



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT GOSTENCNIK

C2023/7631

s.739 - Application to deal with a dispute

**Tasmanian Water And Sewerage Corporation T/A Taswater
and
Communications, Electrical, Electronic, Energy, Information, Postal,
Plumbing and Allied Services Union of Australia
(C2023/7631)**

TasWater General Employees (Southern Region) Enterprise Agreement 2021

Melbourne

10.06 AM, THURSDAY, 8 FEBRUARY 2024

Continued from 18/12/2023

PN1

THE DEPUTY PRESIDENT: Yes, good morning. Are there any changes to the appearances? No?

PN2

MS NOAKES: No, Deputy President.

PN3

THE DEPUTY PRESIDENT: Thank you.

PN4

MR AUSTIN: No, Deputy President.

PN5

THE DEPUTY PRESIDENT: Yes, thank you, Mr Austin.

PN6

MR FLANAGAN: No.

PN7

THE DEPUTY PRESIDENT: Yes, Mr Flanagan, thank you. Ms Noakes, you can make an opening statement if you wish. I don't require it. I have read the materials, including the applicant's outline and reply, but I won't stop you from making an opening if that's what you wish. But otherwise we should just proceed to take the evidence.

PN8

MS NOAKES: Thank you, Deputy President. With that in mind we will move as efficiently forward as possible. So we would like to call our first witness, which is Mr Brendan Windmeyer.

PN9

THE DEPUTY PRESIDENT: Yes.

PN10

MS NOAKES: We are just inviting him to attend now, Deputy President. It may be just a few minutes.

PN11

THE DEPUTY PRESIDENT: Yes, all right.

PN12

THE ASSOCIATE: Good morning, Mr Windmeyer. Can you please confirm that you can see and hear?

PN13

MR WINDMEYER: Yes, I can hear you, thank you.

PN14

THE ASSOCIATE: Could you please state your full name and address.

PN15

MR WINDMEYER: Brendan James Windmeyer, 169 Main Road, Moonah.

<BRENDAN JAMES WINDMEYER, AFFIRMED [10.09 AM]

EXAMINATION-IN-CHIEF BY MS NOAKES [10.09 AM]

PN16

THE DEPUTY PRESIDENT: Yes, thank you, Mr Windmeyer. Yes, Ms Noakes.

PN17

MS NOAKES: Thank you, Deputy President. Good morning, Mr Windmeyer. Can you see and hear me clearly?---I can, thank you.

PN18

Thank you. Can you please tell the Commission your full name?---Brendan James Windmeyer.

PN19

And your business address is 169 Main Road, Moonah in Tasmania; is that correct?---That's correct.

PN20

And what is your position with TasWater?---I'm the general manager service delivery.

BRENDAN JAMES WINDMEYER

XN MS NOAKES

PN21

And you've prepared two statements in these proceedings?---I have.

PN22

Now, I will just take you to your first statement. Do you have that statement with you, Mr Windmeyer?---I do.

PN23

Thank you. Deputy President, for your reference the witness statement of Brendan Windmeyer is located at page 53 of the court book.

PN24

THE DEPUTY PRESIDENT: Yes, I have that, thank you.

PN25

MS NOAKES: Now, Mr Windmeyer, is that statement 14 pages long?---It is, yes.

PN26

Does it contain paragraphs 1 through to 70?---It does, yes.

PN27

Is there two annexures to that statement being BW1 and BW2?---That's correct, yes.

PN28

And is it dated 11 January 2024?---It is, yes.

PN29

Are the contents of this statement true and correct?---They are.

PN30

Thank you. Deputy President, I tender the statement of Brendan James Windmeyer dated 11 January.

PN31

THE DEPUTY PRESIDENT: Yes, thank you. Is there any objection to the tender?

PN32

MR AUSTIN: No objection, thank you, Deputy President.

PN33

MR FLANAGAN: No objection.

PN34

THE DEPUTY PRESIDENT: Thank you.

**EXHIBIT #1 WITNESS STATEMENT OF BRENDAN JAMES
WINDMEYER DATED 11/01/2024 COMPRISING 70 PARAGRAPHS
AND TWO ANNEXURES**

*** BRENDAN JAMES WINDMEYER

XN MS NOAKES

PN35

MS NOAKES: Thank you, Deputy President. Mr Windmeyer, can I take you now to your second statement?---Yes.

PN36

Thank you. Is that statement four pages long?---It is, yes.

PN37

Does that contain paragraphs 1 through to 8?---It does, yes.

PN38

Is that witness statement dated 6 February 2024?---It is, yes.

PN39

Are the contents of that statement true and correct?---They are true and correct.

PN40

Thank you, Mr Windmeyer. Deputy President, I tender the reply witness statement of Brendan James Windmeyer dated 6 February 2024.

PN41

THE DEPUTY PRESIDENT: Thank you. Any objection to the tender?

PN42

MR AUSTIN: No objection, your Honour.

PN43

MR FLANAGAN: No objection.

PN44

THE DEPUTY PRESIDENT: Thank you.

**EXHIBIT #2 REPLY WITNESS STATEMENT OF BRENDAN
JAMES WINDMEYER COMPRISING EIGHT PARAGRAPHS
DATED 06/02/2024**

PN45

THE DEPUTY PRESIDENT: Yes, Mr Noakes.

PN46

MS NOAKES: Thank you, Deputy President. We have no further questions for Mr Windmeyer at this time.

PN47

THE DEPUTY PRESIDENT: Thank you. Mr Austin, any cross-examination?

PN48

MR AUSTIN: Yes, thank you, Deputy President.

CROSS-EXAMINATION BY MR AUSTIN

[10.13 AM]

*** BRENDAN JAMES WINDMEYER

XXN MR AUSTIN

PN49

Thank you, Mr Windmeyer. Can I take you to paragraph 37 of your first statement, exhibit 1?---Yes.

PN50

You say there that team members can be allocated work for a day and there are times due to the nature of customer faults that they're called in or reassigned different tasks. It's not the case, is it, that employees in waste water treatment, or in water treatment, and assigned to waste water treatment plans or water treatment plans are despatched to that kind of reactive maintenance work, is it?---Yes, there would be a need at times for reactive maintenance on plants where we have errors and faults.

PN51

That's not part of their ordinary duties however?---To fix faults at plants? So, yes, it would be the requirement of people to do - to maintain and work on their plants. Yes, it would be the main - the typical job if there was an error. That's why we have people on sites at times so that they can fix and attend to errors on site, yes.

PN52

You've read the statement of Mr Hulls?---I have, yes.

PN53

Mr Hulls describes the work that he performs in a waste water treatment plant, he does that in - just a moment, apologies - he does that in paragraphs 24 to 26 - - - ?---Are you taking me to that, sorry?

PN54

Yes?---Okay. Do you mind showing the screen and just putting that up. I don't actually have the whole court book in front of me. So do you mind putting that up on the screen if that's okay.

PN55

Bear with me.

PN56

MS NOAKES: Deputy President, we can assist - - -

PN57

MR AUSTIN: Is that quite clear? I apologise if that's a little truncated given the size of the screen?---Sorry, it might be easier if I actually just find that statement if it makes it easier. Sorry, I can't read that.

PN58

MS NOAKES: Deputy President, if it would assist the witness I believe it's page 1087 of the court book, the digital court book.

*** BRENDAN JAMES WINDMEYER

XXN MR AUSTIN

PN59

THE WITNESS: Okay. Thank you, I'll do that now. Sorry, it is just loading. Sorry, did you say page 107 of the court book?

PN60

THE DEPUTY PRESIDENT: 1087.

PN61

MR AUSTIN: It's 1087?---I have that now, thank you.

PN62

Thank you for that. So I am taking you to paragraphs 24 to 26. If you need to read that do take the time. It's a summary of occasions where Mr Hulls has to wear different forms of masks. Do you see that there?---I do, yes.

PN63

You see in paragraph 24 he talks about needing to change chlorine every two to four weeks depending on the rate and usage of the chlorine. Later in 26 requiring to wear a non-powered respirator every week on Mondays while at the pump station. They're the only times, are they not, that an employee doing his work at his classification is required to wear RPE?---No, that's factually incorrect.

PN64

What are the other occasions where it might be required?---So if we have a chlorine leak the employee would be required to respond and to jump in and fix

that. So it would be in a reactive nature. It could happen at any time. Whether they be on call they would be required to wear RPE. There could also be other works if they are doing other repairs on site as well. So, no, it's not factually just to say that it's only related to plant tasks.

PN65

Drilling down into the change of chlorine, chlorine isn't used on all of your waste treatment plants, is it?---No, it's not, no.

PN66

Do you know how many waste treatment plants use chlorine?---I wouldn't know in numbers, no. But it's a relatively accepted use of water treatment across the industry. So it is in quite a number. We are trying to move away from it, but it's in a number of our sites.

PN67

Nonetheless not all employees engaged in waste treatment plants, waste water treatment plants are required to do repairs or changes for chlorine?---Not all at all times, no, but they would be required at some stage to require to wear RPE.

PN68

Thank you for that. I take you back to your statement in-chief, and particularly it's paragraph 37 - apologies, I have taken you to the wrong point there, just one moment. Sorry, apologies, Mr Windmeyer, take you to paragraph 5 of your reply statement. Do you have that there?---Yes, I do.

*** BRENDAN JAMES WINDMEYER

XXN MR AUSTIN

PN69

You state there essentially - just one moment - at that point I believe you're discussing the current role of the two applicant witnesses in this case, Mr Burnaby and Mr Hulls?---Yes.

PN70

And you state there that they work in water treatment?---Yes.

PN71

It's the case, is it not, that Mr Hulls is not in water treatment. While he works at a waste water treatment plant he's in fact out in urban networks working on reticulated water systems. Do you accept that he's not in waste water or in water treatment?---So water service operators at times can work across both, but, yes, I accept if that's - sorry, I may have made a mistake there. Yes, that might be the case.

PN72

Thank you for that. That being the case do you accept that Mr Burnaby is not required to use self-contained breathing apparatus or breathing apparatus of the kind usually required for things like chlorine changes?---I wouldn't know specifically in terms of what he's required. I think that they do require - sorry, Mr Burnaby or Mr Hulls?

PN73

That's Mr Burnaby?---Mr Burnaby - so working at water treatment plants would be required at times to wear BA for change of chlorine and gas.

PN74

Apologies, Mr Windmeyer, I think I have to - - -?---I don't understand. Yes.

PN75

I put to you - and apologies if I'm taking you to a wrong turn - I put to you that Mr Burnaby does not work in waste water treatment, that he in fact works in urban networks on reticulated systems, and therefore in doing that work is not required to change chlorine. Is that correct?---He's required to wear RPE, but not for chlorine.

PN76

Thank you. And therefore he's not required to wear breathing apparatus of a self-contained breathing apparatus type?---He is required to wear RPE, but not of a breathing apparatus nature.

PN77

The appropriate RPE for Mr Burnaby would normally be something at a P2 level of protection for the work he does in reticulated systems; is that correct?---That's about right, yes.

BRENDAN JAMES WINDMEYER

XXN MR AUSTIN

PN78

THE DEPUTY PRESIDENT: Sorry, Mr Austin, just to clarify your earlier cross-examination, the earlier questions directed to the role performed by Mr Hulls was intended to be a reference to Mr Burnaby?

PN79

MR AUSTIN: Yes, Deputy President. Actually I should give you the opportunity, Mr Windeyer - I should not have put to you that Mr Hulls was working on other than a waste water system, if you wish to correct your answer to that question?---So, yes - so my understanding is that Mr Burnaby works at the cross networks and Mr Hulls works at a treatment plant.

PN80

Thank you for that. Mr Windmeyer, the policy that was put forward by the company most recently as a PPE policy, that requires all employees to be clean-shaven at the seal of RPE?---For those employees that routinely wear it, yes.

PN81

And how have you determined which employees routinely wear RPE for the application of that policy?---By the nature of their role. So given that we've got such a broad number of staff across the state having a consistent easy to implement process was the best for understanding assurance as well. So where people are routinely and where the ad hoc nature of their role might require them to wear RPE.

PN82

Thank you. You will have seen in Mr Hulls' statement that he's managed to achieve a seal using breathing apparatus with a beard. Do you have any knowledge of that?---Other than the statement, no, but I would just sort of - it's not my expertise, but I would suggest that per manufacturers' guidelines of being clean-shaven at the seal is their recommendation. So I can only go on what the manufacturers' recommendations are.

PN83

Did employees at any stage put to you that they'd been able to achieve seals wearing PPE with beards during this dispute?---They have, but they've also advised that they don't need to wear the RPE when they're doing - cutting silica. And so I need to go on the advice of the safety team and the independent people that are providing that advice, not just people that are telling me that they're able to get a seal, because it's not as simple as that being the case.

PN84

Do you accept in the case of employees using breathing apparatus that they are trained in being able to test that that breathing apparatus, specifically self-contained breathing apparatus can achieve a seal?---Sorry, can you repeat the question?

*** BRENDAN JAMES WINDMEYER

XXN MR AUSTIN

PN85

Apologies. The question was do you accept that employees using self-contained breathing apparatus are trained to confirm a seal on that self-contained breathing apparatus?---Yes, that's correct.

PN86

Do you know of any process undertaken by the company to confirm that testing or that seal by the employees?---As you just stated we provide the training for that. So that's what we provide.

PN87

Is it not the case then that the company's practice to date has been to trust the employees to conduct their own test to confirm that they have or have not a seal each time they use self-contained breathing apparatus?---Well, there's a number of things that the company has done over a period of time that we need to improve, and one of those is the updating of our PPE procedure to be able to make sure that we've got assurance across the state as well.

PN88

But I put to you notwithstanding the manufacturer's advice that the employees have been able to achieve a seal with their beards using self-contained breathing apparatus. Do you accept that?---So are you asking me to go against the manufacturer's guidelines? Is that what you're asking me to accept?

PN89

I am not, Mr Windmeyer. I am asking you to accept that employees conducting their own tests have nonetheless been able to achieve a seal on their self-contained breathing apparatus while wearing a beard?---That's possible. However, probably

not likely based upon the information that we've got from manufacturers and national standards.

PN90

THE DEPUTY PRESIDENT: Mr Austin, when you say employees are we talking about people other than Mr Hulls?

PN91

MR AUSTIN: Deputy President, that was the question, although I should really put it as do you accept that Mr Hulls has been able to achieve a seal despite having a beard?---It's not something I can - I can accept or - it's not something that I've been able to - I haven't witnessed that, so it's not something I'm able to give advice on, apologies.

PN92

THE DEPUTY PRESIDENT: The reason I raise it, Mr Austin, is there's no direct evidence, is there, that any other employee other than Mr Hulls has achieved this?

*** BRENDAN JAMES WINDMEYER

XXN MR AUSTIN

PN93

MR AUSTIN: That's correct, Deputy President. So I withdraw that earlier question, and apologise. Mr Windmeyer, in a scenario where the employees are trained to confirm a seal and on occasion can confirm that seal, or in the case of Mr Hulls have confirmed that seal while wearing a beard, why would the company not allow them to continue to test on a case by case basis whether the way that they wear their beards does or does not impede the seal?---I think you're conflating both RPE and BA. So I think from my perspective there is - the clean-shaven at the seal is actually across all forms of RPE, and so from my perspective the reason why we want clean-shaven at the seal is actually to be in accordance with practice that's nationally recognised, and it is about being able to protect and worker safety. It's a general - if I look across industry - I've worked across mining and construction and the water industry - it's a generally accepted practice that being clean-shaven at the seal to be able to do this is the way to achieve that seal.

