of a discussion that I
had with Ms Pearce about how the job that's proposed in that section has been deleted
might be advertised and I simply forgot that we had that discussion - - -

THE COMMISSIONER: Yes.

MR WARWICK: - - - and we hadn't reached a degree of agreement about it - - -

THE COMMISSIONER: Yes.

5 MR WARWICK: We would ask the commission to not have that section influence your views on the matter.

THE COMMISSIONER: No. No, it's been excised. It would be, I think, appropriate to mark that document. It hasn't been tendered as an exhibit at this stage.

10

MR WARWICK: Yes.

THE COMMISSIONER: And I think it should be A42, correspondence from the UFU re Community Fire Safety Officers.

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EXHIBIT #A42 CORRESPONDENCE FROM UFU RE COMMUNITY FIRE SAFETY OFFICERS

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THE COMMISSIONER: Yes, thank you. Does that conclude? Mr Baker?

MR BAKER: Thank you, sir. I thought I would start my submissions this morning, sir, by just saying what this case is not about. It's not about career firefighters and although there has been a great deal of evidence given in relation to career firefighters, that is not what this case is about in its generality. What this case has become is an argument about career firefighters and employees who, as a hobby, volunteer their services at weekends.

25

30 Now, I pose the question to the commission that, in my view, that is no different from those persons in the community who volunteer their services as army reservists as opposed to those in - those persons in the community who undertake the army as a career. We would not suggest that the level of training and skills that a weekend reservist achieves is equal to or, in fact, exceeds that of a career army employee, or an officer. Likewise, we believe that that is the case with a volunteer firefighters; a person who volunteers their time to assist the community generally.

35

Likewise, we would not - we would also suggest that the person who runs the hobby farm, that is, works 9 to 5 Monday to Friday in down-town Hobart and of a weekend returns to the 10 acres at Acton and runs a few head of cattle, or sheep, or whatever, we find that, perhaps, there are some principles that are the same, but you could hardly compare it to a Midlands farmer who runs several thousand head of cattle, or sheep. Likewise, with the volunteer firefighter we say that any comparison - any comparison with that of a career firefighter is inappropriate in all the circumstances.

40

45

This is not about - we say that this application cannot be about the skill - cannot be about career versus hobby. It's about the skills that an employee is required by the employer to exercise in the job. And we say that the employer in this case has set as a

benchmark, and certainly in conjunction with the union and also through decisions of this commission, have established that there are a range of skills, competencies and training that is required by the employee of the agency, in this case the Tasmanian Fire Service, as to their ability to undertake the duties of a station officer, or a senior station officer, and those skills, competencies and training were outlined in exhibit R16, which I shall return to at a later stage.

Those skills are to be exercised whether that employee is engaged as a career firefighter exercising those duties in a fire station, or alternatively, exercising those duties in the capacity of the Tasmanian Fire Community Safety organisation. It's irrespective because that's how the combination of skills and competencies are loaded together. That needs to be compared, and compared very strongly with what the employer expects of an employee engaged in community fire safety who does not have a career fire safety background, so, a career firefighting background.

The employer again sets the benchmark, again in conjunction with the UFU as the union, and now with the commission, we are looking at what is required for an employee to undertake that work. And the employer - the employer, says to an employee from a non-firefighting background, "We do not require firefighting skills. We do not require firefighting skills."

So I make the point, it's not up to the union, nor is up, in my submission, not up to the commission to determine what the employees should have as a pre-requisite for entry into a career within the State Fire Service. That is a matter for the employee to determine. I do draw the point, sir, that the commission does have a role where it can be demonstrated that the employer has acted capriciously, or unreasonably in the circumstances, and I would tender an exhibit to that end.

THE COMMISSIONER: This will be R19.

EXHIBIT #R19 DOCUMENT TO DEMONSTRATE THAT THE EMPLOYER HAS ACTED CAPRICIOUSLY OR UNREASONABLY IN THE CIRCUMSTANCES

MR WARWICK: And for the purposes of the record I will identify that. This is a matter T12922 of '07. It was an application by the Minister administering the State Service Act 2000 and the CPSU and the LHMU in a dispute. It was a decision by Deputy President Shelley, industrial dispute changes to rosters. And I would take your attention, sir, to paragraph 63 of the decision on page 14, and I quote:

I have taken account of the arguments advanced by Mr Baker in relation to manager prerogative ... (reads)... the health and safety of the employees.

And I pause there. Now, the issue, as I made reference to, commissioner, is that in all the circumstances the commission will need to consider whether, or not it is appropriate in all the circumstances at the end of the day, to interfere in the managements - in the

management of the Fire Service to the degree that it determines what it requires as minimum requirements for a position within its employment structures. And I shall return to that argument later.

5 Commissioner, this application deals with a comprehensive assessment based on principle 9 of the wage-fixing principles. The application deals with, as it currently stands, two employees engaged in the building safety unit and three employees engaged in the training unit. And we heard the evidence from those five employees, Mr Francombe, Mr Webster, who are engaged as instructors; Mr Mackrill, who is engaged as their senior consultant - I'm sorry, as a senior consultant; Mr Daniel Grey - Craig, who is a consultant in building safety; and Mr Manten, who we have spoken about this morning, who was engaged - who is engaged as the fire safety auditor.

15 On pages 4 and 5 of the original claim document, which is part of the application, Mr Warwick goes to some trouble to outline the dispute and he indicates there that the nature of the dispute, on page 4 of that:

20 *The Tas branch of the UFU declared the initiation of a bargaining period ... (reads)... claim related directly to the five UFU members listed above -*

and that was the five that I've just spoken about:

25 *This claim was unfortunately not resolved by the making of the current Federal Firefighters' agreement ... (reads)... whole period since the two agreements were made.*

And then it goes on to say that:

30 *This must mean the TFS does not contest the right of the UFU to pursue the claim for these members notwithstanding the currency of the previously mentioned agreements.*

We discussed that previously between Mr Warwick and myself, and before this commission:

35 *Documentary evidence will show that the UFU pursued discussions on this matter ... (reads)... after the Federal Firefighters' agreement was made.*

40 Our principle claim is that members listed perform the same work at the same level as other employees who share job titles but who come from a career firefighting background. They were, however, paid considerably less for the same work at the first point of their employment and the relative differences in wages is escalating rapidly because of differential with bargaining outcomes as outlined above.

45 And I just go back to the top of page 4 at that point and you'll see that, sir, that the current Tasmanian Fire Service Employees' Enterprise Bargaining Agreement 2004 has been in operation since 2004 and will cease on 30 June 2007. That clause, of course,

sir, has been overtaken by the fact that that agreement is now an agreement with the Tasmanian Industrial Commission and the federal agreement was rescinded.

5 Over this period career firefighting employees have received, or will receive a cumulative effect increase of 20.4 - 24.9 per cent. These increases are applied to members who work in community fire safety who have come from a career firefighting background and who are employed under the Federal Firefighters' Award. Therefore, the difference between the state and federal agreements over roughly the same period appears to be 10.9 per cent and, therefore, I return to page 5 and under Remedies
10 Sought.

The applicant seeks a finding from the commission that the employees to whom this application relates are wrongly classified. The applicant seeks the setting of classifications and rates that are more in keeping with the employment within the
15 Tasmanian Government sector generally. And then Mr Warwick then discusses the issue about employees from Tas Fire Service returning to work and he goes on to say:

The UFU does not necessarily disagree with the position advanced by the employer. However ...(reads)... should be clearly identified.

20

And then he concludes by saying:

The UFU seeks conciliation and arbitration of the commission on the issue ...(reads)... two groups of employees is properly set and maintained.

25

Commissioner, I make the point at this stage and I shall return to it at a later stage, that what then occurred was, of course, Mr Warwick changed the basis of the application before the commission. And he then says to the commission, you forget the last paragraph that talks about setting relativities and you replace that with the following:

30

The UFU seeks the same remuneration for the four employees subject to this application who do the same work as the employees who come from a career firefighting background.

35 And he goes on to say:

In respect of the fire safety auditor subject to this application the UFU seeks the setting of a wage rate with similar positions in the Tasmanian Government sector.

40

And Mr Warwick addressed that last point this morning. In relation to the first point though, and I pose this as a question to the commission: the differential between the two groups of employees is the 10.9 per cent. He makes reference to it in the application. There is a difference in salary and the difference in salary is accentuated by
45 the fact that the bargaining outcomes for the two groups of employees are different.

Commissioner, I would submit that it is not the role of this commission to award pay increases that were not achieved through a bargaining outcome. In my view that would,

in turn, make a mockery of the wage-fixing principles. That is, of course, sir, with the exception of the auditor's position. But I do not believe that this commission, the commission - the role of the commission, and I'll address this in some length later on, is appropriate to consider addressing bargaining outcomes, failed bargaining outcomes, or bargaining outcomes that were short in the union's view, and then you then apply to the commission to attempt to rectify that shortfall.

In my view, that signifies a return to what we used to call symbolised wage - centralised wage-fixing, which is something which is not a - not happened in Australia now for in excess of some 30 years. Now, as I indicated, this claim deals with five current employees classified in the award, and that is the current award, as community fire safety officers levels 1 to 4.

I think it's pertinent to note that when our discussions broke down, they were the discussions between the UFU and ourselves some time in 2006, early 2007, whenever that was, I believe we were heading towards agreement in relation to salary outcomes. Certainly, as far as the classification standards are concerned we contend that they were agreed, and we put that on the record that they were agreed. There certainly was an argument outstanding between us in relation to the salaries.

And I think it's also pertinent to note the evidence, which I shall detail in some greater length, that was given by Mr Steven who we submitted was as an expert witness and, indeed, you commented on that yourself, sir. We contend, sir, that the original dispute was about salaries for employees and, in particular, two of the four levels. That dispute has widened to where we had a claim that centred on setting relativities for all four levels.

That claim again then changed, and there are now two claims before the commission, and that is for levels 2 to 4 are to be classified as at the same rate of pay as that applying to a station officer, sorry, a leading firefighter, station officer and senior station officer, and for the fire auditor to be classified in - sorry, I'm losing my - to be classified at the level of a relative employee in the state - Tasmanian State Service generally.

So I think it's probably appropriate if I just have a look at what this - where this application sits within the confines of the principles into which this application must sit. Originally, the application that was before the commission said to the commission in exhibit A19, that we want this commission to set the relativities between the various levels of employees, and also have - set the relativities between these people who come from a non-career firefighting background to those who from a career firefighting background.

The application changed, and it changed from simply saying - putting that as a proposition to the commission and saying, "We want you to consider the work value of those employees." That changed to the one of "We want equality of salaries. However you define the work value we want the outcome from the work value equal - to equal the salaries paid to these other employees." We say that that is not - that that is a nonsense and that is not work value. If you look at what work value is, and it's defined in principle 9 of the wage-fixing principles. Principle 9 says:

Changes in work value may arise from changes in the nature of the work, skill and responsibility required ...(reads)... creation of a new classification, or upgrading to a higher classification.

5 And the second paragraph I think, is telling:

These are the only circumstances in which rates may be altered on the grounds of work value ...(reads)... work has changed in accordance with the principle.

10 So unless there is a demonstration by the applicant that the nature of the work has changed, the value of the work has changed, this commission cannot alter those wage rates. That is our submission. And then it goes on a 9.2 and talks about allowances, rather than an overall increase in the wage rate. And then, sir, at 9.3, which we haven't heard from the applicant at all and to which I made some references during cross-
15 examination:

Time for which work value changes in the award should be measured ...(reads)... accordance with this principle since that date.

20 So I make two observations in relation to that matter. There was a case which arose out of the anomalies and the inequities conference of late 1989, early 1990, in which the United Firefighters' Union prosecuted a successful case before the commission in accordance with work value, which I shall tender shortly, or any date on the increase award in accordance with this principle since that point in time.

25 The Tasmanian Fire Service Employees' Enterprise Bargaining Agreement of 2004 addresses it - again addresses the issue of work value and I hand a copy of that to the commission to save you hunting through it. And this is an extract from the Tasmanian Fire Service Employees' Enterprise Bargaining Agreement 2004.

30 THE COMMISSIONER: This will be R20.

35 **EXHIBIT #R20 EXTRACT FROM TASMANIAN FIRE SERVICE
EMPLOYEES' ENTERPRISE BARGAINING AGREEMENT 2004**

MR BAKER: And at page 3 of that document under - it has a clause headed Work Value:

40 *The parties agree that the salaries and conditions provided for in the agreement and previous awards ...(reads)... competencies in this work and exercise their responsibilities for work.*

45 And then it lists a range of work which is included in that. Do you note, sir, the two key phrases there is:

...compensated for all work that's currently being undertaken within their classification -

and then it goes on to say:

5

Employees are required to be trained in the use of their competencies in this work and exercise their responsibilities for the work.

10 And that goes back to my initial comments that I made in my opening submission as to what is required of an employee with a career firefighting background who undertakes work in the community fire safety area. Now, you'll also note, sir, that I've included, just for the sake of reference, I've also included over the orange flap, the document headed The Tasmanian Fire Service Employees' Enterprise Bargaining 2007. This is the state-registered document that flowed from the federal jurisdiction, and if you turn
15 over to page 7 of that document under clause 14, Work Value, you will find that the clause is identical.

THE COMMISSIONER: The 2004 document, that wouldn't on the face, cover the classifications in question, would it?

20

MR BAKER: No; I understand that, and I'm - - -

THE COMMISSIONER: You're coming to that, yes.

25 MR BAKER: I'm coming to that, yes.

THE COMMISSIONER: Yes.

30 MR BAKER: Yes. Now, on the - you're quite correct, sir, and I take your point, that it doesn't cover the employees who are subject to this application, but it does prescribe that, if we were looking at a data point in relation to the value of the work which has been undertaken by the employees from a non-firefighting background, if you look at where the changes have occurred we say they occurred pre-2004, because since that point in time those employees have - those employees in - from the career firefighting
35 background have been compensated for any changes in work value.

So that when you actually relate it back, and I'll come back to this point, when we start talking about this 10.9 per cent which is that differential between the wages, but I think that was important to note that as far as the other employees are concerned who have
40 been made subject to this application by way of comparison, that the work value - work value has been noted, accepted and reflected in the wage rates that apply to these employees. Sir, we say that - and if we go to - return to the principle, principle 9, Work Value Changes, you'll see at 9.5:

45 *Where a significant nett alteration -*

I'm sorry, I'll go back to 9.4:

Care should be exercised to ensure that changes which were, or should have been taken in account ...(reads)... work evaluation under this principle.

And, of course, the structural efficiency goes back to the early nineties:

5

Where a significant nett alteration ...(reads)... should be measured in money terms.

So we say that it's the obligation of the commission to actually determine the alteration, how it should be measured. Mr Warwick is submitting to the commission - is that there is a pre-determined amount of money:

10

However, the commission will also take into account the relativities and the integrity ...(reads)... to which the structure was related.

15

And I intend to address that issue about internal relativities because it's an issue which has not been addressed in these proceedings; I intend to address it this morning.

THE COMMISSIONER: Are you also intending to address the relevance, or otherwise, of principle 11, First Awards and Extension to Existing Awards?

20

MR BAKER: Well, I can address that, sir, but I mean, that hasn't been part of the submission made by Mr Warwick.

THE COMMISSIONER: Well, I'm not limited to the application.

25

MR BAKER: I understand you're not limited to the application but I think it would be a bit - it certainly would be bizarre if we're arguing about principle 9. No one makes any reference to principle 11, and then there was a decision that dealt with principle 11.

30

THE COMMISSIONER: Well, that's perhaps why I'm raising it.

MR BAKER: Well then, perhaps before I respond to principle 11, Mr Warwick might like the opportunity to make some comments in relation to that?

35

THE COMMISSIONER: Well, it's an open invitation to both of you to comment on it; it's not compulsory.

MR BAKER: No, and it hasn't escaped my attention either.

40

THE COMMISSIONER: I mean, Mr Warwick, in his submission, did make the point, and I'm paraphrasing, that this application is not so much about necessarily a change in work value but, in his submission, the fact that this group of employees has never been assessed in the first place. Now, that's my paraphrase of Mr Warwick's position, and if I'm wrong on that he will, no doubt, remind me. So I just raise that in the context of principle 11.

