TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2587 of 1991 and
T No. 2473 of 1990

IN THE MATTER OF an application by the Tasmanian Prison Officers Association and the Tasmanian Public Service Association (now the State Public Services Federation Tasmania) to vary the Prison Officers Award

re structural efficiency principle

COMMISSIONER IMLACH

HOBART, 31 May 1994
continued from 4/5/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: Are there any changes in appearances?

MR NIELSEN: Not from the TPOA, Mr Commissioner.

MR C. WILLINGHAM: Yes, good morning, Mr Commissioner. If it pleases the commission, today I appear, together with **MR LAWLER**, with **MR MARRIS** and with **MS LEANNE LAWRENCE**.

COMMISSIONER IMLACH: Thanks, Mr Willingham.

MR WILLINGHAM: Mr Commissioner.

COMMISSIONER IMLACH: We did receive a letter last week from the State Public Services Federation. Unfortunately we've misplaced it but it said that, if I remember correctly - that Mr Nielsen would be appearing on their behalf on this occasion. Is that true, Mr Nielsen?

MR NIELSEN: Yes, Mr Grey did mention that he was proceeding on leave and that he would be forwarding a letter to you, sir.

COMMISSIONER IMLACH: Yes, thanks, Mr Nielsen.

MR NIELSEN: And we're happy to comply with that request.

COMMISSIONER IMLACH: And just as a matter of a point, the federation did say that once Mr Wellington had delivered his submissions today and tomorrow, they would be seeking an adjournment to consider those submissions. I just want to put that on the record. I presume, Mr Willingham, they meant your good self.

MR WILLINGHAM: Yes, Mr Commissioner, I assume that that's what they meant but that's one of the penalties of being someone who is fairly obscure in the system, is that people are not familiar with your surname.

COMMISSIONER IMLACH: Yes well, as far as I'm concerned it was an unfortunate mistake on their part, Mr Willingham which they'll have to wear, won't they?

MR WILLINGHAM: I'll make sure someone wears it, Mr Commissioner.

COMMISSIONER IMLACH: Yes, right. Now having got that over and done with, are you ready, Mr Willingham?

MR WILLINGHAM: Yes, Mr Commissioner, before I commence, my colleague, Mr Nielsen, made mention of some circumstances which will lead him to request a rescheduling of tomorrow's hearing, if the need arises. As I understand it from Mr Nielsen, what he is seeking is that the schedules commencing time for tomorrow of 10.30 be shifted to 2.15 in the afternoon. That doesn't present me with any difficulty and if

it pleases the commission we would ask that you endorse that, commissioner. And I should make mention of the fact that I would certainly have concluded my submissions, with the benefit of today's full day and a half day tomorrow. I don't know if Mr Nielsen needs to add anything to that.

MR NIELSEN: No. I appreciate it if the commission - it's a situation regarding my wife, Mr Commissioner. She's in hospital and, as I understand, I will be required to take her out of hospital tomorrow morning, and I seek that adjournment.

COMMISSIONER IMLACH: Yes, that's all right with me, gentlemen. Thank you.

MR WILLINGHAM: Thank you, commissioner. Mr Commissioner, ... recommence our interrupted submission by going to the wage fixing principles of the commission, and it may be of assistance to you, sir, if you have to hand both the 1991 State Wage Case decision and the attendant principles and the 1993 State Wage Case decision and the attended principles. The 1993 case is T.4692. It's dated 24 December 1993.

COMMISSIONER IMLACH: I have the 1993, Mr Willingham, but not the 1991, I'm afraid.

MR WILLINGHAM: There's only one difference between the two sets of principles, Mr Commissioner, in relation to work value, and that's not the important one so you'll probably get by with that.

COMMISSIONER IMLACH: Good.

MR WILLINGHAM: Mr Commissioner, the work-value principle that we submit the commission should have regard for in the context of this case, is the 1991 State Wage Case decision, which was handed down in August 1991 and flows directly from the National Wage Case of April 1991, which was print J.7400.

Now our reasoning for saying that, Mr Commissioner, the 1991 Principles were those which were in force at the time this special case commenced. There could be an argument that the principles of the 1989 State and National Wage Case decisions should apply and we won't stay to argue that, Mr Commissioner, because the difference between the work-value principle in the '89 and the '91 decisions is so minimal as to be irrelevant to our considerations.

Now could I take you, please, Mr Commissioner, to the work-value principle, as contained in the State Wage Case decision of 1993 or 1991, depending which one suits your convenience. Mr Commissioner, we particularly draw to your attention the words of placitum (a), which reads:

> Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in work rates.

COMMISSIONER IMLACH: Wage rates.

MR WILLINGHAM: Wage rates, Mr Commissioner, thank you.

> The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification.

I end the quote there, Mr Commissioner.

This part of the principle establishes the fundamental criteria against which the association's claims must be tested. It explicitly says, Mr Commissioner, that a change in the work itself may not be sufficient to lead to a change in wage rates. We would say, Mr Commissioner, that by extension there must be a change to the skills and responsibilities required to carry out the changed work.

Furthermore, the evaluation must demonstrate that a significant net addition to work requirements has occurred such as would warrant the creation of a new classification. We therefore submit, Mr Commissioner, that the applicants must conclusively demonstrate that where change can be identified it is inextricably associated with the exercise of increased skill levels and/or responsibilities.

Even where that test can be met, Mr Commissioner, we submit that the change in skill and responsibility levels must constitute a significant net addition to work requirements. That is the work requirements applying at the commencement of the period under review.

Now similarly, Mr Commissioner, we draw to your attention the words of placitum (b), and specifically I quote:

> Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is

> payable only when the new of changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.

This part of the principle, Mr Commissioner, establishes a further and important aspect relating to the application of work evaluation. In essence, what it's saying, Mr Commissioner, is that even where a significant net addition to work requirements has been identified in accordance with the test contained in placitum (a), it must then be shown to be equally and uniformly applicable to all of the persons covered by the classification or classifications being evaluated.

We paraphrase that, Mr Commissioner, by saying that where the new or changed work is not performed all of the time or where it does not affect or is not performed by all employees in the relevant classification, compensation should be made by way of an allowance rather than the adjustment or the creation of a new classification.

And furthermore, Mr Commissioner, we would say in those circumstances that such an allowance is then to be paid only to the employees affected by the new or changed work and then only when they actually perform the additional duties.

If I could take you, Mr Commissioner, to placitum (c), which reads, and I quote:

> The time from which work value changes in an award should be measured is, unless extraordinary circumstances can be demonstrated in special case proceedings, the date of operation of the second structural efficiency adjustment allowable under the 7 August 1989 National Wage Case decision.

Now that was subsequently adopted by the Tasmanian Commission, Mr Commissioner, in the State Wage Case decisions of the 30th October and the 9th November 1989, and has not, to my knowledge, been affected by any subsequent State Wage Case decisions. The reference numbers incidentally, commissioner, are T.2146 and T.2147.

Now as we've said, commissioner, nothing much changes in relation to the wording of the 1989 and the 1991 principles, except that in the 1989 principles the reference of the earliest operative date was 1978 instead of what is currently appearing, which is 1989. But in this particular matter nothing tuns on it.

The extraordinary circumstances referred to, Mr Commissioner, were established through the anomalies conference and the applications are before the commission as constituted in the special case.

If we then take you to placitum (d), Mr Commissioner, which reads, and I quote:

> Care should be exercised to ensure that changes which were or should have been taken into account in any previous work value adjustments or in a structural efficiency exercise are not included in any work evaluation under this principle.

Mr Commissioner, this criterion specifically enjoins the commission to take account of any changes which were or should have been dealt with by a previous evaluation of the work or under the structural efficiency principle.

We submit, Mr Commissioner, that that is a very, very important consideration in the context of this case. We have already pointed to numerous examples where changes claim to be new to the period under review, were in fact taken into account in previous work evaluation exercises.

There are a number of further examples to which we have not yet drawn the commission's attention and we will be doing so a little later in our submission. Additionally and crucially, Mr Commissioner, we submit that the commission must have regard for the structural efficiency principle. The wage adjustments which have occurred as a result of the structural efficiency principle and any factors which were taken into account at the time - those adjustments were granted.

And we will of course, Mr Commissioner, be taking you very shortly to the structural efficiency principle. But firstly, let me take you to please to placitum (e) of the work value principle which deals with the methodology by which changes demonstrated in accordance with the previous criteria may be assessed and how the worth of those changes may be evaluated.

We don't dwell on that particular aspect, Mr Commissioner, but we ask you to turn to the last sentence of placitum (e) which states:

> However, where appropriate comparisons may also be made with other wages and work requirements within the award or to wage increases for changed work requirements in the same classification in other awards provided the same changes have occurred.

Emphasise that last six words, Mr Commissioner: provided the same changes have occurred.

We submit, Mr Commissioner, that there are no comparable classifications in other awards of this commission.

To the extent that the commission may then have regard for the same or similar classifications in awards of other industrial tribunals, we reiterate what we said when reviewing the evidence of witness Elizabeth Barrett. This case is exclusively concerned with changes to the nature, skills and responsibilities of Tasmanian prison officers - changes which are alleged to have occurred during the period under review.

Those alleged changes are unique to the Tasmanian corrective institutions and indeed, Mr Commissioner, a number of the alleged changes have been claimed as being unique to individual institutions and in some cases unique to individual employees.

This case, Mr Commissioner, has not been, and in our submission, it could not be about comparative wage justice or so-called wage parity. Therefore, if the commission in assessing the value of any changes identified in accordance with the principles criteria was minded to consider the rates of pay applicable to classifications contained in awards of other tribunals, in our respectful submission, Mr Commissioner, it would need to be satisfied in respect of two important aspects.

First, that the classifications contained in those other awards were the same as those contained in the instant award, that is, that the duties, skills and responsibilities encompassed by similarly titled classifications were on all fours with their Tasmanian counterparts. That is yet to be demonstrated, Mr Commissioner, if in fact it can be.

Secondly, the commission would require evidence of what changes, if any, have taken place in relation to those classifications and what, if any, wage increases occurred as a result of those changes.

I take you then, Mr Commissioner, to placitum (f) -

COMMISSIONER IMLACH: Could I just interrupt, Mr Willingham - those changes in duties and classifications - you refer to other jurisdictions.

MR WILLINGHAM: Indeed.

COMMISSIONER IMLACH: Thank you.

MR WILLINGHAM: I take you to placitum (f), commissioner, that explains the term: conditions under which the work is performed as referred to in placitum (a). Now we submit that `the environment' means the physical, structural and geographical environment. In other words, factors relating to the location at which the work is performed.

In that regard, commissioner, it is certainly true that there have been some changes. The Launceston Prison was opened and the medium security prison was reopened. Some structural changes have occurred such as the reconfiguration of the main gates area at Risdon, reconstruction of the kitchen and bakehouse areas, the building of the new administration block at Risdon and so on.

In respect to those changes and in particular the Launceston Prison and the medium security prison, the only questions to be answered, Mr Commissioner, are whether or not there is some characteristic or some characteristics which are peculiar to those locations, and if they're peculiar to those locations do they significantly alter or add to the normal duties of prison officers or the way in which their normal duties must be performed. In our submission, Mr Commissioner, the answer to the question that we pose is that no such special characteristics are in evidence.

It always amuses me, Mr Commissioner, how people know you're down at the commission on your feet all day and they send phone messages - say, give us a call - you know, not sure how - excuse me, I'll get the batphone out of the case and -

COMMISSIONER IMLACH: Just people doing their work passing them on I suppose, Mr Willingham.

MR WILLINGHAM: Passing it right back, commissioner.

COMMISSIONER IMLACH: Mm.

MR WILLINGHAM: I'll just continue with that theme, commissioner and say that in relation to structural and physical changes which are then introduced to an existing location, such as Risdon Prison, we submit a similar test must be applied. Have the changes significantly altered or added to the normal duties carried out by prison officers prior to the change - and the answer is, no they have not.

And furthermore, Mr Commissioner, we submit that these changes to which I've referred actually improved the environment in which the work was performed, but without in any way adding to the skills and responsibilities or indeed the nature of the work performed.

Now placitum (g), Mr Commissioner, we will talk to for obvious reasons in greater detail when we deal with both the association's proposal for a new classification structure and our own counter proposal. However, we do say at this time that some of the association's proposals as contained finally in exhibit TPOA.98 - some of those proposals do fall within our definition of what the term `contrived classifications' could reasonably be understood to mean.

And placitum (h), Mr Commissioner, is clear enough and our only comment at this stage is the relevance of the prescription relating to structural efficiency and that is a subject to which we will now turn.

Before I do so, commissioner, were there any matters relating our submissions on the work value principle that you wish to go further with?

COMMISSIONER IMLACH: Not at all, Mr Willingham.

MR WILLINGHAM: Thank you, commissioner.

COMMISSIONER IMLACH: I think you've covered it certainly and your interpretation seems to be reasonably sound.

MR WILLINGHAM: I thank you for that, commissioner.

Mr Commissioner, as we said right at the start of today's proceedings, this case is being run under the provisions of the structural efficiency principle and this is simply because any applications for increases in excess of what was provided for under the terms of that principle had to be processed in the Tasmanian jurisdiction at least as a special case. It therefore follows that structural efficiency and work-value principles are inextricably interlinked for the purposes of this special case and there seems no doubt that the associations have proceeded on that basis and so do we. Excuse me.

Commissioner, the structural efficiency principle was introduced by the Australian Commission in the August 1988 National Wage Case which is Print H4000. The principle was subsequently adopted by the Tasmanian Commission in the ensuing State Wage Case.

Now in the reasons for decisions of Print H4000, the national wage full bench said amongst other things, and I quote:

> We consider it essential however that any new wage system introduced should build on the steps already taken to encourage greater productivity and efficiency.
>
> Attention must now be directed toward the more fundamental institutionalised elements that operate to reduce the potential for increased productivity and efficiency.

That's on page 5 incidentally, Mr Commissioner, of Print H4000.

Amongst the measures which the full bench identified as being essential to the successful operation of the new principle

were the elimination of impediments to multiskilling, broadening the range of tasks which employees may be required to perform and ensuring that working patterns and arrangements enhanced the flexibility and efficiency.

In the February 1989 review of the wage fixing principles, which is print H.8200 of the 25th May 1989, the full bench reaffirmed the intent of the structural efficiency principle and added, again amongst other things, and I quote:

> We agree that where necessary the number of classifications in an award should be reduced. The purpose should be to provide for clearly defined skill levels, broadbanding of functions and multiskilling. However it would frustrate the purpose of the structural efficiency principle and impose rigidities in work arrangements if a classification structure were to be created based on narrow divisions of skill. The range of work functions to be performed and the skills required must be the determinate of the appropriate number of levels in a classification structure.

That's to be found on page 4 of print H.8200, Mr Commissioner. And on page 5 of the same print the commission goes on to say:

> Furthermore there should be no doubt that the principle contemplates changes in fact and not merely changes in award prescription. It requires that there be real changes, for example, broadbanding and multiskilling in work place practises on the part of both management and employees.

The August 1989 National Wage Case decision, Mr Commissioner, which was print H.9100, confirmed the continued operation of the structural efficiency principle. And it was subsequently reaffirmed yet again by the April 1991 National Wage Case decision, which was print J.7400. And that particular case, Mr Commissioner, is famous or infamous, depending on your perspective, for two things. First, was that the full bench declined to introduce an enterprise bargaining principle and, the second, was that the accord partners, that is the then federal government and the ACTU, roundly condemned and repudiated the decision. However the decision did continue the operation of the structural efficiency principle.

Now there was a wage increase associated with that particular decision, Mr Commissioner, and it was subject to a number of criteria, including, and I quote:

> That there is a provision in the award to the effect that an employer may direct an employee to carry out such duties as are within the limits of

> the employee's skill, competence and training. Second, that the parties to the award have implemented substantially the structural efficiency principle determined in the August 1989 National Wage Case decision and have applied or are applying consequential award reforms to the workplace.