PN94

Thank you, Mr Windmeyer. I have no more questions for this witness, thank you, Deputy President.

PN95

THE DEPUTY PRESIDENT: Yes, thank you. Any re-examination, Ms Noakes? Sorry, Mr Flanagan, do you have any cross-examination.

PN96

MR FLANAGAN: No further questions, your Honour.

PN97

THE DEPUTY PRESIDENT: Yes, thank you. Any re-examination, Ms Noakes?

PN98

MS NOAKES: Yes, thank you, Deputy President.

PN99

Mr Windmeyer, you recall that Mr Austin asked you about Mr Hulls claiming to have maintained or confirmed that he has seal when wearing SCBA. Do you recall that question?---I do, yes.

PN100

Can you tell the Deputy President the process of confirming a seal and what might happen during one's working with SCBA on?---Yes. So confirming a seal is one component of wearing RPE. However, there is other elements. So when you're wearing - and I do think it is being confused and being conflated in terms of BA versus RPE. So where we talked about the networks the idea of wearing other alternatives is not a practical solution. So this idea of wearing PAPR in a trench where it could be 2 am in the morning where out on the west coast we're a number of hours away from alternative solutions, being able to just wear something that can fail, mechanically fail and not having easily replaceable parts is actually a significant risk, that people would continue to do a job well intentioned, but would actually be putting themselves at risk across, you know, a period of time.

*** BRENDAN JAMES WINDMEYER

RXN MS NOAKES

PN101

And, Mr Windmeyer, when someone's achieved a seal can that seal change?---Absolutely. So moving around - moving around can change that, sweating. So you can get a seal in an office when you're just doing that, but then when you're out in the environment working in hot temperatures it can change the seal and it can - and adjust that, yes.

PN102

Thank you, Mr Windmeyer. No further questions, Deputy President.

PN103

THE DEPUTY PRESIDENT: Yes, thank you. Mr Windmeyer, thank you for your evidence, you're excused.

PN104

THE WITNESS: Thank you.

<THE WITNESS WITHDREW

[10.32 AM]

PN105

Yes, Ms Noakes?

PN106

MS NOAKES: Deputy President, we will call our next and final witness which is Ms Kathryn Taylor. We're just making arrangements for her to join the hearing.

PN107

THE DEPUTY PRESIDENT: Yes.

PN108

MS NOAKES: Deputy President, while we're waiting we will be seeking leave to tender a document. Would you like us to deal with that prior to Ms Taylor joining the hearing? We will be seeking leave to tender that in evidence-in-chief.

PN109

THE DEPUTY PRESIDENT: Has a copy of the document been provided to Mr Austin and Mr Flanagan?

PN110

MS NOAKES: It has been provided to Mr Austin. It hasn't been provided to Mr Flanagan, apologies. We can remedy that now. We will be sharing it on the screen for Ms Taylor to speak to.

PN111

THE DEPUTY PRESIDENT: Will there be an objection from your perspective, Mr Austin?

PN112

MR AUSTIN: No objection, thank you, Deputy President.

PN113

THE DEPUTY PRESIDENT: Mr Flanagan, you can let me know once you've had a look at the document whether there's any objection from your perspective.

*** BRENDAN JAMES WINDMEYER

RXN MS NOAKES

PN114

MR FLANAGAN: Yes, your Honour.

PN115

MS NOAKES: Deputy President, are you happy for us to deal with that in evidence-in-chief, or would you like to discuss that now?

PN116

THE DEPUTY PRESIDENT: No, you can deal with it when the issue arises for tender.

PN117

MS NOAKES: Thank you.

PN118

THE ASSOCIATE: Ms Taylor, can you please confirm that you can hear and see the parties and the Deputy President?

PN119

MS TAYLOR: I can, thank you.

PN120

MR FLANAGAN: I don't press any objection.

PN121

THE DEPUTY PRESIDENT: Thank you, Mr Flanagan. That question was directed to Ms Taylor, but thank you for your indication about the objection to the document proposed to be tendered. Try that again, Charlotte.

PN122

THE ASSOCIATE: Ms Taylor, can you just confirm that you can see and hear the parties and the Deputy President. Ms Taylor?

PN123

MS TAYLOR: I'm sorry, I didn't hear.

PN124

THE ASSOCIATE: Can you hear me now?

PN125

MS TAYLOR: Yes.

PN126

THE ASSOCIATE: Thank you. And you can see the Deputy President and the parties?

PN127

MS TAYLOR: Sorry, I didn't understand that.

PN128

THE ASSOCIATE: Can you see the Deputy President and the parties?

PN129

MS TAYLOR: Yes, I can, thank you.

PN130

THE ASSOCIATE: Could you please state your full name and address.

PN131

MS TAYLOR: My name is Kathryn Taylor, (address supplied).

<KATHRYN TAYLOR, AFFIRMED [10.35 AM]

EXAMINATION-IN-CHIEF BY MS NOAKES [10.35 AM]

PN132

THE DEPUTY PRESIDENT: Yes, thank you, Ms Taylor. Yes, Ms Noakes.

PN133

MS NOAKES: Thank you, Deputy President. Good morning, Ms Taylor, can you see and hear me?---I can, yes.

PN134

Thank you. Could you please state your full name for the Commission?---Kathryn Taylor.

PN135

And your business address is 169 Main Road, Moonah in the State of Tasmania?---That is correct.

PN136

Thank you. And you've prepared two statements in these proceedings; is that correct?---That is correct.

PN137

Do you have copies of those statements with you now?---I do.

PN138

Thank you. Can I take you to your first statement, Ms Taylor?---Yes.

PN139

Is that statement 25 pages long?---Yes.

PN140

And does it have paragraphs numbered 1 through to 81; so does it start at 1 and end at 81?---Yes.

PN141

Thank you. Is that statement dated 11 January 2024?---Yes.

*** KATHRYN TAYLOR

XN MS NOAKES

PN142

We have some annexures to that statement. Are the annexures KT1 through to KT32?---I believe so.

PN143

Now, Ms Taylor, are the contents of that document true and correct?---Yes. To the best of my belief, yes.

PN144

Thank you. Deputy President, I tender the witness statement of Kathryn Taylor dated 11 January 2024.

PN145

THE DEPUTY PRESIDENT: Just bear with me for a moment.

PN146

MS NOAKES: Deputy President, if it assists you, you can locate Ms Taylor's statement at - - -

PN147

THE DEPUTY PRESIDENT: I have it. It's just I have noticed that the statement is out of order in the court book with the annexures.

PN148

MS NOAKES: Deputy President, we are working - yes. So page 28 is the statement, and then we're working from the annexures which are located starting from 193.

PN149

THE DEPUTY PRESIDENT: Yes, I understand that. My problem is that there are other documents including Mr Windmeyer's statement which appear in the court book between Ms Taylor's statement and the annexures, but it's all right.

**EXHIBIT #3 WITNESS STATEMENT OF KATHRYN TAYLOR
DATED 11/01/2024 COMPRISING 81 PARAGRAPHS AND
ANNEXURES THERETO**

PN150

MS NOAKES: Thank you, Deputy President. Ms Taylor, can I take you to your second statement. Deputy President, for your reference that's located starting at page 994 of the court book.

PN151

THE DEPUTY PRESIDENT: Thank you.

PN152

MS NOAKES: Thank you. Ms Taylor, is that document 12 pages long?---Yes.

PN153

And does it have paragraphs numbered 1 through to 35?---It does.

*** KATHRYN TAYLOR

XN MS NOAKES

PN154

Are three annexures to that statement marked KT33, KT34 and KT35?---Yes.

PN155

Thank you. Is that statement dated 6 February 2024?---Yes.

PN156

Again are the contents of that statement true and correct?---Yes.

PN157

Thank you. Deputy President, I tender the reply witness statement of Kathryn Taylor dated 6 February 2024.

PN158

THE DEPUTY PRESIDENT: Yes, thank you. I neglected earlier, Mr Austin and Mr Flanagan, apologies, to ask whether there was any objection to the tender of the first statement.

PN159

MR AUSTIN: No objection, Deputy President.

PN160

MR FLANAGAN: No objection.

PN161

THE DEPUTY PRESIDENT: The same answer to the second statement, no objection?

PN162

MR AUSTIN: No objection, Deputy President, thank you.

PN163

MR FLANAGAN: No objection.

**EXHIBIT #4 REPLY WITNESS STATEMENT OF KATHRYN
TAYLOR COMPRISING 35 PARAGRAPHS DATED 06/02/2024**

PN164

THE DEPUTY PRESIDENT: Yes, Ms Noakes.

PN165

MS NOAKES: Thank you, Deputy President. In your reply statement can I take you to paragraph 24?---Yes.

PN166

In that paragraph you state that:

PN167

Mr Burnaby did not pass all components of fit testing, but he did pass them using two alternative kinds of RPE.

*** KATHRYN TAYLOR

XN MS NOAKES

PN168

?---Is that correct?---Yes, I stated, just to clarify, that he did not pass all components of the fit testing using one particular kind of respiratory protective equipment. However, he did pass them using two alternatives pieces of equipment.

PN169

Thank you. We're now going to take you to a document that we're going to share on the screen here. It's a covering email, or an email. This was an email that was sent to you by Riley Murtagh on Monday 5 February at 2.47 pm; is that right?---Yes.

PN170

Mr Murtagh, is he a member of your team?---He is.

PN171

Mr Murtagh forwards on correspondence from someone called Samantha James, an occupational hygienist?---Yes.

PN172

Ms James works in an organisation called IPM Consulting; is that right?---Yes.

PN173

IPM Consulting was engaged to undertake the fit testing referred to in Mr Burnaby's statement; is that correct?---So IPM were engaged to undertake the fit testing that Mr Burnaby is referring to in his statement, yes.

PN174

Thank you. If we can take you to the attachment. The title of this document says 'PortaCount raw data TasWater South', is that right?---Yes.

PN175

What does PortaCount refer to?---PortaCount is the name of the machine essentially, the tool that is used in fit testing to make determinations on fit testing components such as fit factor.

PN176

Thank you. And if I can take you down to cell 42 and 43 of that document. Apologies, we will make it a little bit larger. Can you see row 42 and 43?---Yes.

PN177

And if we scroll across to column X and Y the name that appears in those two rows is Peter Burnaby; is that correct?---That is correct.

PN178

And if we scroll across to column A1 we have the recording of 'True', and then following that underneath 'False'. Can you tell the Deputy President what those references are to?---Sorry, which column is that?

*** KATHRYN TAYLOR

XN MS NOAKES

PN179

So it's A1, Ms Taylor.

PN180

THE DEPUTY PRESIDENT: AI.

PN181

MS NOAKES: AI, sorry, AI?---It is. The heading of that column is 'Mask N95'. So that is referring to - I believe that column is referring to is that a mask N95, true or false. There are two spreadsheets associated with this data. This is the detailed raw account, as opposed to the overall summary of the past fail.

PN182

Thank you, Ms Taylor. And does this document indicate that Mr Burnaby passed fit testing on - - -?---This document is a detailed record of the individual components of fit testing that was undertaken. There is an additional spreadsheet where the actual tester, who was in the room on the day conducting the testing, recorded the overall results of the fit testing. So what I mean by that is they take into account everything on this spreadsheet and then they record whether that person has passed or failed the fit testing. And on that other spreadsheet it records as a result of reading the data on this spreadsheet that Mr Burnaby failed the testing on one kind of respiratory protective equipment, but on two other kinds of respiratory protective equipment passed.

PN183

THE DEPUTY PRESIDENT: Ms Taylor, the description of the equipment fit tested appears in the column marked AH; is that right?---I'll double check that. That is - that is correct, yes.

PN184

And whether or not the person passed or failed is recorded in column W?---In column W, no, that is - and that's - column W is recording a pass or fail for one kind of - I think, one kind of result. It's hard to tell without the reference there. Let me check. It may actually be exercise 8 was the overall.

PN185

Just scroll up to see the heading in that column?---Yes, it says - it says exercise 8.

PN186

And then U records exercise 7 result, et cetera?---That's right, and what I'm not sure of, apologies, because I don't personally interpret this data, the tester does, and then they put the result on a different spreadsheet. There are individual - so individual components to the testing, and by that I mean whether you are standing breathing normally, that might be exercise 1, and then exercise 2 is breathing deeply, exercise 3 is moving your face around, and so on. It may be that exercise 8 is the summary of all of that testing. I cannot confirm whether that's correct or not.

*** KATHRYN TAYLOR

XN MS NOAKES

PN187

Could we just scroll down the table again. Stop there, thanks. Sorry, go up one, please, just scroll up one. It appears there that Mr Burnaby's name appears four times, not three?---Yes.

PN188

That is tested for four different types of masks, not three?---Certainly according to this it looks like - so if I go to the actual the mask type will tell that. So that is the column AH will determine if there's any difference there. So what I'm seeing there is that it appears that there are four individual test results, but there are actually two different kinds of tests - - -

PN189

Yes?---Yes. What I suspect is actually - yes, those are two different kinds of masks, and if I - - -

PN190

Sorry, in your statement 24, your reply statement, so we say that - - -?---I can confirm - - -

PN191

You say that he didn't pass all components of one kind, but passed using two alternatives?---That's right.

PN192

That would suggest that there are two masks tested; is that right?---It's showing two masks on this sheet. What I believe is - what I believe it is showing is the

successful testing of both of those types of masks that you can see. The unsuccessful test is not recorded on the spreadsheet by the looks of it.

PN193

All right. I understand that. Thank you.

PN194

MS NOAKES: Thank you, Deputy President. Thank you, Ms Taylor. Deputy President, we seek to tender that document.

PN195

THE DEPUTY PRESIDENT: Yes, all right.

EXHIBIT #5 CHAIN OF EMAILS WHICH COMMENCE WITH AN EMAIL FROM MS TAYLOR TO MS NOAKES AND THE SPREADSHEET ATTACHED THERETO, THE FIRST EMAIL DATED 05/02/2024

PN196

MS NOAKES: Thank you, Deputy President, no further questions for Ms Taylor.

PN197

THE DEPUTY PRESIDENT: Thank you. Cross-examination?

*** KATHRYN TAYLOR

XN MS NOAKES

PN198

MR AUSTIN: Thank you, Deputy President, I do have questions for Ms Taylor.

CROSS-EXAMINATION BY MR AUSTIN

[10.51 AM]

PN199

Thank you, Ms Taylor. While you have that table open and accessible I would ask you to keep that up. Do you have that in front of you though, or would you like me to share a screenshot?---I have that spreadsheet.

PN200

Thank you. You've helpfully pointed out the - - -

PN201

THE DEPUTY PRESIDENT: Before you go on, Ms Noakes, could I trouble you to pop that table back up on the screen for me since I don't have a hard copy.

PN202

MS NOAKES: Thank you, Deputy President, we will send that to the chambers shortly.

PN203

THE DEPUTY PRESIDENT: Sure. Go ahead, Mr Austin. Sorry about that.

PN204

MR AUSTIN: Thank you, Deputy President. Ms Taylor, you've identified four instances in this spreadsheet that show testing of Mr Burnaby, and identified that in AH that column shows the type of respirator used. I would like to take you to that column AH and where tests appear for Peter Burnaby. The first one in the intersection of AH and line 23 it lists a 3M or a 9322A+ half face disposable mask?---Yes.

PN205

Does TasWater have those in stock at the moment?---They do, but not at all locations.

PN206

Do you know which locations they're in stock at?---We have many locations across the state, so I couldn't, but I don't believe that they were in stock at the location that - like as standard stock - you can request them - at the location that Mr Burnaby routinely uses.