45

MR BAKER: Well - - -

THE COMMISSIONER: And I'm not - I don't want to ambush you, you know, you can take your time to respond to that if you wish.

MR BAKER: Well, I will, but I just make the observation that, certainly, the
5 application of principle 11 had not escaped me, but I think, again, Mr Warwick would be hard-pressed to run an argument that is, that would contradict, sorry, that would lead to an increase in wage rates under that principle, because what that principle says:

10 *Where you extend an existing award to new work, and it's not new work, or award-free work, the rates applicable to such work will be assessed by reference to the value of the work or any covered by the award.*

THE COMMISSIONER: Well, it's arguably award-free work, isn't it?

15 MR BAKER: Well - - -

THE COMMISSIONER: When this application was lodged what award was it subject to?

20 MR BAKER: The employees were bound by two awards, sorry, they were bound by the Fire Services Award. The work was encompassed by both the Administrative and Clerical Employees' stream and the Operational Employees' stream.

25 THE COMMISSIONER: Because it was convenient to put them somewhere but, as a matter of law, would they have been subject to that award?

MR BAKER: Clearly, they were. Well, let me say this and I'll be perfectly honest with the commission: in respect of the application and the Operational Employees' Award I don't think there's any doubt, sorry, the Operational Employees' component of
30 the award, I don't believe there's any doubt that that award applied to the relevant employees. There was an issue in relation to Mr Gregg as to whether, or not he was employed under the ANC structure, or alternatively, should have been employed under the Technical Employees component of the award.

35 I made that reference - I made that comment to both Mr Warwick and to Mr Gregg but I don't think there was any doubt that the award had application because the work in which the employees undertook falls within one of those three streams. Now, what we did, or what the agency did, was actually engage Mr Steedman to undertake a review of those classification standards, sorry, those - the work in which the employees
40 undertook, develop the classification standards and in conjunction with discussions with the UFU we translated those employees from the Fire Services Award into the Firefighting Industry Award. So I think there is some considerable history there as to what occurred.

45 THE COMMISSIONER: Thank you.

MR BAKER: But I will await Mr Warwick's submission.

MR WARWICK: Make it now if you like?

THE COMMISSIONER: If it's convenient?

5 MR BAKER: Well - - -

MR WARWICK: I'm more than happy to.

10 MR BAKER: Well, perhaps if I - - -

MR WARWICK: You did offer, Mr Baker?

MR BAKER: Well, I like to keep things - - -

15 THE COMMISSIONER: I don't want to interrupt your flow, but you did invite Mr Warwick to make a submission on that, so it's just a matter of determining when.

MR BAKER: Well, that's correct.

20 THE COMMISSIONER: So you - - -

MR BAKER: Well, I don't mind pausing - - -

25 THE COMMISSIONER: You have extended the invitation. You set the time and the date.

MR BAKER: Then I'll concur of the commission and I'll pause and we'll hear Mr Warwick.

30 THE COMMISSIONER: Right, thank you. Mr Warwick?

35 MR WARWICK: Thank you, Mr Commissioner. Principle 11 prohibits wage increases in the context of new awards and extensions to existing awards. Clearly, the system of the wage-fixing principles comprehend is the making or extension of an award in the first instance, and then questions of work value or, indeed, any other matter that may be addressed under the principles are to be addressed subsequently. And, indeed, commissioner, that is exactly what's happening here.

40 THE COMMISSIONER: When you say wage increases are prohibited you're relying on the prima facie may - considerations shall be existing wage rates and conditions; is that what you're referring to?

45 MR WARWICK: Indeed, commissioner. In my experience in the past that has been the case that when you make a new award, or extend one, you can't, in the course of pursuing that application, seek interest.

THE COMMISSIONER: And your submission follows that once that's done you can then apply, for example, work value; is that what you're saying?

MR WARWICK: Indeed. I think the whole point of it - of the construction of the principles as a whole is that the commission must first gain jurisdiction over what currently exists and then the commission certainly has the right, subject to an application before it, to determine whether those conditions that pre-existed prior to the making, or extending the award, are appropriate. The principles, as a whole, allow that to happen. Thank you.

THE COMMISSIONER: Thank you, Mr Warwick. Mr Baker?

MR BAKER: Well, sir, I concur with all that has been put by Mr Warwick. I concur that in the first instance the prima facie position as described by the principle says that the existing wage rates apply. They go in. There was actually a famous, infamous case, that went on for a number of years, you know, before this commission in relation to what were appropriate wage rates for the employees engaged in mining on the west coast before Commissioner, then Commissioner Imlach, that went on for several years about what the wage rate was.

Now, I concur with Mr Warwick that the pre-existing wage rate is what goes in the award and then it's up to the commission to set to and value, put a value - if that work has not been valued then it's up to the commission, or the commission has role to undertake work value, but the work value, in my view, needs to be constrained by the operation of the other principles.

Now, when I say constrained by the other principles, in awards of this commission remain minimum rates awards which are subject to periodical review by way of safety net adjustments. Now, the commission, this commission has indicated previously that awards of the commission should only be varied in accordance with safety net. And, of course, there was that famous Barmingo decision which went to that very question. So we would say that Mr Warwick's position is correct but when you then apply the balance of the principles in determining a wage rate, you then need to look at the rest of the principles and how they apply.

And so the other principles, 3, 4, 5, etcetera, then come into play in relation to movements in the safety net, and as the employee has indicated, he was subject to these proceedings. They have received in the order of 14 per cent in wages over the last three years. They would have picked up somewhere in the vicinity of almost 20 per cent since 2000 which would be consistent with wage increases emanating from minimum wage adjustments that have transpired through the operation of the minimum wage cases each 12 months with this commission.

And, in addition to that, sir, of course, when we translated these employees into the award, into the Federal Firefighters' Award the employees received wage increases and, in particular, two of the employees received quite substantial wage increases. So if we look at that, I think it then comes back to a question which I will address - which I was going to address in my submission, that the commission needs to look at how those classification standards were put together, and whether they are reasonable in all the circumstances and then make a value judgment as to the values - the value of the salaries which we attached to them, one by the internal relativities which are reported.

Secondly, there is then the issue that goes to the composite - the composition of the skills which they reflect. And, finally, they're then - that needs to be considered in the context of the value of the work which is unattained as the - whether there's been any change to the work, and as - which I will come to. Our view is there has been no
5 change to the value of the work and I think that was - and I will comment on that in more detail but our view is there's been no change in the value of the work. Is that the half-time bell, is it; morning tea?

10 THE COMMISSIONER: We'll probably bat on till about 10 to 11.

MR BAKER: In that case I had better get a drink. I would like to hand to the commission a bundle of extracts from decisions which go to this whole issue of work value in the first award and a couple of other ones as well. And part of this is to look at
15 this issue of the wage-fixing principles, how they have come about, and some of the issues that have transpired over the years.

THE COMMISSIONER: Mark that R21, bundle of decisions relating to wage-fixation principles.

20

EXHIBIT #R21 BUNDLE OF DECISIONS RELATING TO WAGE-FIXATION PRINCIPLES

25 MR BAKER: And the first one, sir, is an extract from financial wage case decision of 1978, September 1978. And this goes on to say - and the Full Bench stated:

30 *In considering whether wages, salaries, or conditions should be awarded, or changed for any reason ... (reads)... which would be to frustrate the commission's general intentions.*

And I pause there and move over to Grounds Justifying Increase, and it goes on to CPI - ground 7A, it talks about changes in work value and it talks about changes in work value being:

35

...changes in the nature of the work, the skill, or responsibility required, or the conditions under which the work is performed.

40 It's pretty much - nothing much has really changed in relation to the principle since all those years ago. You know, if you look down at 1, is - there's - it puts an operative date; 2:

45 *...changes in work value by themselves may not lead to a change in the value of work.*

3:

You need to make an assessment -

and then it goes on, 4 and 5:

Reclassification: existing jobs to be determined in accordance with this principle.

5

And over the page, on page 2 of this extract, it talks about, at clause 7(a) Anomalies, and at 7(d) we get Inequities. Now, I don't want to spend too much time on this other than to say, of course, there was concern that the existing principles at the time were somewhat limiting and so they introduced what became known as the anomalies and equities principle and some of us may recall actually participating in some of those conferences that enable us to get up what, in fact, were comparative wage justice arguments in relation to salaries. And at point 9 it talks about, again, about the first award and extension of the existing awards:

15 *In the making of a first award the long-established principle shall apply. The main considerations existing rates and conditions.*

And (b):

20 *In the extension of the existing awards ...(reads)... be covered by the award.*

So 30 years later not much has changed in relation to the wage-fixing principles. What has changed is the - is, in fact, that many of these things have disappeared into the annals of history. And I'll leave the history lesson, that is the balance of that decision, to those who may wish to look at it. If you would like to turn to the second decision which is actually an extract, and I apologise; it's headed - the page is headed Tasmania.

THE COMMISSIONER: Yes.

30 MR BAKER: And it's got Work Value. It's an application for improved wage rates and employment conditions, work value changes detailed:

35 *The Tasmanian Industrial Commission gave detailed consideration to alleged work value ...(reads)... Tasmanian Teachers' Federation and other unions under a number of headings.*

And together with a response in the curriculum - sorry, for the response from the commission. And then, of course, it lists a range of those things although under Curriculum, the commission failed to see the distinction between intensely enhanced skills and individual new skills. But it did go on to talk about methodology, demand for individual learning programs and strategies for each student resulting in criterion-based assessment, accountability and teacher appraisal, student welfare, resources and working conditions, assessment report of students, student retention rates.

45 I don't think much has changed in 30 years, has it? We still talk about student retention rates: community participation and relations, use of the data point to enable an objective assessment over a given period of time; established a recognisable and

quantifiable change that occurred. And then it continues on down through a whole range of matters. And then the commission's decision:

The commission heard evidence ...(reads)... prospective dates and operation.

5

And then it goes on to talk about other claims. But I simply detail this and sort of outline, you know, what, in fact, demonstrates to the commission what their sort of looks like, you know, it talks about all those things about both what one might phrase as the learning environment as opposed to the environment in which the profession needs to operate, and all those things about school-work, then multi-culturalism, fee-paying, overseas students, society changes, community participation, etcetera.

10

So that's about - and, of course, that was a most famous decision of this commission in the early nineties along with what was also to become the TAFE Teachers' case which went on for a number of years and featured the then former Commissioner Gozzi, etcetera. Turn the page to South Australia, there's a, under 149, an anomaly. And you'll see reference to the Full Commission, "Interpretation" - this is from the decision of the South Australian Commission:

15

Interpretation of principle 7(c)(v) comparative wages ...(reads)... which again is the work value principle -

20

and the matter was referred back to the commission with appropriate answers to the Physiotherapists' Award. And I take your attention to up on the top of the next page, the top of 149:

25

Comparative wage justice disparity alone is not sufficient to constitute an anomaly -

30

and we must remember that we're talking about something that went on so many years ago:

In our view the issue debated before us must be answered ...(reads)... for the making of the one time adjustment.

35

And, again, sir, that talks about work value and it talks about, as I said - I know times have moved on, but it, you know, in the first instance somebody had to establish that there was an anomaly, or inequity before proceeding through the work value institution. And over the page under 151 Wage Rates, this was a decision - this actually awards an increase, and about midway through the middle column the commission makes the statement:

40

It seems to be unreasonably expected and agreement -

45

and this is where he talks about an agreement that pre-dated the wage-fixing principles -

may in a particular industrial climate such as that at the inception of indexation ...(reads)... no provision for dealing with anomalies.

And then the commission goes on to talk about it again, it goes down to talk about the quantum of the increase and it applies a comparative wage justice argument to the outcome, and I'll leave that to you to read at your pleasure. And over the page at 1047 under Electricity Supply, it's a decision of the New South Wales Industrial
5 Commission. His Honour refused applications by the ETU seeking variation of a number of awards in the Electricity Supply industry to provide for increases and wages and allowance for employees working under various county council and municipal council awards. His Honour held that:

10 *...the claims had not been brought within the principles 7A or 7B of the commission -*

which, again, are the work value principles. And it goes on down there - down, midway through that column:

15 *The union argument was based on the principle of comparative wage justice ... (reads)... under these awards had never been compared.*

And he goes on to say later on down - here, his Honour said that:

20 *The union argument was bedevilled further by the fact that even without the guidelines ... (reads)... principles of comparative wage justice.*

And he goes on, the further paragraph, his Honour said that:

25 *Employees under these awards held the view that their relativities and skill ... (reads)... action, or part in this regard.*

He went on to point out:

30 *While the unions concerned had acted in a highly responsible manner ... (reads)... guidelines that had been made in the state.*

35 So says his Honour, Mackin J. And, again, over the page - and this is, I suppose, relevant to what was raised earlier this morning by yourself, sir, matter 485 Pastoral Industry and the bottom of the first column:

40 *The employers raised a threshold question bearing on the consistency of the claim ... (reads)... basis of the indexation principle - - -*

THE COMMISSIONER: Which case is this one?

45 MR BAKER: I'm sorry, 485. It's over - it's at the top of 486 is the - it's the page after the - - -

THE COMMISSIONER: Yes, Pastoral Industry, right.

MR BAKER: Yes. At the top of the page it talks about the:

*...indexation principle all on the traditional method of work evaluation
...(reads)... a rate based on work evaluation.*

5 And then the commission goes on to talk - they then talk about the 41(1)(d) argument
which was advanced at the time. I'm not sure why it isn't another Work Choices
legislation, but whatever it is these days. And then at the top of 486 he says:

10 *Having rejected the 41(1)(d) application ...(reads)... followed by a system of
grading.*

And then it goes on to talk about that. And, finally, there's one on, again, the national
wage case and, again, this is in the 75, it talks about, midway down the first paragraph:

15 *The ACTU, amongst others submitted that the word such as "principle" -*

I should put the decision up first, because this is the basis of the anomalies and the
equities principle:

20 *continually indicated that these factors ...(reads)... available to justify every
wage increase whenever sought.*

So - and then it goes on to talk about the - when the last genuine work value assessment
was, in fact, undertaken. And a little further down:

25 *The prima facie -*

and under the Municipal Officers' Adelaide City Council case when the bench said:

30 *The words are intended to relate to the last movement in the award rates
...(reads)... should an application be made for an earlier starting point we
envisage -*

and then it goes on to talk about -

35 *would normally be heard pre-1970 ...(reads)... has never been a previous work
value undertaken.*

40 And, finally, there is a case, number 29, and I think this - in the context of what I said at
the beginning of my remarks is very important. This is a structural - under the
structural efficiency principle, and a Full Bench of the Industrial Relations Commission
affirmed the approach taken in the national wage case of August 1989, ALIR 286, that
is that:

45 *Remuneration should be based on the payment for the skills used.*

The Full Bench was of the view that:

A worker should not be placed in a classification unless he, or she has the training ...(reads)... he, or she is ready, willing and able to do so.

5 And then it talks about the February '89 review in support. In that decision the Australian Commission stated:

As a general rule that the commission would only approve payment, or reclassification ...(reads)... in the course of their employment.

10 The Full Bench rejected the method of remuneration based on skills acquired within a field, which is one of the arguments that's being advanced here before us today. The Full Bench rejected a method of remuneration based on skills acquired within a field. Unions party to the proceedings and a number of employer groups supported payment of award rates on the basis of the skills held by employers within a field of work.

15 Employees were to be paid at the highest level obtained within a field of work. Field of work was defined to mean:

A defined group of related skills and work functions exhibiting common features based on an official organisation of work aimed at increasing productivity.

20

It was argued that the field of work may be so formulated as to ensure that workers classified within that field of work would normally use the skills comprehended by it. It was contended that payment for skills acquired within a field would encourage skill acquisition, direct skills to meet the needs of industry and allow utilisation of skills of an employee in the field of work.

25

Should employees acquire skills not pertinent to their field of work they would not be paid for those skills. On the other hand it was pointed out that no major award of the commission used a skills-acquired approach and that an employer should be able to match the skills of the employee with the work to be performed, and classify the persons accordingly. It was further suggested that if payment for skills acquired existed, many workers would be disadvantaged if they sought employment at a lower level either because the employer had no other position available, or where the employee sought work at a lower level for health, age, or personal reasons.