Now as you may be award, Mr Commissioner, that particular National Wage decision wasn't adopted by the state commission until August 1991 and the T Nos are 3069 and 3166. And I refer you in particular to clause 2(e) of attachment A of that decision, which is in fact the commission's principles.

Now the 6 months' delay was entirely due to the repudiation of the national decision by the trade union movement and the fact that it took nearly 5 months, Mr Commissioner, and then with great reluctance before the union movement to lodge the necessary applications, and it was even then only after the employers had beaten them to the punch. But nevertheless, the 2.5 increase was duly paid.

Now the continuing weight, Mr Commissioner, of the structural efficiency principle is clearly demonstrated in the principles adopted by the commission in the December 1993 State Wage Case, and I particularly refer you to items (a) and (b) at pages 2 and 3 of the principles contained in the decision T.4692 of 1993.

So Mr Commissioner, it's fairly true to say, I think, that the structural efficiency principle was the primary source of wage increases, general wage increases between 1988 and 1991. In the case of prison officers what were those increases? Increases, Mr Commissioner, that were allegedly payable for demonstrable improvements in productivity and efficiency. The increases were, Mr Commissioner, 3 per cent, $10.00, 3 per cent. That trilogy of adjustments, about 9 per cent in terms of the prison officer classification, was a series of what could be termed progress payments. They were purportedly for structural efficiencies achieved and to ensure a continuing commitment from unions that they would cooperate in a positive manner to the concepts of structural efficiency.

And then came the 2.5 per cent adjustment, Mr Commissioner, as contained in the August 1991 State Wage decision. Now as we've noted, that was supposedly payable only where the structural efficiency principle had been substantially implemented where consequential award reforms had been applied or were applying in the workplace, and for a provision that employees may be required to carry out any duties which are within their skill, competence or training.

So in total, Mr Commissioner, the structural efficiency increases amounted to about 11.5 per cent. What did the employer gain in return? Has the award been varied in any

respect, apart from wage increases to reflect any of the underlying elements comprehended in the structural efficiency principle? What changes to work practices have occurred? What measures for increased efficiency and productivity have been agreed and implemented? They're rhetorical questions, Mr Commissioner. They're rhetorical because the structural efficiency principle which conjured up so many expectations turned out to be a classical example of the conjurer's art. The employees successfully picked the pea in the thimble four times in a row.

In the employer's case the result was an illusion. The pea vanished on every occasion, in fact, most of the time they wouldn't even give us a look at the thimble. Now it could be said, Mr Commissioner, with some justification, that this special case has acted as an inhibiting influence on progress in the pursuit of structural efficiency reform. And I accept that the special case reference of 1990 did add to the complexity of the exercise and it did make the structural efficiency exercise a more difficult task.

COMMISSIONER IMLACH: It cast a burden on all of us, did it not, Mr Willingham?

MR WILLINGHAM: I believe so. I believe that's a fair comment, commissioner.

But even if completion of the structural efficiency exercise was to a large extent dependent upon the conclusion of the special case, there should have at least been some progress, some manifestation of change in return for the money that was paid out.

Mr Hughes has tendered a number of exhibits which, in his submission, demonstrated the association's commitment to participating in the structural efficiency process. And those exhibits, commissioner, were TPOA.70 through to TPOA.83. In our view, those exhibits demonstrate equally the management's desire and commitment to achieving something worthwhile. Now there is not a lot to be gained by trying to apportion responsibility for the failure of the parties to thus far meet the objectives of the structural efficiency principle. It won't change anything, it won't retrospectively bring back or bring about that which should have happened.

The only relevant fact, Mr Commissioner, the only fact, in our submission, is that we paid out approximately 11.5 per cent and gained virtually nothing in return. Just to conclude our submission in relation to structural efficiency, Mr Commissioner, we invite you to examine exhibit TPOA.71.

COMMISSIONER IMLACH: I have it.

MR WILLINGHAM: Thank you, commissioner. It's by way of illustration only, Mr Commissioner. We don't for one moment suggest that the list on TPOA.71 represents a complete catalogue of structural efficiency items appropriate to the prison service. In that exhibit, Mr Commissioner, there are 20 items proposed for discussion. The exhibit if dated February 19th 1991. It is now mid 1994. Three and a half years on, Mr Commissioner, how many of those 20 items have been agreed and implemented according to the spirit and the intent of the structural efficiency principle?

According to Mr Hughes' submission at page 424 of transcript, just three, just three and one of those, which happens to be item 9, is in terms different to the proposal contained in exhibit 71. Now as I noted earlier in my submission, Mr Commissioner, page 576, in fact, this case is based on the number and extent of changes alleged to have occurred during the period under review.

The exhibits 71 - 83, they don't identify change. What they illustrate is the reverse, that in fact very little has changed during that period. And as I said before Mr Commissioner, in that regard we submit that the exhibits hinder rather than assist the association's claims. Some things did change, of course, Mr Commissioner. The wage rates, for instance, they changed four times. Our point, Mr Commissioner, is that we are entitled to expect some efficiency and productivity dividends in return for structural efficiency money already paid out.

We are entitled to expect that some changes in work practices and changes to functions have, in effect, been well and truly bought and paid for. We are entitled to expect that at least some increased productivity and efficiency has resulted from the increases paid under the structural efficiency principle. And we are entitled to expect, Mr Commissioner, that officers of all ranks may be required to and will carry out duties and responsibilities in keeping with the concept of broadbanding and the concept of multiskilling. That was the primary purpose of the structural efficiency principle and that is what the wage increases were purportedly intended to recognise.

To the extent that this case is about changes which affect work value, we say this. If the commission does find that changes occurred which goes to work value, then we respectfully submit that wage increases already paid have taken account of most, if not all, of those changes.

Mr Commissioner, that concludes the segment of our submission dealing with the structural efficiency principle. Was there anything that you wish to discuss further with me or should I proceed to the next component of our submission?

COMMISSIONER IMLACH: Well there is one point that's been on my mind for quite some time, Mr Willingham, in relation to this whole matter. And I think you've covered it here. And I ask this question no so much to show which way the pendulum is going but just because it's been exercising my mind.

I tend to accept what you say about the wages having been paid and very little return therefore. But it seems to me, and this is the point I put to you, that the government being the employer has the whip hand. It holds the lever. And it was always open to the government to come along to the commission and say, under the auspices of this case, I believe, that certain items have been put forward, quite a number, as we both know, as we all know, as structural efficiency items and they've been rejected or unable to be settled. The government submits that these items ought to be implemented.

Now that was always open, Mr Willingham, and I come back to that main point, the principle that I hold to, the employer holds the lever. And that's not been done.

MR WILLINGHAM: Commissioner, I accept without reservation what you say is correct. However I'm constrained to say this, that in the last three increases that were issued as a result of State Wage Cases, and in face of quite fierce contrary submissions by the employer or the public sector employer, this commission chose to make uniformly applied decisions of the structural efficiency increases, as you will recall.

And I say those increases were granted on an across-the-board basis in spite of protests by the public sector employer, at least, that structural efficiency reforms had not occurred or had occurred in a very minimal sense throughout the public sector. And I think you'd be award, Mr Commissioner, that those arguments were - I won't say disregarded by the commission, but ultimately they didn't have the effect on the commission's decision.

There was also the complicating factor, Mr Commissioner, of the so-called public sector structural efficiency exercise which involved major reviews of the General Conditions of Services Award and the four stream proposal, which tended to complicate not only the employer's attitude and approach to progress, but also that of a number of employee organisations. But having made that partial explanation, I accept what you've said because it is a fact, commissioner.

COMMISSIONER IMLACH: Well doesn't that temper then what you've been submitting?

MR WILLINGHAM: I believe not, commissioner. There are a number of examples and I will cite them for you, if you wish, where in fact the public sector employer in awards other than this did in fact endeavour to take a piecemeal approach to

certain elements of structural efficiency reform and seek the commission's endorsement of them. That was universally met with opposition by the relevant unions and indeed on a number of occasions the commission itself as otherwise constituted declined to deal with those changes simply because of the fact that there were the overarching matters of either special cases or the public sector reform exercise proper which, as you well know, commissioner, took the best part of 2 years before it was ultimately interred.

So I again ask you to consider that there were some circumstances which were seemingly not within our control.

COMMISSIONER IMLACH: Yes, Mr Willingham, it might be wise for me not to pursue this particular matter any further at this stage but just to say that I might come back to it later, because to a certain extent or to a large extent I accept what you say as to the outside factors influencing this particular case. It seems to me it's one of the most unfortunate cases in the whole arena, public and private. And what worries me, Mr Willingham, is the whole thing is going to be left on my desk to do something about it, without any cooperation or input in detail from the parties.

MR WILLINGHAM: Well, commissioner, I'll only make comments in respect of this particular party, the employer party, but we hope before the conclusion of our submissions to have presented you with a very well documented and detailed and logical solution to the problem which you've hinted at.

COMMISSIONER IMLACH: Well I hope, Mr Willingham, that's something on the horizon.

MR WILLINGHAM: Oh, it's more than on the horizon; the funnels and the mast are well in view.

COMMISSIONER IMLACH: Proceed, please.

MR WILLINGHAM: Thank you, commissioner. I might take you now, commissioner, to a relatively brief summary of the award variations to the Prison Officers Award which have occurred since the decision in T.16 of 1985. That being Commissioner King's first decision in the prison officers work-value case.

Now although it's not often referred to, commissioner, there were in fact two decisions emanating from T.16. The first, of course, was the so-called work-value case decision. The second one is, in fact, what is usually referred to as Commissioner King's final decision, and it was issued on the 24th May 1985.

Now in that decision then Commissioner King dealt with a number of matters outstanding from the association's claim for a new principal award. You might recall, commissioner, that

was - under public service parlance that was P.272 of 1984. And in respect of those matters Commissioner King had granted leave reserved.

Now in his decision, Commissioner King approved a reduction in the number of incremental levels in the prison officer and chief prison officer classifications. In the case of prison officer he approved a reduction from five incremental levels to four and in the case of chief prison officer, from three incremental levels to two.

After hearing further submissions on the matter, Commissioner King declined to insert a new classification of Prison Officer First Class. In so finding in relation to Prison Officer First Class, Commissioner King said that the insertion of such a classification would fly in the face of the reduced incremental scales and that anyway nothing put to him could justify including such a classification. And finally, the commission combined what were then separate male and female scales. I'm sorry, they were scales for males and females, more correctly, Mr Commissioner.

The next matter that was dealt with by the commission was T.267 and T.301 of 1985. The decision is dated the 15th January 1986. And let me say, Mr Commissioner, I'm not giving you a rundown of every case that's been run under this award, only those that are of direct significance to the matter before you.

T.267 and T.301 combined to form an application for a reduction in the standard working hours from 40 to 38 hours per week. The application was granted effective from February 1986 at an estimated cost of a quarter of a million dollars per annum, Mr Commissioner. That cost, of course, was less any agreed offsetting by way of improved productivity and efficiency measures.

The next matter was T.393/T.401 of 1986, a decision 19th June 1986. And in this particular matter, the commission approved the claim on work-value grounds and ordered substantial increases to the incremental scales of the classification of Superintendent - Womens Prison.

In fact, the case was about that single classification. That decision may assume some significance, Mr Commissioner, if for no other reason than that the datum point for the classification of superintendent womens prison in the present case must date only from the date of that decision. It follows, Commissioner, that any alleged changes to the work value of that classification and any similar to it must also only be taken into account from the date of that decision.

COMMISSIONER IMLACH: What was that date?

MR WILLINGHAM: The date of the decision, Commissioner, was the 19th June, 1986.

COMMISSIONER IMLACH: Thank you.

MR WILLINGHAM: Next matter, Commissioner, T.471, T.507 of 1986, the decision is dated the 7th October 1986 and upon application from both employee organisations, the Commission varied clause 8(i) of the award to include the proviso relating to payment of the seniors allowance from the date of the sixth anniversary of service in circumstances where the officer had not had an opportunity to sit the exam. The next matters, Mr Commissioner, and we are rapidly coming up to the present, is T.608 of 1985 and T.642 of 1987. The decision in those two matters is dated the 17th May 1988.

Now these were applications granted to insert the new classification of Deputy Chief Superintendent and as we said in relation to the superintendent women's prison classification, Mr Commissioner, we repeat that the datum point for the position of Deputy Chief Superintendent can only be measured from the date of this decision, that is, the 17th May 1988, and any changes to the value of the work involved in this particular classification must similarly only be measured from this date.

Then take you, Mr Commission, to matters T.1216 and T.1272 of 1988 where the decision contemporaneous with the previous one, that is the 17th May 1988. This, Mr Commissioner, was the second tier agreement in relation to the prison officers award. In return to the 4% wage adjustment - the 4% hasn't been included in the 11.5 to which I have already referred, Mr Commissioner - in return for the 4% wage adjustment, the association has agreed to the package generally applicable to the public sector employees, although you are fairly well familiar with that one, Mr Commissioner -

COMMISSIONER IMLACH: That was a terrible process, Mr Willingham.

MR WILLINGHAM: We enjoyed ourselves at the time, as I recall, commissioner.

COMMISSIONER IMLACH: We did, yes, I suppose you could say that.

MR WILLINGHAM: Now in addition to the public sector package, there were other matters applicable only to the prison service and these were agreed and are contained in an attachment to the decision as well as by reference to pages 31 through to 33 of the transcript of proceedings of that case, but in essence, Mr Commissioner, the sorts of things that were included as being discrete to the prison service were prison officers driving prison vehicles in agreed circumstances; trade

instructors assisting in library and showering involving their own work gangs and under direct supervision of a prison officer; prison officers supervising farm activities in addition to providing security; prison officers assisting with cooking duties subject to the officers agreement and that of the appropriate employee organisation or organisations; prison officers supervising certain trade activities in the womens prison; prison officers supervising trade activities in the laundry but only when civilian staff were unavailable, and lastly, prison officers to assist in prisoner rehabilitation programs. I didn't want you to miss that one, Mr Commissioner - prison officers to assist in prisoner rehabilitation programs.

The last decision to which I will refer you, Mr Commissioner, is T.1817 of 1989 and that is dated the 1st March 1989. This case dealt with two quite significant issues. First the commissioner approved a claim that the divisor used for calculating overtime and allowances should be reduced from one-fortieth to one thirty-eighth. Three allowances, first aid and unarmed combat special duty and proficiency were deleted from the award and an aggregated increase of $490 per annum was granted to all classifications effective from July 1989.

It might be of interest, Mr Commissioner, for you to note that not all officers had received all of those allowances, but as Mr Commissioner King said, through the decision they would, those officers who hadn't received all the allowances, would in effect receive a bonus by way of the commuted allowances going direct into all salaries. Commissioner King, as I say, noted that on page 3 of his decision, and that completes the run down of those award variations to which I wish the commission's attention to be drawn. Do you have any questions arising from that segment, Mr Commissioner?

COMMISSIONER IMLACH: No.

MR WILLINGHAM: I wonder, Mr Commissioner, for the purposes of my throat and other people's ears whether this might not be an appropriate time.

COMMISSIONER IMLACH: I am quite happy to accept that recommendation, Mr Willingham.

MR WILLINGHAM: .I ask for, say, ten minutes, commissioner.

COMMISSIONER IMLACH: Yes, we will resume shall we say at close to quarter to 12.

MR WILLINGHAM: Thank you, commissioner.

SHORT ADJOURNMENT

COMMISSIONER IMLACH: I trust we are all fortified.

MR WILLINGHAM: Thank you, thank you commissioner. Commissioner, just as a stepping stone to the next part of our submission, I would like to tender an exhibit please.

COMMISSIONER IMLACH: You might help me with the number, Mr Willingham.

MR WILLINGHAM: I believe you will find that it is our first exhibit, Mr Commissioner.