PN207

Thank you. Do you know if there have been requests for those masks at Mr Burnaby's site of work?---I am aware that people across the business routinely request different kinds of PPE. I'd be very confident that these have been requested at times in the past, and people have also gone and purchased their own PPE that suits their face from the local supplier.

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN208

Thank you for that. In terms of the respirator stock more wildly you say in paragraph 33 of your reply statement that 3M 7500 - sorry, I will give you a moment to find that, your reply statement page 1004 in the bundle. 3M 7500, so is that the mask that's stocked in all locations across TasWater where RPE is required?---I believe - so 7500 is certainly in stock at some locations as far as I'm aware. The most prominent mask that is in stock is the one in C1, which is the 8822.

PN209

Thank you. If I have heard you correctly item 3M 8822 is widely available. 3M 7500 is less commonly available, and that varies from site to site. The mask on which Mr Burnaby was tested, the first one appearing in AH, you accept that that wasn't available to him prior to that testing unless he had requested it?---I mean I can't - to be honest I can't confirm either way. I don't believe it was as readily available, as in you could just walk into the store and pick it up, at that location that he used, but I am aware that it's at other locations. It may have been at that location in the past. I genuinely don't know.

PN210

The next one down is 3M 7502 half face respirator. To start off with is that the same or a different mask to the one referred to in paragraph CII, so sub-paragraph CII of paragraph 33 in your reply statement?---Yes, they're the same, but there's - they call them series basically, so a 7500 series would be the same as a 7502 or whatever.

PN211

Thank you. That's all the questions we require for that table, so you can put that to one side. Thank you. Ms Taylor, I will take you to your first statement. You say there in paragraph 6 - sorry, apologies, Ms Taylor, your reply statement. You say there in paragraph 6, page number 995 of the court book, that:

PN212

The relevant employees are always required to be clean-shaven between the face and the seal of respiratory protective equipment.

PN213

When you say that they are always required - sorry, have always been required to be clean-shaven between the face and the seal, are you referring to the 2016 PPE procedure or something different?---Yes. No, I'm referring to that procedure and its reference to other documentation within that procedure such as Australian Standards, and the fact that this is the overall organisational procedure that is used to develop specific work instructions.

PN214

Thank you. You yourself have only worked for the company since August of 2021; is that correct?---That's correct, yes.

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN215

Can you speak personally to the practice in applying or not applying that 2016 procedure before you started work in August 2021?---Only in terms of what people who have worked here during that time have told me.

PN216

I put it to you, and in fact I believe you said in your statement, your first statement, that the 2016 procedure was not always enforced?---So when we - when I say things like that what I mean specifically is that the procedure and its ancillary, you know, work instructions, require that people are clean-shaven when they're wearing RPE, as per the Australian Standard. However, my observation when I arrived at TasWater in early 2022 was that that was not being enforced.

PN217

So you observed employees being not clean-shaven and wearing RPE?---I was - I was informed that it was not enforced, and that we absolutely had people who were - who had various kinds of facial hair that were using respiratory protective equipment, yes. And then I went and confirmed that by speaking with people who do the (indistinct).

PN218

It's true, isn't it, and it was the norm for employees with beards to wear those beards while using RPE in their work for TasWater?---Yes. Not - not everybody, no, but it certainly did occur, yes.

PN219

In your investigations did you come across any instances of any employees being disciplined or reprimanded about having worn a beard while wearing RPE before
- - -?---No.

PN220

Move a bit forward then. In KT12, an attachment to your first statement, at page 691 of the bundle - - -?---Yes.

PN221

- - - you see there a direction to comply with the requirement to be clean-shaven while using RPE dated 27 July 2022?---Yes.

PN222

Apologies, I will need to grab it myself. Apologies for that delay. Do you see there in bold the statement:

PN223

Therefore to ensure your safety and to meet Australian Standards we need to comply with this requirement.

PN224

?---Yes.

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN225

It's true, isn't it, that that's a direction on that date, 27 July, to be clean-shaven from then and there?---Yes.

PN226

There's no reference, is there, to any discussion or consideration of what goes into that decision-making?---I didn't send that email. That was sent by the general manager of service delivery at the time. I would have to check the consultation record in terms of any discussions that might be on record in this evidence as to occurring before that. But there were certainly internal discussions around that. It wasn't just released.

PN227

Thank you. I will take you to the second page of that. There's reference to a Q&A document on a dedicated SharePoint page. Did you have access to that Q&A document?---Right now?

PN228

Sorry, did you have access to it at the time?---I would have, yes.

PN229

Do you know how many responses were given to the Q&A document?---No, I don't.

PN230

I put it to you that at that point on 27 July 2022 TasWater was announcing the final decision to impose that change, about which they were holding discussions,

but not with a view to changing the outcome. Do you agree?---I'm sorry, I don't understand the question.

PN231

I will rephrase that. At that point the company had decided finally to require shaving as a condition of wearing PPE, had they not?---Yes. The - - -

PN232

THE DEPUTY PRESIDENT: Mr Austin, the document speaks for itself, doesn't it? The second page of that document, the bolding at the top rather makes that clear.

PN233

MR AUSTIN: Yes, thank you, Deputy President, I will move on. Just a moment. Thank you, Ms Taylor. I take you then to TK16 in your initial statement, page 216 of the bundle?---Sorry, is that attachment 16, is it KT16?

PN234

Attachment TK16, yes.

PN235

THE DEPUTY PRESIDENT: KT16.

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN236

MR AUSTIN: KT16, yes. Thank you, Deputy President.

PN237

THE DEPUTY PRESIDENT: Which page was it, Mr Austin?

PN238

MR AUSTIN: One moment, I may have the references incorrect. Apologies, Deputy President. That would be 716, not 216.

PN239

THE DEPUTY PRESIDENT: Yes.

PN240

MR AUSTIN: Apologies. You will see there another email from Mr Hughes-Owen. Do you accept that that again was a statement to the effect that the company had made a final decision to implement this change?---This - - -

PN241

I do retract that, apologies.

PN242

MS NOAKES: Deputy President, I think the witness has begun to answer the question.

PN243

THE DEPUTY PRESIDENT: Are you pressing the question, Mr Austin, or are you withdrawing it?

PN244

MR AUSTIN: I was withdrawing the question, but I won't deprive the witness an opportunity to speak if she wishes. It's simply that it was an inappropriate question. I think I have gone to the wrong attachment but I just (indistinct).

PN245

THE DEPUTY PRESIDENT: Yes. Well, that answers the question doesn't it, Mr Austin?

PN246

MR AUSTIN: Indeed, Deputy President.

PN247

THE DEPUTY PRESIDENT: What's the correct attachment?

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN248

MR AUSTIN: Commissioner, we're on the correct attachment, wrong question. At the time that that went out, Ms Taylor, it's correct, is it not, that the use of PAPR was still under consideration?---So this email that you're referring to from Mr David Hughes-Owen was in relation to self-contained breathing apparatus, and the decisions that had been made around the requirement to be clean-shaven because of the acute health risk that our people are exposed to when working with chlorine. It was acknowledged at that time that while the recommendation remains that you are clean-shaven when using all RPE, we would work with the business to try and understand if there were alternatives that would allow a different kind of facial hair to be maintained by some of our employees for various tasks.

PN249

Thank you for that. In that case I will move you forward then to KT24, a review of respiratory protective equipment, at page 768 of the bundle?---Yes.

PN250

You agree that was issued on 30 November 2023?---Yes.

PN251

And that came some one and a half months after the PPE procedure was finalised from 11 September 2023?---That is correct, yes.

PN252

You agree that the report, the review contained in KT24 goes to the suitability or otherwise of PAPR as an alternative to RPE?---Well, PAPR is up here, so the risk assessment you've just referred to which informed the report you've just called out in attachment 24, specifically looked at the minimum PPE - sorry, minimum RPE required for commonly undertaken tasks and activities at TasWater, and in addition looked at whether PAPR could be used as a like for like alternative for existing PPE.

PN253

Thank you. Before the issue of that report, or the review that gave rise to it, was there any attempt to speak with the employees about what the core tasks were that would be under review?---Of course. The employees, including HSRs, were involved in the risk assessment. The risk assessment process itself identified the commonly undertaken tasks and activities that we would look at, and needed to involve people who actually undertook those activities, yes.

PN254

Can you take me then to where the employees were provided with that opportunity to contribute to what would be the list of tasks reviewed for that report?---They came up with a list of tasks. So the HSRs - so in the consultation record, and I apologise, I don't know exactly where it is, I'd have to look for it, it discusses the risk assessment that was undertaken and the HSRs that were involved in the risk assessment. So that is the record that that occurred.

PN255

And the report itself was that distributed to the employees for discussion?---This report was a report from me to the general manager of service delivery to say that I had reviewed all the things that we've just discussed, and that these were my - these were the outcomes of that review and these were my recommendations, and that he needed to make some business decisions based on that.

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN256

So this was an internal document - - -?---Yes.

PN257

- - - not distributed to the employees?---That's right.

PN258

Was anything provided to the employees that summarised that outcome?---Absolutely, and as we've got in the evidence that's been submitted there were numerous communications that summarised the outcome of that review, probably one of the key ones being from Ms Jo Giannini, detailing the decision around this, the process that we had undertaken for the risk assessment, and the various considerations in that; how we undertook that, what the outcomes were and what the resulting business decision was, and that's all tabled here.

PN259

I will take you to a particular part of that report. On page 7 of the report, 774 of the bundle, you set out a list of tasks and RPE recommendation and risk level of PAPR use?---Sorry, I'm just finding the page you've referred to, excuse me. Did you say - sorry, I must have got the page wrong. Which page did you say?

PN260

It's page 774?---774, sorry. Yes. Okay, I have that. Yes.

PN261

I take you to the second line of the first table there for network reticulation repairs, and the statement highlighted in red, 'PAPR use is not recommended due to complex changes or increased risk'?---Yes.

PN262

Nothing was put to the employees, was there, about which complex challenges or increased risks applied there to prevent the use of PAPR, was there?---So each of these tasks in that table that you're referring to throughout that document were discussed in the risk assessment itself, and there are various reasons why PAPR unit may not be applicable for a particular task. This is summarising that so that the general manager can easily understand the outcome. But, yes, absolutely it was discussed in a room with the HSRs undertaking the risk assessment, because they contributed to what that might look like. In the video message that I sent out to employees talking about, you know, the decision itself and what it meant, I gave examples of some of the reasons that we may have said there were complex challenges or increased risk, and some of that detail was also included in communications.

PN263

Thank you. That video however came out after this report, did it not?---I submitted this report to the general manager, then the general manager made a decision, and then we communicated the decision and then we made a video to - -
-

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN264

Sorry, Ms Taylor, I think I might have lost you there.

PN265

THE DEPUTY PRESIDENT: Sorry, Ms Taylor, you may have to start that answer again, you cut off?---Apologies. I hope I'm back now.

PN266

Yes, you are. Yes, start again if you can?---I will start again, sure. So to answer your question, Mr Austin, this report went to the general manager. The general manager made business decisions. We communicated those decisions, and as part of that communication piece, yes, I later made a video to engage people in a different way other than emails. Yes.

PN267

MR AUSTIN: Thank you. So that video was a communication to the employees of a decision already made by the business?---It's to help employees - it was part of a suite of efforts to help employees understand the decision, yes, that's right.

PN268

Thank you. And the discussions with HSRs about the risk assessment they were just the HSRs, were they not, not with the broader group of employees required to use this PAPR?---No. I mean even back in 2022 we had initial discussions with employees, and keeping in mind the HSRs are actual employees who undertake that activity, so - and that's why we wanted them involved, because they do that

work. And, yes, of course we'd been discussing the kinds of activities that people do with coordinators, area managers, et cetera, so that we can make sure that we understand what are the commonly - we can't look at every foreseeable sort of incident, but we wanted to understand what are the things we commonly, routinely, regularly do so that we can have a good look at whether there's alternative RPE that's available for use in those circumstances, yes.

PN269

Thank you, but my question was about the risk assessment. I should have made myself clearer. The relevant risk assessment for use of PAPR, was that risk assessment discussed with the employees other than the HSRs prior to the decision to go along with this report?---No, the risk assessments are generally conducted with people that are relevant to conducting the risk assessment. So they're the ones that you work through it, including health and safety people, some of whom have operational background. And it included HSRs which includes people who undertake the work. And when the risk assessment was finalised, I assessed it given all the other information that I discuss in this report.

PN270

You accept that - - -

PN271

THE DEPUTY PRESIDENT: Sorry, Mr Austin, before you on, Ms Taylor, I note that at the end of that report at page 774 there's a note, an attachment and it says, 'Detailed risk assessment relating to RPE.' Is there any reason you didn't attach that to your statement?---That is the attachment I believe in KT23, as part of first statement. That actually is the detailed risk assessment which is KT23.

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN272

KT23?---Yes.

PN273

MS NOAKES: Deputy, that can be located at 418.

PN274

THE DEPUTY PRESIDENT: Yes. Yes. Sorry. Yes. I have that. Thank you. Again in inverse order. Yes, I have it. Thank you.

PN275

MR AUSTIN: Thank you, Ms Taylor. Apologies, I am just going to that report, KT23 I believe you said?---Yes.

PN276

Thank you. So just to have it clear, was that attachment, KT23, distributed to the employees before a final decision made?---No.

PN277

Thank you. Jumping back to the report in KT24, I took you to a table on page 227 that states at various points:

PN278

PAPR use is not recommended due to complex challenges or increased risk, or alternatively PAPR use is possible but may be impacted by operational factors.

PN279

?---My apologies, Mr Austin.

PN280

Yes?---I've lost the area you're referring to at the moment.

PN281

I apologise. I'll stop dragging you around. It's page 427; 260 in your actual internal reference?---Okay. Sorry, I've got page 427, yes.

PN282

Thank you. Would it not have been sensible to ask the employees to confirm their view on the impact of operational factors on the use of PAPR before proceeding with that change?---They were. The employees were involved in the risk assessment.

PN283

Apologies, but apart from the HSRs having been involved, what was the involvement of the employees in the risk assessment?---We have 950 people that work at TasWater, so we certainly wouldn't involve all of them in a risk assessment.

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN284

You didn't show them the risk assessment?---We communicated the outcomes of the risk assessment, yes.

PN285

Apologies. Before the decision was made, you did not show them the proposed risk assessment?---No, but we communicated the outcomes of the risk assessment as part of the communication around a decision, so – yes.

PN286

Thank you for that. One moment. Deputy President, I think that's all my questions for Ms Taylor.

PN287

THE DEPUTY PRESIDENT: Yes, bear with me a moment. I seem in my court book to have two copies of at least some of the attachments. So, for example, KT24 appears both at 421 and 768 of the court book.

PN288

MS NOAKES: Deputy President, that's right. I believe the court book has been compiled by reference to every piece of correspondence received by chambers.

PN289

THE DEPUTY PRESIDENT: Yes.

PN290

MS NOAKES: So we are working on the basis of referring to the annexures, and Mr Austin may be also working on this basis of referring to the annexures to Ms Taylor's statement, starting at 193, all the way through, and then I personally work on the basis of excluding the second copy.

PN291

THE DEPUTY PRESIDENT: Yes. It's just that you took the witness initially to 768, and then back to 421.

PN292

MR AUSTIN: Apologies, Deputy President.

PN293

THE DEPUTY PRESIDENT: That's all right.

PN294

MR AUSTIN: They were the same document.

PN295

THE DEPUTY PRESIDENT: They are the same. Yes, I accept that. That's why (indistinct) there are duplicates, in any event. Mr Flanagan, any cross-examination from you?

PN296

MR FLANAGAN: No further questions, thank you.