35

And then it goes on to talk about that it arose out of a matter pertaining to the National Building and Construction Industry Award and a Full Bench of Madden, Keogh and Watson. So I think that decision in the context of the proceedings before us today is very pertinent and, again, I'm not aware of any - a phrase, but I am aware of one, one award of this commission that actually provides for skills acquired whether you use them, or not.

40

THE COMMISSIONER: Would that be a convenient opportunity for a short break?

45 MR BAKER: Thank you, sir.

THE COMMISSIONER: We will resume about five past.

ADJOURNED

[10.50 am]

RESUMED

[11.10 am]

5

THE COMMISSIONER: Mr Baker?

10 MR BAKER: Thank you, sir. I would like to go to a history of the Above the Award
and also the development of the wage-fixing principles within this jurisdiction, and I
would like to commence with a decision of this commission which is dated 10
December 1993 by Deputy President Robinson in an application by the United
Firefighters' Union of Australia in the fire - what was then known as the Fire Brigades
Award.

15

THE COMMISSIONER: I don't normally mark decisions, but to be consistent I'll keep
doing it. This will be R22, T2594 of 1990; that will be sufficient, thank you.

20 **EXHIBIT #R22 DECISION IN T2594 OF 1990**

MR BAKER: This was - this arose out of the Firefighters Special Case application
which arose from the State Wage Case of October '89 which I intend to refer to shortly.
25 But if we go through this, at page 3 you'll note, sir, in fact, if you look at page 2 you'll
see at the top of page 2 the application sought, a new classification structure that
commenced from trainee firefighter through to superintendent with a set of wage
relativities and consequential wage rates beside them. On page 3 of the decision it's
quoted:

30

*The UFU proposal was for a classification and progression structure based
upon the attainment of relevant skills and qualifications which -*

it said:

35

*it understood to be not inconsistent with the broader plans and objectives
...reads)... cost-efficient fire service for Tasmania.*

In this regard the UFU argued that it's proposals were:

40

*...wholly consistent with that part of the wage-fixing principles ...(reads)... to
continue to participate in skill formation.*

45 The case was also prosecuted by the UFU on a number of other separate grounds.
Principal amongst these grounds was the actual devolution of responsibilities
throughout the whole of the ranking structure, together with a new requirement as from
January '92:

...for promotion to the rank of station officer would be dependent upon the attainment of a TAFE associate diploma of applied science (fire technology).

5 The UFU argued the adoption of this diploma as both a requirement by the employment of firies in a goal for aspiring firefighters and already resulted in the enhancement of a level of training being provided through the adoption of Australian Fire Services draft competency standards and therefore led to increased skill acquisitions.

10 And, sir, if I can turn you to page 13 of the decision and the first - and it's about halfway down the page and it goes - the first witness called by the minister was Mr John Brian Gledhill who, at that time, was the regional officer for the southern region of the Tasmanian Fire Service, and Mr Gledhill, of course, is now the chief officer. And he gave details of the changes to management structures and altered areas of responsibilities which occurred in recent years.

15 He also said that in the context he believed the same fundamental skills were being utilised as previously in regard to urban and rural brigades and the changes gave the Fire Brigades Award and financially some classifications from rural areas. He said that, in effect, district to district, but then he goes on to say at the third paragraph - Mr
20 Gledhill also dealt with the way in which the training program for recruit firefighters need to be revised as a consequence of the integration of the rural and urban brigades.

25 He said that recruit training used to take 12 weeks then increased to 15 weeks to take account of the inclusion of additional subjects some of which were related to country firefighting. At the beginning of 1988 the training course was extended to 17 weeks to take into account a greater amount of the subject matter relating to country firefighting. And over the page:

30 *The objective of the employer was to create firefighters and officers who had a knowledge of all types of firefighting likely to be encountered anywhere in the state whether in the city, or in the country area.*

35 The evidence of Mr Gledhill was that the tasks are done in a more professional manner and there is now more - far more flexibility to move officers within the organisation. And I might just skip around here a bit, but if we go to page 25, which is towards the end of the document, and the first paragraph at the top of page 25:

In my view -

40 and this is Deputy President Robinson:

In my view there have been some evolutionary changes ...(reads)... that are still in the process of implementation.

45 And then he goes on, sir, to make a decision in relation to the work value as a whole, but the clause on page 25 I think is very important in that he identifies that there are some evolutionary changes that need to be taken into account. And we would submit to

you, sir, that this matter, in the case of work value, that there also have been evolutionary changes as opposed to work value changes.

5 Interestingly, this decision marked the commencement of the, what has become known
as the composite salary, and you will note on page 19 of the decision, the government's
proposal was to reaffirm the present salary levels and relativities on the basis of there
being no alteration to work value. But at the same time it supports the conversion of
weekly wage rates to wages, to annual salaries, to absorb all allowances, and those
10 allowances are then listed there: a disability allowance, the service and incremental
payment scheme - some of us actually remember when it was, sir, driving allowances,
first aid allowance, institute of fire engineers. I'm not sure what a BA instructor's
allowance is - - -

15 MS PEARCE: Breathing apparatus.

MR BAKER: - - - breathing apparatus instructor's allowance, and those employees
who are currently being paid at higher duties. So that was the - that was the first time
that the composite allowance, sorry, the composite wage rate was raised and there were
subsequent decisions - discussions which arose out of this decision which saw the
20 composite wage reflecting far more than that, which we will deal with later on. Now,
sir, I just hand for your - just for your information, a decision of the Tasmanian
Industrial Commission which was numbered 96 and 99 of 1985.

25 THE COMMISSIONER: We'll mark it R23.

EXHIBIT #R23 DECISION OF TASMANIAN INDUSTRIAL COMMISSION

30 MR BAKER: And I table these next couple of decisions just to put that decision into
context. This is a decision of the present Deputy President and Commissioner Watling
of 24 April '95, and this was the, if you may, like, the first decision of the commission
in relation to the adoption of wage-fixing principles as a commission, as opposed to the
old wages board system. And at page 10 of the decision the commission has already
35 adopted, it states, about two-thirds of the way down:

40 *The commission has already adopted a mutatis, mutandis the principle of the
Australian Commission ...(reads)... on the statutory independence of the
commission.*

And then it goes on to talk about exemptions, and so on. So since 1985 at the inception
of this commission, we have had a set of wage-fixing principles. And if I may, I'll just
hand to the commission a copy of matter T2399 of 1990 which deals with what was to
45 become the special cases into which the previous application was subsequently dealt
with.

MS PEARCE: Which one was it?

MR BAKER: Hang on, sorry. No, no, look, I'm sorry, yes, that's that decision at the back here, I've got some out of kilter, it's that one. Sorry about that.

MS PEARCE: Thank you.

5

THE COMMISSIONER: Mark this R24. I'll just note, T2399 of 1990.

EXHIBIT #R24 DECISION T2399 OF 1990

10

MR BAKER: And this decision dealt with matters pertaining to the Tasmanian State Service and, in particular, on page 13 and 14 under the heading Special Cases:

15

There remains whether the large number of special case matters which have been the status ...(reads)... structural efficiency adjustments under the principles.

20

And then it goes on to say in the state wage case, it's over the page on 14, the bench stated - made it clear amongst other things:

The special cases that form part of the structural efficiency review ...(reads)... provision cannot be accessed.

25

And then it goes on to talk about the how the award was to be restructured and the classifications. And that, in respect of the special cases applications:

30

These have now been allocated to an appropriate commissioner for hearing and determination. However, the special cases applications for the teaching services awards -

35

except to which we made mention of this morning. So into those - as a result of those two decisions of this commission the matter that we spoke about earlier in R22, proceeded, and that established the basis of the award which is now the Federal Fire - well, what was the Federal Firefighters' Award. But this commission has continued to apply the wage-fixing principles and I think it's important just to note that point. In a decision in July 2006 in a matter before this commission, and I have a copy of that decision, in relation to the application of the wage-fixing principles.

40

THE COMMISSIONER: Will be R25, T12395 OF 2005.

EXHIBIT #R25 DECISION T12395 OF 2005

45

MR BAKER: I draw your attention to paragraph 28 on page 5 of the decision:

The minister contends that such an increase provides an equitable adjustment for lower pay ...(reads)... within the Tasmanian Industrial Relations system.

And at paragraph 112 of the decision on page 17, the bench decided that:

5

The current wage-fixing principles will be amended where necessary to reflect the terms of the decision.

10 In 2006 - so we have come forward 21 years, those wage-fixing principles have endured. There was, in the state wage case, or the minimum wage case of 2007 a proposition outlined by the minister, administering the State Service Act in relation to the wage-fixing principles and I would tender a copy of that decision.

THE COMMISSIONER: That will be R26, T12940 of 2007.

15

EXHIBIT #R26 DECISION T12940 OF 2007

20 MR BAKER: And I take you to paragraph 28, sorry, 29 on page 4, and at paragraph 29 the minister said that:

The proposed amendment to the principles was in the public interest ...(reads)... either in the private, or public sector.

25

The comments that were consistent with what had been made in 2006. And at paragraph 111 of that decision on page 14 of 17, the commission indicated that:

The amendment as proposed by the minister ...(reads)... would be amended.

30

And at paragraph 114:

The current wage-fixing principles will be amended ...(reads)... to reflect the terms of the decision.

35

40 And those principles are those principles which we are debating before us today. So, sir, I put that forward to indicate to the commission the long and very serious history that has been involved in the development and application of the wage-fixing principles and, in particular, principle - what was principle 7A in the federal jurisdiction that became principle 9 in the state jurisdiction in relation to work value, and the application of the principles by this commission as to matters that come before it.

45 I previously discussed the 1993 case that was before the commission in relation to the special case that arose in matter in exhibit R22. And now, if I may commissioner, I would like to actually turn to something which actually pre-dates that decision and that is the award, a copy of the award for the Fire Brigades Industrial Board number 2 of 1979.

THE COMMISSIONER: Yes, that is dating things. That will be R27.

5 **EXHIBIT #R27 DECISION FIRE BRIGADES INDUSTRIAL BOARD
NUMBER 2 OF 1979**

MR BAKER: Now, if I may just walk you through the document, sir, you will see that
10 over the page it was established in respect of the Fire Brigades - established and
maintained by the Fire Brigades Boards under the provision of the Fire Board's Act of
1945 and over on the following page it goes into watch-room operators, mechanical
tradespeople, storemen, minimum wage, disability allowance, and then it lists - the
following page it has the set of wage rates, the old basic wage and margin concept.

15 THE COMMISSIONER: Yes.

MR BAKER: And servicemen and firefighters and the like. And over the page, sir,
there was - it goes into part II which was conditions. And if you work - and there's an
index, and on part II it outlines the conditions. And then it says, sir:

20

*In addition to the wage rates described in clause 1 and 2 of section 1, part I,
employees who are required to work shift-work ...(reads)... during which
ordinary wages are paid.*

25 And then there's an exclusion for Burnie and Devonport watch-room operators. And
then it provides definitions, trade work, a driving allowance and over the page it talks of
the hours of work. And you'll see there, sir, under 5(a), for firefighters, watch-room
operators and officers:

30

*The rostered hours of duty shall be 40 per week plus two extra hours of duty
...(reads)... roster of hours in clause hereof.*

And it then defines what the hours of work are and the roster itself, and the document
finishes up with clothing over the page. I indicate to you, sir, there are two issues that
35 arose out of that - arose out of that, and that is how the wage rates were originally
structured - originally structured, the loadings that were paid at that time. The '93
decision which incorporated a number of bits and pieces that were both in the award
and outside the award, and also, which is not reflected in R23, and that is the
subsequent discussions that led to the making of the award as such.

40

THE COMMISSIONER: Just on that 1979 award, did that embrace, or did that have
the concept of paid crib time? It seems to me, on a quick glance, it does.

MS PEARCE: For rostered shift-workers?
45

THE COMMISSIONER: For rostered shift-workers:

Employees shall be given a 15 minute rest period in the morning and in the afternoon to be taken at a time convenient and at the place where the employees is employed at such time.

5 To me, that's - - -

MS PEARCE: Yes, meal breaks are paid - were paid.

THE COMMISSIONER: Sorry?

10

MS PEARCE: Meal breaks were paid - - -

THE COMMISSIONER: Yes.

15 MS PEARCE: - - - under that time for rostered shift-workers.

THE COMMISSIONER: Thank you.

20 MR BAKER: So may I now return, sir, to the decision of Deputy President Robinson in the '93 decision, which laid the foundation of the modern firefighters' award. In that decision at page 8, the UFU submitted the criteria used for assessing change which was accepted by Commissioner Paine, as he was, of the Federal Commission:

25 *...will be adapted to a fire service situation. The criteria which was accepted at that time for assessing change was -*

then he lists a series of issues that one should address in developing a work value analysis, and that is:

30 *Increases in formal and informal qualifications required to do the job; an increase in the skills...(reads)... changes in the conditions and circumstances under which the work is performed.*

And then at the top of page 9, it goes on:

35

Other authoritative decisions -

which endorse the same approach as Commissioner Paine and which were said to have much in common with the circumstances of this case -

40

were put forward as exhibits and form part of the case.

45 Sir, I think that's an extraordinarily good and sound overview of anyone who wishes to actually assess work value. I think it's actually stood the test of time and I would argue it's stood the test of time because it, in my view, it succinctly addresses what work value - what work value is all about. Now, during the proceedings the witnesses were asked a range of questions that went to the issue of changes, or changes that they perceived in their level of work.

And if I may address those comments within the framework of paragraphs A to H on page 8 of exhibit R22. And I asked Mr Manten at paragraph 1512:

5 *In the period of the 22 months, that is from the day that you started until literally, yesterday, has there been any significant change ...(reads)... significant change in the way in which the work is carried out?*

Mr Manten replies:

10 *Probably the major change is the way in which we conduct the work ...(reads)... from our audits.*

Paragraph 513, I asked the question:

15 *Can you explain it to me?*

Mr Manten says:

20 *We are trying to work more closely with the client ...(reads)... has changed the focus of some of our - - -*

And at paragraph 1514:

25 *But those regulations, that's something which evolves, isn't it?---Yes.*

And at 515:

Yes, that's an evolving thing?

30 To which Mr Manten replies:

Yes.

35 So I pose the question for the commission: does it meet any of the criteria which the UFU submitted in that matter all those years ago, or does it fit what the president, sorry, the Deputy President of the Commission said on page 25 of the decision:

In my view there are some evolutionary changes.

40 It seems to me that nothing much has changed for Mr Manten. Mr Webster also presented evidence to the commission in relation to the work that he undertook. And Mr Webster had been employed with the Fire Service for some three years and so I posed the question at paragraph 273 to Mr Webster:

45 *Can you indicate to the commission whether, or not in the last three years ...(reads)... that you have undertaken in the last three years?*

To which Mr Webster replies:

Yes, there has.

In 274:

5 *Could you outline for the commission what they are?*

And he responds:

10 *Since I first started, or going back to my start date ...(reads)... delivering the structured courses that were available.*

And at 275:

15 *Would you not agree that you develop in the job, you grow in the job?*

To which he responds:

You do.

20 And, again, at 276:

You become more confident; you obtain more competencies. You would normally do that?---Yes. Would there not be a normal progression ...(reads)... into the development of the course?

25

To which he responds:

Yes, that would be part of the job, yes.

30 Again, I pose the question: does Mr Webster's evidence fall within the paragraphs A to H as criteria for changes in work value, or does it fall within the evolutionary comments made by Deputy President Robinson in that matter? And then, sir, Mr Gregg presented very significant evidence, I thought, to the - very significant, very confident evidence to the commission and at paragraph 490 I posed the question to Mr Gregg:

35

Has there been any significant nett change to the value or work that you now undertake ...(reads)...impact on you as an employee?

Which Mr Gregg responds:

40

There's always changes to, I suppose, technology ...(reads)... with all industry, really, so - - -

To which I respond:

45

So it's the evolving thing that we go through ...(reads)... what would that have been?