COMMISSIONER IMLACH: First? What do you suggest as a -

MR WILLINGHAM: M.1.

COMMISSIONER IMLACH: M.1 - very good.

MR WILLINGHAM: The purpose of the exhibit, commissioner, is to just add another layer of information for you in relation to the overall environment of the prison, the prison service, for the period under review. I won't dwell on this particular exhibit, commissioner, other than to draw to your attention the conclusion that we make from those raw figures which shows, commissioner, that there has been a marginal decline in the total number of inmates during the period under review and that there has been a rise of approximately 8% in the number of prison officers during the period under review, so the further conclusion that we draw from those raw figures, commissioner, is that the ratio of prison officers to inmates has increased during the period under review, that is, there are more officers per inmate now than when the review period commenced.

Commissioner, we now want to turn to the question of change and specifically, commissioner, we want to address you on what we believe the commission should have regard for in terms of what is being placed before it, and in so doing, commissioner, our submissions relate of course directly to the strictures of the work value principle and the sokuctured efficiency principle. Mr Commissioner, defining and identifying and quantifying change is unquestionably the key to the success or the failure of the association's claims.

It is a trite thing to say, commissioner, but it is worth repeating in a case of this nature that nothing, nothing in the work place is unchanging and that nothing is unchangeable. Change, whether it occurs through methodology or technology or practice or procedure tends to be evolutionary rather than revolutionary. It is also true, commissioner, that taken over a period of time change generally tends to be subtle rather than dramatic. Now a corrective services institution provides a unique self-contained continuing service. In this

environment, change tends to build gradually on what is already in existence rather than to radically tear down what exists and start over. The change tends to occur in small amounts and small ways over a longish time frame rather than on a large scale basis over a short time frame and nowhere, nowhere is this more true than in the prison environment where the basic product, the essential service, remains unchanged. That basic product, that essential service, is the secure, safe and humane incarceration of inmates. The fundamental purpose of a prison is incarceration of inmates. Until that purpose is drastically altered change will continue to evolve gradually and slowly.

It follows, commissioner, that the changes themselves will be comparatively minor if taken one by one or even if taken in the aggregate. Mr Commissioner, change of itself is not or it should not be difficult to identify, irrespective of whether the change is peripheral or minor, or whether it is significant or substantial change, it will usually be a matter of fact. Even dramatic or large scale change, say organisational change or structural change, may not filter down to the extent that any particularly noticeable effect is experienced by the work force. It is equally true that the effect of change may be narrowly confined, that is the change may affect some employees but not others.

Then again, commissioner, a single item of change may affect all employees but in differing degrees. Some may experience a considerable impact from a particular change, and others may scarcely be affected by it or not affected at all. The very nature of change implicitly means that something different occurs to a given practice or in a given situation. Mr Commissioner, whilst the change itself is by definition new, it does not by any means follow that the practice or function which gives effect to the change is new, and the simplest example of this in the prison case, Mr Commissioner, is perhaps to instance the evidence that a number of forms have been changed, or that information is recorded in a different manner than previously.

Though it is true, Mr Commissioner, that the way the information is recorded may have changed, nevertheless the actual information, the method by which the information is garnered and the level of skill and experience required to record it has remained constant, it has remained unchanged. Similarly, change may occur at a personal level. A person may acquire functions or responsibilities which are new to that individual but are every day functions or responsibilities to any number of people, equivalent employees, in that work place and an instance of that, commissioner, by way of illustration could be the taking of photographs in the medium security prison. You will recall there that the witness said in response to a question from me along the lines of, `Well, this

is a function that has been carried out by officers for a very long time.' He replied to the effect, 'Well, it's new to me', and so it was; it was a new function for him, but it was not a new function in the prison or to prison officers in general.

So whilst a function may be new at a personal level the fact that some officers do or don't perform any given function at any given time is not relevant in a work value case, provided that function is generally encompassed within the classification and the duties attaching to that classification. We have a view, commissioner, that change in the work place can be considered in the context of bookkeeping, accounting, that there is a sort of double entry bookkeeping system for change. When something occurs on the left hand side of the page, something similarly has to happen on the other side of the page - debits and credits I think the accountants call it, commissioner.

MR NIELSEN: ....

MR WILLINGHAM: My colleague is agreeing with me - he has done accounting, obviously.

By way of illustration again, and only for illustrative purposes, commissioner, let's take the claimed increase in interaction between inmates and officers, as an example of this double entry bookkeeping. On the one hand, commissioner, virtually all of the officers agree that this interaction lessens tension, it lessens the volatility that would otherwise exist in the prison environment and that it helps to create a more stable prison environment.

So at face value, commissioner, that is good news for everyone. On the other hand, some officers say that the increased interaction adds to their work load, and one or two said that while the general environment had improved as a result of this interaction, at a personal level they felt some stress because of the part they played in this two-way interaction. There is no reason for us to doubt the feelings or the views of those officers, so we take them at face value, but Mr Commissioner, in days gone by when, as one witness put it, the prison environment consisted of prisoners speaking when they were spoken to, as one witness put it, and that atmosphere was not only prevalent, it was part of the running orders of prisons. Was that a less stressful environment?

Mr Commissioner, if we just continue along on this theme, we have heard evidence that the introduction of inmate privileges, and this as we submitted to you occurred long before the period under review, but in - for the purpose of this example - the introduction of inmate privileges such as televisions, radios, personal items, sporting and hobby-type activities, those things generate a better environment at the prison. We have been told that those privileges, because

their continuance is conditional upon good conduct and behaviour, act to modify intemperate behaviour by inmates, primarily because they will be withdrawn if the inmates play up.

And there was another interesting sideline to that because Officer Jones told us, commissioner, that with these privileges the inmate has more to interest and occupy him or herself with, and as Officer Jones put it, inmates are more likely to get restless and aggressive if they are bored and haven't got anything to do. So on the one hand, we accept - if we accept that interaction is increased, so that goes on the left hand side of the book, commissioner, and we have to look at the right hand side of the book to see what the effect of those changes is and whether it has made life in a general sense more tolerable, easier, safer, better, for prison officers, whether it is demanded in greater skill requirements of them, or lesser skill requirements, or no change to their skill requirements, and we will come to that very shortly.

It is true, commissioner, that interaction is greater now than in the past. Interaction is definitely not something which first commenced during the period under review, but it has nevertheless, Mr Commissioner, continued to evolve during the period under review. May I just continue with this theme of the balancing and counter-balancing effects of changes, commissioner, and refer you again, only by way of illustration, to the introduction of personal pagers. Now these pagers, as I understand it, replaced two-way radios and other less immediate alarm-raising and communication methods. As you have seen, commissioner, the pagers are simplicity itself to operate; they are certainly no more, and arguably they are a great deal less, demanding than the items they replaced. They are far more immediate in terms of response time and therefore they actually improve the safety and the welfare of officers and inmates alike, and as I said, that is just a simple example for the purposes of illustrating the point, but how does that look on the balance sheet.

We say it looks like this: that in terms of work value change, not only are there no new skills in evidence, but that that particular aspect of the work has been made easier and safer. In a theoretical sense, commissioner, such a change should actually reduce work value, not increase it. I don't argue that, commissioner; I say only in a theoretical sense. Commissioner, let's take another aspect relating to change in the context of a work value case. It is the nature of the beast in proceedings such as these, commissioner, that most of your time will be taken up with dealing with the newness of the changes, but there is another aspect, there is the oldness of the changes, that is, something new appears and is put into practice, it replaces something old which goes out of practice.

You don't often hear of these functions and practices and responsibilities which have been reassigned or eliminated or which disappear because of being supplanted by the new changes.

Like, for instance, commissioner, you have heard a great deal about the reintroduction of the medium security prison which the superintendent of that institution is here with us today, but it wasn't opened for the first time, it was reopened, it was reopened. For a given point in time when officers' salaries were set, they contemplated the existence of a medium security prison. In 1981, as I understand it, the medium security prison was closed. There was no variation to salaries or anything else to have regard for the elimination of that particular aspect of the prison service. It was reintroduced again some eight years later.

The sum total is zero - one up, one down, sum equal. Some of the changes that have disappeared are, at its most simplistic, commissioner, can be referenced to the information recording. If you record something on a form now, you don't record it in a book, or vice versa. If you record details of visitors in a diary, in the visitors box, you don't do in reception. Something comes in, something goes out. If a new standing order is issued, one goes out, or it changes something of that standing order, something disappears. All of the things which disappeared, commissioner, or are eliminated, or are varied, at one stage were countenanced in terms of reflecting the overall work value of the particular component of work.

The test then, in our submission, is to adjudicate whether the work value component requirement of the eliminated work was equal to, lesser than or greater than that which replaced it. I've indicated, commissioner, what has changed is the practice. What has not changed is the level of skill required to carry out the changed tasks. In many instances, commissioner, where practices or functions disappear, they might have actually had an identifiable monetary component attached to them. Again, for the purposes of a simple illustration, take working in the perimeter towers. That task was specifically assessed as being one of several reasons for the introduction of the special allowance which itself has now been absorbed into salary rates.

Mr Commissioner,. there is no question that the function of manning the towers, or womaning the towers, has diminished by 75% from when the allowance was first struck, but the compensatory payment continues at its original full value. Mr Commissioner, let me deal briefly with the claims from some witnesses to the effect that they were doing more work. We say, commissioner, that a work value case cannot be sustained and it certainly cannot be justified merely by bringing forth every item of minutia and claiming it in the aggregate to be an enhancement of the intrinsic work value of the overall job.

If I were to sit down and assess how ones own work and work environment had changed over, say, a period of ten years, I think it is true that everyone could talk for hours and hours about it, but that itself doesn't signify that all or any of those changes have increased our work value. Any amount of evidence in this case attempts to illustrate change, but much of it, commissioner, we say is essentially minimal and at the best it is evolutionary or it goes to alleged additional duties. There is a distinct difference between additional skills and additional responsibilities which must be demonstrably present before this commission can, with respect, proceed to determine whether or not there has been a significant net addition to work value requirements, and even if it could be proved, commissioner, that taken individually or in the aggregate that change has actually increased the work load of prison officers, that does not necessarily make out a case for increased work value.

The intrinsic work value of a particular function, or indeed a whole range of duties, is not increased merely because a person performs more of them in a given time span. That, Mr Commissioner, is productivity, not work value. Working harder by performing functions countenanced by the defined duties of a classification is not work value. An example of this, I think, was Officer Salter who told us about the searches of cells and particularly we dwelt for a short time, you may recall, Mr Commissioner, on searching television sets, and there is a counterbalancing feature here, and in fact that counterbalancing effect may result in a positive net effect for the officer.

Let us assume for the purposes of the exercise, commissioner, that the officers' work rate increases because there are more things in the cell - in the cell to be searched; let's supposing it does increase, although I stick to my original submission that you can only do so much in so much time and no more, but to counterbalance that it is those very items in the cell which by the officers' own admissions have created a better prison environment. It makes behavioural control of inmates easier by the officers' own admissions.

In other words, Mr Commissioner, it lessens the incidence of tension and therefore the likelihood of tense situations occurring which otherwise place stress on officers. So with each change there is this counterbalance. There is no doubt that a number of the interactive and privilege components of the evidence before you act as modifiers on inmates' behaviour. They act as modifiers on the prisoners' attitudes to prison life, prison discipline and their general demeanour in dealing with custodial staff.

So, commissioner, we conclude this part of our submission by saying that there is nothing in learning a new function or a new way of carrying out a task which is remarkable - nothing remarkable at all. The act of learning itself does not imply the acquisition of greater skills or even new skills. Indeed, Mr Commissioner, it might well be the reverse. As we have said, the skills required to perform the new task may be of a lesser nature than those that were required to perform the old task.

And learning a new function, Mr Commissioner, does not mean in every case that additional work has to be carried out since the new work almost always supplants some former practice or function and in fact the new practice may be less onerous in terms of work load than that which it replaced. As we have said, commissioner, the basic and essential functions of a prison are unchanged.

Finally, commissioner, even if we accept that change has occurred, significant change in accordance with the work value principle, has its effect been uniformly applicable across each of the classifications for which the change has been demonstrated.

It's unquestionably true, commissioner, that some changes have occurred during the period under review - it would be amazing if that were not the case. Our submission is that the witnesses' evidence fails to reveal any change to work practices or functions which could be regarded as significant or substantial. Our submission, commission, is that the bookkeeping is pretty well balanced out. Our submission, Mr Commissioner, is that no case can be advanced which leads to the conclusion that there has been a significant net addition to the work value of prison officers.

Now, Mr Commissioner, I now wish to deal with the TPOA's classification structure as amended a number of times and appearing finally as TPOA.98 and in so doing, commissioner, I think it might be worthwhile rather than to respond in great detail to the TPOA classification structure and therefore use a considerable amount of time, we have, as I've intimated, our own proposal subject to your convenience and views, commissioner, it might be better if I spoke to our own proposal and where necessary made appropriate comments in relation to TPOA.98, if you think that's a simpler way of going -

COMMISSIONER IMLACH: I do, Mr Willingham - I do, yes.

MR WILLINGHAM: - it will probably cut the time down. On that basis, Mr Commissioner, I'd better do something with some more exhibits, I think. And I hand two, but separately, if I may, commissioner, for reasons which will become clear in a moment.

COMMISSIONER IMLACH: The Prison Service Enterprise Award - M.2

MR NIELSEN: Thank you.

MR WILLINGHAM: Commissioner, I want to make a few comments about this document before going into the substance of it. This document largely reflects our position in relation to everything relating to prison officers' conditions of employment. I say largely because there are a couple of matters which are unfinished and it may well be that with the benefit of discussions which continue with the employee associations, that there might be other agreed matters which will ultimately be included.

We have had mind, Mr Commissioner, to the requirements of the wage fixing principles that awards should be reviewed and where necessary amended to bring them up to date with modern practice, to rid them of the pestilence of the convoluted wording and tortured syntax from days gone by to make them relevant and readable and right.

Now I don't say that this particular document is any of those three things but I do say this, commissioner, it is a lot closer to them than the existing award and the reason that the existing award is in the condition that it is, is no fault of this commission but rather, I think, due to the inertia of the parties. However, this is a genuine attempt, commissioner, at producing a document, and I hope that document ultimately will be produced by consent, that makes a worthwhile contribution to the modernisation of the commission's awards.

Having said that, commissioner, I should alert you, you having already had a quick scan, that this document does depart from a number of traditional customs and standards of the commission.

The reasons for those departures are, we hope, logical and rational and we will endeavour to explain them to you and hopefully to persuade you to accept them as we go through the document.

Mr Commissioner, for the purpose of making it easier for everyone in the room to follow what's going on, it may be appropriate if I deal with the proposed award from start to finish rather than commencing with the classification structure because a lot of things I feel will become clear if we do it that way.

Now we have prepared, commissioner, a document which explains in fairly brief form why we have done what we've done with the proposed award as contained in M.2. And I'm beastly careless as to whether parties would like a copy of that or not, but to

the extent that it may assist in explaining why these things have occurred and why we've done them. I offer it as an exhibit if the commission thinks it's going to assist.

COMMISSIONER IMLACH: I think it would be of paramount assistance, Mr Willingham.

MR WILLINGHAM: I'll tender that accordingly then, commissioner, thank you.

COMMISSIONER IMLACH: M.3. I presume to put it tritely one to be read in conjunction with the other.

MR WILLINGHAM: Exactly, commissioner. And, commissioner, just to make the exercise a little bit more complicated, it is almost impossible to read either of the two documents without a copy of the principal award, that is, principal award No.2 of 1991 - the Prison Officers Award.

COMMISSIONER IMLACH: I have that, Mr Willingham.

MR WILLINGHAM: Do you have all of your references before you, commissioner?

COMMISSIONER IMLACH: I do, Mr Willingham - thank you.

MR WILLINGHAM: Commissioner, we just start off by saying that the first departure from the norm is that we've omitted the title clause, that is, the proposed the award, M.2, doesn't have a clause dealing with title.