*** KATHRYN TAYLOR

XXN MR AUSTIN

PN297

THE DEPUTY PRESIDENT: Thank you. Any re-examination, Ms Noakes?

PN298

MS NOAKES: Thank you, Deputy President, yes, I do.

RE-EXAMINATION BY MS NOAKES

[11.22 AM]

PN299

MS NOAKES: Ms Taylor, can I take you to KT12?---Yes.

PN300

Do you recall that Mr Austin put to you that this correspondence contains a direction?---Yes.

PN301

Can I just take you to the subject line of that email. Could you read that subject line out for the benefit of the Commission?---

PN302

News from the GM service delivery – breathing apparatus requirement.

PN303

Could you tell the Deputy President what the reference to breathing apparatus, or BA, refers to?---It refers to 'self-contained breathing apparatus' which we use at TasWater as an additional risk control for exposure to chlorine primarily.

PN304

Shortly following this communication was there any dispute in relation to the BA direction?---My recollection is that there was. I would have to have a look at that but certainly that's my recollection, yes.

PN305

Thank you. Can you tell the Commission when the direction to comply with the PPE procedure occurred?---The direction to comply with the PPE procedure, I believe was on 11 September 2023 – the revised PPE procedure.

PN306

Can I take you to KT25?---Yes.

PN307

Is that a communication from Mr Windmeyer?---It is.

PN308

Is that dated 1 December 2023?---It is.

PN309

The second paragraph does that say that full compliance will occur from – with the PPE procedure, will start from Monday, 4 December?---It does.

*** KATHRYN TAYLOR

RXN MS NOAKES

PN310

On the following page - - -?---It says, 'Eager to commence with the full compliance of the procedure,' and then in a subsequent paragraph it says that the full compliance will now be effective from Monday, 11 December.

PN311

Is it your understanding that that is the date from which TasWater enforced compliance, Monday, 11 December?---With the entire PPE procedure, yes, that is correct.

PN312

Thank you. Do you recall Mr Austin asked you about what communications had occurred with employees about the decision?---Yes.

PN313

Do you recall those questions?---Yes.

PN314

Could I take you to KT26?---Yes.

PN315

You told Mr Austin that there was correspondence from Ms Giannini. Could you take a look at that annexure?---Yes.

PN316

Can you confirm this is the correspondence you were referring to?---Yes, it is because it's quite a lengthy correspondence that ensures it covers requisite detail around the assessment that was conducted, the outcomes of the assessment and what that means for everybody.

PN317

Thank you. On page 435, the second page of that annexure, does that refer to an assessment process?---Yes, it does.

PN318

Were those the factors that the assessment process took into account?---Yes, it was.

PN319

Thank you. How many employees at TasWater use RPE on any given day?---I wouldn't be able to answer that question, but there'd be quite a lot.

PN320

You've told Mr Austin that HSRs are employees; that's correct?---Of course.

PN321

They're not some external contractor? You don't engage people to simply - - - ?---No.

*** KATHRYN TAYLOR

RXN MS NOAKES

PN322

- - - come in and give you advice on that? No. Thank you. With all of those employees that use RPE, as an experienced safety professional, would you normally ask every single employee about what they think about a safety decision you are going to make?---Not generally. Look, consultation really needs to be targeted to the – to getting the best engagement with the people who are impacted by your decision-making. And so sometimes that's very localised. Sometimes it impacts a whole organisation. And sometimes the consultation, such as this consultation, needs to be targeted in multiple different ways to get the best engagement. So having HSRs involved who do the actual work involved in the risk assessment was really important, but we still communicated and consulted more widely. So, for example, we've tendered evidence that prior to releasing the PPE procedure we directly emailed all of the health and safety representatives at TasWater and asked them for their feedback on that procedure. That was just one part of the consultation. And we attended multiple meetings, multiple toolbox meetings across the entire State, with our people who undertake this work, to talk about these issues and get them to tell us what their concerns were or what their issues were. That – I mean, this consultation is one of the longest consultations I've been involved in when you look at it all together, and we have involved as many people as possible. But, no, there's no hard and fast rule about who to consult with, other than you need to consult with people impacted by the decision-making, which we have done.

PN323

Thank you, Ms Taylor.

PN324

THE DEPUTY PRESIDENT: Sorry, before you go on, Ms Taylor, can I take you back to annexure KT12?---Yes.

PN325

Ms Noakes asked you or referred you to the subject line of that?---Yes.

PN326

Which says:

PN327

News from the GM service delivery – breathing apparatus (BA) requirement.

PN328

The body of the document is not confined to that, is it?---No, it mentions RPE in the body of the document, Deputy President.

PN329

It more than mentions it, doesn't it?---Yes, it does, and if you'd like I can provide some context around that.

PN330

Sure, and I'll get you to do that, but over the page the – what appears to be a direction:

*** KATHRYN TAYLOR

RXN MS NOAKES

PN331

From Monday, 1 August, staff will be required to be clean-shaven.

PN332

And it is not confined to the use of BA, is it?---No, it's not in that particular communication.

PN333

Yes. Yes. The context you wanted to add?---So the initial view taken by the general manager of service delivery at that time was that if we're required to be clean-shaven, and it's such a clear expectation under Australian standards and manufacturer's requirements to ensure it's worn safely, that that should apply to everything, including all the other RPE that we use. Given the response of people to that communication, we looked at the acute health risk. What can actually cause immediate, severe health impact, and that was chlorine. And there was an immediate need to ensure that people were getting an effective seal when using that RPE as a risk control. And it was also restricted to much less people who needed to interact with chlorine than everything else that we use RPE for. Therefore, in order to ensure we're managing the immediate impact of a severe health risk but showing compassion for our people, and in terms of trying to understand for everything that's not an acute health risk is there something else that we can do that wouldn't impact them as much, those issues were segregated following that communication. However – and I just want to point this out – the

recommendation has always been that you need to be clean-shaven to use any RPE, since that time.

PN334

Yes, thank you. Sorry, Ms Noakes, continue.

PN335

MS NOAKES: Thank you, Deputy President. Apologies if my question was misleading.

PN336

On the question that the Deputy President has just asked you, you've said it was a recommendation to always been clean-shaven, but from 27 July 2022 there was no enforcement of people being clean-shaven between the face and the seal when wearing RPE, other than BA; is that right?---Yes, I'd say that's correct. There were no employment outcomes for that, yes.

PN337

Thank you. Just while we're on KT12, do you recall that Mr Austin put to you that no discussions have occurred prior to that piece of correspondence?---Yes.

PN338

Could I take you to KT34. Deputy President, that's located at court book 1029.

PN339

THE DEPUTY PRESIDENT: Thank you.

*** KATHRYN TAYLOR

RXN MS NOAKES

PN340

THE WITNESS: Yes.

PN341

MS NOAKES: Ms Taylor, could you tell the Commission what that document is?---This is a record of minutes of the Workplace Consultative Committee which occurred on the 21st of June 2022, which is prior to the communication we were just discussing earlier.

PN342

On the second page of that document, on court book 1030, does that record discussion regarding breathing apparatus?---Yes, it does.

PN343

Thank you. Just one moment, Deputy President.

PN344

Ms Taylor, do you recall a short time ago we referred to feedback being provided as part of the consultation process?---Yes.

PN345

The opportunity to provide feedback, and that feedback was provided?---Yes.

PN346

Could I take you to KT19. Deputy President, that's located at page 397 of the court book.

PN347

THE DEPUTY PRESIDENT: Thank you.

PN348

THE WITNESS: Yes.

PN349

MS NOAKES: Does this document record the feedback given as part of the consultation process?---It does.

PN350

In particular, there's three pieces of feedback recorded on that document; is that right?---That's correct.

PN351

But other than this document, you received feedback in WCC meetings and from employees in other discussions; is that right?---Yes, all along similar themes, yes. Into – sorry, that could be misleading. All along similar themes to each other; not to what we are – the piece of paper, the attachment we're looking at now.

*** KATHRYN TAYLOR

RXN MS NOAKES

PN352

Thank you. In relation to obtaining that feedback, can I take you to KT33, which is located, Deputy President, at page 1006 of the court book. Thank you. Could you tell the Deputy President what this document is?---This is an email that's sent from the health and safety mailbox, which is an email that is managed by my team. The subject was, 'Updated PPE procedure,' and it is a direct email to all of our health and safety representatives at TasWater that we keep a register of, letting them know that we have made the updates to the PPE procedure, and summarising what those updates are in relation to, including the, you know, previously consulted position on BA and facial hair, glasses, gloves, etcetera. And that we invited them to participate in a final review of the updated document before we sent it to the wider business for their full consultation, and that their feedback is highly appreciated. And that we - - -

PN353

Thank you. Sorry, Ms Taylor, I think we just lost the end of your answer then?---It was not relevant.

PN354

The date of this email, could you tell the Commission what the date of that email was?

PN355

THE DEPUTY PRESIDENT: I can read, Ms Noakes.

PN356

MS NOAKES: Thank you, Deputy President. Deputy President, no further questions for Ms Taylor.

PN357

THE DEPUTY PRESIDENT: Thank you. Thank you, Ms Taylor, for your evidence. You're excused.

PN358

THE WITNESS: Thank you very much.

<THE WITNESS WITHDREW

[11.37 AM]

PN359

THE DEPUTY PRESIDENT: Ms Noakes, does that conclude the applicant's evidentiary case?

PN360

MS NOAKES: Yes, it does. Thank you, Deputy President.

PN361

THE DEPUTY PRESIDENT: Yes, thank you. Mr Austin.

PN362

MR AUSTIN: Thank you, Deputy President. As the applicant, I refer to and rely on the outline of submissions filed in this matter by the CEPU, and we otherwise propose to call witnesses.

*** KATHRYN TAYLOR

RXN MS NOAKES

PN363

THE DEPUTY PRESIDENT: Yes, go ahead.

PN364

MR AUSTIN: Thank you, Deputy President. To start off with, Mr Peter Burnaby. Just one moment. Sorry, Deputy President, I'm just expecting him to dial in shortly.

PN365

THE DEPUTY PRESIDENT: Yes.

PN366

MR AUSTIN: Apologies for this delay, Deputy President. I will try to reach the witness again.

PN367

THE DEPUTY PRESIDENT: Thank you.

PN368

MS NOAKES: Deputy President, if it assists, the applicant doesn't require Mr Burnaby for cross-examination, or Mr Hulls.

PN369

THE DEPUTY PRESIDENT: Well, Mr Austin, are you proposing to ask any supplementary questions of either of the witnesses?

PN370

MR AUSTIN: I sincerely apologise, Deputy President, I didn't catch all of that.

PN371

THE DEPUTY PRESIDENT: In light of the position Ms Noakes has articulated, were you proposing to ask any supplementary questions of any witness?

PN372

MR AUSTIN: No, Deputy President, no.

PN373

THE DEPUTY PRESIDENT: In that case, I'm fully for you to tender their statements without the need for them to attend.

PN374

MR AUSTIN: Thank you, Deputy President. In that case, I tender the statement of Mr Peter Burnaby, a statement of 10 pages dated 1 February 2024, with three annexures.

PN375

THE DEPUTY PRESIDENT: Yes. No objection to the tender, Ms Noakes?

PN376

MS NOAKES: Deputy President, we note that the statements contain opinion evidence in places in respect of the appropriate RPE, and that there is also some hearsay contained within the statements. So we make a general submission that appropriate weight should be given to the evidence given those matters.

PN377

THE DEPUTY PRESIDENT: Sorry, perhaps if you can just send my chambers a note about the specific paragraph that you think no or little weight should be given because of the fact that they are or contain opinion or hearsay.

PN378

MS NOAKES: Thank you, Deputy President. We will do that at the conclusion of the hearing.

PN379

THE DEPUTY PRESIDENT: Thank you. I'll give you, Mr Austin, an opportunity to respond to anything that you disagree with.

PN380

MR AUSTIN: Thank you, Deputy President.

PN381

THE DEPUTY PRESIDENT: If I could have those perhaps by close of business tomorrow.

PN382

MR AUSTIN: Thank you, Deputy President.

PN383

THE DEPUTY PRESIDENT: I think Mr Burnaby is now here. At least half of him is appearing on the screen. Mr Burnaby, thanks for joining us but in your absence the solicitors representing your employer have indicated they don't require you for cross-examination and I am content simply for your statement to be tendered in evidence, which is what we're in the process of doing.

PN384

So with that in mind, I will mark the witness statement of Mr Peter Burnaby dated 1 February 2024, comprising 37 paragraphs but the count restarts after the heading of 'Kathryn Taylor', so 37 paragraphs and a further 19 which would make it 56 paragraphs, as exhibit 6.

**EXHIBIT #6 WITNESS STATEMENT OF PETER BURNABY
DATED 01/02/2024, COMPRISING 56 PARAGRAPHS AND THREE
ANNEXURES**

PN385

THE DEPUTY PRESIDENT: Yes, Mr Austin, (indistinct) and the annexures thereto.

PN386

MR AUSTIN: Thank you, Deputy President. We also seek to tender the witness statement of Mr Matthew Dana Hulls. A matter of housekeeping, Deputy President. We undertook to provide a signed copy of that statement. Mr Hulls has had some difficulty in getting that to us. I am able to hand up a signed copy but it's not in the bundle, but has identical terms. Or if you prefer, Deputy President - - -

PN387

THE DEPUTY PRESIDENT: I don't require a signed copy.

PN388

MR AUSTIN: Apologies, Deputy President, I didn't catch that.

PN389

THE DEPUTY PRESIDENT: I don't require a signed copy.

PN390

MR AUSTIN: Thank you, Deputy President. In that case, we tender the statement of Mr Matthew Dana Hulls. It's a statement of 15 pages, 89 paragraphs, unsigned, with three annexures.

PN391

THE DEPUTY PRESIDENT: Any objection to the tender?

PN392

MS NOAKES: Thank you, Deputy President. We maintain the same objection that we've made in relation to Mr Burnaby. Just that appropriate weight should be

given to the statement, or little to no weight should be given to the statement where there are matters of opinion or hearsay. Again, we will provide you with a note following today's hearing, which outlines which paragraphs that objection is in relation to.

PN393

THE DEPUTY PRESIDENT: Yes, thank you. And, similarly, Mr Austin, I'll give you until the close of business tomorrow to respond to any issue with which you disagree. I would otherwise mark the witness statement of Matthew Dana Hulls, comprising 89 paragraphs, as exhibit 7.

EXHIBIT #7 WITNESS STATEMENT OF MATTHEW DANA HULLS, COMPRISING 89 PARAGRAPHS AND THREE ANNEUXRES

PN394

THE DEPUTY PRESIDENT: So that concludes the Union's evidentiary case, Mr Austin?

PN395

MR AUSTIN: Yes, Deputy President.

PN396

THE DEPUTY PRESIDENT: Mr Flanagan?

PN397

MR FLANAGAN: Yes, Deputy President. The AWU also relies upon the outline of submissions filed by the CEPU.

PN398

THE DEPUTY PRESIDENT: You're not going to advance your case beyond that?

PN399

MR FLANAGAN: That's correct, your Honour.

PN400

THE DEPUTY PRESIDENT: Yes, thank you. Are you in a position to make your final submissions now, Ms Noakes?

PN401

MS NOAKES: Yes, Deputy President, but if possible could we take a small comfort break? I'm happy to come back in a short period, if that assists.

PN402

THE DEPUTY PRESIDENT: I'm not going to time you, Ms Noakes. Yes, I was going to suggest we have a short break in a moment. Mr Austin, you'll be ready to make your final submissions today?