To which Mr Gregg responds:

A more - a more mechanical type of device.

5 And, finally, at paragraph 492:

Yes; to do the same thing?---Yes.

10 So again, sir, I pose the question: does Mr Gregg's work change that dramatically to trigger any, or all of the suggested criteria from A to H in the document, or is it, again, a question of evolution? And then there was Mr Mackrill who presented evidence to the commission as the senior consultant, and at paragraph 1035 I again posed the question to Mr Mackrill:

15 *Yes, well, since your employment and up to the present time, has there been any significant change ...(reads)... more to do today than I had to do yesterday.*

To which Mr Mackrill replies:

20 *Don't we all? Look, Mr Baker, I'd have to say, no ...(reads)... scheme of things I would say, probably, no.*

And at paragraph 1035 I respond, "No".

25 Sir, I'll take just those two points, the last one first:

Does that, by that do you mean you are now required, for example, to live on the job more than you used to? TasFire Training has always -

30 to which the response is "No":

TasFire Training has always provided a service ...(reads)... meet the environmental guidelines and things like that.

35 And again, at 1037:

We try as much as possible to deliver to our sites ...(reads)... you know, an accredited course.

40 So, again, Mr Mackrill is, in my view, unable to identify, in fact, he was quite precise when he said, "No", unable to identify any changes in the level of work that he undertakes for TasFire Service that falls within the criteria identified by the UFU in A, or H, in matter T2594 of 1990. And, again, the changes, even Mr Mackrill perhaps it doesn't even fall into the evolution of change, it's just change which occur in the
45 workplace. And, finally, Mr Francombe, in response to a question from Mr Warwick, at paragraph 1869, sorry, 1870, and he's talking about changes that may, or may not have happened and he's talking about contextualisation and meeting clients' needs. And 1870 he poses the question:

*Over what period of time?--I would suggest only in the last three years
...(reads)... deliver our training. Why is it dramatic -*

and Mr Warwick poses the question:

5

*Because the requirements of individual businesses and finances ...(reads)...
requirements of the individual workplaces.*

10 And so, sir, again, I pose the question: is that an evolutionary thing, or is it a change in work value? I would contend, sir, that given that what was said during the presentation of the evidence, it is quite clear that what we are looking at, if we are looking at change at all, is an evolutionary change. There's been no change in the skill that has been undertaken by the employees.

15 Now, I just continue with this whole question in the developing of this work value, and the assessment - the assessment which will have to be made by the commission in any alteration to a level of - the level of remunerations afforded to the employee by way of an increase. We have previously discussed the commission is obliged to, if they find the work value resulted then it needs to do an assessment as to how that alteration
20 should be measured in monetary terms.

Now, in monetary terms in relation to those employees categorised - sorry, classified at the community fire safety officer levels 2, 3 and 4, those increases in round dollar terms are \$8000, \$11,000 and a further \$8000. The increase for an instructor that's being
25 sought before the commission, is some 17 per cent. For the building consultant it tops the pole at 20 per cent and for Mr Mackrill, as the senior consultant the increase is some 14 per cent.

30 These are not increases that are averaged over two or three years but they are the impact of a decision that would equate a quality of outcome for salaries; 17 per cent, 20 per cent and at the top of the table, 14 per cent. We suggest, and I suggest strong to the commission, that the evidence that's been presented in these proceedings does not see a nett addition to the value of the work. On the evidence that we have - that's been submitted, we say that answer must be, no.

35

We say that the case that has been submitted by the applicant has moved away from one of work value in which the commission may - the commission may determine an increase and allocate an outcome to that, to one of comparative wage justice. Mr Warwick was quite defiant in his closing comments in relation to his remarks pertaining
40 to that concept and at paragraph 5 in that, Mr Warwick said:

Commissioner, in his opening statements Mr Baker described this case and he used the words "comparative wage justice" ...(reads)... I think that's a very serious mistake in terms of representing what this case is all about.

45

Commissioner, I would offer a comment in relation to that: there's an old saying about a duck, I'm not sure where it comes from, but I think we all know about a duck and if it looks like a duck and it quacks like a duck and - etcetera. So what I'm saying is that I

think if you go back to the supporting material in Mr Warwick's opening - in the application that was made to the commission at page 3:

5 *As a consequence of these different groups of members of the UFU being employed under different awards ...(reads)... five members of the union listed above.*

And then he goes on, over on page 4:

10 *The current agreement again has been operational since '04 and will cease in '07 ...(reads)... roughly the same period is 10.9 per cent.*

15 So what implications, commissioner, can we draw from that statement and what - and how is that related to the claim that's before the commission? And I say that in the first instance Mr Warwick seeks an increase arising from these proceedings of 10.9 per cent, because that's the difference - that's the negotiated difference between what occurred for federal firefighters under the federal award, and those employees who were employed, or who are employed either under the Federal Firefighters' Award, or under the Fire Service Award who are not career firefighters.

20 That is the difference and it is a significant point that this commission needs to consider, because what is being proposed here is that this commission fix up a matter which the UFU were unable to fix up in 2004. Mr Warwick makes reference to it in the supporting material where he indicates that, even though the negotiation proceeded at
25 that time they were unable to achieve the outcome. So what is being asked of this commission is that, however it's dressed up, whether it be work value, or first award, or however it's been put together, what is being asked of the commission is that it fixes up something which the union was unable to fix up three years ago and, in my view, that is a return to centralised wage-fixing.

30 Although this commission doesn't have as one of its objects the issue of decentralised wage-fixing it, nevertheless, has adopted through the wage-fixing principles a decentralised bargaining outcome. It has also embraced the Federal Commission's wage-fixing principles, whether they return federally, or not, I don't know, but they
35 certainly exist in the state and they talk about primarily - they talk about quite strongly at principle 3, that the function of the commission is to facilitate enterprise bargaining.

40 You can't have a situation where, in my view, the commission has an obligation to facilitate enterprise bargaining and then at some later stage when the bargaining outcomes are done, dusted, etcetera, that an applicant can make an application before this commission to arbitrate an outcome that is in excess of what was agreed between the parties, and I stress,
"it was agreed between the parties".

45 And, indeed, sir, I just make the point that should Mr Warwick's application be successful to pick up the 10.9 per cent would it then not be equally valid for other organisations to make similar claims where they believe that they have missed out

comparative to other people either in the State Service generally, or other sections of employees.

5 THE COMMISSIONER: Mr Warwick's claim goes beyond 10.9 per cent, doesn't it? On your figures it ranges from 14 to 20?

MR BAKER: That's right.

10 THE COMMISSIONER: So I guess, looking backwards, Mr Warwick would contend there always was a problem which has been exacerbated by the different bargaining outcomes; is that a fair summary?

15 MR BAKER: That's a fair summary, and that's what I intend to address now, because you're quite right, sir, there is this difference, but there's this 10.9 that we can't lose sight of that's there, and then there is this other differential which I want to address now.

THE COMMISSIONER: Yes, thank you.

20 MR BAKER: As I indicated earlier, the gap between the three levels, that is the community fire services officer level 2 through to 4 would indicate that there was a salary differential there of somewhere between 14 and 20 per cent. However, take the 10.9 per cent off the top it produces quite a different outcome. And if we look at Mr Mackrill, for example, who is the highest paid of the non-career firefighters who has a salary of some \$61,344, if you compare that to the salary of the senior station officer
25 who's salary is \$69,801, and you lock the 10.9 per cent off that so you're comparing like with like, the difference in salary is \$848, or 1.3 per cent.

30 So if you take the bargaining component off you're left with the situation that the salary differential is less than a thousand dollars, it's 1.3 per cent. So that's the - that's what happens when you take the 10.9 off. And, likewise, with the building consultant, the difference is somewhat greater there, is \$3940, or 7 per cent, and with the instructor it's \$2138 for 4 per cent. So there's quite a significant difference once the 10.9 is applied. So it does impact upon any decision that the commission makes, it impacts greatly as to how you look at the salaries and how you equate the salaries.

35 And in doing that, if we look at that differential which is 4 per cent at the bottom, 7 per cent mid-point, and 1.3 per cent and you say, well, they ought to get the same rate of pay. Well, I say if they're going to get the same rate of pay then you need to have a look at what the salary is all about, and you need to talk about the skills and knowledge
40 of the career firefighter versus that of an employee who is not required to have that same range of skills.

45 Now, as I indicated to the commission, I've presented an exhibit which went to the old Fire Brigades Industrial Board which went into the basic wage, and margins, and salaries, and all of that, and we went through the Fire Brigades Award and we discussed it all about what then subsequently happened in '93. And you'll recall, sir, the evidence that I quoted from the then regional officer of southern Tasmania who is now the chief officer, Mr Gledhill, in relation to the changes that had occurred in the day-to-day work

of the firefighter. I would like now, sir, to turn to a decision which is a decision of the Australian Industrial Relations Commission.

THE COMMISSIONER: That will be R28 - - -

5

MR BAKER: And this, sir - sorry.

THE COMMISSIONER: I'm just trying to give it an identification. It will be print S8256.

10

EXHIBIT #R28 PRINT S8256

15 MR BAKER: This is a matter which goes to a termination matter which I won't go into, but what I wanted to turn to, sir, is page 3 of the decision and this is evidence that was presented by Mr Peter Alexander, who was the then deputy chief officer responsible for the operation of career and volunteer brigades, sir, in Tasmania. He was examined about the requirement for a period of probation in excess of three months. In
20 his evidence - and I should, sir, I missed the point there, of course, the probation period has been extended to six.

It was his evidence that the requirements of firefighters had changed significantly over the years. He discussed the sort of training undertaken in 1983 which required a three-
25 month recruit training course, Monday to Friday, then a recruit would be placed at a head station to have the benefit of attending emergencies with experienced fire crew and at that time most resources were in the city, additional firefighters and officers would mentor recruits in emergency calls.

30 A crew was then made up of firefighters; a crew today is three firefighters. And at paragraph 14: training for firefighters today, according to Mr Alexander, is a far more complex - is far more complex addressing occupation safety issues, changes in technology, bush fire fighting and basic life support for first aid. The crews are required to undertake training in accord with the national training framework, the 21
35 modules equate to 500 hours of training which approximate to a 12-week course designed to meet the requirements of the training in the essential skills identified by brigade and training managers.

40 Recruits having successfully completed their training are placed in a fire station in either Hobart, or Launceston where they are required to work shift-work and attend many emergencies or dangerous incidents. They learn to work in a team environment with the same mentoring until they gain the experience required to perform the job safely.

45 After the six-month probation period an assessment is made and recruits are notified whether or not they have been successful. The first three months is recruit training in the training facility under supervision and the second three months is on the job training in an operational environment. There are some things a recruit can do after the three-

month recruit training but it was Mr Alexander's evidence the operation environment is different in the Monday to Friday training environment. He said that a permanent career firefighters had embraced the national competencies but it was yet to be introduced for volunteers. And there's a further exhibit that I would like to produce in relation to - - -

THE COMMISSIONER: It will be R29.

MR BAKER: It's a letter, sir, to the then Premier, Mr Jim Bacon, and it's from Mr Warwick, secretary of the UFU.

THE COMMISSIONER: Thank you.

15 **EXHIBIT #R29 LETTER TO PREMIER, MR JIM BACON FROM MR WARWICK, SECRETARY UFU**

MR BAKER: For someone it makes very interesting reading. I'll leave it that for your pleasure. I do say, Mr Warwick, you had obviously written it in a moment of peak, but that aside. The document actually talks about the work and the role of professional firefighters and the fact that - I must admit I didn't realise there were so few of them who were actually engaged on shift at any one time, but the document actually does talk about the role of the firefighter, that is the career in a shift circumstance and what they may have to undertake. And then I would take you to, on page 3 of the letter, about midway down the page - - -

THE COMMISSIONER: Page 3 of the letter? It's only got two?

MR BAKER: It's actually page 3 of the attachment, I beg your pardon.

MR WARWICK: If I could clarify for Mr Baker, sir, the attachment is a speech made to an assembled rally of firefighters outside Parliament House.

MR BAKER: Thank you, Mr Warwick.

THE COMMISSIONER: I couldn't get a ticket, Mr Warwick.

MR WARWICK: I was back - - -

MR BAKER: I was wondering why there was sort of like a crescendo at the end of it? Midway down the page he says:

45 *And so the government made a decision that we're responsible and we have to comply ...(reads)... liaising with police, ambulance, and the State Emergency Service.*

I should add, sir, I should identify this document. It was written in 2001 so it was at the time that the previous EBA was being negotiated.

THE COMMISSIONER: Yes.

5

MR BAKER: There's another example, the list goes on:

10 *The same thing happened a few years ago with confined space rescue. The same thing happened with trench rescue. The same thing happened with high angle rescue.*

And he posed the question:

15 *Do you know what high angle rescue is?---That's where you use ropes and pulley systems to rescue people from multi-storey and high-rise buildings.*

And then he goes on to talk about the following program, the Operation Procedure Manual. We have got a copy down here, it's as thick as your arm and the people here today have to have an intimate knowledge of every instruction in it. And what else do we do? Well, we go to bush fires. Well, that's hardly surprising, you might think, but apparently they don't do it on the mainland so it's something that's - - -

20

MR WARWICK: They do in Perth. I got a nasty letter from Perth.

25 MR BAKER: But the key to this is, and it's midway through paragraph 4, sorry, page 4:

30 *I mentioned volunteers before; now, we haven't got anything against volunteers, they do a good job ...(reads)... as we know, there's always plenty of them.*

So, again, sir, this just stresses the difference between what a professional firefighter is and someone who undertakes a hobby, undertakes it as a hobby. Now, there were exhibits produced in R17 and R16, that went to that fact. Now, if you recall R16, commissioner, it actually outlines a range of competencies that a career firefighter needs to undertake, and there is a full A4 sheet of competencies that are drawn from certificate 2 in public safety firefighting in emergency operations; certificate 3 in public safety firefighting in emergency operations; certificate 4 in public safety, diploma of public safety, advanced diploma of public safety firefighting management.

35

40

And there's a whole range of those competencies that are listed and through the pay points in the career fire - in the structure of the career firefighter, there are requirements; requirements that are set that a career firefighter needs to meet before he, or she advances to the next level. And through all of that, and in addition to meeting the competencies there is a time element with much of it. And that is then replicated to a degree in R17, which goes to the volunteer firefighting skills matrix, which was presented to the commission.

45

And if you look at that, and was to do a comparison you would certainly see that a number of the units of competency are undertaken, particularly at the lower level as the units in both certificates 2, and there are some units of competency that are drawn from certificate 3. But the issue is, as has been noted, is the length, the degree, and the depth of knowledge that a career firefighter has in relation to what needs to be undertaken as opposed to that which is undertaken by a volunteer firefighter.

And I will present evidence shortly about the issue about the fact that volunteers are about at their current point, they are unwilling, or particularly unwilling to undertake any further additional training because of the fact that it interferes so much with their way of life. And that's of no - that's of no criticism of the work in which the volunteer firefighter undertakes. But I think we need to quite clearly spell out that, in fact, that's what these people are, they are volunteers as opposed to a career firefighter.

If they were - if they stopped being a volunteer tomorrow then there is no - there is no detriment to their work. They don't receive a disciplinary notice if Mr Mackrill, for example, decided he would cease his heavy duty licence, endorsement of his licence, he said, "Oh, I'm not going to drive the truck any more", well, it's got nothing to do with the Fire Service whether he drops the endorsement, or not. And it's like other employees who undertake volunteer work, there is an extensive code of practice that applies within the Tasmanian Public Service, the State Service, I should say, to employees who undertake volunteer work of any nature and it doesn't just apply to those who engaged in fire. It's coincidental that it applies to persons who work in the Tasmanian Fire Service.

And the other, which I will come to as far as internal relativities are concerned, sure, it is that if there is some allowance made for employees who undertake, and I use the word "hobby" volunteering for treating fires, does that also extend to other persons within the Fire Service who undertake such activities, as clerical employees, or maintenance employees, or fabricating employees, or whoever else? So there's a whole - another concept which we'll move on to in relation to - in relation to those employees who participate in these worthwhile volunteering areas of work. But, again, I need to continue to stress the point in relation to the issue of the work which people have undertaken over a period of a long time.