The reason for that is, commissioner, because we can find no reason to have a specific clause which deals with title. There's no reason that we can think of in logic whilst - why - a specific clause should be included in any award which just goes to its title. It is self-evident why an award needs a title and we provide one, but it is not so apparent as to why there should be a clause to cover the same subject. So we omit it, and it appears on the front cover of the award.

Now, commissioner, we have made a number of amendments to clause 2 of the current award which is `Scope', and you will see that our scope clause in M.2 just reduces to the Prison Service Enterprise Award 1994 shall apply to all persons employed in the prison service who occupy position classified in this award.

That's fairly well bridged from the wording as is currently contained. For instance, Mr Commissioner - and I'm not going to take you through all of these reasons because they are written down and people may study them at their leisure, but for instance the scope clause, as it's currently written, says: subject to the exceptions and conditions contained herein, and that very largely is a standard clause of the

commission, I must say. But there are no exceptions and conditions contained herein therefore there's no need to have it in there. Never have been. And `employed under the provisions of the State Service Act' is superfluous because it's otherwise defined in the correct places in the award. So that could be deleted. And of course there is a necessary change to prisons division of the Law Department, because it's not now the Law Department, but again we say that the reference to the department is not necessary because that's found in the definitions also, because we have included a separate definition of `prison service'.

However, there's a few things that have changed since then, commissioner, because what is now clause 3 becomes the index to the award. Clause 3 as it currently stands, commissioner, is the arrangement or index to the award. You can call me an old traditionalist, if you like, commissioner, but I reckon that indexes ought to come at the start or the end of the document not part of the way through it. And for the same reasons that we enunciated in relation to the title clause, I can see no point in having a specific clause which deals with the arrangement or the index of an award. There is no reason why you just can't have the title of the award on the front cover of the document and an index which immediately follows it - that's what we've chosen to do which is why the proposed award, M.2, the first actual clause is clause 1 - Scope.

Now before we move from there, commissioner, I notice that the scope clause reflects the new title which is Prison Service Enterprise Award 1994. Going back to front, it's just a - a minor thing perhaps, but we have a view that there may be some benefit particularly in years to come in awards of the commission having incorporated in their titles the year in which the awards were made. And that's the purpose of putting 1994 in there.

We've retitled the award, commissioner. Originally we were going to refer to it as Custodial Officers Award, as I understand it that is a title preferred by the employer - employee - associations themselves, although they can obviously put their own preferences to you. However, it then occurred to us that custodial officers or prison officers - it matter not - would continue the award as an occupational award which is now pretty well proscribed by the Industrial Relations Act. So turning our attention to that, we then said, well okay what - what can we do with it, and we said, well we're talking about the prison service - let's call it the Prison Service Award. We're talking about the enterprise of the prison service, we're talking about an era of wage fixation which depends almost entirely on enterprise bargaining. Some of the features contained in this award are already the result of `in principle' agreement by the parties, so we believe that it was appropriate as a first award of the commission in the public sector for some considerable time to

have it reflect as much as possible modern trends, modern practices, modern concepts. That's the reason for the retitling, commissioner.

COMMISSIONER IMLACH: In that context, Mr Willingham - I might be jumping ahead of you - I note - I think I remember it correctly - that the - the guidelines - or the act - sorry - the act requires than an - oh it couldn't be the act - oh, it might be - the enterprise award in any case - careful what I say here - I'm not absolutely certain - but has to be done in special case circumstances - is that correct?

MR WILLINGHAM: I'm not familiar with the -

COMMISSIONER IMLACH: No.

MR WILLINGHAM: - requirement you're referring to, commissioner, but it doesn't mean it doesn't exist of course.

COMMISSIONER IMLACH: No, but I mean it's fortuitous we're in a special case circumstance. Anyway I'd better check my own facts on that.

MR WILLINGHAM: And - and certainly - certainly it would be fortuitous to have reference to enterprise award. Can I make the point, commissioner, in case it should be misunderstood, that the use of enterprise award is pursuant to the provisions of the Industrial Relations Act and the award making powers of this commission. It should not be read as some surreptitious attempt to take the prison officers down a path they may not wish to be taken.

We're here before you, commissioner, we're here proposing to you a new award .... clause 4, commissioner, date of operation - really not - we have just made this simple - we've taken out words such as `the first full pay period commencing on or after' because there's absolutely no reason on earth why you just can't specify the date from which the award operates. Custom and practice and usually the agreement of the parties dictates that the operative date is the first day of a pay period. The pay period in this particular institution - this enterprise - is common to all employees and it is - the pay day itself is common to all employees. There is no reason why the date of effect of any new awards shouldn't be the start of a pay period and on that note, commissioner, you will read them - we have changed `date of operation' to `date of effect' because that is consistent with the wording used section 37(4) of the act. The act itself is not referred, date of operation refers to date of effect.

We have chopped out also, commissioner, the proviso to the existing clause 4 - that's the one that refers to the 13th August 1991 no claims commitment. There is no such obligation upon employee organisations now in existence as a result of

the 1993 decision. I'd have to say, commissioner, it was probably not a great place to put it anyway in clause 4 but irrespective of whether that's a valid argument or not it's certainly valid to say that it serves no purpose now having become obsolete. So we remove it.

Clause 5, the supersession and savings clause, gave us some headaches primarily because of the double belts and braces approach that have been adopted previously by the Public Service Board and continued on through this commission. But essentially, Mr Commissioner, what this clause is about is to ensure that both parties - employer and employee - don't inadvertently lose and entitlement, don't shift an obligation merely because an award is varied. That's the whole purpose. The simplest example might be that if you had a provision in the award, which don't, for annual leave, and it was 4 weeks a year an award was subsequently varied to make annual leave 2 weeks a year, then an employee - an employee's accrued annual leave wouldn't go back 5 years at 2 weeks a year, it would be saved at 4 years until the date that it changed. And I know you're aware of that, commissioner, I'm explaining it, I think, perhaps for other parties. So the point is to write a clause which isn't full of all this jargon that simply says what it means and we believe that we've done that.

Again, if I could refer both the commission and other parties to my notes in M.3, in relation to supersession and savings a great deal of what we've done may become clear and the reasons why.

Commissioner, if I could then take you to clause 6. This is again clause 6 of the current award - Parties and Persons Bound. And I have to say, commissioner, it's my pleasure - my personal pleasure to be before you today putting this proposal, because we've always believed - and you've heard me speak of it before - that parties and persons bound is to some extent a meaningless clause taken by itself. In fact I think we had this discussion only a couple of months ago didn't we, commissioner?

The first and foremost regulation in terms of employee and employer organisations is the registered interest in an award. And we propose that clause 6 - which is clause 4 in our proposed award - should be varied so as to say, parties and persons bound and interest. And we propose, as you see, commissioner, that subclause (1) of the proposed new clause should go to interest as found under section 63(10) of the act and that the second part should go to persons and parties bound. And I don't know whether my colleagues have caught up with it, but so that there can be no suggestion that we're trying to influence who is validly deemed to have an interest in the award, we've included both of the current service organisations - sorry - both of the current employee organisations.

We do that commissioner, not because we try to pre-empt your considerations, but merely because we didn't want anyone taking the wrong conclusions.

And I think the rest of it - the parties and persons bound, commissioner - we have just merely cleaned that up - we have deleted as much excessive or tortured wording from it as we can and just made it simple. We have said that the people who are bound are the employer, the employees and the organisations that cover those employees. We've deleted reference to things like whether members or not because it's of no relevance to whose bound.

If you take the clause, commissioner, in the current award, 6(a) - I'm only going to use this one single example _ the minister responsible for the administration of the Tasmanian State Service Act 1984 in relation to all employees as defined for whom classifications appear in this award whether members of a registered organisation or not, when all it needs to say is the employer. And the employer is defined in the new definitions clause.

There's absolutely no purpose whatsoever to go further than the two words `the employer'.

And since we've included a separate binding proviso directly on employees, there is then no need for either of the employee organisations to have the wording which says: and their members for whom classifications appear in this award. This award can only relate to people who are covered by it.

It's all superfluous wording. The scope clause ensures that we know who we're talking about but again, commissioner, I'll rely on the explanatory notes in M.3 to guide you through that. In new clause 7 - I'm sorry, in existing clause 7 - Definitions - we've expanded this quite substantially. We've taken some of the definitions from clause 19 - Shift Work - and included them in here because there's no logical reason why they should appear anywhere else, and we've included a couple of new definitions. For instance, we've included the definition of employer, we've included a definition of prison service, but you'll find nothing in there, commissioner, other than those definitions we think are helpful to those people who are going to read and try to understand the award.

The next clause is clause 8 - Salaries - commissioner, and that's by coincidence - not by design - the only clause of the existing award which matches in terms of its number the proposed award.

The figures in M.2 - that is the salary figures in M.2 - under Classifications - are the existing salaries. If I may,

commissioner, I probably won't get to finish discussing the classification structure before the luncheon adjournment, so may I go to existing clause 9 of the award and just soak up as much time as we can before the adjournment?

COMMISSIONER IMLACH: Yes you may of course, Mr Willingham, whatever you wish.

MR WILLINGHAM: Thank you.

COMMISSIONER IMLACH: What about the proposed clauses 6 and 7 - you - they come together with the classification clause do they?

MR WILLINGHAM: Yes, we've repositioned virtually all of the clauses, commissioner, to give them what we believe is a more logical sequence and - and when we get to the new award in its entirety we can explain that to you but at the moment I'm constrained, I think, to deal with the existing award and we work backwards.

COMMISSIONER IMLACH: Right - yes - now you were going to go to?

MR WILLINGHAM: Well I think if we can go to No.9 - clause No.9 - Conditions of Service - commissioner.

COMMISSIONER IMLACH: Right.

MR WILLINGHAM: We have kept that in, but we've made it the last clause in the proposed award because we think that's where logic dictates it ought to be.

For instance, the opening words of that clause say: unless otherwise prescribed in this award. So it makes some sense to have that refer to any foregoing provisions in the award and have the conditions of service as the very last clause in the award. That's what we've done. And we've also tidied up the wording.

In relation to clause No.10, commissioner, the disputes procedure, we have - we have reworded that slightly and we have broken it up into slightly different components but the essential wording is identical, the effect of it is identical except that we have included from the second tier exercise the undertaking that union meetings in relation to a grievance are to be held in the employees own time unless otherwise agreed by management - and that now appears as the final paragraph of the disputes procedure in M.2 and you'll find the disputes procedure, commissioner, in M.2 at clause 15.

Now clause 11 which is currently titled `Implementation of a 38-hour week', as I've already said to you, commissioner, the 38-hour week came in a long time ago, so the implementation of

it's probably pretty well understood by now. So we've retitled this clause `Ordinary Hours of Work' and we've included some standard, and I hope, uncontroversial conditions into the proposed award and we have incorporated where necessary how the 38 hour week is given effect and what it means in accrued days off. And that all appears, Mr Commissioner, as clause 7 in the proposed award. But again if you follow the notes in M.3 it will make it clearer than perhaps anything I'm saying now.

In current clause 12, commissioner, which is `Meal Break - Bakers' - we've done two things with this; we have expanded a clause and called it meal breaks because there's no obvious reference to meal breaks general other than in the shift work provision so we have set that down, expanded that, and we've deleted the reference to bakers. In other words the provision that was in the Meal Break - Bakers clause, now in our proposal extends to everyone.

We've also changed the wording of the Meal Break - Bakers clause because what it said, commissioner, what it says it the current provision is different from what it means. The break that bakers have or don't have because of the way they work led to this particular provision being included and its intention was that where a baker didn't take a meal break or had it later than the scheduled time, that person wouldn't attract overtime rates - some form of penalty.

But that's not actually what the clause says. What the clause says is that employees classified within the trade instructor scale who are employed as bakers shall not be paid for the midday meal when it is not taken. Well it's a nonsensical clause because they are paid for it whether they take it or not. They are on an 8-hour shift which includes a paid meal break. I mean if I read that clause literally, commissioner, if the baker didn't take the meal break I should actually deduct 20 minutes from his 8-hour shift payment and that's not what was meant by the clause. So we've retyped - we've rewritten that to make it clear what the original intention was.

COMMISSIONER IMLACH: Mr Willingham, just as we're going through it, what about meal breaks for day workers?

MR WILLINGHAM: They're included the proposed clause of M.2, Mr Commissioner, at clause 12.

COMMISSIONER IMLACH: Where does it - but as I read that, it applies to shift workers - it ought to apply to shift workers only.

MR WILLINGHAM: Why do you say that, commissioner?

COMMISSIONER IMLACH: Employees shall be allowed a meal break of 20 minutes during each shift.

MR WILLINGHAM: Yes.

COMMISSIONER IMLACH: Well day workers, I say, don't work shifts to start with.

MR WILLINGHAM: Yes, I understand what you're saying, commissioner, that may need a little bit of refining; in the sense that it's written there, shift refers to the ordinary hours of work. Whether that's regarded as a shift for the purposes of shift work as - or shift worker - as defined or whether it's just the normal hours of duty.

COMMISSIONER IMLACH: And so you're allocating, allowing or suggesting that day workers have 20 minutes?

MR WILLINGHAM: Well my understanding is that they already do. For instance what we might call - and I stand to be corrected here, Mr Commissioner - there's a number of things that I may subsequently have to revise - but my understand is that someone that we would call a day worker still works 8 hours and has a paid meal break.

COMMISSIONER IMLACH: In the prison.

MR WILLINGHAM: As I understand it. But I'm getting - I'm getting all sorts of -

COMMISSIONER IMLACH: All sorts of noises - yes.

MR WILLINGHAM: - all sorts of noises to suggest that's wrong. It makes not a great deal of difference to the intent of the effect of the clause.

COMMISSIONER IMLACH: I understand that. I just - as - I'm only intervening because I think it helps as we go through it - that's all.

MR WILLINGHAM: Certainly, commissioner. But we'll take advice on the question of - as I say, the clause is unaffected because it refers to shift. But if day workers - if there is a feeling that provision for meal breaks for what we call day workers needs to be included in there I'll take advice on that and get back to you, commissioner.

COMMISSIONER IMLACH: And just as a further item, again I don't the know the history, but in my own experience which is rather narrow in such matters, the meal breaks were extended to 25 for shift workers, so I know whether that was -

MR WILLINGHAM: This is an area of - I'm not if they were extended or cut back in that particular area - I think they might have been wound back, commissioner.

COMMISSIONER IMLACH: Anyway, that's between the parties - I make that point.

MR WILLINGHAM: Yes, yes.

COMMISSIONER IMLACH: Right.

MR WILLINGHAM: Now, commissioner, if we then go to clause - I think we're up to `New Appointments and Promotions' - clause 13 - we think that that is now completely redundant other than that the point at which someone is appointed in the level structure, that is the structure of levels in the proposed award, is still a matter for the employer when the employer has regard for the practical experience and qualifications of an intending employee, so we have included that proviso in the new clause 8 - Salaries - directly beneath level 1. Other than that we delete clause - New Appointments and Promotions.

COMMISSIONER IMLACH: When do you think it's time, Mr Willingham?

MR WILLINGHAM: I just wondered if I can get payment of wages out of the way very quickly -

COMMISSIONER IMLACH: Right - yes.

MR WILLINGHAM: - because I know the prison officers will be anxious to show their warm enthusiasm for this one because we've actually expanded this particular clause to provide a more specific and greater protection to the employees in relation to the method by which payment of their wages is made. The current provision, as you can see, is the only single example we have of brevity in the entire award. It just says: payment shall be made fortnightly by non cash mode. It contains no attendant qualifications or criteria. We have included in the proposed award, M.2, what we believe to be sensible criteria which in fact reflect the current situation and I think would offer appropriate safeguards for the employees as well as the employer.