PN403

MR AUSTIN: Yes, thank you, Deputy President.

PN404

THE DEPUTY PRESIDENT: We'll adjourn for 10 minutes. Thank you.

PN405

MS NOAKES: Thank you.

SHORT ADJOURNMENT

[11.48 AM]

RESUMED

[12.05 PM]

PN406

THE DEPUTY PRESIDENT: Thank you. Yes, Ms Noakes.

PN407

MS NOAKES: Thank you, Deputy President. In making our closing submissions we rely on the applicant's outline of submissions filed on 11 January, and the applicant's outline of reply submissions filed on 6 February. We'll make some further oral submissions now.

PN408

Before I do so, I just wanted to bring to the Deputy President's attention that there are two housekeeping matters. We discovered that the application filed by the applicant is not contained within the court book, so that may be something that we wish to rectify at this point in time. We raise that for your consideration. A further point is if the Deputy President would be assisted by a copy the relevant enterprise agreements.

PN409

THE DEPUTY PRESIDENT: Well, I can access the enterprise agreements myself, so I don't need that. But if you are proposing to refer to the application in your submissions?

PN410

MS NOAKES: I'm not, Deputy President, but it does annexe the extracts of the relevant clause of the enterprise agreement.

PN411

THE DEPUTY PRESIDENT: Yes.

PN412

MS NOAKES: So I just raise that for completeness.

PN413

THE DEPUTY PRESIDENT: Yes. Well, you can take it that the application and the annexures are part of the material before me.

PN414

MS NOAKES: Thank you, Deputy President. This application has been made by

- - -

PN415

THE DEPUTY PRESIDENT: Just bear with me for a moment.

PN416

MS NOAKES: Thank you.

PN417

THE DEPUTY PRESIDENT: Sorry, Ms Noakes, I've got a couple of large screens in front of me and you're currently on the left and I was looking at you when I was speaking. And directly underneath you, which you cannot see, sits my associate. She thought I was giving her a glare, which I wasn't. I just state that for the record.

PN418

MS NOAKES: Thank you, Deputy President. I hope that glare wasn't for me.

PN419

THE DEPUTY PRESIDENT: I wasn't. It was just squinting.

PN420

MS NOAKES: I note, Deputy President, that we can't actually see you. I'm not sure if that's - - -

PN421

THE DEPUTY PRESIDENT: Well, that's probably a good thing, but I'm not sure why that is, but I don't want to scare young children. But, Mr Austin, are you able to see me?

PN422

MR AUSTIN: Yes, I am. Thank you, Deputy President.

PN423

THE DEPUTY PRESIDENT: Mr Flanagan, are you able to see me?

PN424

MR FLANAGAN: I am, thank you.

PN425

THE DEPUTY PRESIDENT: Ms Badcock, you can see me?

PN426

MS BADCOCK: Yes, I can, Deputy President. Thank you.

PN427

THE DEPUTY PRESIDENT: And, Ms Sales, you're there? You can see me?

PN428

MS SALES: Yes, Deputy President, I can see you.

PN429

THE DEPUTY PRESIDENT: I'm afraid, Ms Noakes, it's your system.

PN430

MS NOAKES: It is our system, Deputy President, it appears. Should we log out and log back in or proceed? Which would you prefer?

PN431

THE DEPUTY PRESIDENT: It's a matter for you, but I'm not bothered. But if you want to try logging in and logging out, I'm happy to wait.

PN432

MS NOAKES: We're happy to proceed, Deputy President.

PN433

THE DEPUTY PRESIDENT: Thank you.

PN434

MS NOAKES: Thank you. This application has been made by TasWater for the Commission to deal with a dispute under section 739 of the Fair Work Act in accordance with the dispute settlement procedure. TasWater requires the Commission to determine two questions.

PN435

First is the direction that TasWater's employees comply with the PPE procedure, a reasonable direction? And, second, does the status quo provision of the enterprise agreements apply? We contend that the answer to the first question should be 'Yes', and the answer to the second question should be, 'No'.

PN436

I'll now take you through, Deputy President, an overview of some of the evidence that is before you, and that has been ventilated today by the applicant's witnesses. TasWater's business is a complex business. It services an entire State and makes up 30 per cent of Australia's treatment plants, despite Tasmania only having two per cent of the population.

PN437

The details about the complexity of the organisation and the services it provides can be found in Mr Windmeyer's first statement at court book reference 54 through to court book reference 58. Now, TasWater provides water and sewerage services across Tasmania. Those services include sourcing, treating and delivering water to customers. Collecting, transporting and treating sewerage. And safely returning effluent to the environment.

PN438

It owns and operates a complex network that includes a variety of connections, sewer mains, water mains, treatment plants and pump stations. The precise number of those assets is set out in Mr Windmeyer's first statement at paragraph 25, which is at court book reference 57. But, by way of example, TasWater operates and owns 59 water treatment plants and managing just under 5000 kilolitres of sewer mains, which gives an idea of the extensive nature of the operations.

PN439

Now, the day-to-day operations involve actively operating, maintaining, repairing and building water and sewerage infrastructure, and responding to customer requests for assistance. Part of the organisation is a business called service delivery. Service delivery is responsible for ensuring that water and sewerage

services are provided to TasWater's customers in a reliable and efficient manner. And an overview of the function of service delivery is set out in Mr Windmeyer's first statement from paragraph 29 onwards. That's located at court book reference 58.

PN440

As Mr Windmeyer sets out in his evidence the work performed in service delivery can be reactive and it can be proactive. And Mr Windmeyer has informed the Commission of this in his evidence today, the various duties that may be required to be performed by water operators, either on a day-to-day basis or on an ad hoc basis, and that such duties do require the wearing of RPE.

PN441

Mr Windmeyer's evidence sets out the way in which work is allocated and the various types of work, and the fact that employees can move from different types of work during the course of a shift. That's located again in Mr Windmeyer's first statement, from paragraph 59 and following. That's page 59 of the court book, to page 61 and 62.

PN442

Now, the evidence before the Commission details the different types of RPE that are used in the performance of work at TasWater. If I could take the Deputy President to KT1 – sorry, no, KT3. Here we have a disposable NPAPR mask, which is used in the performance of work at TasWater. This is one of the two types of NPAPR that is used by TasWater employees, which falls within the acronym of RPE, respiratory protective equipment.

PN443

Turning to KT4, we have the second type of NPAPR that is used by TasWater employees, which is a half-face respirator. And turning to KT5, we have the PAPR which forms part of the respondent's submissions and evidence regarding whether or not it is appropriate to be used in TasWater's business.

PN444

Now, in the evidence of Ms Taylor she sets out the various hazardous work that is performed at – hazardous environment that is encountered in the work performed by TasWater employees. She steps out those safety risks at paragraph 22 and following of her first statement located at court book 34.

PN445

For example, Ms Taylor sets out that operators may be exposed to airborne contaminants while performing various tasks, including handling or repairing equipment and items. Typically pipes that have asbestos-containing materials. Cutting manufactured stone, concrete road base and asphalt to access water and sewerage pipes. Cutting cast iron or polyvinyl chloride pipes. Excavating or working near gas installations that may cause exposure to volatile organic compounds such as cyanide gas and following – that's detailed at paragraph 34 of Ms Taylor's first statement.

PN446

In order to manage those risks TasWater uses a variety of different RPE, and I've just taken you to those different types of RPE to manage those different issues. And it also uses a range of higher level design, engineering and administrative and environmental controls to manage risks associated with airborne contaminants.

PN447

Now, Ms Taylor has informed the Commission both in her written evidence and in her oral evidence today, about the requirements of the Australian Standards. Australian Standards can be located behind KT1, which is located at court book 193. If I can take you, Deputy President, to court book page 239 you'll see that in the Australian and New Zealand Standard it refers to the requirement that there is a good facial fit. And the second paragraph states:

PN448

Respirators incorporating close-fitting face pieces rely on facial fit to prevent inward leakage of contaminants. Such RPE employing a full face piece or half face piece should not be used by males who are not clean-shaven about the cheeks, neck and jaw. Half face pieces RPE of this type shall not be used by those with moustaches if there is any chance of hair coming between the face piece and the skin.

PN449

And it goes on to deal with long hair as well. Further down that page it says that:

PN450

Positive pressure RPE may diminish the effect for facial fit but will not obviate the effect of leakage caused by facial hair.

PN451

Turning further to page 269 of the Australian New Zealand Standard – sorry, page 269 of the court book. The Australian New Zealand Standard on this page deals with facial hair in RPE fitting. And you can see that three-quarters of the way down the page, Deputy President, where it states:

PN452

Facial hair lying between the sealing surface of the RPE face piece and the wearer's skin will prevent a good seal. Beards, moustaches and sideburns preventing satisfactory sealing. Long hair may also interfere with the operation of exhalation valves. The sealing problem is especially critical when close-fitting face pieces are used. The reduction in pressure developed in the breathing zone of these respirators during inhalation may lead to leakage of contaminant into the face piece where there is a poor seal. Therefore, individuals who have stubble (even a few days' growth will cause excessive leakage of contaminant), a moustache, sideburns or a beard which passes between the skin and the sealing surface should not wear a respirator which requires a facial seal.

PN453

Again, then turning to page 283 of the court book, at this page of the Australian Standard it deals with the various different types of facial hair and the facial seal

of respirators. So the Australian Standard deals with facial hair and the issues arising from where there is no clear skin between the seal of a mask, and it sets that out extensively.

PN454

Turning now to page 320 of the court book, this is KT8. We have the manufacturing requirements for the 3M disposable respirator 8822, which Ms Taylor has referred to today in her oral evidence. On page 320 under the heading, 'Warnings and Use Limitations,' and halfway down the dot points it states:

PN455

Do not use with beards or other facial hair, or conditions that may prevent a good seal between the face and the sealing edge of the respirator.

PN456

So it's clear from the manufacture's requirements that a good seal is required between the face and the edge of the mask.

PN457

Turning to KT9, which is the manufacturer's requirements in relation to NAPR, even the NAPR manufacturing requirements state that the manufacturer recommends – and this is on page 321 in the penultimate paragraph:

PN458

The manufacturer recommends users are clean-shaven where the face seal contacts the wearer's face.

PN459

For goods and helmets with an inner neck collar or an inner shroud that form a partial seal in the neck region of the wearer, 3M suggests that:

PN460

Beards and facial hair should not extend into the sealing surface of the hood or helmet. Facial hair extending into the sealed contact areas could result in an improper seal and could result in sickness, injury or health.

PN461

Now, in developing the PPE procedure, which is detailed in Ms Taylor's evidence, a number of extensive steps were taken by the organisation. Just bear with me one moment. Ms Taylor sets out in her evidence, Deputy President, in her first statement from paragraph 34, on court book page 38, that when she commenced in the role as Head of Health and Safety at TasWater she spent an initial period taking stock of the function and reviewing the existing procedures and processes.

PN462

She sets out steps she took and the people she spoke to as part of that review. And as part of that review she identified a key area for improvement which was in relation to the use of RPE and the fit-testing process. As detailed at paragraph 38, Ms Taylor's review identified that:

PN463

Operators working with chlorine were not clean-shaven when using RPE.

PN464

And that:

PN465

Operators working with other airborne contaminants were not clean-shaven when using RPE.

PN466

Ms Taylor sets out in her evidence from paragraph 40 to 44, the health and safety risk associated with chlorine use. And she sets out at paragraph 44 that TasWater implemented the requirement to be clean-shaven between the face and face seal when using SCBA, and that that requirement has been enforced.

PN467

Deputy President, many of the correspondence that we were taken to today in or around July and August 2022 was in relation to the use of SCBA for operators working with chlorine. And that requirement was enforced some time ago, that predates the requirement for the broader workforce in relation to RPE which was enforced from 11 December.

PN468

THE DEPUTY PRESIDENT: Although, I think Ms Taylor's evidence was that there was a dispute in relation to that. That's not this dispute?

PN469

MS NOAKES: That is correct, Deputy President. That dispute has been resolved, is my understanding.

PN470

THE DEPUTY PRESIDENT: Yes.

PN471

MS NOAKES: Following the steps taken in relation to workers working with chlorine and using SCBA or BA, as it is interchangeably referred to in the materials, TasWater then embarked on a process of continuing consultation because it was in relation to the same theme, and looking at implementing the requirement for the broader workforce in relation to RPE.

PN472

That process involved a number of steps. Just bear with me one moment, Deputy President. That process involved a number of steps and was informed by various information that TasWater had sought out and considered. That includes a hygienist's report regarding potential asbestos exposure. Now, that hygienist's report is located at KT10 which is page 323 of the court book. If I can take the Deputy President to page 340, there is a recommendation contained in that report under the heading, 'Six Recommendations,' that states at number 6:

PN473

Ensure adequate respiratory protection is used during cutting of AC pipe. Respiratory protection should be selected and used and maintained in accordance with the Australian Standard AS/NZS 1715 2009, including training of workers and respiratory aperture fit testing.

PN474

TasWater also availed itself of information from an occupational hygienist, which is located behind tab – one moment, Deputy President. Located behind tab KT11. This occupational hygienist report was in relation to silica exposure and risks. Set out on page 348 are the conclusions and recommendations following that occupational hygienist's report. You will see that the second dot point under the heading, '(7) Conclusion and Recommendation,' states:

PN475

If wearing close-fitting respiratory protection to minimise worker exposure, staff must be clean-shaven as mandated by AS/NZA 1715 2009, 'Selection, Use and Maintenance of Respiratory Protection Equipment'.

PN476

That's the Standard we've referred to, Deputy President. The third bullet states:

PN477

If workers are relying on respiratory protection then a respirator fit testing and training program in accordance with Regulation 44 of the Tasmanian Work Health and Safety Regulations 2022 must be undertaken to ensure workers wear respirators correctly and are adequately protected whilst complying with site-mandated respiratory protective equipment.

PN478

They informed themselves of that information and they consulted extensively with the workforce. That extensive consultation is set out at paragraph 43 of – bear with me. I withdraw that. It is set out at paragraph 56 of Ms Taylor's first statement which is located at court book reference 43. There was extensive consultation that occurred throughout the SCBA issue, through to the broader implementation of the RPE requirement, and you can see that that consultation is listed in paragraph 56 and is also detailed in the various annexures that flow from KT13.

PN479

That extensive consultation included as I've set out there. Deputy President, I don't propose to take you through each of those meetings as they're set out in Ms Taylor's evidence, but please let me know if you would be assisted by that.

PN480

As part of the process of looking to implement the PPE procedure, we've heard that Ms Taylor also arranged for a risk assessment to be undertaken. Now, that risk assessment took into account a variety of considerations. Those considerations are set out at paragraph 48 of her first statement on court book page 40. So it took into account the type of exposure, the ability to plan for exposure, the impacts, the severity, the environmental work conditions, the minimum RPE required to provide appropriate protection, and alternative RPE to

what TasWater currently uses, specifically PAPR, as it had been suggested by a number of employees. That risk assessment is located – let me just locate that risk assessment for you, Deputy President.

PN481

THE DEPUTY PRESIDENT: KT23.

PN482

MS NOAKES: KT23. Thank you. So that was the risk assessment that was undertaken by the business. The outcome for that risk assessment and the determinations of that risk assessment are set out at paragraph 52 of Ms Taylor's first statement, at court book page 42. As you'll see, the risk assessment determined that of the 13 common tasks and activities undertaken at TasWater, where RPE is required to be used, only two were considered low risk for the use of PAPR.