MR WARWICK: Mr Commissioner, I wonder if it would help the proceedings if I indicated to Mr Baker that we don't contest the point he's been making for the last half hour?

THE COMMISSIONER: You can take that on board, Mr Baker.

MR BAKER: Well, I'll take it on board, sir, except that we have had an enormous amount of evidence that was presented in these proceedings about people undertaking volunteer firefighting duties as opposed to duties that are undertaken by a career firefighter and, indeed, Mr Mackrill even went so far as to suggest that he's called upon during work hours and he responds. He considers himself to be part of the Tas Fire Service. Now, I accept what Mr Warwick is saying - - -

THE COMMISSIONER: If it's any help it's not looming high on my radar.

MR BAKER: Well, if that's the case, sir, then I won't press the point any further. Well, I think we'll just - perhaps if I just have five minutes?

5

THE COMMISSIONER: Yes. How are you going time-wise?

MR BAKER: I probably do have an hour and a half to run, I would think. I won't be any longer than that.

10

THE COMMISSIONER: Well, do you want to - if you think it's obviously going to go after lunch we could break now and resume at, say, 1.45; would that work, rather than breaking for five minutes, coming back for 20 minutes and then breaking again?

15 MR BAKER: Unfortunately, my colleague has a lunch time engagement.

THE COMMISSIONER: Right, okay. Okay, well, we'll break for five minutes - - -

MR BAKER: Yes.

20

THE COMMISSIONER: - - - then resume for - till about 10 to 1?

MR BAKER: Yes, perhaps if we just have 10 minutes it would be fine.

25 THE COMMISSIONER: Ten minutes?

MR BAKER: Oh, sorry, do you want to - yes, dare I ask that we adjourn till 2.15, if that's - - -

30 THE COMMISSIONER: Now?

MR BAKER: Yes.

THE COMMISSIONER: Yes. We will adjourn to 2.15.

35

ADJOURNED

[12.10 pm]

40 **RESUMED**

[2.20 pm]

THE COMMISSIONER: Yes, Mr Baker?

45 MR BAKER: Thank you, sir. In earlier submissions which went to cross-examination of witnesses I produced two exhibits 9 and 10, R9 and 10, which went to the issue of salaries that were paid to employees both in - and they were headed, exhibit 9, Salary Component, Community Fire Safety Officer and Senior Station Officer and Station

Officer and exhibit R10 went to the same, and those exhibits were designed to show the how which - the composite salary loading was structured, so that it was obvious to the commission, or it becomes obvious to the commission as to how the composite salary/salary rate was structured.

5

And we do recall that it contained a 15 per cent shift-work premium, a seven and a half per cent weekend penalty rate loading, a 3.75 per cent loading for public holidays and a 10 per cent loading for working hours in excess of 40. Sir, a senior consultant, that is a consultant that does not have a firefighting background in community fire safety, is paid a maximum salary, as we discussed this morning, of \$61,344 per annum and his counterpart, senior station officer, earns a salary of \$69,801 per annum.

But as I stated in my submission, the salaries that we are looking at today contain various loadings but, importantly, when we look at these salaries, if you just take them on a straight hourly rate, that is, don't do anything about taking bits and pieces off for loadings, or anything else, and you simply - take an hourly rate, the rate that Mr Mackrill is currently employed at is \$31.04 an hour. That's his hourly rate.

If you take the hourly rate, that is the rate that is calculated out for someone in - who holds the firefighting skills in addition to that of consultant, the hourly wage, or the hourly wage rate is \$28.47, because the divisor - the divisor is different. So all of this - all of these considerations are before the commission, is a complex exercise both in relativities between and betwixt and, indeed, even in the hourly rate. So as I said, commissioner, even if you don't worry about the loadings, don't worry about the 10.9 per cent, or you don't worry about the issue about the loadings for weekend work, or overtime rates, or whatever, there is still the third consideration that needs to be had and that goes, as I said, to the hourly - to the hourly rate of pay.

THE COMMISSIONER: So that's the difference between 42 and 38; is that what you're saying?

MR BAKER: That's what I'm saying, commissioner. Sir, how do we then assess the rate of pay? And I think this becomes the most interesting of all the questions: how do we assess the work value component? We know from the evidence tendered, and this goes to the issue of the non-career firefighters engaged in community fire service, that there were issued a statement of duties that were originally developed and they were delivered - sorry, developed from the career firefighter - career firefighting statements of duty from those positions that were similar in content.

We also know that the Tasmanian Fire Service undertook a review of those classifications in 2006 by engaging a Mr Steedman to conduct it. We also know, from the evidence, that the Tasmanian Fire Service developed and had completed a range of job analysis questionnaires for each position. And we also know from the evidence that there is some discrepancy between the parties as to exactly what happened to those JAQs at the end of the day, but needless to say they were, in fact, developed.

Now, Mr Steedman provided witness evidence to these proceedings and, as I comment noted here in my notes, that you, yourself, know that Mr Steedman is an expert witness

on behalf of the respondent. At page 166 of the transcript at paragraph 30 to 35 Steedman indicates the nature of his expertise, and I quote:

5 *When I retired in 2004 from the Office of the State Service Commissioner
...(reads)... and matters relating to classification standards.*

And, again, in respect to those standards that he developed he makes reference to the inertia of clerical employee standards on pages - on page 165, the previous page, at paragraphs 40 and 45:

10 *I provided a consulting service to agencies on personal matters ...(reads)... I
was the architect of the current clerical award.*

15 And then Mr Steedman goes on to explain in detail as to the classifications - how the
classification standard was developed, at page 168, and I won't intend to paraphrase all
of it but he does go through how each level builds upon the other, in some detail. And
then on page 170, 171 and 172 he goes into detail as to how he developed the
classification standards that appear in the award as they are today.

20 And he talks in depth as to how those standards were developed and how they relate to
the ANC level. Now, I just take just one note in relation to the new level 4 in the
community fire safety officers' levels, and he makes a comment there that, he says:

25 *Now we developed my view that accords with level 7 in the clerical standards
because both require an upward participation -*

in 1 dot point and 2; we're now looking at number 4. And then he makes the
observation that it fits well with the level 7 clerical standard. And I'll come back to that.
Commissioner, I accept there was a vigorous exchange between Mr Warwick, myself
30 and yourself as to the overall acceptance of the developed standards. However, I make
the note that there was no challenge made to the standards, that they are not
representative of the work levels, and, indeed, when you look at the way in which those
standards are constructed there was no criticism that they did not represent the four
levels of work undertaken by the employees.

35 And, indeed, in the submission made by Mr Warwick in respect of the Fire Safety
Auditor, that is Mr Manten, it is suggested that a proper comparison with his
classification should be compared to that of the ANC work levels 5, 6 and 7, and it's in
the second paragraph of the correspondence that was filed with the commission.
40 Attached to this correspondence are three separate statements of duties that relate to
inspectors of workplace standards, levels 5, 6 and 7 of the Administrative and Clerical
Award.

45 Now, I make that observation that when you look at what is proposed in these
documents as far as a work level standard is concerned, what actually separates the
parties in this matter is that Mr Warwick submits these documents as representative of
inspectoral - of an inspectoral grade within the State Service. The difference that
separates us is that we say that Mr Manten is classified at level 4 and Mr Warwick, on

the other hand, suggests that perhaps they should be classified somewhere between levels 5 and 7, although level 7 is a team leader, I think, from memory - team leader, yes.

5 So there is a difference between us, but in respect of that matter, of course, we don't have any evidence from the applicant as to where Mr Manten should sit in the overall stream of things in respect of that matter. But I make the point that there was criticism of the way in which the methodology was advanced by Mr Warwick. But I would submit to the commission that those standards were developed in accordance with
10 proper conduct and processes, and are consistent with those classifications that apply across the State Service in respect to the Administrative and Clerical Employees. No such counter proposition was advanced by Mr Warwick.

15 Now, one of the things which I concur with Mr Warwick on is that there are other employees within the Tasmanian State Service who do inspectorate work; who do instructional work; and we have an exhibit that I would hand up, which I would suggest to the commission should be read in conjunction with the documentation provided in the exhibit that was provided to the commission on 30 November.

20 THE COMMISSIONER: This will be R29, no, 30; R30.

MR BAKER: They're just a bundle of statements of duties, commissioner.

25 THE COMMISSIONER: Bundle of statements of duties.

EXHIBIT #R30 BUNDLE OF STATEMENTS OF DUTIES

30 MR BAKER: These have just been selected at random, there's been no, if you like, we didn't do a google search, or anything, they're just a collection of whatever we could find at the time. And if I just sort of take you through them quickly, sir. The first one, this is a level 4 and it's - and the title is Fisheries Monitoring and Training Officer. And over the page - I must admit the agency does go in with a fair bit of gut before you
35 actually find out what the job's about but over on page 3 of the document it lists a series of duties:

Provide an accurate and time, electronic data processing service ...(reads)... appropriate reporting and provide administrative support.

40

And then it goes on and lists the knowledge skills, etcetera:

Experience in working requiring data entering keyboard ...(reads)... and promote personal development.

45

And then you need to, of course, be able to work effectively as the member of the team, have some great skills in oral communications and have a knowledge of Tasmanian commercial fishing industry and associated legislation and policies. Similar sort of

work which is undertaken by the auditor, I would suggest. If we just press on over the page, there's one from the Department of Primary Industries and Water, the information education officer, Fox Eradication. This is a level 6 position which equates to our building consultant at that level. And, again, sir, if you turn to page 3 it talks about
5 knowledge, skills and - sorry, I've skipped a page, the major duties are on page 2:

*Co-ordinate and develop a wide range of interpretation, education, promotion
...(reads)... and other relevant stakeholder groups.*

10 And then you also need to maintain the web site. And over the page, again, it lists the skills:

*Sound knowledge and experience and the development and delivery of
education ...(reads)... design and production of a variety of education and
15 promotional material -*

etcetera. And you will notice the desirable requirements, the suggestion that you should have a university degree, or an equivalent inter-related discipline. Further on, sir, there's a statement of duties for the Department of Tourism, Parks, Heritage and the
20 Arts. This an education officer, Antarctica and Community programs. This one's at level 7. Again, sir, is to:

*Effectively develop, co-ordinate and implement visitor programs to actively
educate the public of Tasmania's cultural and natural heritage.*

25 And then, again, it lists the major duties:

*Manage, develop and implement, monitor and evaluate innovative programs
...(reads)... related to the museum's collection, the museums and schools.*

30 And then there's:

Liaise -

35 etcetera -

and assist.

40 And over the page, Knowledge - sound knowledge:

*Sound knowledge and understanding of the principles of education ...(reads)...
public and special interest groups.*

45 And the qualifications? There is none other than you need to have - need to pass the conviction check. I do apologise; over the page there is actually Desirable Requirement:

An appropriate tertiary degree, or diploma from a recognised Australian institution.

5 From the Department of Justice, and I think these might mirror what, in fact, Mr Warwick has provided this morning. This is from the Department of Justice, inspector, at level 6, and the duties are:

10 *To provide high level and advice and support to industry to ensure compliance with legislation administered by Workplace Standards Tasmania.*

And, again, the duties:

15 *Promote, develop and implement programs, policies and guidelines ...(reads)... contemporary workplace issues gained through research and training.*

And then over the page the selection criteria:

20 *Well-developed written, communication skills, sound understanding of the role ...(reads)... together with a capacity to work as a contributing member of the team.*

And you'll see down the bottom, the requirements at the bottom of the page, it talks about:

25 *Essential, current driver's licence and desirable, appropriate qualification and/or experience ...(reads)... forest harvesting, manufacturing, or retail.*

30 There's a further one from the Department of Justice which I won't read which is actually the senior inspector's role which is at level 7, which is basically the same but, obviously, there's a step up there required. There are two final ones which I make mention of. One is in relation to the Department of Premier and Cabinet, the TASINET trainer and support officer, this is at level 5, and the primary tasks are:

35 *To organise and conduct formal and informal communications ...(reads)... provide mental needs -*

and then it goes on to talk about how you do:

40 *Implement new clients, Tassie services -*

etcetera. And over the page it goes on about knowledge and skill:

45 *Expertise, the provision of adult training in the knowledge of techniques ...(reads)... and support services by TASINET.*

And then it goes on and talks about:

Interpersonal skills, sound written and computer literacy skills.

Over the page there's another level 5 position, the Department of Infrastructure, Energy and Resources, and this is a training officer:

5 *To assist in preparing training documentation, delivery of training ...(reads)... assistance for the development and maintenance.*

And then it lists a number of duties:

10 *Assist in developing and delivery the training package for the new Motor Registry system ...(reads)... provide training in the receiving and balancing of moneys.*

And then over the page it lists a selection criteria and it talks about:

15 *Well-developed communication and interpersonal skills, ability to interpret the information ...(reads)... appropriate processes and procedures.*

20 And the desirable requirements is a certificate 4 in training and assessment which we have heard something about during these proceedings. Now, sir, just providing that overview gives you just an outline of work which is carried on the in the State Service which is similar to, but not identical to that undertaken by persons who occupy similar roles with Community Fire Service.

25 Now, if you're asking me what the value of the work is by comparison, there's a question to which I don't know the answer because I haven't gone out there, and I haven't evaluated [sic] the work which those persons undertake as opposed to the work which is carried on in Community Fire Service. And, likewise, I put to you - I put to the commission, that that work that has been put forward by Mr Warwick in respect of Mr Manten is, likewise, not tested.

30 Now, I think, sir, that that is an issue which we need to give some serious consideration to. There's been a lot of assertions made in these proceedings and, indeed, I've just made one. I have suggested to the commission that the work which these consultants undertake within TasFire Service resembles the work which is not unfamiliar to that which is taken on in other areas of the State Service. I do that by reading a statement of duties; they look the same. Are they the same? I don't know. I don't know the answer to that.

40 Likewise, commissioner - but then, again, it's not my issue to prove the case one way or the other, it's up to Mr Warwick to be able to prove the case and I suggest that that hasn't happened. What Mr Warwick has done is relied on assertions; assertions from the bar table, assertions from witnesses, comments that have been extracted from witnesses from the respondent as to the similarities of work. Now, it may well be argued that, in fact, the work is similar and it may well be argued that it is, in some instances, identical.

45 That evidence has not been led. We have not seen evidence led by a station officer, or a senior station officer to whom this application relates. Sorry, I'll rephrase it: to whom

the work is compared. There is no comparison. There is no evidence before this commission either by way of inspection, or by way of witness evidence that says that the work is the same. Nor has there been any direct evidence supplied to this commission that the underpinning skills and knowledge of the persons concerned, is the same.

We say that it is not. I do not want to go back and reiterate the comments that I've made this morning, but I think it is imperative that the commission gives weight, serious weight, to exhibit 16 and 17 and, in particular, 16, which outlines the underpinning skills and knowledge of the individuals concerned who, as part of their career part move from a career firefighter into community fire safety, and then return.

I'll come back to that about employees returning. Because the level of skills and knowledge of one class of employee is significantly different from that of the other, because as the statement of duties have demonstrated from, I think it was R3 to R8 in respect of those - the SODS, clearly show that there is no requirement, no requirement for a level of underpinning skills and knowledge to the same level. They talk about, as I made reference to them, as life skills - appropriate skills in the circumstances, but they bring to the position a variety of those skills but there is no pre-determined, no pre-determined outcome, sorry, pre-determined level of skills and training that are necessary to undertake those positions other than if you're an instructor you really need to have the certificate 4 in workplace assessment.

In addition to that I think it's also important to note in relation to the structure into which these employees sit and there is a note in the wage-fixing principles that goes to the account of the relativities and the integrity of the internal award structure. These employees normally sit within the ANC levels 4, 5, 6 and 7. At levels 8 and 9 persons who are not subject to this application are, in fact, their managers. There are employees who are employed in TasFire Service who do not undertake an operational firefighting role but who, nevertheless, are classified within that structure.