And if it's your wish, commissioner, we could leave it there and deal with clauses 15 through 19 and then back to clause 8 during the afternoon.

COMMISSIONER IMLACH: Yes, and is this the first time the other parties have seen this proposal, Mr Willingham?

MR WILLINGHAM: It is my - I undertook to provide the document by no later than today whether I tendered it or

otherwise, commissioner. Just as luck would have it, it's been tendered in running.

COMMISSIONER IMLACH: Give them the opportunity to digest it over the lunch break.

MR WILLINGHAM: Indeed, commissioner.

COMMISSIONER IMLACH: We'll resume at 2.15.

LUNCHEON ADJOURNMENT

COMMISSIONER IMLACH: Mr Nielsen?

MR NIELSEN: If I may address you, I've been requested to raise a point of clarification in regards to the status of the exhibit presented to you this morning in regards to exhibit M.2 - what is the status of this document; 3), is this another application; and 4), as you're only too well aware, Mr Commissioner, our application to this special case was to the existing Prison Officers Award - M.2 addresses the Prison Service Enterprise Award.

COMMISSIONER IMLACH: Are you asking me or are you - through me, Mr Willingham? I can tell you what I think.

MR NIELSEN: No, no, no - I'm asking you - well, I'm asking you, Mr Commissioner, is it in order. I suppose my position is that we're here before you addressing a - a special case. There are two applications before you on that special case by the parties - the employee organisations. We're somewhat mindful as to this - as to M.2 is another document or another application.

COMMISSIONER IMLACH: Well as I understand it, Mr Nielsen, at this stage it represents nothing more than the alternate proposals put by the minister and I distinctly remember him saying that he's seeking agreement from the other side in relation to it - the lot - and to be specific at the moment it is nothing more than an exhibit in this hearing.

MR NIELSEN: Well I can only say there's certainly no agreement from the other side, Mr Commissioner, at this point of time.

COMMISSIONER IMLACH: No. Alright. Now have I fairly reflected that, Mr Willingham?

MR WILLINGHAM: I don't think I've ever had an exhibit challenged before, commissioner, I am unused to this situation. It is true, commissioner, your recollection is correct - that I had indicated that I held some hopes that

ultimately we would find a good deal of agreement from the other side in relation to most of what's contained in M.2. I still entertain that hope; if we don't get the agreement then your task will be just that much more difficult won't it? But in terms of its status in relation to whether it's an application or not, I don't understand the question. Mr Nielsen and indeed the SPSFT have put up an application which includes five exhibits going to their proposed classification structure. They've put up a number of exhibits relating to their preferred award changes and M.2 should be seen as our response to that and our preferred position and we certainly would urge you very strongly in your deliberations to give the greatest weight possible to what we have proposed in M.2 - that clearly is our view of how we, with respect, submit the commission should determine the framework and the content of a revised award.

COMMISSIONER IMLACH: Yes.

MR WILLINGHAM: Does that make it clear do you think, commissioner?

COMMISSIONER IMLACH: Well it does to me, Mr Willingham. There is the technicality which I'm acutely conscious of because of history that it be wise for me and for I presume all parties before we've finished in the long term with this matter to make sure that the applications are amended formally to include the details of all these exhibits if the parties wish them to be included as detailed applications.

MR WILLINGHAM: Well I - strange you should mention that, commissioner, because I've actually deleted from my major submissions on the last but one day of hearing, reference to the deficiencies in the applications that are currently before you and whether they permit the kind of submissions to be made in the terms of the way the applications are structured and I deliberately refrain from doing so because I thought it was a somewhat pedantic and unnecessary point. But I can assure you that if my explanation of the status of M.2 is unacceptable to my colleagues on the other side, I'll be wanting to revisit the technical aspects of the applications that currently constitute the special case and more than that I won't say at this time.

COMMISSIONER IMLACH: No. I just say - explain myself a bit further - in another matter in the private area, the parties agreed on certain matters and then agreed that I should arbitrate certain other matters, and then when I did arbitrate certain other matters one of the parties appealed against that decision on the grounds that they hadn't formally applied for it and they - the appeal was held, so -

MR WILLINGHAM: Well I'm aware of that particular case, commissioner, and were of it in great detail, and all I can

say is that I don't think you find any of the parties at this table - any of the parties - carry on their business in that manner. And indeed I think there's a case for which the decision was issued as recently as yesterday, where something similar has occurred. And we've been accused of a lot of things at this end of the table but I haven't got to those - those levels of operation yet, commissioner.

COMMISSIONER IMLACH: No, well I just alert the parties. I don't think it's necessary to go into these formalities as yet and perhaps, Mr Nielsen, I just make that point - as far as I'm concerned at this stage these are just proposal put up by the minister. Certainly it seems as though he's foreshadowing that if I put it on to him he will seek to have that included in his application formally, and I'm indicating that that's what I would be expecting because of history - no other reason - and I take his point that the same applies to your exhibits, Mr Nielsen.

MR NIELSEN: Thank you. I think actually the question - or the question I was asking, Mr Commissioner, was - and it's been answered I think, as the minister has the ability - or the advocate, should I say - has the ability to make applications or submit applications to the commission in a special case is somewhat thoughtful as to - as to whether only the employee parties to a special case have the ability to submit an application and that was the question I was - seek to raise.

COMMISSIONER IMLACH: Well subject to objections and so on, I'm open to receive all applications relating to these matters if necessary even if one of the parties goes to the bother of putting in a formal application to the commission and I'll join it -

MR NIELSEN: Yes.

COMMISSIONER IMLACH: - to these proceedings subject to objections and so on - to hearing objections and so on - but I think we've covered it all, haven't we?

MR NIELSEN: I think so. And the other point too, I don't wish to in any way lead the commission to say that - that we've cut off all options as far as any agreement in the future. We have an open mind on that position and are somewhat mindful that there may be further consultations between all parties to move to that particular position.

COMMISSIONER IMLACH: The commission might recommend it, Mr Nielsen.

MR NIELSEN: Thank you, Mr Commissioner.

COMMISSIONER IMLACH: Are you ready to proceed ....

MR WILLINGHAM: Well .... new tenor seeming to pervade the issues, I'm not so encouraged now about the prospect of further consultations. But perhaps I'm unnecessarily pessimistic.

Can I just say, commissioner, that I think the point that Mr Nielsen made is worth responding to, that it is open to a party to the award, and particularly a party to the award that has an interest in that award, which the employer does by virtue of the act the Minister for Public Sector Management is deemed to have an interest in all public sector awards, as you would know. It is open for that person therefore to make an application to vary the award at any time he so chooses.

And in the instance of recent special cases, and I quote for your reference the police case, the TAFE special case, the teachers' special case and the ambulance services special case which Mr Nielsen would be intimately familiar with, in all those circumstances when similar comments were made from the other end of the bar table we simply took our proposal, attached it to an application under section 23 or 24, whatever it is, banged it in and the commission joined it. Because the commission held that the employer has as much right to make applications in relation to any matter covered by the wage fixing principles as any other party. And I think that's all I'd want to say.

Now I think before the luncheon adjournment, commissioner, we had just concluded dealing with clause 14 of the present award, payment of wages, and I was explaining to you how I thought we had, in fact, ... that to be .... of employees in that their safeguards were more clearly specified. Although had I known the sort of negative vibes that I was going to be receiving this afternoon I would have had second thoughts about my generosity. It always happens; I should learn by now.

But we'll turn to clause 15 - Qualifications, commissioner. We have rewritten this particular clause. The principal changes are that we have deleted `Prison Officer on Probation', because both our proposed salary scale and that of the association's, that is deleted - sorry, in our proposal it is deleted. We have included a qualification criterion for `Prison Officer .... First Class'. We have changed the title of `Trade Instructor' to `Industry Supervisor' and we have amended the qualification criteria for what currently appears as `Trade Instructor'. And this revised reworded clause then becomes clause 7, I think it is, of the proposed new award.

COMMISSIONER IMLACH: Clause 6.

MR WILLINGHAM: I beg your pardon, clause 6, commissioner.

Then turn to clause 16 - Recreation Leave Allowance. We have deleted this clause in its entirety because the provisions parallel those of the General Conditions of Service Award. And for that reason we can see no particular purpose for them being replicated in either the current award or the proposed new award, since we have the reference to conditions not otherwise specified being referred back to the General Conditions of Service Award.

Clause 17 of the current award, commissioner, is entitled `Remote Call'. Our research into the subject suggests that the kind of call is anything but remote and our judgment is that the title is more accurately described as being `on call', and that is how we've decided to entitle the allowance. We have just reworded the existing provisions to make them an easier read and we have included a further provision which requires that officers of the level of chief and above may, whilst they're receiving that allowance, be required to give advice and information to the senior officer on duty at a prison.

Now in terms of existing clause 18, which is salary increments, most of this clause is already redundant, Mr Commissioner, and in any case in the award that we propose which deletes salary increments for all except the custodial officer classification at level 1, it wouldn't have any application. So what we've done is take the relevant parts of this clause and include them as a proviso in the criteria at level 1 in clause 8 - Salaries. And for the rest of it we delete the clause. The relevant part that we take, Mr Commissioner, is the essential elements of paragraph 3 of that award - of that clause.

Now clause 19 - Shift Work, probably presented the greatest amount of difficulty for us and in rewriting it we have done so - I don't pretend for one moment we've got it spot on. In fact, my colleague, Mr Marris, has already alerted me to a couple of areas where we need to further revise the provisions we've included in M.2.

But a little later, commissioner, I will be taking you through M.2 as it sits and going through any variations that we require you to take note of.

But, can I just say in relation to the shift work clause that essentially what we have done is try to simply it by, firstly, changing the wording to a more user-friendly form and, secondly, by deleting what we believe are a number of redundant or superfluous provisions.

Just as an example, commissioner, because we can go through it later when we go through our proposed award. If I can refer you to pages 16 and 17 of the award - the current award -

you'll find the proviso on page 14 is exactly the same as the proviso on page 17.

This is the one that starts, `That where a shift worker by mutual agreement'...

Now I am not sure whether was intentional or whether it has slipped in some way through word processing, or what. But, clearly, one of them was superfluous. In our judgment the whole clause is superfluous and we have deleted it. But there are those kinds of things.

We have, as I indicated to you previously, we have taken the definitions of clause 19, subclause (a), and put those in the new definitions clause.

We have substantially rewritten the shift workers hours of duty clause; we have rewritten the roster clause; we have certainly rewritten the afternoon and night shift allowances clause; not the least of those changes, commissioner, is that we have actually prescribed what the night shift allowance is, because it wasn't previously in the award.

We have simplified, we hope, the overtime clause; we have simplified the Saturday shift clause; we have simplified and substantially amended the Sunday and holidays shift clause; we've deleted Clause 8 - Broken Shifts and incorporated that elsewhere in the proposed award; and with the daylight savings clause we have attempted to reduce to a couple of lines what we think the intent of that particular provision is.

Now if I can return to clause 8, commissioner, of the award as it currently stands - that's salaries.

As we look at the current award, commissioner, in our proposal we delete from subclause (1) `Prison Officer on Probation' - and I shall talk to you about that shortly - and we include in that scale, but with separate qualification criteria, the position - or the classification - of Prison Officer First Class.

At the Senior Prison Officer level we delete one incremental step. In our proposal the wage rate applicable to that particular classification should be what is currently shown as the second increment.

The same comments apply to Chief Prison Officer. We delete `Principal Prison Officer' from our proposed award in its entirety.

At the level of Superintendent Women's Prison we delete two of the three increments.

Deputy Superintendent, we delete one increment.

And Deputy Chief Superintendent we delete one increment.

At Trade Instructor level, as we now designated in our proposed award Industry Supervisor, we delete both classes and/or but one increment.

If I could now ask you, commissioner, to go to M.2. That is our proposed award.

The first page sets out in approximate form how we would see the title of the award and it reflects currently the applications that are before you, although there may be an additional one very shortly, commissioner.

The second page gives the Index of Contents, which is correct as per the clauses as they currently stand, but obviously will require some modification as changes are made.

Clause 1 - Scope: we believe that that quite properly and quite accurately is all that's required to ensure the proper scoping of the terms of this award.

Clause 2 - Date of Effect: has a date of the 12th of January. That's very much notional, commissioner. It was put in more as an illustration than as any desire on our part for the new award to start from the 12th of January.

Clause 3 - Supersession and Savings: we believe that the words we have there properly and without in any way reducing the current supersession and savings provisions accurately protects the entitlements and obligations of all parties.

Clause 4, as you see, commissioner, from where I spoke earlier, as set out in subclause (1) the parties that are registered under section 63(10) as having an interest in the award. That becomes the first part of that clause.

And, subclause (2) says in very simple terms who is bound by the terms of the award.

If we can then go to clause 5. We've taken the afternoon shift and night shift definitions from where they currently sit in clause 19 and amended them very slightly but without changing their effect, so that they conform with GCOS definitions.

`Controlling authority' and `employee' are cross-referenced so that there can be no mistake if the words appear separately during the award as to what is meant, although I think you'll find, commissioner, that we only use `employer' throughout the award now.

`Holiday' has been amended. There was reference in the current - or there is reference in the current award - to `public holidays' which is an incorrect reference. There is no such thing as a public holiday in this State. There are bank holidays and there paid holidays, but there are not public holidays. So we have merely tidied that up to make it technically accurate.

There is a new definition, as I said, of `prison service' , and there is a compound of the definition of `shift worker' and a `7 day continuous shift worker', so that the meaning of a shift worker is more clearly expressed than in the current definition of 19(a).

Now, Mr Commissioner, I should say that with a number of these things the employee organisations would not have had the benefit of seeing these before today, so I should make it clear that we're more than happy, more than willing, to discuss with them any concerns they have with some of these changes and to react favourably wherever we can to any suggestions that have for change, providing those changes are not going to leave us with more gobbledegook or leave us with technical deficiencies in the provisions of the various clauses.

Clause 6 - Qualifications, commissioner, is set out on pages 3 and 4.

Custodial Officer First Class, Senior Custodial Officer and above, and Industry Supervisor. As I have just explained to you they have been rewritten in a way that I hope will make them simple to understand and, more importantly, that they are provisions that are easy to put in effect. That there can be no ambiguity about what is meant.

In Clause 7, which is titled, `Ordinary Hours of Work', you may recall, commissioner, I said that this incorporates part of the current clause going to the implementation of the 38-hour week and a part of it is new.

Here we do make the distinction between shift workers and non-shift workers, and we include for the first time in the award a spread of hours.

It is an arbitrary figure on our part, it is our preferred position. It doesn't reflect in any way agreement.

The second paragraph is similarly our preferred position, but it does include the limitation on working split shifts, which is currently contained in the broken shifts provision.

And then as you can see from there, commissioner, we go to the fact that people working a 38-hour week will have their

accrued days off calculated by the various methods which are presently set out in the award and which are repeated here.

Again, commissioner, if I may, I would like to just go past Clause 8 - Salaries because that contains the major feature of our submission.

If I can just take you to Clause 9 - Payment of Wages, on page 6.

As you can see that's where we have expanded the provisions of that clause to make it clear what the non-cash mode of payment is, when it shall be made, and who determines how it is made.

The fact that it is the employee who determines which account must be nominated and a proviso that prevents the methodology of payment being changed without sufficient notice.

Mr Commissioner, I thought about including in there the advice which should be provided to employees in relation to their pay, and there are a number of awards of this commission which include that.

However, with the amendments to the Industrial Relations Act which came through in 1993, the regulations now incorporate all of those features, and it seems to me to be unnecessary to take up an extra page and a half as, for instance in the Teaching Services Award, just stipulating what is already required by the Act. Not only required, it is prescribed by the Act.

Clause 10 - Shift Work is our endeavour to simplify and rework what presently exists under Clause 19, and there are a couple of amendments that I should draw to the attention of the commission here.