PN483

Due to the sequencing of tasks, unplanned activities and challenges with decontamination and maintenance units, like for like use of PAPR to replace other existing RPE was not possible. Ms Taylor sets out that while theoretically PAPR units have a higher protection factor than, for example, a P2 dust mask, there are many things that can impact the effectiveness of a respirator and the actual protection factor achieved when using in a work environment, and that existing RPE used in accordance with the manufacturer's instructions and the requirements of the PPE procedure and any additional tasks with specific risk controls, and in combination with other relevant control measures, are considered sufficient to protect workers at TasWater.

PN484

Ms Taylor's evidence goes on to consider why PAPR is not an appropriate alternative to the existing RPE used at TasWater. On 11 September TasWater communicated the revised PPE procedure. The evidence in relation to that is located at paragraph 47 – my apologies – is located at court book reference 47, which is Ms Taylor's evidence, and that is detailed at paragraph 58 of Ms Taylor's first statement.

PN485

The PPE procedure can be located, Deputy President, behind KT20, and I'll take you to that now, Deputy President, because it's a key matter in dispute today. On page 407 of the court book, under heading 6.4, 'Respiratory Protection,' it states:

PN486

Respiratory PPE must be used in accordance with AS/NZS 1715, 'Selection, Use and Maintenance of Respiratory Protection Equipment' –

PN487

which is the Standard we've been referring to. And over the page, Deputy President, on page 408 of the court book, it states that, just sitting under the table, Deputy President:

PN488

When selecting, using and storing respiratory PPE it is important to take the following into consideration.

PN489

One:

PN490

Those who use respiratory PPE that requires a facial seal must be clean-shaven between the face and seal. See further details below.

PN491

And, secondly:

PN492

RPE must be kept clear of dust, corrosive atmospheres, oil and direct sunlight when stored.

PN493

There's then a heading which states, 'Respiratory Protection and Facial Hair', which states that:

PN494

Any facial hair, e.g. beard growth, moustache, sideburns, between skin and the sealing surface of the respirator may prevent an adequate seal. Individuals who have stubble, even a few days' growth, a moustache, sideburns or a beard, which passes between the skin and the sealing surface, cannot perform activities which requires respiratory PPE. Employees and contractors must be clean-shaven between the face and the respiratory protection seal if using respiratory PPE, and manufacturer's instructions and regulatory guidelines must be followed in relation to facial hair and proper fit/seal.

PN495

Between 12 September and 30 December, TasWater held a number of toolbox talks. That evidence is located at paragraph – at court book page reference 48, in paragraph 61 of Ms Taylor's first statement. In addition, there was various communications distributed to TasWater employees including across various modes, regarding the PPE procedure and a requirement to comply with that procedure.

PN496

On 1 December Mr Windmeyer sent an email to all service delivery employees, informing that full compliance with the PPE procedure would be required from 11 December; and that is located at paragraph 64 of Ms Taylor's evidence, and KT25 of the court book which commences at page 432 of the court book.

PN497

Further correspondence with the workforce regarding the requirement to comply with PPE procedure was sent on 4, 8, 11 and 21 December, and that again is set out in Ms Taylor's evidence which can be located at page 49 of the court book. That correspondence is also annexed to her statement.

PN498

There were multiple reminders and communications regarding the requirement to comply with PPE procedure, and multiple options and avenues for employees to provide their views to the business regarding the PPE procedure. As part of that consultation process, feedback was provided by TasWater employees, both informally in discussions, such as the WCC meetings, but also formally in the response to responses that were recorded in KT19. Deputy President, we've taken Ms Taylor to that and she just confirmed that that was the feedback that was received as a result of the consultation process, and that's located at court book reference 397.

PN499

Compliance with the PPE procedure was required from 11 December. That's set out at paragraph 64 of Ms Taylor's statement. And given the extensive communications and consultation that had occurred, Deputy President, it was no surprise that this requirement was coming into effect.

PN500

Turning now to the two questions for determination, Deputy President. The first question that TasWater seeks the Commission to determine is if the direction that employees comply with the PPE procedure was a lawful direction. Now, we submit that the answer to that question is yes, and that answer is the case because the direction in question is a reasonable direction.

PN501

Whether a direction is reasonable is a question of fact, having regard to all of the circumstances. We have that authority from Mount Arthur Coal. Deputy President, would you like us to provide a copy of these cases to you?

PN502

THE DEPUTY PRESIDENT: No, thank you.

PN503

MS NOAKES: In Mount Arthur Coal the Full Bench stated that:

PN504

Whether a particular direction is reasonable is not to be determined in a vacuum. It requires consideration of all of the circumstances, including the nature of the particular employment, the established usages affecting the employment, the common practices that exist, and the general provisions of any instrument governing the relationship.

PN505

In New South Wales this would include consideration of obligations in the WHS Act which governs employment relationships in that jurisdiction. As we've set out in our submissions, Deputy President, to be reasonable a direction does not need to be the preferable or most appropriate course of action, in accordance with best practice or in the best interests of the relevant parties.

PN506

We say that the following circumstances lead to the conclusion that the requirement to comply with the PPE procedure is a reasonable requirement, and that's for the following reasons, Deputy President. That the requirement is for the sole purpose of ensuring that TasWater's employees do not become ill or die from illnesses like silicosis or asbestosis, mesothelioma.

PN507

Mr Windmeyer, in fact, sets out in his first statement, Deputy President, that he feels particularly motivated to ensure that employees do not suffer from such illnesses. It's also reasonable because the WHS Act requires TasWater to ensure, as so far as reasonably practicable, the health and safety of its employees. And the requirement that they comply with the PPE procedure is aimed at meeting this obligation that arises under legislation.

PN508

Furthermore, there's a regulation 44 of the Work Health and Safety Regulations 2022, Tasmania, which requires TasWater to provide its employees with masks, and for the masks to be effective the employees must be clean-shaven.

PN509

In addition, Deputy President, the requirement that employees comply with the PPE procedure aligns with work health and safety legislation in Tasmania, including section 28, Deputy President, of the Work Health and Safety Act 2012. This is not referred to in our submissions, Deputy President, and I'm happy to provide you with a copy of the extract. But that section of the legislation puts obligations and duties on workers, and states that:

PN510

While at work a worker must:

PN511

(a) take reasonable care for his or her own health and safety; and

PN512

...

PN513

(c) comply so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act; and

PN514

(d) cooperate with any reasonable policy or procedure of the person conducting the business or undertaking, relating to the health or safety at the workplace that has been notified to the workers.

PN515

I am happy to provide you, Deputy President, with a copy of that section. Furthermore, the requirement is reasonable because it was only implemented after extensive consultation, and that consultation met the requirements set out both in the WHS Act and the enterprise agreements.

PN516

We submit that the requirement is reasonable because the requirement to be clean-shaven on the parts of the face which make contact with the seal of the masks is not onerous, especially when compared to the potential harm of inhaling hazardous materials which can cause death or serious illness.

PN517

This requirement only applies to employees who will or are likely to perform work which would require the usage of RPE. Section 5.7 of the PPE procedure allows for exemptions in certain situations. So the requirement is not a blanket rule. We also submit that it's a reasonable requirement because it is in the best interests of the employees and is both logical and justified.

PN518

Relevantly in a decision determined by the Fair Work Commission regarding an unfair dismissal where an employee had failed to comply with a requirement to be clean-shaven, the Commission found that that requirement was reasonable and appropriate given the potential hazards.

PN519

We have set out a reference to that case in our submissions and we note that in that case, Deputy President, there had been a policy in place for a period of time at the employer which is BHP Billiton, that employees be clean-shaven and that there had not been enforced compliance with that policy for a period of time and that the employer had taken steps to require compliance, not dissimilar to the situation we find ourselves in, Deputy President, with TasWater's organisation.

PN520

And the requirements that the employee comply after a period of non-compliance was found to be a reasonable and lawful direction, and reasonable and appropriate, as I said, given the potential hazards. Given those matters we submit that the answer to the first question being, 'Is the direction that TasWater employees comply with the PPE procedure a reasonable direction,' should be 'yes.'

PN521

Turning now to question 2 which is, 'Does the status quo provision of the enterprise agreements apply?' Clause 63.1(b) of each of the enterprise agreement states that unless a reasonable concern related to the health and safety of any person exists or the parties agree otherwise that the position that existed prior to the dispute situation arising will prevail.'

PN522

We submit that there are two questions that flow from that clause. That's 63.1 subsection (b). And that is, 'What is a reasonable concern related to the health and safety of any person?' And 'Does such a reasonable concern exist?'

PN523

Now, Deputy President, I don't propose to take you through the jurisprudence in relation to the principles of interpretation for enterprise agreements. That is well settled. So that is set out in our submissions and I don't propose to elaborate on those principles further in oral submissions today.

PN524

But what I would like to emphasise is that clause 63.1(b) provides that 'the status quo will not apply if a reasonable concern related to the health and safety of any person exists.' And if we break that down, a concern must exist and a concern must be reasonable, and it must relate to the health and safety of any person.

PN525

THE DEPUTY PRESIDENT: But that much doesn't appear to be in dispute.

PN526

MS NOAKES: Yes, Deputy President. That's correct. We say that plainly the exception to the status quo provision applies in the present dispute. That's in circumstances where TasWater knows that its employees work with hazardous materials and that work with those materials can lead to airborne hazardous materials and that controlled measures are in place.

PN527

TasWater has a reasonable concern that its employees will breathe in unfiltered air. That unfiltered air could contain asbestos, crystalline silica or other harmful substances which could result in the death of employees in the future. And that the direction that employees comply with the PPE procedure is a sensible, fair and well-founded - sorry. The concern that TasWater has in the present matter is a sensible, fair and well-founded concern it's not far fetched. It's not out of the realms of possibility. And TasWater's concern is also informed by the requirements in the Australian Standards and the manufacturer's instructions as to what steps should be taken to prevent employees from being exposed to these health and safety risks.

PN528

Finally, the concern is entirely and solely related to the health and safety of TasWater's employees. Turing briefly to the position articulated by the union's written submissions it appears that the union's concerns come down to the views that TasWater should be required to provide PAPR units to employees who are required to use RPE in the performance of their work.

PN529

We say that this argument is flawed for a number of reasons. First, TasWater's risk assessment process has determined that PAPR is not a like for like alternative to the RPE used at TasWater due to the limitations of using PAPR's including in the performance of various tasks and in the sequencing of tasks. And Ms Taylor puts forward evidence in relation to that.

PN530

Further, the guidance from the manufacture indicates that to maintain an adequate seal a person using PAPR should be clean-shaven between the face and the seal. So that guidance material from the manufacture indicates that regardless in relation to the PAPR unit and notwithstanding those points, importantly it is not for the Commission to interfere in TasWater's decision that the RPE it is currently using is appropriate. And that is the RPE that is appropriate for use by its workforce.

PN531

This is the material prerogative of TasWater. And pursuant to the principles in the XPT case there is nothing unjust or unreasonable and therefore that managerial prerogative should not be disturbed. Deputy President, would you be assisted by a copy of the XPT case?

PN532

THE DEPUTY PRESIDENT: No, thank you. It seems to me that to the extent that there's a dispute about the adequacy of the equipment chosen by the employer to mitigate the risk, that's a dispute that can be separately agitated under the relevant occupational safety legislation and/or under the disputes proceedings to the extent that it's caught. But that's a different question to the question that is being asked here, and that is whether or not the direction relevantly is reasonable and whether the status quo is engaged.

PN533

I mean, the two things can coincide. There might be a dissatisfaction about it. The union might say that in our attempt to fulfil the employer's obligations to provide and maintain a safe working environment this particular equipment is to be preferred because it eliminates the risk rather than mitigates, for example. And I'm not suggesting that's the case, but for example.

PN534

But that doesn't necessarily result in the employer wishing to take this step and rendering that step to be unreasonable. A dispute can be had about the adequacy of that and whether or not better equipment can be provided. But it just seems to me to be a different question and a different dispute. That's not this dispute.

PN535

MS NOAKES: Yes, Deputy President. We agree with that.

PN536

THE DEPUTY PRESIDENT: Can I just raise an issue about the construction of the status quo provision. You set out at paragraph 40 of your submissions, or you note obviously that there is no reference to the person who must have the relevant concern or the reasonable concern. And you suggest that that must exist in the mind of the party.

PN537

It just seems to me that the relevant question about who must hold the reasonable concern is to be determined by reference as to who is required to do, or refrain from doing something during the status quo provision, that period. Because it's relieving that person or those persons of the obligation to maintain the status quo.

PN538

So, here the status quo sought to be maintained is that the employer not enforce the requirement to be clean-shaven until the whole of the dispute is resolved. And in those circumstances what is in the mind of the union, it seems to me, doesn't much matter because it's not required to do anything. And that which is relevant is whether there is a reasonable concern in the mind of the employer, bearing in mind it's a corporate entity, and that such a concern exists.

PN539

So, it's not just a party, it's a particular party of the industry. Now, sometimes aspects of the status quo will need to be maintained by both. But in the most frequent of occurrences if it's one party that must do, or refrain from doing something to maintain the status quo, in the case of a refuse to undertake particular duties if there's a dispute about that because there's a safety concern, or a refusal to perform duties it'd be the employee who is refusing.

PN540

And if there is an allegation, the status quo must be maintained, i.e., perform those duties, it'll be the employee's concern that will be relevant for the purpose of whether that concern was reasonable for the purpose of maintaining the status quo. So, it just seems to me that the relevant question is who must do all refrain from doing something in the context of this dispute in order that the status quo apply.

PN541

Once that person is identified then it's whether or not that person has the reasonable concern about health and safety. Because they're seeking to be discharged from it.

PN542

MS NOAKES: Yes, Deputy President.

PN543

THE DEPUTY PRESIDENT: I mean, I don't think it much matters here in this sense because I don't think there's any particular dispute that the employer wants to proceed with implementation. And it's concern that we're focussed on, and whether or not that concern which it has expressed is a reasonable one. I don't think that much is in dispute and that's really the nub of the status quo argument.

PN544

MS NOAKES: Yes. Yes, Deputy President, we - - -

PN545

THE DEPUTY PRESIDENT: Objectively whether TasWater's concern is reasonable.

PN546

MS NOAKES: Yes, Deputy President. We agree with that view.

PN547

THE DEPUTY PRESIDENT: Yes, all right. Sorry, I interrupted you. Continue.

PN548

MS NOAKES: No, no. Thank you, Deputy President. There's only one final matter that I would like to raise and it may be slightly linked to the point we've just made, Deputy President. We agree with your view as to the recent concern and who holds that recent concern. But we note that in relation to this dispute the respondent has not called any of the three employees who have indicated that they will not comply with the PPE procedure.

PN549

So, we've not heard from them or about their concerns. We have heard from two other employees, Mr Hobbs and

PN550

Mr Burnaby. And in that respect we submit that a *Jones v Dunkel* inference should be drawn that such evidence would not have assisted the respondent's case. Those are all the matters that we wished to raise in closing, Deputy President, unless you have any further questions.

PN551

THE DEPUTY PRESIDENT: The three employees are identified then?

PN552

MS NOAKES: Sorry, Deputy President? Sorry, Deputy President, what was that?

PN553

THE DEPUTY PRESIDENT: The three employees who have concerns that were not called, were identified where in the materials?

PN554

MS NOAKES: I do not believe they are identified in the materials, Deputy President.

PN555

THE DEPUTY PRESIDENT: Well, how do I know about them?

PN556

MS NOAKES: I'll withdraw that submission, Deputy President, in those circumstances.

PN557

THE DEPUTY PRESIDENT: Yes, all right. Thank you. Ms Noakes, you've finished your submissions?

PN558

MS NOAKES: Thank you, Deputy President, I have. Those are all the closing submissions.