So we have managers classified at levels 8 and 9 in both TasFire Safety and building safety who administer the area. And there would need to be some reappraisal of a whole section if that matter was to be processed further. So we accept - so when looking at this issue as a whole the commission needs to be mindful of that internal structure that currently exists; needs to be mindful of the way in which the structure was put together by Mr Steven and his experience in putting it together; and the commission needs to be mindful of those classifications of employees similarly engaged in both inspectoral roles and instructoral roles outside of TasFire Service. They are roles which are similar.

Again, sir, I make the point, and I won't labour it, but I make the point, if we are genuinely looking at comparing like with like then we say that it's incumbent upon the applicant to demonstrate like with like, not assertions, not statements that are led from the bar table, not comments elicited from rebuttal in - during cross-examination, but genuine work value assessment, assessment of the work at level.

Now, sir, you and I and Mr Warwick, in previous times, have gone down that path. We have gone out and we have done inspections and we have elicited the information from witnesses. This is half a case, in our view. And I again go back to the point that I made at the outset: this case commenced as a review of relativities between firefighters and
5 non-firefighters undertaking work at a similar level, and that was, in my view, genuine work value. But something happened to all of that, midway through the case and the claim changed then to one of equality of salary outcome, now, "They have got it; we want it."

10 Now, as I've indicated before, in our view, that then moves away from the issue of work value because it removes from the commission an ability to determine what is an appropriate salary in all the circumstances, because the claim is, "There it is, that's what we want", and there's no middle ground. Now, I accept that the commission has the right to do whatever it feels is appropriate in all the circumstances.

15 However, having said that where would that, in fact, leave the parties? This, as I've indicated, is an extraordinary complex situation because of the interrelationship between the classification levels, between those who are engaged as career firefighters, those who are engaged as non-career firefighters, the supervisory levels and the whole
20 interrelationship between the various levels within the Tasmanian Fire Service. So it's not just an issue of picking up one level and altering it. It has an impact on the service and that needs to be remembered.

I want to go back and simply reiterate what I said before in relation to the issue of -
25 refer back to the issue that I made the point earlier on in relation to the centralised bargaining, sorry, the centralised wage outcome. The 10.9 per cent sits there on top of all that I've just previously said because that is an issue which, in these proceedings, whatever outcome is arrived at, needs to be considered because that also, in turn, applies to whatever. Whatever is dealt with at the end of the day that 10.9 sits over the
30 top of whatever decision may be encompassed - sorry, whatever decision may be arrived at.

We say that there has been no significant nett addition to the value of the work. There has been no evidence put forward in these proceedings, none whatsoever that has been
35 put forward to effect, if you like, the trigger that is required under principle 9, the wage-fixing principles that there is a significant nett addition to the value of the work. There has been an issue raised about - an issue raised about whether, or not it can apply and when it commences; whether or not the work has been valued.

40 We say the work of the station officer, there is the work which is now being compared, was valued in 2000, sorry, in 1993, '94 and the decision - and the EBA decision of 2004 took into account the EBA changes that occurred up until then. Now, Mr Warwick wants to compare the work value of the position - of those positions then the work value component of those classifications was established in 2004.

45 So if you are comparing the like with like you then need to go back to 2004, we would suggest, and set that's where the benchmark is, because those station officers, and senior station officers to whom the increases applied at that time encompass the work value.

So we say that that's where the benchmark sits. And, as I said, since then, in my view, it is impossible to demonstrate that there has been any movement in work value. And I again reiterate the comments by Deputy President Robinson in that '93 decision when he indicated that:

5

In my view there have been some evolutionary changes...(reads)... and then continue on past it.

10 Now, we say that is what the case is in these proceedings, evolutionary change. And evolutionary change affects all of us in our daily work lives. We have certainly heard a fair bit about contextualisation of training courses and it is my opinion, and it was that expressed by Mr Killalea in his presentation to the commission, his evidence, that it's always been part of the instructor's role to contextualise training courses.

15 And, of course, it has changed, and now we have national training packages and that enables the trainer to add, subtract, mix, match, but at the end of the day he finishes up with a training package that he knows he can deliver and deliver an outcome that is consistent with the national training package and meets the requirements of the consumer. I pose the question: is it more difficulty, more complex, or does it allow the
20 trainer more productive time to mix and match, deliver more alternate training courses and be a more productive employee.

But I make the point, it's not change as much as it's adding value to - it adds, certainly adds value to the work, but the change, again, is evolutionary. And then there was the
25 analysis of the complex building plans. I note Mr Warwick's amazement at the depth of the plans that Mr Gregg had assembled on the table before him. But I pose the comment to the - the following comments to the commission: are those plans as complex today as they were 20 years ago?

30 Computer drafting and the development of standardised symbols, computer-enhanced graphics, colours, together with software enables specifications to be set to pre-determine tolerances, both enhances the drafted plans and aids consistency in the approach and outcome. You know, there's no hit and miss whether, or not you have got two, or three people doing one plan, you know, it's one plan might be done by a dozen
35 people but the outcome is the same. So it's more complex; there's greater detail; but there is a consistency in the finalised product that enables the reader to have a greater understanding of the detail plan that's before him, or her.

40 Likewise, the building regulations; more complex, greater detail, more accountability, or is that part of the changing working environment? Regulations change, Acts of Parliament change, regulatory bodies, accreditation providers, they all change, but again, the question is raised: is it a significant addition, or is it the evolution of work? And, finally, I just make a couple of minor observations.

45 I made a comment in relation to the fire auditor, nothing - nothing has been presented to this commission in any shape, way, or form that would require, in my view, the commission to interfere in the process that TasFire Service put in place in relation to the

salary for Mr Manten, nothing has been put to this commission that would, in my view, move the commission to alter the current structure.

5 In closing my submission, I make the point that this case has been presented along lines which I have found confusing. There's been a lack of clarity; there has been an enormous amount, as I commented on this morning, of erroneous material and, in my view, the principles in which this case was to be conducted that is under the work value principle, had, in fact, been ignored.

10 In my view the submissions of the applicant cannot, and do not meet the test of the wage-fixing principles imposed on matters such as this and, therefore, the case must fail. And, in conclusion, sir, well, that is in conclusion. Subject to any questions that you may have, or any comments that my colleague would like to add to the submission, and as she shakes the head, I shall resume my seat subject to your - any pertinent
15 inquiring questions.

THE COMMISSIONER: No, I'm fresh out of them, Mr Baker.

20 MR WARWICK: Before Mr Baker resumes his seat, commissioner, I wonder if he could explain for my benefit was TASINET is, because I have absolutely no idea?

MR BAKER: What an outrageous question? TASINET? Yes, thank you.

25 THE COMMISSIONER: Ms Pearce?

MR BAKER: I'll move to the back of the room.

30 MS PEARCE: If it assists Mr Warwick, TASINET is the State Government telephone system which operates all of the telephone arrangements in between government agencies, including not just, of course, the switchboard operations, but also a multitude of other functionalities, including arranging conference calling and all sorts of other facilities.

35 THE COMMISSIONER: Yes.

MR BAKER: Yes, there you go. I knew it was a telephone system.

40 THE COMMISSIONER: Thank you, Ms Pearce. Mr Warwick, what's your position, because you have got the right of reply?

MR WARWICK: Well, I'm good to go. My only consideration is that I have two hours on the meter as of 2.15.

45 MS PEARCE: You have got an hour left.

THE COMMISSIONER: You have an hour.

MR WARWICK: It's all right. It's just a matter of going and putting some more money in it, sir.

THE COMMISSIONER: So you're in a position to respond?

5

MR WARWICK: Yes; in full.

THE COMMISSIONER: We'll have a - - -

10 MR WARWICK: In full.

THE COMMISSIONER: We'll have a break for 10 minutes.

15 **ADJOURNED** [3.05 pm]

RESUMED [3.20 pm]

20

THE COMMISSIONER: Mr Baker?

MR BAKER: Just one final thing, commissioner, I have one last exhibit I want to present.

25

THE COMMISSIONER: Yes?

MR BAKER: It's in relation to firefighters who are working currently in building safety and TasFire Training who will, at some stage in the future, move back into operational firefighting.

30

THE COMMISSIONER: Call it R31.

MR BAKER: I simply raise the exhibit, and I don't intend to speak to it, but it's self-explanatory.

35

THE COMMISSIONER: Just before you do, I'm trying to give it a title.

MR BAKER: Robyn?

40

MS PEARCE: Employees with firefighting background who have worked in community fire safety.

THE COMMISSIONER: The transcript will note that.

45

EXHIBIT #R31 EMPLOYEES WITH FIREFIGHTING BACKGROUND WHO HAVE WORKED IN COMMUNITY FIRE SAFETY

THE COMMISSIONER: Thank you. Yes, tell me what it's all about, Mr Baker; can you - - -

5 MR BAKER: Well, it's nothing much, all I do is, I just put it on the record, there was issues raised about who's in, who's out, who's going where, so I thought I would just - we would just put up an exhibit to show - demonstrate.

THE COMMISSIONER: Right. Thank you. Mr Warwick?

10 MR WARWICK: Thank you, commissioner. Just if you will allow me to make a note about that exhibit before I - if I may, commissioner, I would seek to commence by going through what Mr Baker has put to you today, item by item. Mr Baker said that this case is not about career firefighters. He referred to volunteers having a hobby, and I must say that that's not a term I would use in respect to the circumstances in the Fire
15 Service in the sensitivities that prevail. However, he also talked about reservists and hobby farmers.

Commissioner, I rather think that the respondent has missed the point. We only
20 introduced evidence about some of our members being volunteers, in fact, the five, or some of the five people in question being volunteers, to highlight inconsistencies and attitudes in treatment, that is to say that the Fire Service does ask those people, the people who are subject to this application, to go on firefighting duties from time to time, just as they do other non-rostered shift-workers.

25 We weren't suggesting at any point that, well, in fact, the union was never suggesting at any point that the evidence that Mr Baker's put about the difference in the levels of competency in respect to career and volunteers as being true. And I think perhaps the most illustrative point, and one that he missed, was the second period of probation, three months, when trainee firefighters go on to shift after their recruit course, they're
30 assessed, amongst other things, in relation to their competence to be a shift-work firefighter and, indeed, no one who hasn't been a shift-work firefighter could be assessed in that fashion. So we would - we do not argue that and we never would.

35 Mr Baker went on to say that the case is about the exercise of duties by station officers and senior station officers, whether they're in a fire station, or in community fire safety. Our argument is that the non-rostered shift-workers who work in community fire safety don't use their firefighting skills in community fire safety and if they do it's on an extremely uneven and extremely ad hoc basis. There is no consistency to it whatsoever.

40 Mr Baker argued that the union is, in fact, interfering in management prerogative decisions, or management decisions and, therefore, by extension, prerogative. We would say that that simply is not so. This case is about rates of pay. We have never argued about the TFS should run its business. The award says they're entitled to send officers into non-rostered shift-work positions for two years. They can leave them for a
45 longer term and, indeed, they do. We have never attempted to interfere in that process at all, except in the circumstances where people might feel aggrieved, that is, they feel that they have been treated unfairly compared one to another - another officer.

And, obviously, there have been circumstances where people have been told to go and to non-rostered shift-work when others who work on the fire station haven't been told, and they may have done some periods previously where they have gone and done non-rostered shift-work and other peoples haven't - people haven't, well, that's a matter of
5 people being treated fairly. That's not interfering with management prerogative.

And it's not the case that we have ever told them that they should do this, that and the other, as to how they staff these positions. It's simply not true. We have only ever endeavoured to intervene on behalf of employees who feel that they have been unfairly
10 treated. Mr Baker said that 10.9 per cent is the difference and it's not the role of the commission to correct bargaining outcomes. He said that our claim makes a mockery of the wage-fixing principles.

Those claims are wrong for a number of reasons. The application, commissioner, seeks
15 a work value case, but what it does by way of explaining the circumstances surrounding the case is - refer again to a background document that was, in fact, lodged as a section 29 dispute in November 2006. Now, the commission is, of course, subject to the direction of the Supreme Court in respect to instructions that were made more than a decade ago, that applications before this commission had to be expansive and fully
20 explanatory of the circumstances.

And rather than write a whole history again I decided to attach this explanatory document, the section 29 November 2006 document, as the background to the claim. The claim is for a work value assessment. It is not to correct bargaining outcomes and
25 it is wrong for Mr Baker to say that that's what the claim is about. And that examination, or that discussion of the 10.9 per cent was only in there by way of historical reference.

Mr Baker said that in the discussions we have had in the lead-up to this hearing, that he
30 believed we were heading towards agreement on classification standards, but not wages. He said the claim has changed and that it's not work value. Well, we weren't, certainly weren't heading towards agreement on wages. The reason that we're here is because we couldn't agree on wages. And as to the inclusion of the classification standards, they were agreed by us in the context of the transfer of the federal award and
35 agreement back to the jurisdiction of this commission, and the inclusion of the community fire safety officer classifications.

And we were under some significant pressure to get that process done but, also, under significant pressure from the government itself to do so. So we agreed to the order
40 clause as it now stands on the basis that was always made clear to the Fire Service that we wanted to either bargain an outcome for these people, or if that couldn't be achieved, we had made it clear on many occasions that we would bring the matter here.

And I said in earlier proceedings, commissioner, it is within the purview of your
45 jurisdictional powers to either find that those classification standards are appropriate, or not, as you see fit. I would say, however, that we do agree, largely speaking, that there are four levels of work. It is unfortunate I think, from our point of view, perhaps that the auditor does not have a further position to aspire to, a range of competencies that he

could pursue and enhance his promotional prospects, and that is perhaps something we could address down the track.

5 Mr Baker talked about nett changes in work value since the structural efficiency increase, and I believe he was saying that that had to be considered in the context of where you find the data in point. Well, the employees in question were not subject of the 1993 award restructuring decision in relation to firefighters, they simply were not subject to it. He talked about the current EBA work value clause on page 3, which talks about firefighters being compensated for all of the work they do, and we agree; it does.

10 There is one exception because we're now responsible for domestic rescue, industrial rescue and what's called technical rescue, which is trucks, buses and trains. And we inherited that along with road accident rescue, almost just a little bit over 12 months ago, so that's not in the scheme of things yet but, generally speaking, the work value clause does compensate firefighters, but these people don't come from a firefighting background and they don't work on the station, and they don't do those jobs. But our argument is that, largely speaking, the non-rostered shift-workers who do the same work as them, they also don't do those jobs, not on a regular basis and, in fact, many of them never do those jobs.

20 Mr Baker said that the work value - the work value principle must operate subject to other principles and I'm paraphrasing him but he pointed out that the people in question have had some pay rises over the last three years, and he might not like me putting it in these terms, but I think he was sort of basically saying that they had done okay. The fact that they have had pay rises, commissioner, is not relevant. Mr Baker's submission boiled, in this regard, boiled down to saying that they have done okay so they should be happy. Well, they're not happy, and I think they have every right to be unhappy, working side-by-side as they do with people who are paid much more than them but, nonetheless, they do the same work.

30 Mr Baker referred to the teachers' special case in 1993 and he said "That's what a real work value case looks like", well, unfortunately, I think Mr Baker's wrong there because that's what a work value decision looks like. The decision went through and itemised areas of change; quite right. There has been evidence put to you, commissioner, about the nature of the work, the skill and responsibility and all of those things, and I would imagine in making your decision you would make reference to those.

40 And, indeed, it may be reported in a very similar fashion to the way that the teachers' case was, but to say this is not a work value case because it hasn't got a set of dot points in the way that the teachers' case did, is a specious argument. Mr Baker talked at great length about the August '99, '89 national wage case decision, and I'll come back to that later. But I would say at this point I rather think the government and the Fire Service is misreading the intent of that case.

45 We don't contest that firefighters' work was valued in 1993 but that's not the point. The point is that this work hasn't been assessed. He argues that there must be significant change in relation to Mr Manten. There is no datum point. There is no previous

assessment. Mr Baker cannot hold that that work value case in 1993 that applied to the firefighters can apply to Mr Manten, or any of the other four individuals involved when they don't go shift-work firefighting. That's the basis of his case, so how could he say that that work value case applies to these people?