In Clause 10 - Shift Work, under (b) Rosters, we will be submitting an amendment to this, and what we'll do, commissioner, is we will rewrite this so that you don't have separate pieces of paper floating around and you'll have the one document which will reflect our amendments.

But, for the purposes of the record, the new words that we will replace subclause (b) will be as follows:

> There shall be a roster for shifts which, unless otherwise agreed by the employer and the majority of the relevant employees, will provide that -
>
> (1) Not more than eight shifts are worked in any nine consecutive days;

(2) There is not more than one single day off in any period of three weeks. All other days off being arranged as two or more consecutive days.

An employee's place on a roster shall not be changed at the direction of the employer without four days' notice of payment or the relevant penalty rate.

Where an employee's place on a roster is changed by agreement between the employer and the employee two days' notice may be given and no penalty will be payable.

Where an employee requests a change in place on a roster no penalty will be payable.

Mr Commissioner, we actually seek your guidance at this point. We have used the expression `penalty' as it is currently contained in the award. It occurs to my colleague, Mr Marris, who reads this award rather than having to write it, that there may be some confusion between the term `penalty' as it applies to penalty rates and `overtime'.

If it's understood that `penalty rates' means overtime rates, then all well and good. If there is some possibility that others may see penalty rates as being the appropriate shift work allowance we seek your advice as to whether it would be preferable to substitute `penalty' with `overtime'.

COMMISSIONER IMLACH: Well if we do that immediately. If it only refers to overtime, well I would put in `overtime'.

MR WILLINGHAM: Yes. Thank you, commissioner. It was more to do with whether the general expression `penalty' in not just this award but a number of others might be better used in terms of the overtime rate; because, as I understand it, and I am not hearing the usual cacophony when I am wrong behind me so I assume that it is overtime rates this time.

So we will further amend - where I have just read out `penalty' - we will amend that by putting in `overtime'.

Clause 18 -

COMMISSIONER IMLACH: Don't take - just as an aside, but nevertheless don't take that to mean that I endorse everything you are saying on the point -

MR WILLINGHAM: Absolutely not. Although you disappoint me, commissioner.

COMMISSIONER IMLACH: Well, I'm not saying yes or no, I am just making that clear.

MR WILLINGHAM: I understand that. Can I just say at this point in time that clause 18 to which we will shortly come, if that is adopted, commissioner, by the parties as an agreed matter it obviously will have quite a significant impact on the shift working provisions and calculations that are currently both in the existing award and M.2. So we will need to revisit this again.

Unfortunately, commissioner, I don't think you have seen the last of M.2. It's going to take a couple of revisions, I suspect.

So, other than that, commissioner, those are the only changes at this point in time that we would make to the provisions of the shift work clauses contained in M.2.

Now, clause 11, you'll note from our exhibit, Mr Commissioner, that it says, `draft clauses still being prepared'.

We do now have our proposed clause and I might, with your position, put that up as an exhibit.

COMMISSIONER IMLACH: Mark that M.4.

MR WILLINGHAM: Thank you, commissioner.

Commissioner, what this loaded rate proposal is, I think Officer Masters has already explained to you in some considerable detail, both the genesis for it and the various formula and equations that he used in it.

It will subject to the agreement of both the employer and the majority of the employees as to whether it is introduced or not.

It will be for a trial period, and in essence what it will amount to is that penalty rates and annual leave loading will be paid at in the form of a loaded rate which itself will have the effect of converting fortnightly pays to a relatively constant amount for each pay period, as I think Mr Masters had suggested to you as one of its more attractive features.

The trial period will be for 56 weeks. The reason for that is that that figure ties it in with the roster cycle, as I am advised.

Now, at the end of this particular trial period - and no effective date of operation has yet been agreed, Mr Commissioner - it will cease. That is, the loaded rate proposal will cease unless both the employer and a majority of employees agree to its continuance.

It is I think common ground between the parties that that is an absolute veto. That is, that if one party does not agree to its continuance then it will not continue, and we will revert back to the existing conditions as they are currently prescribed in the Prison Officers Award.

Mr Commissioner, I am not going to attempt to explain to you what looks like the doodlings of Einstein in a piece of paper, but I am assured by Mr Masters who I think I can attribute expert status to in relation to this proposal and our own resident expert on these matters, that what it all means is what the parties intend.

However, if you would like for the employer's advocates to give you a run down on it in addition to that which was provided by Mr Masters, I am happy to do so.

COMMISSIONER IMLACH: No, I don't think it is necessary at this stage, Mr Willingham.

MR WILLINGHAM: Thank goodness you said that.

COMMISSIONER IMLACH: I'll try and read it through and absorb it myself. But it seems to me that it is pretty clearly stated.

MR WILLINGHAM: Well, I never was very much good at algebra and all that sort of thing, commissioner, I have proved it today. But that will be the provision. Subject to any agreed modifications between the parties, that will go into the currently blanked spaces in our proposed clause 11.

And again, commissioner, I remind you that we will revise the exhibit as it stands in M.2 and incorporate the features of which I have spoken this afternoon so that you have a single document before you.

If we can come to our Clause 12 - Meal Breaks. Despite the exchange just before lunch that clause stands. It is correct.

The reference to whether non-shift workers have 20 minutes meal break or whether they don't is largely irrelevant to the provisions of that particular clause. In fact, it is totally irrelevant because it only deals with shift workers.

But I am advised, commissioner, just as a matter of your passing interest, that people who are non-shift workers who work Monday to Friday work public service hours essentially, which includes an hour for lunch.

We have taken provision which talks about meal breaks taken between 10.00 pm and 6.00 am, and we have reworded that, commissioner. You'll find that currently in clause 19 of the present award - 19B(d) at the very bottom of page 15.

It made more sense to include it in the general meal break provision, but in any case we would submit that 19B(d) didn't actually say what it intended. The literal reading of that particular provision means that the employees must take a meal break from 10.00 pm to 6.00 am.

COMMISSIONER IMLACH: We'll have to get rid of that quickly, Mr Willingham.

MR WILLINGHAM: We have done so. What I think it meant to say was that meal breaks are taken between 10.00 pm and 6.00 am. That's of course how we have expressed it here.

Clause 13 of our Exhibit M.2 we have already spoken to you about, commissioner. We have retitled it, `On Call Allowance' and apart from tidying up the wording we have included in it the provision requiring chief prison officers and above to provide information and advice to the senior officer on duty.

That's not to suggest that they don't already do so. In fact, I am reliably advised that they do. It's just that management believe that it is an appropriate thing to include it in the award to distinguish that the provision of such advice or information does not constitute a recall for the purposes of overtime payments.

Clause 14 on page 9 of M.2, commissioner, is a multi-skilling clause. It is our term, multi-skilling. There may be a better description for it. What the provision is is the direct lift from the 1991 State Wage Case which required that in return for the 2.5% increase, there shall be a provision inserted into each and every award that says to the effect the employer may direct an employee for perform any duties which are within the limits of the employee's skill, competence and training. I've already taken you to that particular reference, commissioner.

If we then go to clause 15, the dispute settlement procedure, I've indicated to you previously that all we have done is break that up slightly. The effect and the procedures themselves are unaffected whatsoever. We have done a bit of re-wording and finally we have added in the proviso stemming from the 1988 second tier matter to which I have earlier referred you, going to the fact that union meetings relating to a dispute or agreements are to be held in the employees own time unless otherwise agreed by the employees representative.

Clause 16, commissioner, is to time off in lieu of overtime and it puts in place what I spoke to you on the second last day of hearing about when there was some general discussion of this, that if were minded to include a time off in lieu provision, it would only be on the basis of time off in lieu

of time worked on a one-for-one basis, and that clause does no more than reflect what we said on an earlier occasion.

Clause 17 is enterprise flexibility in keeping with both the structural efficiency and the new provisions as contained in the 1993 State Wage Case decision. We provide a mechanism by which the parties, and in this case it means the employee organisations and the employer, may vary any of the provisions contained in the nominated clauses to suit the needs of the prison service, and we have deliberately avoided touching matters such as salaries because we don't think that is an appropriate thing for the parties to vary by their own agreement without some more formal endorsement by an appropriate industrial tribunal, and to ensure that there is a degree of formality to any variation that might be struck as a result of this clause, we propose that a requirement should be that a copy of the signed agreement between the parties be provided to the member of the Industrial Commission who has at that time the responsibility for the award.

Now the last clause in our proposed award, commissioner, is the Conditions of Service Award and, apart from saying that it is being repositioned where it logically should be at the very end of the award and also that we have very, very slightly reworded it without effecting its intent, there is nothing more to say about conditions of service. Let me take you now, commissioner, to clause 8. The proposal sets out six distinct levels for employees of the prison service covered by this award. Level I in our proposal incorporates the current prison officer range as contained on Item (i) of page 7. As we indicated to you, commissioner, we delete the prison officer on probation classification and that becomes the first incremental step of the proposed custodial officer scale.

If you go directly below where it is says `fourth year of service', commissioner, that first criterion, the commencing salary of a person et cetera, is lifted from elsewhere in the award. The progression is lifted partly from elsewhere in the award and partly as a soft barrier. This was also in essence a suggestion from the association that a person who was going to move from their probationary year should be required to complete successfully some form of appropriate custodial officers examination. We make that a soft barrier; we say that you should not progress to the second incremental level until such times as that custodial officers examination has been successfully completed, or that the employer believes that the person concerned has appropriate practical experience or qualifications.

And then the third paragraph, commissioner, which is the proviso going to add an increment of course is taken from the existing award, annual increments. As I recall, I referred a little earlier to that and said that we've taken paragraph 3 of the existing provision. Directly below that, sir, we

insert the custodial officer first class. The rate of pay incidentally there is the rate of the current fourth year of service and thereafter prison officer with the addition of the senior officers examination allowance, and because we have added that allowance in, sir, we delete the allowance provision currently contained as the first proviso in the existing award.

There is a criterion for officer first class which I think is not far removed from what had been suggested by the association, except that we add the proviso that a custodial officer first class must act in the position of senior custodial officer when required. For the remainder, Mr Commissioner, apart from the obvious fact that we have deleted a number of incremental levels within each of the classifications, and I already alluded to that, I would have hoped that the clauses, relatively speaking, self explanatory. In terms of the positions which are included within each level, those positions have been included at those levels because in the opinion of the employer, that is the most appropriate and relevant grouping for those particular groups. That is, that the relativities from one position to the other are most properly reflected if they are included in the levels as we propose. That is the very firm view of the employer and to management representatives, Mr Commissioner.

And Mr Commissioner, if I could just briefly refer to exhibit M.3 which was the explanatory notes, or if I had known Mr Nielsen was going to take exception I wouldn't have provided them, but can I say that all of the submissions that we have made so far in relation to the existing award and our proposed award in M.2, I would like them to be taken in conjunction with the explanatory notes in M.3. Now whether, Mr Commissioner, that requires M.3 to be incorporated into the transcript or whether you are content to read them as I submit, I don't have a firm view.

COMMISSIONER IMLACH: I think it would be good to have them incorporated in the transcript because you're virtually adopting them as your detailed submissions, are you not?

MR WILLINGHAM: Indeed, Commissioner.

COMMISSIONER IMLACH: Yes, well I think we will - is it necessary - is it sufficient for us to say that we incorporate them, Mr Willingham?

MR WILLINGHAM: I think what has happened from there once you make such a pronouncement, commissioner, is that the record of proceedings will include them in their entirety.

COMMISSIONER IMLACH: Yes, well that is certainly my preference and if you're seeking that, I agree.

MR WILLINGHAM: Thank you, commissioner. Commissioner, you said on the very last page of M.3, there are three little star points, they are almost memory joggers for the employer. We are not sure yet whether in our view there is a need to incorporate into the proposed award any remaining second tier offsets. We believe that the provisions that we struck thus far are adequate but we need to do just a little bit more checking. You will recall that in the existing award it makes specific reference to the offsetting measures derived from the second tier exercise, and I want to be sure after consultation with my colleagues in the department, that there is no need for us to replicate them one by one in the award, but I will take further advice on that.

The third star point on that page makes reference to what I have already spoken to, commissioner, which is that if the .... proposal is worked in, we've got more work to do on the shift work provision, and maybe some others, and the second star point which is the final reminder note for us is that we have still yet to determine whether we need to take a fresh position in relation to paid holidays, and that is the quantum and the payment to shift workers in respect of paid holidays. Now I am only just going to flag this, commissioner, because we haven't done enough research on it thus far, but as you'll be aware, there are a certain number of days granted to shift workers in a .... because they work Saturdays and Sundays and because they require the work public holidays - it's an old public service tradition - so they get an extra week's leave and they get an extra number of days in relation to days worked on public holidays. Now we may have to return to the commission on two counts: one as to whether the number of days granted in lieu of working on public holidays is in fact too much, and secondly whether the number of days currently stipulated as I understand it, twelve, is in fact in excess what the number of public or paid or bank holidays is at the moment.

So we'll have a look at that and we may - well, we do seek leave to return to the commission if we require to further amend this exhibit in relation to those matters.

COMMISSIONER IMLACH: Yes, in relation to that, Mr Willingham, I don't know whether I was speaking out of school or before time, but that matter is being reviewed by a full bench - proposed to be reviewed, maybe - in the near future in relation to health industry.

MR WILLINGHAM: I know, commissioner. You know, I was reminded over the - or I reminded myself over the lunch period that in answer to your earlier question about whether the employer and the employee should take equal responsibility for nothing happening under structural efficiency. It occurred to me of course that the general condition is a service matter, has been basically stopped for the best part of four years,

and every time we have endeavoured to make an application, or indeed employee organisations have made an application to vary a condition, it has been effectively squelched because a full bench is dealing with conditions of service.

COMMISSIONER IMLACH: Yes, well I don't know whether I take that absolutely to heart because what is running through my mind is, and this is not to be taken absolutely as one hundred per cent, but if there is a full bench appointed and I am not on it in relation to this matter, because of my experience and general attitudes on shift work and principles thereon, I might even be tempted to take my own course, Mr Willingham, but that might be all conjecture.

MR WILLINGHAM: I'd be delighted if you were to do so, commissioner.

COMMISSIONER IMLACH: And if you are going to leave this matter now, there are a couple of points.

MR WILLINGHAM: Certainly.

COMMISSIONER IMLACH: If we go backwards - enterprise flexibility, those items there, they are pretty serious items, Mr Willingham.

MR WILLINGHAM: Yes.

COMMISSIONER IMLACH: Is that sort of a standard thing these days, you are submitting, or are you suggesting or what?

MR WILLINGHAM: No, we're suggesting it as an innovative approach consistent with the wage fixing principles and consistent with modern concepts of how employees and employers should deal with one another in the enterprise. We are saying that there should be a degree of flexibility. Our proposal provides specified areas where these things cannot be changed without reference back to the appropriate tribunal, and at the same time permits a number of practice and custom and other matters which simply entitles the parties to talk to one another and maybe come up with an agreement which gives the flexibility that is required to suit the needs of the enterprise.

We have deliberately, as I said, avoided areas where we don't think there should be a change. Clearly we couldn't have employees and employer agreeing as to who should have an interest in the award, or who should be bound by the award; that is clearly a matter you couldn't have them alter. Neither should you have them agreeing, by the provisions of this clause, to changes in title, or definitions, because the definitions stand to affect the entire award, but yes, when we come to qualifications, it may be that the employees and the

employer come up with some alternative that they think is more appropriate, that best suits their needs. It may not necessarily be the case that they would bring that back to the commission for endorsement.

Ordinary hours of work is very clearly an area where we believe that there should be flexibility for the employer and the employees to vary existing conditions if they so choose. It is entirely in keeping with the spirit of structural efficiency and enterprise bargaining. Similarly shift work and in fact we see the loaded rate as a prime example of that, although notwithstanding we are asking you to endorse that proposal. Meal breaks, similarly. There may be all sorts of situations where one or both of the parties may wish to adopt a different course of action in relation to how the meal breaks are taken, where they are taken and for how long they are taken. The on-call allowance, similarly, and we may find a better and perhaps less expensive way of having standby or availability in the prison service, and certainly conditions of service, not otherwise specified.

