AW796143 **PR918644**

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

s.113 application for variation

Australian Liquor, Hospitality and Miscellaneous Workers Union

(C2001/5814)

SECURITY EMPLOYEES (VICTORIA) AWARD 1998

[ODN C No. 21725 of 1992]

[Print K8045 [AW796143]]

Security guards — Security industry

COMMISSIONER HOLMES — MELBOURNE, 11 JUNE 2002

Allowance.

DECISION

[1] This application by the Australian Liquor, Hospitality and Miscellaneous Workers Union (ALHMWU) (the union) made pursuant to **section 113** of the *Workplace Relations Act 1996* (the Act) sought to have inserted into the Security Employees (Victoria) Award 1998 [AW796143] [the award] a new allowance which was to be entitled the Aviation Security Allowance. The quantum of the allowance sought was 20 percent of the base rate for each classification contained in the award which applied to employees employed at the Melbourne (Tullamarine) Airport and the Avalon Air Base (part of the Qantas maintenance base) who are engaged in aviation security.

UNION SUBMISSIONS

[2] Ms Frenzel, for the ALHMWU submitted that the application was based on the Commission's wage fixing principles namely the work value principle. In her submission the general work covered by the award was the subject of a work value evaluation in 1991 and in relation to the specific work of screening within the security industry that had been the subject of a work value evaluation in relation to the Victorian award in 1999. She went on to submit that since the work value evaluation of general security work was undertaken as part of the minimum rates adjustment by the then State Commission in 1991, significant and dramatic changes had occurred in relation to the work value of the particular security guards who are the subject of this claim. Ms Frenzel also contended that there had been a significant change in the work value of all aviation security guards at Tullamarine as a consequence of the tragic events which occurred at the World Trade Centre in New York on 11 September 2001 and the collapse of Ansett Airlines on 13 September 2001.

[3] Ms Frenzel submitted that the union's claim had two constituent parts. The first part was that all aviation security guards had experienced a substantial increase in the work value of their duties since they were the subject of work value evaluation in 1991, such that it would warrant the payment of an allowance. The second part of the claim was based on the significant increase in work value which had arisen in relation to the performance of screening duties because of the measures which had been put in place following the tragic events of 11 September 2001 and the increased workload and changes to the conditions in which security screening work was performed as a consequence of the collapse of Ansett Airlines also in September 2001. She went on to contend that there was no barrier to the conduct of a work value evaluation of this particular work given that the circumstances under which the same work was being performed had changed significantly since it was last evaluated. Thus as the union would show, the claim fully satisfied the requirements of the work value principle of the wage fixing principles of this Commission.

[4] Changes in the value of the work which had taken place were clearly evident, not only as regards the changed requirements across the airport generally, but also when consideration was given to the technical nature of the work undertaken. Moreover there had been a significant deterioration in the conditions under which the work was performed. As regards the significance of the difference in the conditions under which the work was performed Ms Frenzel relied particularly on the decision of His Honour Senior Deputy President Polites in relation to checked baggage handlers [Print T2388]. As a consequence of a request for clarification by Mr Wood for the respondent, Ms Frenzel indicated that the claim did not include checked baggage handlers and it was concerned with work value changes which had occurred particularly since the adjustment of the award rates in 1999 by Gay C. Comparable variations had been made to the Security Employees State Government Departments and Instrumentalities (Victoria) Interim Award 1993 [**PR917859**] by Her Honour Senior Deputy President Harrison later that year.

[5] The Commission was also advised that the union would present witness evidence which established clearly the changed work requirements which had occurred between 1999 and post September 2001. As regards the latter Ms Frenzel submitted that the situation was dynamic and that work value changes continue to develop dramatically. The application did not seek to rerun the issue of regrading the technical screening functions performed by security guards. In essence the application was based on the implementation of the work value principle of this Commission regarding:

"

· *changed work requirements which have arisen as a result of legislative change in terms of the aviation regulations;*

· *increased expectations on the part of both airport clients and public with respect to aviation security;*

· *significant changes to the working environment of airport security guards; and*

· *the increase in workload of not only screening guards, but other airport security guards as well . .* "

[6] Ms Frenzel then led evidence in the form of both written witness statements and viva voce evidence from the following:

· Ms Josie Musumeci, a security guard who predominantly works at gate 35. It is through that gate that usually all vehicles needing to go " *air side* " have to pass. They are physically checked and then escorted by an Australian Pacific Airport Management (APAM) vehicle to their designated delivery or work location. Her evidence in addition to setting out her qualifications and work experience addressed the changed work requirements between 1999 and September 2001 and the further significant changes which had occurred post 11 September 2001. They included the physical examination of the interior of vehicles including the inside of car boots, central consoles, the storage areas of utilities and covered trucks etc. She also cited examples of weapons and other instruments/tools which had been recently confiscated from drivers.