PN559

THE DEPUTY PRESIDENT: Yes. Thank you. Mr Austin, how long do you think you might be?

PN560

MR AUSTIN: Deputy President, I expect about 15 minutes.

PN561

THE DEPUTY PRESIDENT: Unless there's violent objection I propose to just continue and finish rather than adjourn for a luncheon adjournment. Yes. Go ahead, Mr Austin.

PN562

MR AUSTIN: Thank you, Deputy President. You've received, and we rely upon the outline of submissions filed in this matter but I'll add just briefly to that. There are two questions before the Commission. One, whether there it was a reasonable direction for the applicant to require its employees, all of them who are required to use RPE to be clean-shaven while using that RPE. And two, whether the status quo should apply for the resolution of this dispute.

PN563

I'll deal firstly with the question of reasonableness of the direction.

PN564

I won't go to all of the authorities cited by my learned friend. We don't have a disagreement as to what the relevant authorities are. It is a question to be determined on the facts and in all the circumstances. And we say that among the employment conditions that inform what will be a reasonable direction, are the terms of the Work, Health & Safety Act which include not just a duty on the employees and the employer to prevent risk to health and safety but also an obligation to consult with the duty officer. That appears at section 46 of the Act.

PN565

And in that consultation explicitly to consult with the workers affected by the proposed change which appears in section 47 of the Act, further that such consultation must be consistent with procedures established for the resolution of disputes with those workers, which we say includes the terms of the enterprise agreement that have to with consultation.

PN566

And most importantly, the consultation for the purpose of the Work, Health & Safety Act must include a reasonable opportunity to express the views of the employees and contribute to discussions. And that's at section 48. So, one of the ways in which we say that the direction is unreasonable is that we say key parts of the decision that form the RPE policy were not the subject of consultation with the wider work group that was affected by it.

PN567

We say that there is a requirement to go beyond merely having meetings with HSR groups and that the failure to provide to employees relevant information about the risk assessments, both the outcomes and the inputs to those assessments, meant that despite it being quite a long consultation process on key issues the consultation was inadequate.

PN568

I will come later to what those issues are. But apart from the compliance with consultation for the purpose of the Work, Health & Safety Act we say that there's a deficiency in the direction in that the current object of the policy is to avoid a risk to health and safety of the employees arising from respirable materials and respirable gases.

PN569

It would, we say, have been reasonable for the respondent to allow employees to engage in fit testing of different forms of masks that accommodate their particular beard or facial hair as a way of mitigating the risk to which this policy is directed. We say that in this instance we are talking about a degree of autonomy for the employees to be able to express themselves how they wish.

PN570

It is not a particularly strong right. There are ways for that right to be aggravated. And obviously one of those ways is if that's necessary and practicable to give effect to the duties imposed by the Work, Health & Safety Act we don't cavil with that. However, we say in this scenario the facts point to the employees being able to achieve the necessary seal to be safe with the beards that they wear, or at the very least to be able to test different forms of PPE to confirm whether or not in fact they may keep their beards.

PN571

But it's not the position and it has not been the position of the CEPU throughout this dispute that it is never at all reasonable to direct an employee to shave nor to wear RPE. The question we have here, Deputy President is, is it reasonable to direct that all of the relevant operators shave at all times to be ready and able to use the particular RPE that the company has applied and are prepared to use.

PN572

You have heard, Deputy President, from Mr Hulls and

PN573

Mr Burnaby. Mr Hulls describes in paragraph 60 of his witness statement of being able to obtain a seal – sorry, in his witness statement reply, be able to obtain a seal using breathing apparatus consistently over the period of six years. Mr Burnaby describes being able to use positive air pressure, PAPR masks in the same work environment for which he is now required to use P2 masks, effectively. That's at paragraph 12.

PN574

And at paragraph 11 it says his PAPR masks are not cumbersome and have been used effectively in his work.

PN575

So, the experience of the employees on which you have evidence is that in fact these PAPR masks are workable and appropriate with a beard.

PN576

In terms of what the regulations would require you were taken, Deputy President, to KT9 which shows the various forms of PAPR supplies by 3M which include a number of different models which are clearly marked as being an appropriate – or sorry, I should use the correct language, 'May be used with facial hair or beards that do not extend into the neck, collar or ordinary shroud, et cetera.'

PN577

THE DEPUTY PRESIDENT: Sorry, which document?

PN578

MR AUSTIN: Apologies, Deputy President. That is in KT9. I'll get into a reference for you.

PN579

THE DEPUTY PRESIDENT: So, it's 321.

PN580

MR AUSTIN: Thank you, Deputy President. And so, Deputy President, you will see that there are a range of options available to the applicant for forms of mask, in this case, PAPR, which could be worn with some degree of a beard. The ask of the CEPU is that employees do what they clearly ought to always do which is undertake fit testing but they be allowed to do so on different models of mask that would accommodate the beard that they wear on their day to day.

PN581

The PPE procedure, we say, is in dispute to the extent that it doesn't provide for those options, that being hood, helmet or other loos fitting forms of PAPR. But it's not the position and has not been the position of the CEPU that in circumstances where they absolutely cannot be used the employees could not in any circumstances be required to be clean-shaven. The risk assessment to which you were taken in KT23 for PAPR masks explicitly, goes through a number of findings of the applicant in relation to the suitability of those masks.

PN582

We note that a number of them are marked as having been affected by operational issues or otherwise unsuitable. You have from Ms Taylor in cross-examination today and in re-examination that that risk assessment and the related report were provided to HSR's management and workplace consultative committee but not to the wider workforce to comment or contribution.

PN583

We say the effect of that is that the employees have not had an opportunity in this process to provide their input on whether or not in fact the way that they work produces operational risks or problems for the use of these masks. The evidence, at least from two of the employees who have given evidence today is that they've not been impaired in their ability to use PAPR masks. And essentially, Deputy President, we would invite you to find that before the applicant could act on that thought it should be the subject of proper consultation under the Work, Health & Safety Act with the effected workers.

PN584

On that note I go to the question of whether *Jones v Dunkel* would allow you to draw an adverse inference given that we have not evidence from three employees said to have decided not to shave their masks(sic) in this - - -

PN585

THE DEPUTY PRESIDENT: Mr Austin, that submission was withdrawn.

PN586

MR AUSTIN: Deputy President, I withdraw that submission. Sorry.

PN587

THE DEPUTY PRESIDENT: No, no. Ms Noakes withdrew that submission.

PN588

MR AUSTIN: I do apologise, Deputy President. I had missed that.

PN589

THE DEPUTY PRESIDENT: I'm correct, aren't I, Ms Noakes?

PN590

MS NOAKES: That's correct, Deputy President.

PN591

MR AUSTIN: Thank you, Deputy President. I withdraw that then. Deputy President, in relation to the obligation to consult we say that it is significant that the applicant has here a policy, the PPE policy that was put out in September of last year. And it has its practice of requiring particular PPE. Ms Taylor was taken to a list of PPE on which individuals were tested in this month for fit testing and conceded that at least in the case of

PN592

Mr Burnaby, he had failed initially a test on the form of mask ordinarily provided by the applicant.

PN593

What appears to have occurred thereafter is that he has past testing on an alternate form of mask which was not kept in stock, and has subsequently been provided. That is the adjustment essentially that we would seek for all employees, that they have an opportunity to be fit tested on a model of mask of their choosing that would fit the wearer beard or facial hair that they have.

PN594

With respect to status quo, Deputy President, you were taken to clause 63.1, paragraph (b) of the enterprise agreement.

PN595

THE DEPUTY PRESIDENT: Hold on.

PN596

MR AUSTIN: Sorry, Deputy President.

PN597

THE DEPUTY PRESIDENT: That's all right. Just bear with me for a moment. Did Mr Burnaby fail the fit test on the model of mask because of facial hair? It wasn't for that reason, was it?

PN598

MR AUSTIN: Deputy President, I should correct myself. I don't think it's in evidence as to why he failed the fit test. That's not before you, Deputy President. All that is before you, Deputy President, is the note that was handed up by the applicant that outlines a number of (indistinct) I would have thought.

PN599

THE DEPUTY PRESIDENT: Sure. Look, I can understand the submission which is an employee should be fit tested for a mask but if an employee fails then an alternative mask might be found to meet the particular class of that employee. I understand your submission.

PN600

But why should an employer provide a fit test for the mask that it uses for persons who maintain facial hair knowing that they'll fail the fit test, and then find another mask that's more suitable in circumstances where the employer is obliged to provide the relevant personal protective equipment and it has chosen a particular brand or brands and it requires its employees to comply with the Australian Standards which are applicable to the brand or brands that it has chosen? Why is that unreasonable, putting aside the consultation argument, but just as a general proposition?

PN601

MR AUSTIN: Thank you, Deputy President. To that we point to, in the statement of Mr Hulls, distinct personal impacts of having to shave his beard. And essentially for the purpose of his work to alter his appearance with impacts on him personally and in his private life. The obligation of the employer is to provide PPE that's, so far as practicable, averts the risk to the employees.

PN602

We would say that in the question to be answered around what's practicable for the employer, consideration out to be given to how they find the employee in the first instance, without requiring the employee to make such changes. If it is possible to do it that way then we say it preserves the greater interest of that employee. But I can put it no higher than that really, Deputy President, that it is a consideration that should weigh in the decision as to which form of mask is used.

PN603

I don't come here proposing that there is any particular inalienable right to keep facial hair. I put it no higher than that.

PN604

THE DEPUTY PRESIDENT: Presumably Ms Noakes will tell me in her note that much of the personal impacts that Mr Hulls refers to is hearsay, in the sense that he is giving evidence about what his fiancée can and cannot deal with, for example, her – the giving of him of that evidence. And beyond simply saying that his fiancé can't deal with the change, we don't actually know what that means.

PN605

MR AUSTIN: But Deputy President, that is the case, that obviously the weight of that evidence is affected by the fact that it comes second-hand. It is nonetheless, I think, open to you, Deputy President, to find that people who have beards keep them for personal reasons and it is generally an imposition on them to require them to remove that or change their appearance for their employer's sake.

PN606

THE DEPUTY PRESIDENT: Yes, Mr Austin. Continue.

PN607

MR AUSTIN: Thank you, Deputy President. In relation to the question of the status quo, we accept the construction put forward by the Deputy President it is the case that the obligation relevantly falls to whoever it is has the power to disrupt or continue the status quo. But I don't think there is, in this dispute, too much of a difference between the parties on that point.

PN608

But we are talking about whether the employer in this case has a relevant concern related to the health and safety of a person. It may in other circumstances be a concern held by the employees - that's the employees who have the relevant action to continue or refrain from doing, based on the status quo. But the status quo as it sits, Deputy President, would be for the employer to return to a state of consultation on a proposed change to its PPE.

PN609

That was the state of affairs before this dispute arose and we say the Deputy President need do no more than say, well, further consultation on those issues is required. And I don't think it's appropriate to go back to that while the matter is being heard. It would be the case in a situation of status quo that employees essentially go back to making their own determinations about whether or not they wear facial hair.

PN610

But it is also the case that such employees would have their own obligations under the Work, Health & Safety Act to their health and safety. We don't propose that the affect of the status quo would be for employees who have failed fit tests on masks that are available to them would start to work without masks when they're required for health and safety.

PN611

So the question is, we say, therefore confined somewhat. As we said before, Deputy President, the dispute in our view is about that requirement for employees to use the particular PPE proposed by the employer and thereby a larger group of employees required to shave in order to do so. We know in relation to status quo that TasWater, Tasmania Water has taken some years to get to this point.

PN612

It has not proposed to exercise any right under clause 63.1(b) since it initially proposed the change in 2022 until December of 2023. That certainly doesn't speak to a level of urgency on the employer's part about its concern for health and safety. And in the context where you've heard, at least in the case of Mr Burnaby that there has not been previously a policy of fit testing all employees for RPE where they're not breathing apparatus, BA.

PN613

Essentially there are better ways to address the risk that is complained of. In this case we would suggest to test employees on a wider range of masks to see if they could be met. We also say as to whether a concern for health and safety is reasonable, that is still a determination that has to be approached through the lens

of the Work, Health & Safety Act and other instruments and conditions that apply to the employment relationship.

PN614

So, to the extent that there has not been adequate consultation on aspects of this change we say that should weigh on whether the employer has a reasonable concern for health and safety, noting that the identification of risks in the workplace and how to address them are both subject matter for consultation under the Work, Health & Safety Act.

PN615

I can put it really no higher than that that there are essentially reasons to find that the concern about health and safety is not in this case, in these circumstances, reasonable both due to the delay in exercising that right and the failure to comply fully with consultation obligations before making the change. And that's all I wish to add to the outline of submissions for the respondent.

PN616

THE DEPUTY PRESIDENT: Mr Austin, is it possible to find that the requirement was unreasonable because there was inadequate consultation, and yet find that there is a reasonable concern for the health and safety of any persons but for these purposes, employees undertaking the relevant tasks for which the protective equipment is required?

PN617

MR AUSTIN: Deputy President, in the abstract that is possible. But I don't think one question determines the other. However they have essentially considerations in common.

PN618

THE DEPUTY PRESIDENT: Because in most status quo provisions one is not required to maintain the status quo, only in – not in circumstances of a generalised concern about operational safety but an imminent risk. That's the usual approach. But here the parties have used (indistinct). So, whether there's a reasonable (indistinct) the question is if it was a reasonable concern about an imminent risk to particular (indistinct) but more generally, whether there's a reasonable concern related to general words, the health and safety of any person, whether that exists.

PN619

MR AUSTIN: Deputy President, we concede that it is - - -

PN620

THE DEPUTY PRESIDENT: And surely in the present context where the fact that the employees are not using the supplied facial masks in accordance with the Australian Standards gives rise to a reasonable concern does it not?

PN621

MR AUSTIN: Deputy President, to deal with the first part of that question it is a broader language than saying 'imminent risk' is. However, the imminency of the risk, we say is relevant to whether the concern is reasonable. And regard should

be had to what the, I guess, proposed departure from the status quo is and how that addresses the risk as to whether or not it is a reasonable decision.

PN622

THE DEPUTY PRESIDENT: All right. But the proposed departure was the enforcement of the requirements of the Australian Standards and the manufacturer requirements for use of the mask the employer has chosen to supply. So, that as a normal practice is the only change, is it not? Or are we now going to require – are we going to enforce it now? We haven't in the past but we are now?

PN623

MR AUSTIN: You are correct, Deputy President. That is the change. I suppose the effect of the change has to do with our concerns in relation to what that means for employees who can't use that PPE. You are correct. That is the confines of the change, yes.

PN624

THE DEPUTY PRESIDENT: And plainly one might rightly say, well, the employer ought to have had this concern all along and enforce its policy. But it didn't and that's where we're at. And now it's chosen to enforce a policy which it effectively already had. And it does so because it's now realised, well, there may be a safety issue if we don't. But - - -

PN625

MR AUSTIN: Yes, Deputy President. That is the situation that the relevant change is to the implementation of a direction that employees be clean-shaven when using RPE. And it is the case that the effect of not proceeding with that change would be for employees not to shave, or not be required by the employer to shave while using PPE. That is not to say that they would not be subjected to other obligations which would have the effect less serious, we say, of the employees essentially using masks that are appropriate to their tasks which might accommodate them wearing beards and facial hair.

PN626

THE DEPUTY PRESIDENT: That's a submission that in the interim whilst maintaining the status quo should provide employees with the masks that we say they ought be provided with. And if they did that there wouldn't be any concern.