5

The hole in Mr Baker's argument is that there is no datum for these people; there never has been; the same goes for Mr Gregg; the same goes for Mr Mackrill; and the same goes for Mr Francombe. Mr Baker said that there is no nett addition to the value of the work. He called it "comparative wage justice" and he went quack, quack, quack, well, this is not comparative wage justice. Comparative wage justice, historically, was about wages in disparate work places and across industries and, in fact, it was a problem, we concede to Mr Baker, that it was a fairly artificial way of endeavouring to get wage increases, but we are talking here about people who work in exactly the same workplace and do exactly the same work.

15

Now, that is a work value question. That is not a comparative wage justice question. Is it fair for those people to continue to be paid substantially less than their colleagues for the reasons purported by the employer? We say it is not fair. Mr Baker said that we are asking you to fix up a matter - asking the commission to do something that the UFU couldn't bargain for. I said earlier that the application was made up of background information. We had no control over the bargaining outcome for the five people in question in 2004, none whatsoever.

20

The bargain that applied to them at the employer's insistence, related, or was done - that bargaining was done by the CPSU, HACSU, ALHMU and others, not us. We had no role whatsoever. The Tasmania Fire Service insisted, and our claim in 2004 was for these people to be part of our bargain and Mr Baker tabled the evidence to that effect, and the employer rejected our argument in that regard. When the offer came, there was nothing about these five people in it. And, indeed, the same was true in respect to this current round of bargaining.

25

30

And, again, the Fire Service dismissed any request on the part of the UFU for these people to be included in the general bargaining that goes on for firefighters. And, in fact, it was on - at a bargaining meeting earlier in this year, when the Fire Service said to us, "Well, no, they're not in the - they're not in this bargain, and that's it." So the point of all that is, what the Fire Service is really saying is that "We'll put you in - we'll put these five people in the Firefighters' Award but we're not going to have them part of this bargaining process.

35

So Mr Baker says that we're trying to get the commission to fix up something the UFU couldn't bargain for; well, the Fire Service refused to bargain and they have refused to date. Mr Baker spouted all sorts of figures about percentages and monetary amounts. Well, those - all I can say about those figures and percentages is that if the Fire Service had bargained with us in good faith then perhaps those percentages wouldn't be as large as they seem to be.

40

45

Mr Baker talked about all sorts of complexities in relation to various loadings, straight hourly rates, comparison of those. He talked about shift loadings and penalty loadings,

commission; all of that is irrelevant. In exhibit R22 at page 21, two-thirds of the way down the page - - -

THE COMMISSIONER: Page 21?

5

MR WARWICK: Yes.

THE COMMISSIONER: Yes?

10 MR WARWICK: Two-thirds of the way down the page, commissioner, I quote:

*Both parties agreed to the concept of annualised instead of weekly salaries
...(reads)... and the disability allowance should be absorbed.*

15 Well, what happened in the end was, there were annualised salaries by consent and, indeed, the union lost that part of the argument going to the absorption of a number of allowances and they were to do with matters such as first-aid and driving aerial appliances, and such. So it was a consent ultimately - well, in large measure consent but - - -

20

THE COMMISSIONER: Does that include shift allowances and weekend penalties in this - - -

MR WARWICK: Yes, I believe so. So 14 - - -

25

THE COMMISSIONER: What do you - - -

MR WARWICK: Sorry?

30 THE COMMISSIONER: What do you have to say about the divisor question, the 42 hours versus 38?

MR WARWICK: That matter was resolved by negotiation in the 2004 agreement, sorry, in a succession of agreements, '99, 2001 and, finally - sorry, '99 and 2001
35 agreements, that matter was resolved.

THE COMMISSIONER: Yes, but bear in mind you're a lot closer to the history of this than I am.

40 MR WARWICK: Yes.

THE COMMISSIONER: On first blush, if I was to accede to your claim the outcome might be that I agree that there should be 100 per cent parity, that's not what I'm saying was going to happen, but that could be the outcome, for which one group of employees, namely, career firefighters, are working 42 hours a week and the other group of
45 employees, being the subject of this application, are working 38 hours a week for the same salary - - -

MR WARWICK: Yes?

THE COMMISSIONER: Now, am I wrong on that, or what's the position? I mean, is
5 it tied up in the notion of what I was perhaps hinting at before, of paid crib breaks and
that sort of thing? It's just a loss to me?

MR WARWICK: Okay. If I can clarify it? Starting with the crib payments: only
10 rostered shift-workers get paid meal breaks, non-rostered shift-workers don't, where - it
doesn't matter where they come from.

THE COMMISSIONER: Right.

MR WARWICK: And I can only give you the history of the firefighters' 38-hour
15 week. The 41st and 42nd hours were purchased in the seventies, for money. And the
39th and 40th hours were resolved - the issue of the 39th and 40 hours, 40th hours was
resolved in the 1999 and 2001 agreements on roughly 50 per cent pay - a 50 per cent
pay increase and 50 per cent additional annual leave, of which additional annual leave,
or, in both of those components the non-rostered shift-workers enjoy the benefits of
20 those. It may be useful if Mr Baker gives you a history of the broader general
conditions of employment?

THE COMMISSIONER: Well, I must say it's an aspect I'm struggling with at the
25 moment. If we take the case of Mr Mackrill who, as I understand it, has - is working
alongside career firefighter, or firefighters doing training work, now, are they working
the same hours, or are they working different hours?

MR WARWICK: On the face of it I would say they're working two hours; Mr
Mackrill works two hours less.

30 THE COMMISSIONER: Two hours less?

MR WARWICK: Yes, on the face of it. I think that would be right.

THE COMMISSIONER: I see nodding from Ms Pearce. Do you want to confirm?
35

MS PEARCE: Yes, that's correct, commissioner. The hours of work for the
community safety officers are a nominal 304 hours in an eight-hours, eight-week cycle,
or 38 hours a week. The hours of work for the non-rostered shift employees who are
40 from a firefighting background is 320 hours over an eight-week cycle, which averages
40 hours a week for which they have been compensated an additional 6.25 days per
annum in annual leave for the reduction hours - - -

THE COMMISSIONER: So the answer is that it's taken up in annual leave?

45 MS PEARCE: Yes. And they - the same divisor is applied to all employees under the
award because, normally, they will work a 38-hour week but they are compensated for
the additional hours with other benefits.

THE COMMISSIONER: So just so, as I understand it, on the face of it the - or not on the face of it, the career firefighter works an additional two hours on average per week but - - -

5 MS PEARCE: The - - -

THE COMMISSIONER: - - - but is compensated for that through additional leave; is that right?

10 MS PEARCE: The non-rostered - - -

THE COMMISSIONER: Yes.

15 MS PEARCE: - - - career firefighter works an additional two hours, yes, and is compensated by an additional 6.25 days annual leave per annum. And the rostered shift-worker receives the 6.25 days and, in fact, both of them receive the 10 per cent extra duty hours as well, which is part of the loading. That two hours that Mr Warwick referred to was purchased back in the seventies, which is the 42-hour bit.

20 Now, why they both receive it, both the rostered shift-workers and the non-rostered shift-workers, that was part of the arrangements of when the two services came together, the urban fire brigade service and the rural fire brigade, they needed to find a way that they could bring all people together. And so those who were non-rostered shift-workers ended up sharing the benefits of the loadings, etcetera, that the rostered
25 shift-workers had because they can be required to work 14-week nights and 14 weekend days, and so that's why they still receive the penalties and the extra duty hours payment, because we can require them to work weekends and nights.

THE COMMISSIONER: Yes.

30 MS PEARCE: We don't require that of the community fire safety officers.

THE COMMISSIONER: Yes, thank you. Mr Warwick?

35 MR WARWICK: Just to clarify that compensation for the 39th and 40th hours, commissioner: the '99 agreement, in addition to the wage increases that were agreed, there were two instalments of 1 per cent over two years which compensated for, I guess, either the 39th, or the 40th hour, and in the next agreement there was the additional 6.25 days in annual leave, which isn't - it doesn't equate to the 39th and the 40th hour, it
40 equates to one of those, so it's only one hour. The additional leave only compensates for one hour.

THE COMMISSIONER: Now, I'm just a simple soul. If we take Mr Mackrill - - -

45 MR BAKER: How could you lot dream this up?

THE COMMISSIONER: Again, if we take Mr Mackrill and his career firefighter colleague, one is working 40 hours a week, the other is working 38. The one who is

working 40 hours a week gains an additional 6 point-something days annual leave; is that correct?

5 MS PEARCE: And, as Mr Warwick said, and I do have some vague recollections now that he's explained it in that manner, that there was a percentage increase as well as one of - as part of one of the agreements that they would receive it, so, under an EBA the career firefighter would have also received a percentage payment - - -

10 THE COMMISSIONER: Yes, I - - -

MS PEARCE: - - - but I can't recall the detail. So there was part payment, part leave to compensate for the additional hours.

15 THE COMMISSIONER: But leaving that aside, as it stands at the moment, forgetting about how the wage component has been put together, one is working 38 - - -

MS PEARCE: Correct.

20 THE COMMISSIONER: - - - one is working 40.

MS PEARCE: Correct.

25 THE COMMISSIONER: The one who is working 40 gets more leave than the one working 38?

MS PEARCE: That's right; absolutely.

THE COMMISSIONER: Thank you.

30 MR WARWICK: Coming back to this question of the absorption of loadings and penalties, and the annualisation of the salary, commissioner, we say that the employer's argument in this regard is irrelevant. It was 14 years ago, and the strict proviso at the time was, as Ms Pearce says, that non-rostered shift-workers can be required in an eight-week cycle, to work four weekend days and 14 nights, which is, in fact, what the
35 shift-workers work in the eight-week cycle, but, see, the problem is they don't, and I'll say more on that later.

40 Mr Baker talked about the evidence given by Mr Steedman and he said, there was no challenge to the classification standards, and if I could reiterate again, we had significant pressures to get these people into the award with something like an appropriate set of classification standards. Mr Baker said that in respect to the auditor we tabled, or I wrote to the commission and tabled the Workplace Standards Authority position descriptions, and he said there was no evidence from that.

45 I would like to correct Mr Baker. He said that we thought that an admin and clerical level 7 would be appropriate. That's not in the correspondence I forwarded to you, I said 5 or 6. He says that there is no evidence in the documentation I forwarded. Well, we reject that completely; there is evidence. The documentation talks about an

inspectorial function; the job of inspecting. The government's requirement of business to meet the government's law.

5 Now, if people are doing a job, and there is no other comparison, the documentation I forwarded clearly says there is no comparison in the private sector. And we say that if people are required to go out on behalf of the government and at a higher level ensure that the government's law is being observed, that's their job, then there is a very, very clear comparison and, furthermore, it's evidence.

10 If I could turn to exhibit R30? In the first statement of duties that Mr Baker discussed, he talked about the Primary Industry's licensing administration, well, major duties: the first one talks about:

Provide an accurate and timely electronic data processing service.

15

Well, the auditor doesn't do that, Mr Commissioner. The Fire Service employs other people to do that. The auditor doesn't do Return Timely Summaries of Reports of Intelligence Quota Information, prosecution briefs, perhaps. He doesn't monitor industry reports, non-submission of required data by a business. The Fire Service has
20 other people to do that. He doesn't deal with complaints. He doesn't liaise with stakeholders on matters relating to compliance. He goes out and inspects.

He doesn't do internal training of fisheries and monitoring staff. He doesn't develop training processes and schedules. Perhaps he provides administrative - no, he doesn't
25 provide administrative support to the chief investigations officer at all; he doesn't do that. So there - he goes out and inspects. If I could turn to the second one: Fox Eradication, major duties on page 2 of this one, and this is level 4 again, so it would be a comparison with the auditor:

30 *Co-ordinate and develop a wide variety of interpretation, education and promotional information materials -*

Mr Manten doesn't do that. He doesn't raise public awareness of any program:

35 *Liaises with the Fox Eradication program ...(reads)... educational programs -*

well, he doesn't do that:

40 *Assist with the co-ordination and delivery of interpretation ...(reads)... to community groups, schools -*

he doesn't do that. He doesn't maintain web sites and he doesn't review material developed to ensure:

45 *...and ensures compliance with government -*

well, I guess he does. And he does - this talks about:

...liaising with consultants, contractors ...(reads)... ensure compliance with government agency in a program -

5 well, that doesn't sound like the auditor at all, commissioner. The next one is the
Tasmanian Museum and Art Gallery Antarctic and Southern Ocean, a level 7 position.
So this would be, I imagine, in contrast, or in comparison with Mr Mackrill. Well,
without taking you through it in great detail, commissioner, there's nothing in here
about managing budgets. There's nothing in here about managing staff. There's
10 nothing in here about developing business opportunities. It doesn't match up at all,
commissioner.

We move over to the Department of Justice. Well, this is the level 6, Workplace
Standards inspector. Well, we said level 5, or 6, so we ask you to look first at the level
5 position description which we provided to you. And the next one is the level 7,
15 Workplace Standards, well, it's manager of inspectors, team leader of inspectors. Our
submission does not talk about the relevance of that position description at all, in fact,
we didn't mention it in our correspondence.

And the next one is the Department of Premier and Cabinet, the TASINET position
20 description, and it talks about:

*TASINET training programs, course content and training materials ...(reads)...
meets their needs.*

25 Well, the clients - who are the clients, commissioner? Clients I would imagine, are
internal. I think they're internal; they're not external businesses. They're not - this is
not going out designing business, but training programs for industry. This is about
training to make sure that the operators of TASINET know what they're doing. I don't
want to undervalue it but it is not part of the GBE.

30 And the last one, training officer, land transport safety, level 5, which would be Mr
Francombe and Mr Webster. This is in-service training, it seems to me. The third
point:

35 *Provide advice and assistance to clients within and external ...(reads)... and
associated systems.*

I actually have no idea what that means, commissioner, but - well, I guess you'll have to
make your own judgment about this, commissioner but - and, in fact, I would say the
40 duties are so poorly written that it's pretty hard to tell who they're training and what the
training is. So I thank Mr Baker for tabling that and giving me the opportunity to pull it
to pieces.

45 MR BAKER: I'm glad I was able to assist you, Richard.

MR WARWICK: Pardon?

MR BAKER: I'm glad I was able to assist you.

MR WARWICK: Mr Baker said that there's been no proper evidence led. He said that he hasn't, or the commission hasn't seen any comparison and no witness evidence from station officers and senior station officers who work in community fire safety. Well, we say to that, commissioner, what better evidence does Mr Baker want than what the
5 director of the unit has got to say, the person who manages these people?

What's the need to spend days and days talking to the employees, the non-rostered shift-worker firefighter employees who do this work when the open, compelling evidence of Mr Killalea, the Director of Community Fire Safety is it in all four cases where the
10 work is the same, that they do exactly the same work? Why waste the commission's time in adducing evidence from people when we can go straight to the source? If anyone's going to contest it, surely it would be the director of the unit?

And Mr Killalea didn't contest that evidence. He gave that evidence. He didn't contest the questions put to him. So I really don't understand what - where Mr Baker's coming from in that regard. Mr Baker said that there are people who aren't under the Firefighters' Award, they're managers. They do not undertake operational levels of public service 8 and 9, they work at public service levels at admin and clerical, I guess,
15 8 and 9, that their work would have to be reassessed.

Well, is that an argument? If this assessment establishes that perhaps someone else's work should be assessed, is that a reason to say these people can't have their work assessed? That argument just doesn't work. You're either entitled to come in here to the commission and have a work value case, or you aren't. Mr Baker can't say, "Oh, this
20 could affect some other people so, therefore, you can't run this case." It's ridiculous and, in any event, they're under a different award.

Well, we reject all of the arguments put by Mr Baker that this isn't a genuine work value case. It is. There is the proper evidence before you, and we reiterate that the work's
30 never been assessed, and there is a direct comparison that you can make to assess it against. Mr Baker said that our claim removes the capacity of the commission to be able to move in respect to how it might make a decision. This is simply not so. We have to put a claim before you. I mean, if I stood up and made - ran this case and didn't put forward any claim to you, you would ask me to make one. So we had to make a
35 claim; we have made one.