· Ms Wendy McPherson - a level 2 guard who has worked over some 24 years at the International and both Domestic Terminals and is currently assigned to duties at Qantaslink. She detailed her qualifications including first aid and dangerous goods handling which she had obtained whilst employed at the airport. In addition to highlighting the special aspects of that work which entails the screening of incoming rather than exiting passengers from rural areas she set out in some detail the changes in work requirements between 1999 and September 2001 and the subsequent changes post 11 September 2001. In this latter regard she cited the increased range of items which were prohibited.

· Mr Williams Stevens - a level 3 security guard who has been employed at the airport for some fourteen years. His primary duties involved working as a Senior Security Officer at the Qantas Domestic Screening Point. He set out in some detail not only the changed work requirements for the same periods as had the preceeding witnesses but also the regulatory changes instituted by the Department of Transport (Commonwealth) and their impact on security duties. A significant aspect in addition to the increase in passengers and visitors had been the increased level of confiscations and also the host of reactions by general members of the public to the more stringent security arrangements.

· Mr Mark Russell - a level 2 security guard whose primary duties involved baggage screening for international departures which fall within the scope of APAM operations. (International traffic for airlines other than those of the Qantas group). Effectively Mr Russell's duties are concerned with the screening of checked baggage. It does not entail any dealings with passengers or other members of the public. His evidence was concerned with the background to and events which had led to the decision by Senior Deputy President Polites to grant an all-purpose allowance of 90 cents per hour to the security employees engaged in checked baggage duties.

· Mr Cameron Greenaway - a level 5 guard who works eight, 12 hour shifts on a rotating roster and is currently an Acting Supervisor in the security control room. He has been employed by Chubb security for 4 1/2 years at Tullamarine. His evidence set out in some detail the range of responsibilities required in the performance of his duties which included Deputy Chief Fire Warden, the monitoring of the Emergency Warning System Panel, monitoring of closed-circuit television system, attending to unattended baggage including suspicious objects, custody escorts etc. He too canvassed the changed work requirements for the periods covered by the other preceding witnesses.

[7] Ms Frenzel also tendered two of the written witness statements (those of Mr Diamond and Mr Feltham), which had been prepared for and tendered in evidence by the respondents in this matter during the proceedings in matter BP2001/2926, the section 170MX arbitration of the disputed matters some of which form the basis of the current proceedings. The host of other documentation including the *Air Navigation Act 1920 , Air Navigation Regulations 1947*

as well as various policy documents issued by various statutory authorities, including the Australian Competition and Consumer Commission etc., and awards, decisions and/or transcript or extracts thereof of various tribunals were also tendered by Ms Frenzel.

[8] Ms Frenzel turned to examine the work value wage fixing principle in some detail to support her contention that it allowed for the creation of specific allowances in awards where changes in work value were limited to specific circumstances and not applicable across the full scope of the award's operation. In that regard she relied on paragraphs 6(a) and (e) of that principle. An examination of the evidence in her submission clearly demonstrated the significant changes which had occurred in recent time particularly as a consequence of the events of 11 September and 13 September which dealt with the conditions under which the work was performed and which had not been the subject of consideration when the decision had been made by Gay C to reclassify security guards from level 1 to level 2. Changes in technology had been the primary basis upon which that reclassification had occurred. Moreover it had to be appreciated that when that change was introduced, security guards reclassified to level 2 had lost their entitlement to the airport security allowance and so the actual increase which they had received was diminished by the loss of that allowance. In the current operational arrangements there were only two level 1 security guards employed:

· at Qantas valet parking which was staffed by a casual;

· and at the Avalon air base.

[9] In her submissions the basis of the employer's case as demonstrated by an examination of the written submissions of Victorian Employers' Chamber of Commerce and Industry (VECCI) and Chubb was that the union's claim involved no more than just a greater quantity of work i.e. more of the same, and in real terms the work value of the positions had not changed. She took the Commission to the transcript before Gay C. to demonstrate that no attention had been given in those proceedings to the issue of the conditions under which the work was performed. Rather that variation was concerned with technological change and the union certainly was not seeking to use that change as the basis for the current claim. It accepted that two increases could not be given on the basis of the same ground for that change in work value. Moreover in the matter before SDP Polites regarding the security guards involved in checked baggage she observed that his deliberations and decision had been made prior to the events of 11 and 13 September 2001.