So we don't make any secret of the fact that that is what we're looking for and for the fact that we believe it is far more appropriate in 1994 to give both parties the flexibility to do those sorts of things. I make the point, commissioner, that in this particular clause, such variations, such changes, can only be made by the consent of the relevant unions and employer. There are other areas where we suggest that changes can be effected with the consent of the employee and in some cases with the consent of the majority of employees, but here, here, we say such changes cannot take place without the consent of the union, or unions.

COMMISSIONER IMLACH: It is maybe that I still have my feet stuck in the mud of history or whatever, Mr Willingham, but I just find it hard to accept that these changes be made without any - the benefit, as I see it - of any formal approval because if we take ordinary hours of work if the parties were to agree to go, say, to 48 hours per week, it seems to me that they ought to come along and register an agreement or seek to amend the award.

MR WILLINGHAM: In many cases, that may be what they would do, commissioner. This clause doesn't preclude that at all. What it says is what they may do, but I think I would have to say that the proposal before you combines the best elements of an award and enterprise flexibility.

Here you have a situation where an enterprise agreement as well as an enterprise award can be incorporated within the one document where the parties have the power to quickly respond to changed circumstances, and it gives them the opportunity and the flexibility to cater for those changed circumstances in a manner they think fit.

Now there will clearly be situations where agreement can't be reached, therefore the provisions of this clause wouldn't apply, and if either one of the parties wanted to effect such a change they would have to make an application in the normal fashion and seek to persuade you to make the variation.

But, no, sir, I continue to say that we believe that an enterprise flexibility clause combines the best elements of workplace bargaining and an award base for protection.

And we have thought long and hard about the items that should be capable of being varied, and those are they, commissioner.

COMMISSIONER IMLACH: Well we will leave that in abeyance, from the point of view of what I think about it.

MR WILLINGHAM: Were there other questions, commissioner?

COMMISSIONER IMLACH: Yes, there are a couple more, Mr Willingham.

The shift work provisions, I just want to let you know that there's a sacred phrase in - actually, it's not in this award as it stands, as far as I'm concerned, but I will read out to you what is in this award, and then make the point - when I find it. Shift work, yes. Rosters, page 16 of the present award:

> There shall be a roster for shifts which shall:
>
> (a) Provide for rotation unless the majority of employees concerned desire otherwise.

Now the one that I prescribe to is, and it is the metal industries one, or it was:

> There shall be a roster for shifts which shall:
>
> Provide for rotation unless all employees concerned desire otherwise.

Now, what do you say to that?

MR WILLINGHAM: Well, I understand what you're saying, sir. We've deleted that provision from the proposed award.

COMMISSIONER IMLACH: I know, and I'm saying I regard it as rather a fundamental matter. It reflects fair play all around.

The clause that I quoted - not the one from the award - I consider that that's not democratic what's already there, believe it or not - purely democratic.

What I am saying is, well put it in these words, Mr Willingham, it's the responsibility of the employer where shift work is concerned, and the prerogative - both together - to make sure that the employees in the shift work situation each and everyone of them receive an equal slice of the cake, no matter what's in the cake. Saturday work, Sunday work, night work, money, whatever.

And I say, I repeat in my opinion it is the primary responsibility of the employer to ensure that. Then, of course, the employees can't complain, which is a great advantage to everybody.

MR WILLINGHAM: I understand what you are saying, commissioner. I don't .... that there is a problem in practice, and the best of my understanding is I believe that that fair distribution as you'd call it probably takes place now as best as it is able to do in those situations.

But I do say that the provision which requires the consent of all employees is, in my view, unnecessarily restrictive.

It could be that 170 employees say `Yes' and one says `No' and the whole running of the prison service can be quite severely impeded by that one dissenting vote, and a number of other alternative proposals would then have to come into play for the employer to cater with that situation.

So, no, we don't believe that it should be included here that all employees or the majority of employees. As you rightly say, it is the responsibility of the employer to design rosters that are fair, and it is open for the employee organisation to come before this place, or indeed another - that is the Commissioner for Review - if that employee feels that there is inherent unfairness in the roster either generally or in relation to the particular employee.

And we believe that there are quite adequate safeguards, and that that provision doesn't need to be there. And that is why it is deleted.

COMMISSIONER IMLACH: Yes, well again I could pursue this I think for quite some time, but I hope the parties are going to get together, as you have expressed, Mr Willingham, and maybe reach agreement on these proposals. But I just make that point -

MR WILLINGHAM: Thank you.

COMMISSIONER IMLACH: - for all the parties, and I could say a lot more on it - in other words, debate it - but I would like to see the parties discuss it amongst themselves first.

Yes, that's all, Mr Willingham.

MR WILLINGHAM: Thank you, commissioner.

And, just before I finish with M.2 and M.3, I've been reflecting in the small pauses, commissioner, about the earlier exchange with Mr Nielsen.

COMMISSIONER IMLACH: I hope you are not getting too upset about it.

MR WILLINGHAM: Oh, I am not upset at all. I am always prepared to learn, especially from an old fox like my colleague Peter Nielsen. I'm never too old to learn lessons from him.

And what I think I will indicate to the commission is that when we have revised our application along the - I am sorry, revised our Exhibit M.2 - along the lines that I have already spoken to you about, I will in fact submit an application for the commission to delete the existing award and vary it in accordance with what is currently Exhibit M.2, plus any other little goodies I can think of on the way through, in accordance with the structural efficiency principle .

And that I think, commissioner, will ensure the basis upon which you proceed. I am very conscious of the comments that you have made, and with everyone seeming to be spending more time about whether the jurisdictional foundation is appropriate than the merit of the case, it won't do any harm at all to double wrap it like that.

So I will get that down to you in the next few days. Certainly before Mr Nielsen responds. And, of course, will send it to all parties. We won't attach the Exhibit M.3, of course.

Well, commissioner, I don't know whether it would be an appropriate time for a small break or whether you would like me to continue on? I anticipate another half an hour and I'll be close to conclusion.

COMMISSIONER IMLACH: Well so long as yourself and all the other parties don't mind I would be quite happy for you to proceed forthwith.

MR WILLINGHAM: Right. That's doesn't affect me, sir.

MR NIELSEN: No problems, Mr Commissioner.

COMMISSIONER IMLACH: Unless you want -

MR WILLINGHAM: No, no, I am anxious - it has been a long time waiting for this moment, commissioner. When I actually

conclude my submission it has been the longest submission I have ever made in terms of time.

COMMISSIONER IMLACH: Yes, quite so, Mr Willingham.

MR WILLINGHAM: I want to now take you to the TPOA's classification structure as it finally emerged in Exhibit TPOA.98.

You'll recall, commissioner, that that Exhibit 98 includes all the main ingredients of Exhibits 84, 86, 87 and 91, but Exhibit 98 is the one from which we have been working.

Now you will recall, commissioner, that Mr Hughes had carriage of that part of the association's case which went to the structure and his submissions are to be found between pages 435 and 447 of the transcript, and then in summarising the TPOA's submissions Mr Nielsen also spoke to the exhibit, and you may find his remarks between pages 458 and 459 of transcript.

Well there is not so much that we disagree on, commissioner, when you consider it. We agree, for instance, with Mr Hughes that the existing requirements of clause 15(1) are totally inappropriate - that's 15(1) of the present award - are totally inappropriate and should be deleted.

And for those who haven't got a ready reference to clause 15(1) that says:

> The successful completion of a preliminary examination in the subject of Arithmetic, Composition, Dictation and Handwriting of a standard at least equivalent to the sixth grade of State primary schools.

- etc.

So I have no argument that that should be confined to the scrapheap of history.

I am even getting a smile from Officer Masters, commissioner, that's a rarity.

I don't believe, commissioner, despite what else has been said about that subject, that there is any need for a reference to a general level of education at all.

You will scarcely find an award of this commission in the public sector that has a reference to academic standards, other than those that require tertiary qualifications for either appointment or promotion.

I'm unclear in my own mind, and I certainly argue against the inclusion of any general provision which specifies a standard of secondary education for prison officers.

That is not to say that the prison service does not want to continue to recruit people with a sound educational standard, so that as with any other occupation the general educational attainments of people within that group are constantly upgraded.

There is a desire and an objective on the part of many in the prison service that ultimately we will see a degree qualification in custodial and corrective practices.

Certainly there is a project afoot to examine the feasibility of a non-university tertiary institution providing some sort of certificate or diplomate - what do we say, diplomate, or?

MR MARRIS: Associate Diploma.

MR WILLINGHAM: Association - yes, that's what I was - Associate Diploma courses. And those things are in hand and ultimately it may well be that they are incorporated into our proposals. Hence, commissioner, at least one of the references in our enterprise flexibility clause to qualifications.

I think I've said enough in relation to the academic standards that ought to be attained by prison officers.

We have a view that there is no need whatsoever for probationary officers any more in this day and age. Virtually no other occupational grouping in the state service has a distinct probationary officer classification. It is a fact, commissioner, that under the provisions of the Tasmanian State Service Act all employees are on probation for a designated period of time and we think those provisions can apply equally to people working in the prison service.

We do think that there should be either an entrance examination, a preliminary examination of some kind or another or, alternatively, that the controlling authority or the employer may exercise discretion to deem that a particular person has appropriate qualifications so as to not need to sit an entrance examination. I would think over time, commissioner, that that would become almost the universal practice.

In any event, commissioner, we're obliged to point out that qualifications as such relating to appointment in the state service are, of course, the province of the Commissioner for

Public Employment, so it doesn't matter what Mr Marris and I think about in relation to the appropriate qualifications, we have to get his clearance before we can put them as a matter of the minister's position.

Now there have been a number of changes to the qualification criteria contained in the fourth column of TPOA.98. But can we say to you, commissioner, that we agree with the qualification on page 1 of TPOA.98 for the first year custodial officer, leaving aside the fact we disagree with the probationary officer. If we converted that to the first year of service of a custodial officer we agree that there should be some preliminary examination or something deemed by the employer as equivalent thereto. We don't agree with the reference to tenth grade, for reasons that I have just said. We would delete that. And we would substitute words to the effect: that deemed appropriate by the employer.

If you go to the second qualification which attaches to Level 2A Prison Officer in TPOA.98, we would say if you delete `probationary' from those words, we are more or less in agreement, commissioner, because we have said: Yes, you must complete a custodial officer's examination. And if you refer back to our proviso in clause 8 of M.2, you will see that we say that you can't advance unless you've completed 1 year's satisfactory service and your conduct and diligence has been of an appropriate nature. So essentially we agree. We say it in different ways.

If you go to page 2 of TPOA.98, this is for Prison Officer Level 2B, well given that we don't agree with those two levels of prison officer anyway, we would not inject another examination at third year.

Go then to Level 3 Prison Officer First Class, we are not far apart on that, commissioner, from TPOA.98. They require satisfactory completion of a number of years service and the successful completion of the senior prison officer's examination, and we essentially agree. The difference I think is the amount of years that an officer must serve before being eligible. And in our submission it's not 4 years; it's 3, is it not? Three years' satisfactory service we propose, commissioner, whereas the association proposes 4.

I'm advised that it contradicts the award but since the advice was from Mr Masters, I won't take any note of it at the moment. But you then go to Chief Prison Officer, Mr Commissioner, and the qualifications on page 5 of the exhibit. We don't at this stage agree with those qualifications criteria for Chief Prison Officer to the extent that there is no CPO course, neither has one been proposed that we can have a look at, neither are we persuaded that one is necessary. But it is something which we've previously indicated and we now indicate we're prepared to discuss further with the two

associations. Oh, I'm sorry, I've got to stop saying that, don't I; one's an association and one's a federation.

And we don't disagree with `by selection', as the shorthand way of saying how people should be appointed. And we don't disagree in effect with the qualification criteria contained on page 6, because that's essentially what is the case now, for the same reason we don't oppose the criteria on page 7 or on page 8 or on page 9. And page 10 there's no need to comment because we would not include the position of Chief Superintendent in the award.

COMMISSIONER IMLACH: When you say `not opposed', Mr Willingham, do you mean you agree?

MR WILLINGHAM: Well, sir, the prior experience and qualifications deemed appropriate by the controlling authority for the duties of the position is not quite the way I would have written it and it's not quite the way I have written it. But it's essentially according to the state service merit principle and the qualifications and experience are those deemed ultimately to be the most appropriate by the employer. So although it doesn't say it in quite the way I would, we don't have a disagreement and that's, in fact, what happens now.

Where there is reference to supervisory certification or a CPO's examination course, I just refer you back to my previous remarks. There is no such clause. We are not persuaded one is necessary but we are prepared to discuss those matters further with the association and the federation if they choose to do so.

Sir, I was just saying that we don't have to say very much at all about page 10 because we don't include the position of Chief Superintendent in our preferred model award. In our award the highest classification is that of Deputy Chief Superintendent and that's contained in level 6 of clause 8 of M.2.

With the position of Custodial Officer First Class, we originally had thought, commissioner, that perhaps, for reasons I've previously explained to you, there was no great harm in including it in the proposed award as a separate classification. But the more we read the structural efficiency principle, the award modernisation and rationalisation requirements, the more we looked at the evidence that had been produced in this case, the more we looked at trends emerging both in prison services elsewhere in the country and in other like disciplined and rank services, we came to the conclusion that there's no justification for supporting a separate classification of Custodial Officer First Class.

However consistent with our previous undertakings, we are prepared to include Custodial Officer First Class as, if you like, the final incremental level of Custodial Officer. And so that it's not seen to be a classification level to which people can progress simply by the effluxion of time, what I would term as hard barriers have been imposed as a prerequisite to attaining that level. They're of course set out in our proposed clause 8 of M.2.

I think I've already made the point, commissioner, as I say in passing, that where on TPOA.98 in the fifth column there is reference to insignia, this is essentially a matter for the parties and if they can't agree, I suppose, it's essentially a matter for the employer. I don't think the question of what insignia emblematic shoulder epaulettes, badges, buttons and whatnot is really a matter that would fall within the jurisdiction of the commission, nor indeed fall within my area of responsibility. So again I say I will leave that to the parties in the hope that they can determine an acceptable position.

In terms of the levels of responsibility shown on TPOA.98, commissioner, we believe, as hinted at earlier, that it falls foul of the structural efficiency principle and the work-value principle in that it increases the number of discrete levels in the award. It increases the discrete number of levels of responsibility. Far from broadbanding and not falling into the trap of producing narrowly confined levels of responsibility, it simply just does that. It doesn't move to broadbanding of responsibilities; it doesn't move to a wider range of tasks as they affect the supervisory level. In our judgment they are contrived classifications. They impute no real supervisory distinction. In our view they are produced for no other reason than to provide stepping stones to greater numbers of wage incremental levels and by extension to give employees access to them.

You have not heard one word of evidence or submission in support of the five levels of Custodial Officer up to and including Senior Prison Officer, commissioner. And really it's an absurd notion that there should be an endeavour to implement an award that has five layers notwithstanding they're very narrow and that they're very grey, five layers of supervisory responsibility as is proposed in TPOA.98. And just so there can be no misunderstanding of what I'm saying, sir, those levels are Prison Officer on Probation, Prison Officer Level 2A, Prison Officer Level 2B, Prison Officer First Class and Senior Prison Officer.

And in each the level of responsibility - there is an attempt in each for the level of responsibility to be different from the preceding level. And if that doesn't fall into contrived classifications and if that doesn't fall into narrowly

defining the levels of responsibility, I don't know what does, particularly when the current award has two levels.

I suppose it follows, Mr Commissioner, just in case I haven't made it abundantly clear, that the proposals as they relate to the structure of the classifications in TPOA.98 fly in the face of the structural efficiency principle.