The commission can meet our claim, or not. The commission, as currently constituted, can do whatever it likes in respect to what it thinks is right. And the emphasis that we have somehow positioned into a state where you can't do anything I think is - it doesn't
40 make any sense. Mr Baker was at great length time and time again to say that there's no significant net addition to the work, and he quoted directly from the work value principle.

Well, that argument falls over every time because there is no datum - data point, datum point, it simply doesn't exist. He then went on to say that while the station officer's work was valued in 1993, 2004 is the proper benchmark, the 2004 agreement, and he's
45 quite right, the 2004 agreement does speak at great length about work value for the station officers, whether they be rostered, or non-rostered. But these people, the

community fire safety, five, were not assessed in 2005 either by bargaining, or any other means. They were just lumped in with the Public Service Wage Agreement. They had no control over it.

5 The Fire Service had rejected their participation, or their involvement in our claim, in our bargaining process. And we accept that station officers, they have been properly assessed; accept that entirely. But these people haven't and they can't claim that they have. He said that - he raised - Mr Baker raised the question of contextualisation and he said that Mr Killalea gave evidence that they have always done it and that it is not
10 relevant. We say that if you examine the evidence, commissioner, they're doing much more, and that was the evidence given by our witnesses.

He talked about the complexity of plans and regulations, and this was in regard to the building safety consultant, level 6. Well, that's never been assessed. He said that it's
15 evolution in many cases. Well, that's never been assessed. That's our argument. He said that there was no evidence from the auditor. Well, he came and sat in the witness box and described his job to you, commissioner, in great detail. Yet Mr Baker argues that that's not evidence. It doesn't make much sense to us.

20 And Mr Baker said that the principles have been ignored. Well, I'll come back to that. Commissioner, Mr Baker took you this morning on an epic trip down memory lane and I had planned to do something similar but certainly nothing of the epic nature that Mr Baker saw fit to do, however, I have a document that I will table simply because it's been printed up, so I clearly shouldn't throw it in the bin considering all the paper
25 involved.

THE COMMISSIONER: We will mark this A43, it's print H9100.

30 **EXHIBIT #A43 PRINT H9100**

MR WARWICK: Thank you, commissioner. This is, as I'm sure you're aware, the August 1989 National Wage Case Decision and, as I'm sure you're aware and, in fact, I
35 believe you were there at the time, it was a particularly significant case. And Mr Baker has tendered a submission which I'm just trying to lay my hands on - tendered a document which confirmed a section of this decision which appears on page 10. And you will see, about in the middle of the page, there's a very large paragraph and there's a paragraph - there's a sentence in that paragraph that says:

40

Hence, workers should not be placed in a classification unless they have the training ...(reads)... actually required to perform those functions.

I'm sure you'll agree that those were landmark words in Australian industrial history
45 and, in large measure, influenced the award restructuring and structural efficiency process that ensued. And, in fact, it became known to be a core - became known as the "Skills acquired and the skills required issue", and it, subsequently, as Mr Baker indicated, and it was confirmed in full by the AIRC and, I believe, all commissions.

Well, how does the TFS match up to skills acquired versus skills required? Well, it's patchy. Some people they send out for two years and they go back; some people go to non-rostered shift-work, never come back. Some are classified and paid well over the level of their operational competencies. We have got two people we heard evidence
5 about who went from station officer to senior station officer in community fire safety. One went back and had to attain a very broad range of competencies to be able to continue to be paid and work at that level.

We heard about one who's classified as a senior station officer but was only ever a
10 senior firefighter and had a break in the Fire Service, left as a senior firefighter and is now a senior station officer, who has never gained those competencies for a senior station officer in an operational scene and could only go back and work as a senior. One has never been an operational firefighter yet is paid as a senior firefighter. A significant number were not recalled to duty to the biggest fire in the history of Hobart
15 and we heard Mr Davidson say in response to a question about that, he said:

We had enough officers.

But the problem is, commissioner, that it's the same people who never get recalled to
20 duty, and they're very unhappy about it. And Mr Killalea agreed with me that they probably are unhappy about that fact. Some of them have been there 10 years in community fire safety; never done a day's shift-work in the entire period. They don't get recalled, not even to the biggest fire in Hobart's history.

No evidence was adduced by the employer that any of the employees in question, and
25 that is - I'm talking about the community fire safety, five, the employees subject to this application, no evidence was adduced by the employer that any of the employees in question work at a lower level than their counterparts who come from a career firefighter background and who do the same jobs in community fire safety.
30

In every case they conceded the work was the same. Mr Manten, of course, the auditor,
being the exception because there is no one who does his work. The TFS argument is based on only one thing, that being that those from the career side have an additional skill set they can utilise. Ms Pearce asked my witnesses if they are aware of the penalty
35 components in firefighters' wages. The problem here is that the non-rostered shift-workers in community fire safety don't work those penalty hours, or if they do, they don't do so to any greater extent than those members who are the subject of this application.

All employees in building safety work office hours Monday to Friday, all of them. In
40 other words, it's okay for the non-rostered shift-workers to not work penalty hours but Mr Gregg is to be punished because he also does not work penalty hours. In TasFire Training the evidence shows that Andrew Francombe, and Steve Webster, and Phil Mackrill do not do any more, or less night-time work, or weekend work than the others
45 yet they too, are to be penalised.

Yes, commissioner, the work of shift-work firefighters is impressive but so too is the work conducted by my members in community fire safety, and by that I mean all of

them. Now, the award says, commissioner, that the Fire Service needs to give 21 days notice to a rostered to go working as a non-rostered shift-worker, sorry, the award says 28, agreement says 21, as a result of a bargaining decision, but more importantly, it says that a non-rostered shift-worker can be sent back to rostered shift-work on one day's notice, directed.

How many of the community fire safety employees, the non-rostered shift-workers, could go back to rostered shift-work on one day's notice? The answer is, very few. It would be only those who have been away from shift-work for two years or less, or less. At any given time that represents a significant minority of CFS staff. Ms Pearce asked a set of questions of one of the - of both - of two witnesses, Mr Comer and Mr Davidson, are they aware of a range of employees who have gone to CFS for a two-year period and then gone back to shift, and they agreed that they knew of them, and that that's what had happened and, in fact, I imagine that those people are set out in Mr Baker's last exhibit, R31, which actually itemises the people.

But to have a full picture, Mr Commissioner, what you need to understand is that it's true, there have been a range of people who have gone - a number of people who have gone through community fire safety positions, stayed there for two years and gone back. It is true, they have, but they have moved through only two or three positions, that is, a high rotation through two or three budgeted positions. The overwhelming majority of positions are occupied by long-term employees.

A great many of them have been there for a decade, or more, and many of them, I would say all of those who have been there for a decade, or more, have done no rostered shift-work and very, very limited return to operations, and usually then only in respect to what's called "Armageddon-type bushfire situations", where cities are threatened. And in those cases they most certainly do not occupy senior positions in the - in civic control system in those circumstances.

The evidence shows that very few community fire safety employees can go back to shift at one day's notice. For most this would require a significant amount of refresher training and familiarisation. For those who are paid higher pay in CFS - in community fire safety, then when they left shift-work they would have to gain a significant number of new competencies before they could work at the level designated by their rank.

Mr Commissioner, to the extent that you might be persuaded by the respondent's argument that the wages of the employees in question should be discounted for the reasons they propose, we argue that you should look at the reality. If the Tasmania Fire Service had a skills maintenance program for community fire safety non-rostered workers that ensured that they were shift-work ready on one day's notice then they might have an argument.

If the members who are the subject of this application saw these members, these community safety non-rostered shift-workers going off once a fortnight, spending a day on skills maintenance in operations they might say, "Fair enough". And I hear from that basis they work - they are collectively able to go and respond to emergencies as a shift-work firefighter, or officer on one day's notice, they might say "Fair enough". That

would require a comprehensive skills maintenance program. Do they have one? They don't. And that is why we say that their argument is artificial. Commissioner, this case is about inconsistent treatment and it's about inconsistent attitudes. If I could refer you, Mr Commissioner, to exhibit A39?

5

THE COMMISSIONER: Yes.

MR WARWICK: Commissioner, I apologise to you again, in having to look at my visage, not only on the page but in real life as well. Mr Killalea and I discussed this document at some considerable length and I would like to quote again the passage from this document that's set out in the two dot points towards the lower part of page 1, or page 25, in fact. The chief officer decided, and I quote:

10

Given the above, my view is the following - - -

15

THE COMMISSIONER: Where are you reading from, sorry?

MR WARWICK: Well, it's page 25 on the exhibit, but it's actually the front page of the exhibit.

20

THE COMMISSIONER: Okay.

MR WARWICK: And you will see there are two dot points down towards the bottom of the right-hand side of the page?

25

THE COMMISSIONER: Yes.

MR WARWICK: I quote:

30

Given the above, my view if the following: that arrangements be made ... (reads)... continue to receive training necessary to maintain their operational competence.

And:

35

That operational staff selected to a permanent position ... (reads)... full range of operations competencies commensurate with their rank.

And the exhibit goes on to say, commissioner, that if these people want to maintain their operational competencies after 12 months then it's up to them and they can do it on their own time. Now, Mr Killalea said - Mr Killalea told you, in fact, commissioner, that the Fire Service has been talking about this and they have been talking about changing it. Well, they haven't changed it, commissioner. This is government policy. Now, all employers are entitled to have policies and employers, employees I'm sorry, are required to respect those policies.

45

But it is even moreso, commissioner, a matter of importance in respect of an emergency service organisation. This is public policy about emergency services, about counter

disaster operational activities and the preparedness of people to be able to participate in it. And the government's policy is, if you work in community fire safety for more than 12 months as a non-rostered shift-worker you don't have to maintain operational competencies. And that's fine, they can talk about it and they can just come to the
5 commission and express the view that "We're thinking about changing", but they haven't.

And what does that mean in practice? It means, in practice, that these non-rostered shift-workers are not currently competent, and many of them are a long, long way from
10 being able to achieve current competence. The Fire Service likes to red-tape people through these non-rostered shift-workers' positions on a two-year basis, and send them back to shift, and we don't oppose that, but they also like to keep a significant majority of people working in community fire safety non-rostered shift-workers, on a long-term basis. We don't oppose that either.

15 What we object to is inconsistency and unfair treatment. What the TFS is saying to my members who are the subject of this application, is inconsistent and unfair. They are saying that they will have a majority of positions in community fire safety, filled by ex-firefighters who really, if ever, get involved in operations for a decade or so at a time.
20 But we are going to pay them much more than you and have different bargaining outcomes for you based on a skill set that these non-rostered shift-workers acquired years ago but which we do not require them to use.

25 Before moving on I would just like to say in relation to the evidence put to you by Mr Steedman. We don't doubt for a moment his sincerity and his ability but what was conducted by Mr Steedman at the behest of the Fire Service was a desk-top exercise and it was no substitute for a proper Tasmanian Industrial Commission work value assessment.

30 And in respect to work value, commissioner, we say this is not a comparative wage justice case. Mr Baker has been at pains to point out to you that he believes that the work value principle requires that there be a nett additional change to the work before an increase can be applied. We stress again that there can be no datum point when the work has not been previously assessed. The work under question was assessed in the
35 early 1990s but only from the point of view of employees who come from the firefighting stream.

If you were a firefighter and you go to work in community fire safety then, yes, your work has been valued and direct bargaining has subsequently been undertaken in
40 relation to it. In the case of the five employees in question, no assessment has been made. Even moreso, the one round of bargaining has gone on since the employees in question were first employed has had nothing to do with their work. The round of bargaining related to the Tasmanian Public Service generally. The work value principle was drafted on the basis that the work comprehended by awards generally, has
45 previously been assessed.

THE COMMISSIONER: Just on that last point, do I assume correctly that these five employees, now they're in the award, will not participate in the four and a half per cent State Wage Agreement applicable the next week?

5 MS PEARCE: That's correct.

THE COMMISSIONER: Thank you.

10 MS PEARCE: However, they will be subject to any negotiations that occur in terms of negotiations for agreements under the Tasmanian Firefighting and streaming.

THE COMMISSIONER: So they're in the fold now?

15 MS PEARCE: Yes.

THE COMMISSIONER: Yes?

MS PEARCE: They are certainly in the fold and we are bargaining in relation to them.

20 THE COMMISSIONER: Thank you. Thank you, Mr Warwick.

MR WARWICK: Having said that, commissioner, we have had no indication from the employer, I mean, there's negotiations and I need to be careful, but we don't know whether they're going to be - these people are going to be offered the same pay increase, or not, as the others. We don't know if anybody's going to be offered anything, in fact, at this stage.

MS PEARCE: Where have you been?

30 MR WARWICK: Well, perhaps I should say that we have a - we have had some discussions about pay rates for firefighters but nothing in relation to people who sell and service fire-extinguishers and nothing in relation to the people who dispatch the fire crews, and nothing in relation to these people. So we simply don't know about what the bargaining round holds.

35 Commissioner, the work value principles was drafted on the basis that the work comprehended by awards generally, has been previously assessed and, indeed, that's what the award restructuring and structural efficiency process was about. And it was a massive exercise, and all awards across the country were restructured but we submit that it was not intended by the people who wrote the work value principle and, indeed, the people who have continued it, as Mr Baker rightly points out.

40
45 It was not their intention that if your work has not previously been valued by the commission then that's your bad luck and you miss out. That is, in fact, the thrust of Mr Baker's argument. Their work has never been assessed, there's no data from it so, sorry, tough luck. Mr Commissioner, we strongly submit that that is not what is intended by the work value principle, or by the people who wrote it.

Commissioner, the essence of this case is about skills acquired versus skills required. We heard that Mr Daniel Gregg will soon gain a high level of qualifications in the field he is working in, in fact, he will soon achieve an advanced diploma, I believe. Will the Tasmania Fire Service be required to pay him a higher rate of pay because he will have
5 this qualification? No, of course not, because that is a skill acquired.

they may, commissioner, have to give some consideration to the market but that's another matter in terms of what they - they will be obliged to do. He's got an advanced diploma now, do they have to pay him more? No, they don't. The TFS requires all
10 employees in community fire safety to be competent to do their jobs, that is, the community fire safety jobs. At the same time they pay one group of employees for skills acquired whether they use them, or not, and those are a significant majority of the non-rostered shift-workers and community fire service - and community fire safety who do not get recalled to operational duty or, if they do, very rarely.

15 There is no skills maintenance program for them. They're not currently competent to go back to shift on one day's notice, yet the Fire Service pays them at a higher rate of pay for skills acquired. And, I must say, it was surprising to see Mr Baker table the August 19 - or that subsequent decision in respect to the August 1989 national wage case
20 decision and, in particular, I was surprised at his interpretation of what skills required and skills acquired means. And in that regard, commissioner, I put it to you very strongly that the respondent is wrong.

Mr Commissioner, there is only one set of rates of pay that are appropriate for work in
25 community fire safety, and they are the rates of pay paid to those who come from a career firefighting background. They are the only appropriate rates of pay. The employees who are the subject of this application should be paid those rates of pay. If the commission pleases.

30 THE COMMISSIONER: Thank you, Mr Warwick. Well, I think that brings this matter to an end. Not surprisingly, I'm going to reserve my decision.

MR BAKER: There's just one thing I would like to - just to compliment really, what
35 Mr Warwick said in relation to the EBA process, I mean, it's currently - has commenced and it is a little clouded but we would envisage that all the employees who are now bound by that award would be the subject of the negotiations. We don't see that there will be - there won't be any separate negotiations in respect to that matter.

40 THE COMMISSIONER: It is a matter for the parties.

MR WARWICK: I don't doubt that at all, sir, but my point is, I don't know that the outcomes will be consistent. We have no reason to believe at this stage that they will.

45 THE COMMISSIONER: That is a matter for the parties. As far as I'm concerned they're no longer part of the State Service Wages Agreement, and they are in the State Fire Service fold. The outcome of that is in your own hands. So, as I say, I'll reserve my decision. There is a mountain of material to go through. It will receive my earliest possible attention, but you may be confident that it won't be out before Christmas. And

having said, for those who I don't see again before Christmas, my best wishes for the festive season. The matter stands adjourned.

5 **MATTER ADJOURNED at 4.35 pm INDEFINITELY**

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