PN627

MR AUSTIN: Deputy President, I see your point. It remains our position that it is available and open to the employer to provide alternatives, some of which are essentially provided, we've heard from Ms Taylor, on request. And essentially we would say part of the status quo simply involves the applicant being willing to actually receive those requests and make that available, which similarly to the requirement to the fit test, we say simply it hasn't been implemented properly.

PN628

THE DEPUTY PRESIDENT: Have any of the affected employees made such a request?

PN629

MR AUSTIN: Deputy President, I believe you have in the statement of Mr Burnaby that he made a request of his direct manager for access to a particular mask. I'll find the reference, apologies. Bear with me, Deputy President. I do apologise.

PN630

THE DEPUTY PRESIDENT: That's all right.

PN631

MR FLANAGAN: Deputy President, I'm wondering if we might be able to have a brief adjournment for ten minutes?

PN632

THE DEPUTY PRESIDENT: Is there any objection?

PN633

MS NOAKES: No objection, Deputy President.

PN634

MR AUSTIN: No objection, Deputy President.

PN635

THE DEPUTY PRESIDENT: Thank you, Mr Flanagan. We'll adjourn for ten minutes.

PN636

MR FLANAGAN: Thank you.

SHORT ADJOURNMENT

[1.30 PM]

RESUMED

[1.47 PM]

PN637

THE DEPUTY PRESIDENT: Yes. Ms Austin, thank you.

PN638

MR AUSTIN: Thank you.

PN639

THE DEPUTY PRESIDENT: Before you continue, I forgot to ask you this. And I know this dispute was commenced initially because of the question of whether the status quo had to be maintained. That's the employer's complaint, that it should be permitted to implement its policy. But if I determine that the employer's direction was lawful and reasonable is there any need to determine the status quo question at all?

PN640

MR AUSTIN: Deputy President - - -

PN641

THE DEPUTY PRESIDENT: Other than for academic reasons.

PN642

MR AUSTIN: I should think that would be an academic question at that point, and I think it preferable that a decision simply be made on the question of reasonableness if that is the case.

PN643

THE DEPUTY PRESIDENT: Yes. Because as I say, if there is not – it is not inconceivable that one could find the decision not reasonable because of an absence of consultation but conclude nevertheless that the status quo doesn't apply. And this is not a dispute about whether or not there's been adequacy of consultation but perhaps I could make a further order to that effect. But if I'm with the employer on the first question and the second question is met.

PN644

MR AUSTIN: Yes, Deputy President. We would agree that there really wouldn't be utility in resolving the second question if the first question is resolved in favour of the applicant.

PN645

THE DEPUTY PRESIDENT: Yes. All right. So, continue,

PN646

Mr Austin.

PN647

MR AUSTIN: Thank you, Deputy President. Deputy President, you had asked me before we broke about whether any employee had requested a different model of mask than was provided.

PN648

THE DEPUTY PRESIDENT: Yes.

PN649

MR AUSTIN: And you have that in paragraph 28 and 29 in the statement of Mr Burnaby at page 1063 of the model. In that Mr Burnaby describes having approached his manager to obtain approval to wear a different form of mask that in his view better suited his fit of beard. And we note you also have in paragraph, were it properly numbered would be paragraph 47, I do apologies - - -

PN650

THE DEPUTY PRESIDENT: That's all right.

PN651

MR AUSTIN: It appears it's the second to paragraph 10 of his statement. And there he discusses being fit tested initially on a particular respirator provided by the external provider doing the testing. And I don't think you have it in evidence as to whether the later test of

PN652

Mr Burnaby was on a mask of his provision or the employer's. I don't think that's clear.

PN653

But you have received in the exhibit put forward by the applicant this morning confirmation that he eventually did pass a fit test on a different mask to the one referred to in paragraph 47.

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THE DEPUTY PRESIDENT: Yes.

PN655

MR AUSTIN: Deputy President, I don't - - -

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THE DEPUTY PRESIDENT: Mr Burnaby doesn't, himself, complain about the lack of consultation because he was involved in the consultation.

PN657

MR AUSTIN: Deputy President, yes. Mr Burnaby was a HSR rep and involved in the discussions to the extent - - -

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THE DEPUTY PRESIDENT: Yes. And a delegate, yes. And then he was a member of the Workplace Consultative Committee where these consultations, at least in part, occurred.

PN659

MR AUSTIN: That's correct, Deputy President.

PN660

THE DEPUTY PRESIDENT: So, in relation to him, to the extent there's no absence of consultation what is it about the decision so far as it affects him that is unlawful or unreasonable?

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MR AUSTIN: Deputy President, in that scenario where you're deciding merely on the question of consultation, we say consultation has occurred with him on those relevant points. We do say that the saying is not true of other employees.

PN662

THE DEPUTY PRESIDENT: I understand that. I understand that, thank you.

PN663

MR AUSTIN: Yes.

PN664

THE DEPUTY PRESIDENT: Thank you. The reason I'm raising that is that if there hasn't been adequate consultation the question – this is one of the problems with, I suppose, a generalised question, but the question of whether a direction is lawful and reasonable is to be determined around all of the circumstances. The circumstances that are relevant in assessing that include the individual circumstance of an employee.

PN665

And if the complaint is the absence of consultation and some employees were consulted and others were not, then it might be that the direction was lawful and reasonable in respect of employees A, B and C but not D, E and F.

PN666

MR AUSTIN: Basically I submit, Deputy President, that that would be a correct approach. Nonetheless the practical outcome would be of little utility to both parties if the outcome was significantly different for groups of employees not identified in the evidence.

PN667

THE DEPUTY PRESIDENT: Sure. But so far as Mr Burnaby was concerned, if I were to make that determination then that status quo, so as far, as he's concerned, (indistinct) to show up on whatever the next working day as clean-shaven?

PN668

MR AUSTIN: Deputy President, that is open to you, Deputy President. Nonetheless it's not the only ground on which we advance that the decision was unreasonable. And we also would seek orders that give clarity for a broader group of employees than just those who were on the HSR Committee and the Consultation Committee.

PN669

THE DEPUTY PRESIDENT: Yes, all right. But your principle contention is that the requirements that individuals, the requirement that under the occupational health & safety regime as it applies in Tasmania, the requirement that there be consultation with affected employees in relation to occupational health and safety measures was not met in most cases, essentially?

PN670

MR AUSTIN: That's our submission, yes, Deputy President.

PN671

THE DEPUTY PRESIDENT: And so far as your concerns about reasonableness extend beyond that what are they?

PN672

MR AUSTIN: But Deputy President, it then is simply a question of are the alternative PAPR options essentially preferable rather than, say, a resolution of the health and safety risk.

PN673

THE DEPUTY PRESIDENT: I understand that. I'm just trying to understand this, that – let's assume I'm with you and that they're preferable, why does it make this direction unreasonable?

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MR AUSTIN: Deputy President, in this - - -

PN675

THE DEPUTY PRESIDENT: Let's assume consultation had occurred, or going forward (indistinct), the employer then consults and after consultation essentially makes the same direction, what is it about the fact that there are alternatives that make the direction unreasonable?

PN676

MR AUSTIN: There are two things we say that make it unreasonable. One is that, Deputy President, we have evidence here that for those who don't use breathing apparatus and instead use respirators, there has not been a uniform practice of doing any fit testing on the masks provided by the applicant. And on that basis we would say the applicant ought not to have been satisfied that it met the risk by saying this is the mask that you use.

PN677

I can see that doesn't get us to the point of saying that therefore the applicant must use a particular model of PAPR, but we do say that at least gets us to the point of the employer needing to go back and consider the suitability of its preferred model of mask, and as part of that, to revisit consultation. But I can put it no higher than that.

PN678

THE DEPUTY PRESIDENT: That's fine. Yes.

PN679

MR AUSTIN: Thank you, Deputy President. I think we otherwise rely on our outline of submissions unless you have further questions.

PN680

THE DEPUTY PRESIDENT: No, thank you, Mr Austin.

PN681

Mr Flanagan, do you want to say anything?

PN682

MR FLANAGAN: No, just that we support the position that was put by the CEPU in our submissions, Deputy President.

PN683

THE DEPUTY PRESIDENT: Yes, all right. Thank you.

PN684

Ms Noakes, anything in reply?

PN685

MS NOAKES: Thank you, Deputy President, yes. I will be brief. So, if could just make a few points in reply. Firstly, I'll start - - -

PN686

THE DEPUTY PRESIDENT: Mr Austin said 15 minutes, and here we are an hour and ten minutes later, so - - -

PN687

MS NOAKES: I promise, Deputy President, you can hold me to alert to the 15 minutes.

PN688

THE DEPUTY PRESIDENT: That's probably my fault. It's not just his. Yes, continue.

PN689

MS NOAKES: Thank you, Deputy President. Just a few matters we'd like to respond to that were raised by

PN690

Mr Austin. At one point in Mr Austin's closing submissions he referred to an obligation to consult under the applicable enterprise agreements. Now that's not something that appears in the respondent's written submissions and we say that there is no obligation to consult that safety direction.

PN691

Under the consultation provisions in the applicable EA's those consultation obligations were limited to major change and roster changes. And we say that this direction does not fall within a major change, major request change.

PN692

THE DEPUTY PRESIDENT: I think his point was slightly different. I think his point was that the obligation to consult is that relevantly here under the work health and safety regime, and that that has a requirement that disputes about safety members be resolved through the established mechanisms, the dispute settlement procedure and/or consultation. That was how I understood you were putting it, Mr Austin, which is to be found in the agreement.

PN693

MR AUSTIN: Yes.

PN694

MS NOAKES: Thank you for the clarification, Deputy President and Mr Austin. A further point was raised by

PN695

Mr Austin that there is no urgency to this matter that TasWater has not approached this matter with any urgency, and we disagree with that. We have approached this matter with urgency. We have taken a number of steps. We've consulted with employees.

PN696

Once we made a decision about the PPE procedure we implemented it. We allowed some grace period for employees to comply with the requirement but it was a confined grace period because we do see this as an imminent health and safety risk with employees not wearing appropriate RPE. Once you - - -

PN697

THE DEPUTY PRESIDENT: Ms Noakes, does your client say that each affected employee has been the subject of consultation ?

PN698

MS NOAKES: We say that we have consulted and we've met our obligations, Deputy President. And we've consulted extensively. In relation to the urgency of this dispute we received a dispute notification from the CEPU on 30 November. We shortly thereafter made an application to the Commission to determine this matter. We have attended consultations.

PN699

We have filed evidence of extensive health and safety considerations, risks in relation to the need to have appropriate and adequate RPA. So, we say that there is urgency to this matter. We also note that a question was asked about – Deputy President, you asked Mr Austin about Mr Hulls and – apologies, you may have asked him about

PN700

Mr Burnaby and his participation in particular consultation meetings. We note that Mr Hulls is also a WCC member and a HSR and that evidence - - -

PN701

THE DEPUTY PRESIDENT: And he gives evidence that he attended workplace consultation committee meetings.

PN702

MS NOAKES: Yes, Deputy President.

PN703

THE DEPUTY PRESIDENT: So, is your point that there's actually no evidence from any employee that they weren't consulted?

PN704

MS NOAKES: Yes, Deputy President.

PN705

THE DEPUTY PRESIDENT: Yes.

PN706

MS NOAKES: And two final matters that we'd like to raise. You asked Mr Austin if in his view it's necessary to determine the question of whether the status quo applies. It's our submission as the applicant that we do wish to have a determination on the question of status quo. We would like to understand if in circumstances such as these where there is a reasonable concern the status quo is enlivened. And so we do press for a determination of that question.

PN707

Deputy President, just to close out our submissions today, the dispute in question is whether the requirement to comply with the PPE procedure is reasonable. And what follows from that is a question about status quo. This dispute is not about

that TasWater must undertake fit testing for employees on the masks of their choosing. It is not about that employees should have RPE of their choosing.

PN708

It is not about that TasWater should provide RPE which is dictated by each employee's preference. And it's not a dispute about what is reasonable and practicable to avert risks. But we say that the PPE procedure is, for a workforce of over 900 employees, an appropriate procedure to have in place and a reasonable procedure to have in place. And that those employees in the service delivery of which there is approximately 400, perform a variety of tasks which are both proactive and reactive and we have heard from Mr Windmeyer today about that.

PN709

We also say that this is not a dispute about whether TasWater should return to consultation. And it's not a dispute about whether TasWater should adopt a change to the RPE that RPE for each employee based on an employee's individual preference which could occur at the whim of each employee depending on what they turn up looking like every single day or on a daily basis.

PN710

So, we say that this matter is confined to the reasonableness of the PPE procedure and not the other matters that have been advanced. In relation to the points that Mr Austin has raised of PAPR, the evidence shows that it is only appropriate for some tasks and not all tasks. And Deputy President, on page 774 and 775 of the court book there is a table which indicates the tasks that PAPR is appropriate or suitable to be used in.

PN711

And you will see on those two pages that it is very limited. The business has determined that PAPR is only suitable for tasks in two instances. It is also a costly alternative and we have the evidence of Mr Windmeyer at court book reference 993, paragraph 7 which shows that those units are 2200 each. TasWater has also determined that it is not a like for like alternative and that is contained in the evidence of Ms Taylor at paragraph 52 which is contained at court book page reference 42.

PN712

And even if TasWater decides to introduce PAPR more broadly there are a number of implementation steps that need to be undertaken before it could be made available to employees. And we say that's not necessary to implement it more broadly. But it's not simply the case of just deciding one day to introduce PAPR's at different sites. There are various implementation steps that would need to be taken as set out in the reply statement of Ms Taylor at paragraph 13(f) which is located on the court book reference 998.

PN713

Those are the key matters that we wanted to raise in response to the submissions put forward by Mr Austin, unless you have any further questions for us, Deputy President.

PN714

THE DEPUTY PRESIDENT: Generally the relevant employees are performing the tasks, they're using the masks as provided?

PN715

MS NOAKES: Yes, Deputy President.

PN716

THE DEPUTY PRESIDENT: And presumably that was the case before the requirement to be clean-shaven was flagged as being enforced.

PN717

MS NOAKES: Yes, Deputy President. I believe the evidence of Mr Windmeyer may say that the PPE is contained in trucks and in stores where employees can access. Would you like me to find that reference?

PN718

THE DEPUTY PRESIDENT: No. But presumably no one is suggesting that employees didn't use the masks at all?

PN719

MS NOAKES: No, Deputy President. There is no suggestion to that effect.

PN720

THE DEPUTY PRESIDENT: And so previously the masks were used by bearded employees from - - -

PN721

MS NOAKES: Yes, Deputy President.

PN722

THE DEPUTY PRESIDENT: But the employer now has a concern that they won't work because they're not worn in accordance with the Australian Standards or the manufacturer's specifications and that creates - - -

PN723

MS NOAKES: Yes, Deputy President.

PN724

THE DEPUTY PRESIDENT: Yes. Thank you. Is there anything else, Ms Noakes?

PN725

MS NOAKES: Those are all of the submissions that we'd like to make today, Deputy President.

PN726

THE DEPUTY PRESIDENT: Today is your last chance,

PN727

Ms Noakes. We're not coming back for another dance.

PN728

MS NOAKES: Apologies. Those are our submissions thank you, Deputy President.

PN729

THE DEPUTY PRESIDENT: Yes, all right, Ms Noakes. I thank all the parties for their helpful written and oral submissions. I'll reserve my official decision about these matters. I'm not going to try and give you an estimate I will get it out as soon as I can, you understand. So, (indistinct) emergency. It's a matter (indistinct). All right. Thank you, once again. Have a good day. We're adjourned.

PN730

MS NOAKES: Thank you, Deputy President.

ADJOURNED INDEFINITELY

[2.09 PM]

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