Now Mr Hughes mentioned in one of his submissions that one of the redeeming virtues of the proposal, which at that time wasn't TPOA.98 but I think it means the same thing, he says that the association proposal provides a reduction in the number of salary points compared with the existing award. And that is largely true. But it's a red herring to the extent that the number of salary points isn't relevant to whether a structure is broadbanded or overclassified. It's the number of classifications, the number of discrete classifications which determines whether the award is narrowly confined or whether it isn't. The number of salary increments within each level or the number of salary increments within each classification has absolutely nothing to do with whether the award is structurally efficient.

Mr Hughes says that this structure, as is now surfaced in TPOA.98, will provide the management with the flexibility it requires and that it will remove the unnecessary restrictions imposed on the management of the corrective services division. Now that particular quote is taken from pages 438 and 439. It's unclear to me, Mr Commissioner, what Mr Hughes meant when he said it would provide management with the flexibility it requires because I'm not sure what it is we've said we do require, or whether that's Mr Hughes' version of what he thinks we ought to be requiring.

And he says further that it will remove the unnecessary restrictions imposed on the management of the corrective services division, and again I'm unclear as to what those unnecessary restrictions are. And I don't say for one moment that in making the proposal the association was not acting in good faith as it saw the circumstances. But without further elaboration I don't understand the references. But I do say this, the introduction of a classification structure of the kind suggested by TPOA.98 could not, in my view, act to remove restrictions; it could only act to increase them because of the narrowly confined levels of responsibility and because of the increased number of them.

Commissioner, I've already referred to you the previous decisions of the commission relating to the positions of Superintendent, Women's Prison. If I may just remind you that was T.393 and T.401 of 1986, where that particular position was comprehensively work valued. That decision resulted in an increase of approximately 20 per cent to that particular classification. The grounds upon which that determination

were made is to be found at pages 6 through 8 of the decision of then Commissioner King dated the 19th June 1986. And they included, Mr Commissioner, and I quote:

> A more humane approach to the treatment of prisoners and a move from a totally penal system to one incorporating general rehabilitation.

That's as far back as 1986, commissioner. Introduction of the holistic approach to the care and treatment of prisoners. You'd be very familiar with the holistic approach, it seemed to appear everywhere in the health industry some years ago, sir.

COMMISSIONER IMLACH: Yes, I wasn't guilty of using it myself.

MR WILLINGHAM: No, me neither. I still don't understand what it means, commissioner.

Responsibility for all medicines and the administration of them; counselling of staff on attitude therapy of inmates; introduction of social skills education; assessment of inmates educational and recreational needs and provision of education as required; implementation of new physical activities for inmates; introduction and conduct of staff training as required. That was a decision taken in 1986, Mr Commissioner. An awful lot must have happened between 1984 and 1986 and very little thereafter.

Mr Commissioner, I want to conclude the employer's submission by, in fact, referring you to Commissioner King's decision in the 1984 work-value case, that is T.16 of 1985, and that's dated the 11th February 1985. And I believe it might be exhibit POA.1.

COMMISSIONER IMLACH: Yes, Mr Willingham, I have it.

MR WILLINGHAM: Thank you, commissioner. I was just sidetracked momentarily, commissioner. I was just looking at the names on the first page there and there's not an awful lot of us left now, is there?

COMMISSIONER IMLACH: Yes, we've been through the mill one way or another, Mr Willingham.

MR WILLINGHAM: I beg your pardon?

COMMISSIONER IMLACH: We've all been through the mill one way or another.

MR WILLINGHAM: It just frightens me that I'm the only survivor. Oh no, my colleague, Mr Pearce.

COMMISSIONER IMLACH: Mr Miller.

MR WILLINGHAM: Yes, I'm not sure if that's surviving or not.

Commissioner, there are a number of similarities, Mr Commissioner, between the case before you now and that which presented itself to then Commissioner King. The same two employee organisations were involved, differently titled. One of those organisations, of course, in Commissioner King's matter was actively opposed to the claims before the commission, although there is no direct analogy in this particular case. It's a strange twist of fate, isn't it, that the same organisation, whilst it hasn't taken an opposing role, has taken a role of such inaction as to be scarcely represented in a meaningful way whatsoever, except through the submissions of my friend and colleague, Mr Nielsen.

The claims before Commissioner King included a general work evaluation, a claim for the restruction of some of the salary scales, the introduction of new classifications, and the insertion of new definitions. If you refer to page 3 of Commissioner King's decision, Mr Commissioner, you will find that he chose at that time to deal only with the work-value claims and the other matters were dealt with in his second decision under T.16 which was issued, I think from memory, in May 1985.

So all of what then follows in the decision contained in exhibit POA.1 relates to the work-value component of the two organisations' claims. It may also be useful to note that the work-value principle that Commissioner King was required to utilise was essentially the same as the work-value principle that you're required to operate under. The only difference, Mr Commissioner, for the purposes of the record is the reference to the date, the earliest date from which a work-value exercise could be measured. In those days it was the first - or it was, I think, January of 1978. In this case we submit that's not a relevant consideration since the datum point has been established. And the second matter was, of course, that the commission was enjoined to have regard to any changes and/or increases which might have resulted for the structural efficiency principle. That's the principle which faces you, commissioner. Of course, it didn't face Commissioner King because the structural efficiency principle had not at that time been put into place.

If I ask you, commissioner, to turn to page 7 of exhibit TPOA.1. Commissioner King writes that he took evidence and statements from seven witnesses. He goes on to say - you'll find this in what I would call the third paragraph, perhaps the second paragraph, commissioner. I quote:

> The prepared statements were produced in booklet form and exhibited as exhibit H.4. Obviously much

> time and effort was given to their production and as a comprehensive resume of the duties and responsibilities of the officers concerned, they lacked nothing. However in terms of the real purpose of the case the proving of changes in the nature of the work, skill and responsibility required they did not show a significant net addition to work requirements.
>
> The same could be said of the oral evidence which very largely supplemented and was an elaboration of the statements.

Commissioner King said, and I repeat it, sir: Obviously much time and effort was given to their production and as a comprehensive resume of the duties and responsibilities of the officers concerned they lacked nothing. However, in terms of the real purpose of the case the proving of changes in the nature of the work, skill and responsibility required, they did not show a significant net addition to work requirements.

The conclusions reached by Commissioner King, Mr Commissioner Imlach, are, in our submission uncannily apposite to the oral and written evidence of the TPOA and the SPSFT in the present proceedings.

Staying with page 7 of Commissioner King's decision and going through to page 9, Mr Commissioner, Commissioner King then summarises the main changes relied upon by the association in support of its claim. I ask you to take a look at some of those matters, Mr Commissioner. I won't read through them all but I'll select them: more sporting time made available to prisoners; some administrative changes, for example, increased paper work for the trade instructor in the bakehouse; increased use of diaries; photographs - taken at the request of prisoners for private use; increased responsibility associated with the recording and security of television sets allocated to prisoners; increase in visitors - both in terms of numbers and in frequency; changes in standing orders; an increase in orders from the canteen. It's eerie isn't it, Mr Commissioner, it's deja vu. More diplomacy required of prison officers because of changing attitudes towards prisoners; an increase in short term prisoners; the element of risk associated with the supervision of prisoners; problems associated with abuse and threats from prisoners; certain physical problems associated with the design of the prison, particularly the towers and general lack of facilities; a claim of increased eye problems from officers required to man or woman the television monitoring system.

Mr Commissioner, all of those elements were at some time during the course of this case referred to you as being different, as being new to the period under review, and yet

here is Commissioner King, having conducted the case up to the end of 1984, in early 1985 saying that all of these matters were brought before him - all of these matters were brought before him. And he says on page 7, does he not: in terms of the real purpose of the case the proving of changes in the nature of the work, skill and responsibility required, they did not show a significant net addition to work requirements.

But Mr Commissioner King goes on. On page 9 he says, and I quote:

> I am sure that these and other matters - these and other matters - were referred to me with the aim of giving me a clear picture of the work, responsibilities and disabilities associated with the role of the prison officer. However, in terms of the work value case they cannot have any bearing as they are no doubt - as they no doubt are not new factors and have been taken into account in previous work value assessments.

Again we say that Mr Commissioner King's finding is so relevant and so applicable, Mr Commissioner, to the case currently before you.

On page 10 of the decision, Mr Commissioner, Mrs Herbert is - I'm sorry - on page 10 of the decision Mrs Herbert's submission on behalf of the TPOA is being summarised by Commissioner King. For the second paragraph, I quote:

> She emphasised what the prison officers consider to be an increasing responsibility in that they are required to do more personal supervision of prisoners.

I just repeat that: they are required to do more personal supervision of prisoners.

> This has been brought about by the following factors: a) an increase in visitors to the prison; b) an increase in sporting activities; c) an increase in hobby classes; d) an increase in the number of lawyers, welfare officers, social workers and medical officers visiting the inmates.
>
> Emphasis was placed on what prison officers considered to be a greater strain placed upon them because of a change in attitude towards prisoners by the administration. The change in attitude required a greater degree of diplomacy and understanding to be shown to prisoners.

Bear in mind, Mr Commissioner, these were the factors that were advanced and supported the case back in 1984/83 and which

are now in many respects parallelled as being put forward in support of the current case and argued as being new to period under review.

Finally, Mr Commissioner, I ask you turn to page 17 and 18 of Commissioner King's decision. At page 17, Commissioner King says, and I quote - and this is last sentence of the second paragraph, Mr Commissioner, starting with `The evidence' - I quote:

> The evidence and submissions in this case can be categorised as follows:-
>
> - General factual information relating to work functions, responsibilities and conditions which have been in existence for many years. Such information was enlightening and very helpful to me but does not assist the P.O.A. case in terms of proving change;
>
> - Showing an increase in workload in certain areas affecting some classifications. An increase in workload does not constitute grounds for work value considerations where it is a case of more work of the same or similar nature as envisaged by the classifications;
>
> - Going to changes which occurred either before September 1981 or after December 1983. In either case such evidence cannot be considered in determining this case;

And I interpose here, commissioner, that then Commissioner King did not identify what those particular changes might be but my research of the case fails to prove or identify any such change which could be compartmentalised to those two years.

I continue with the quote:

> Evidence supported by submissions showing changes which occurred during the relevant period.
>
> The changes which occurred during the relevant period were, in my view, of a fairly minor nature, and not changes which could constitute a significant net addition to work requirements.

The findings of Commissioner King to which we have referred you, Mr Commissioner, are in our respectful submission significant and relevant to your consideration of this case. Firstly, because a great deal of the material relied upon in the 1984 case has been recycled for an appearance in the present case.

We have attempted to cover each aspect of that material during our submission going to the witness evidence and we of course rely upon that. However, Mr Commissioner, we respectfully urge you to place great weight on the findings of Commissioner King insofar as he dealt with matters which have resurfaced in the present case.

The second and absolutely last point we make, Mr Commissioner, is that the conclusions that Commissioner King reached in relation to categorising the evidence and submissions of the TPOA are, in our respectful submission, directly and entirely germane to the evidence and submissions advanced by the TPOA and the SPSFT in the present case. Accordingly it follows, Mr Commissioner, that we believe the applications should experience a similar result.

If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mr Willingham. Now that's it for today. I understand we'll resume at 2.15 tomorrow.

MR WILLINGHAM: Commissioner, I think we have a - a variation to that; I indicated to you earlier that that would conclude my submissions. I assume the batting order will now fall back to my colleagues, Mr Nielsen and the SPSFT. Whether Mr Nielsen would now want to use tomorrow is a matter that perhaps he could discuss with you.

COMMISSIONER IMLACH: Yes.

MR WILLINGHAM: But for my part I certainly shan't need it.

COMMISSIONER IMLACH: Alright, thanks, Mr Willingham. Mr Nielsen?

MR NIELSEN: Mr Commissioner, we made inquiries in the last couple of weeks to get the transcripts for the hearing on 22nd April and we desire of course to get the transcripts for today's hearing before we would like to make - to make our submissions or response - or rebuttal I think is the correct procedure - and once having received the transcripts then you would appreciate we would then need a couple of weeks. We certainly have done some work - quite a bit of work to be frank with you - and before the closure of today's hearing, Mr Commissioner, we would like the parties to give consideration, I suppose, one would have to be - one would have to anticipate that these transcripts when they arrive - I was told some weeks ago when I - when I did make some inquiries, decide to set up another date for another - some dates for our further hearings. Or what I would assume, subject to what the position is, the rebuttal of our organisation's and the SPSFT as to the conclusions for these proceedings.

As you're aware we still have an open mind and I think what's come out of today's hearing certainly is - we're prepared to have further discussions as to whether - and that's our position all the way through, Mr Commissioner.

COMMISSIONER IMLACH: Yes, alright. Well, Mr Nielsen, as I understand it, you haven't got the transcript for the previous hearing - is that right?

MR NIELSEN: That's correct, Mr Commissioner - the 22nd April.

COMMISSIONER IMLACH: Well we'll do what we can to expedite that and this - today's transcript and I can only suggest that once that is available we'll contact the parties about approximately 2 weeks after that to resume and complete.

MR NIELSEN: Yes - appreciate that, Mr Commissioner.

COMMISSIONER IMLACH: And in all that context I put it to the parties, it leaves them plenty of time to resume discussions and negotiations, particularly in the light of the minister's proposals, shall we say, as - as in evidence in M.2. I say that deliberately in that it's 'without prejudice' to the submissions of the TPOA, but on the other hand in where changes are proposed the - the suggestions or requests or whatever you like of the employer, or shall we say the agreement of the employer is rather important. So I'm not saying therefore I endorse what's been put forward by the employer, but it - because of the very nature of that position of being the employer they are what they want to do with their operation. Naturally it does take some precedent. Do you understand what I'm saying, Mr Nielsen?

MR NIELSEN: I understand. Well, if I may seek some clarity, Mr Commissioner.

This is a special. We were under the Anomalies Conference through the TTLC eventually granted the authority to pursue a - an application before you on a special case and we've endeavoured to do that. What you're saying to us, sir, that today we've received documentations or exhibits from the employers to they - as to what they desire and we'll certainly give respect for consideration to those and consultation and it's already been said this afternoon that there are some points, and we've said this over the last couple of hearings, of agreement.

And what I think you also are saying, sir, that we should give further consideration to that as to whether we can reach more agreements in those matters that have been presented.

COMMISSIONER IMLACH: Yes, that's correct, Mr Nielsen. I do make the point that - which you have made, we are here on a

special case hearing and one major part of that is a work value case put by your association, but another part, and probably a more long term part, is the structural efficiency principle changes sought by the employer and I mean when the employer says the government - the minister says that the money has been paid but the goodies haven't been returned, in simple terms that's true - we all know that.

MR NIELSEN: Yes.

COMMISSIONER IMLACH: So in that context I'm saying that now all parties have laid their cards on the table and I know in detail what they're discussing, I think it's sort of getting to the eleventh hour where decisions have to be made and I certainly think that agreed matters are much more preferable to arbitrated matters.

MR NIELSEN: Yes, I appreciate that, Mr Commissioner. We'll certainly take that on board and .... The only thing is, I don't to delay proceedings, but we do have a defence to the - and you've already referred to it - with the employer as to their ability to restructure during the period of time that has elapsed over some 2 years with us, but they've had their prerogatives and we've even had our exhibits to you that we've attempted to do certain things in that regard.

COMMISSIONER IMLACH: I understand that. But now we have it all in front of us.

MR NIELSEN: Yes.

COMMISSIONER IMLACH: So in that context I'm requesting the parties to meet and negotiate. I can't order them to reach a settlement but I certainly seek - request that you see if you can reach settlement as much as possible.

MR NIELSEN: Thank you, Mr Commissioner.

COMMISSIONER IMLACH: Well we'll adjourn till we hear further in relation to the next hearing date and I'll take that on board in relation to the transcript and fixing the next date. Are you clear?

MR NIELSEN: Yes, thank you.

HEARING ADJOURNED