[10] In the union's submissions just because a broadband classification structure *might* comprehend the notion of the work done by aviation security guards, the real value of the work was not comprehended by that structure. The Commission, through the union's submissions, was taken through the history of award variations applying in various states in relation to screening activities. It was clear, in Ms Frenzel's submissions, from an examination of those variations which had been made to a number of awards that there was no consistency in either the terms of the variations, the date of effect or the nature of the case put by the applicant(s) - in some instances the variations were by way of consent. Turning to the decision of SDP Polites, Ms Frenzel submitted that it was clear that His Honour had found that the functions performed by checked baggage screeners were clearly different to passenger screening. He also found that a work value increase by way of an allowance for screening checked baggage was appropriate having regard to the revised training required of the screeners and the application of legislative requirements in relation to the items to be screened or the processes to be used which had their genesis in the conduct of the Olympic Games in 2000 in Sydney. Those requirements involved increased training on the job, more detailed and rigorous specifications in relation to security work, the requirement that security guards train other guards and the increased accountability and responsibility of checked baggage screeners. Ms Frenzel made it clear that the checked baggage screeners were not part of the application before the Commission.

[11] In relation to the security guards who were the subject of the application it was clear that the changed legislative requirements in relation to airport security involved a requirement for guards to be trained and certified and also a requirement that experienced and qualified guards were required to train other guards. In addition to that the range of articles which were now prohibited had increased and the screening processes had been the subject of

significant alteration particularly in relation to international flights. Ms Frenzel submitted that the union's application was consistent with the principles contained in the authorities relied upon by Chubb and VECCI namely:

· Mitsubishi Motors Australia Limited Vehicle Industry Award, [Print M6389];

· State Electricity Commission of Victoria v the Federated Ironworkers Association of Australia

· Schmidt J of the New South Wales Industrial Commission in *Crown Employees (Toll Collectors) Department of Main Roads Award,* (the Toll Collectors case)

in that the union was not seeking to double count work value increases as the basis for its claim. Moreover, it was clear from the evidence before the Commission that the work value changes were specific, had occurred over a brief period of time, were radical and clearly demonstrable. In that regard specific reference was made to exhibit A15, the Commission's own inspections at Tullamarine as well as the union's submissions which were specifically put as follows:

> *" The work value change demonstrated by the evidence before the Commission and supplemented by the inspections and the union's submissions clearly meets the tests. It is clear that the work of aviation security guards has become more demanding. The nature of the work in some areas but not others has changed. The skill and responsibility exercised by aviation security guards in some areas but not others has changed, and the conditions under which the work is performed has changed, we say, in probably 75 per cent of the areas which were the subject of the inspections by the Commission."*

[12] Ms Frenzel then set out the changes which had occurred utilising the tests which had been spelt out by Senior Commission Taylor 124 CAR 295 at 308 (*Flight Attendants' Association of Australia and Qantas Airways* Limited, (24 November 1998), AIRC [Print Q8926]) which in turn had been incorporated in the decision of Wilkes C in Print Q8926. She submitted that the award as currently formulated did not recognise a number of factors explicit and implicit in those work value tests i.e. changed government regulation and supervision by the Department of Transport and Regional Services as a consequence of the events of 11 September 2001 and changes introduced by that authority in 1999 and 2000; the increased training requirements including dangerous goods training, defibrillation training and more skilled training in accordance with APAM requirements at gate 35 etc; increase responsibility for surveillance in relation to a larger range of items to be confiscated. Ms Frenzel set out under each of the headings used by Senior Commissioner Taylor her contentions as to how the current claim met each of those tests. I do not propose to summarise those submissions which are succinctly set out in the union's written closing submissions.

[13] She also drew on the decisions of Leary C [Print G5474], Macdonald C [Print K2423], Munro J. [Print H4342], Riordan D.P. [Print G6666] and SDP Polites [Print T2388] to support her contention that the work value principles of this Commission were satisfied by the application. Ms Frenzel then went on to outline the developments which occurred in relation to security screening requirements since the decision of His Honour SDP Polites which in addition to the items set out above included additional manual handling resulting from the increase in the range of prohibited goods, the additional hand searching of carry on baggage and the *absolute fact* that security employees faced a heightened probability and possibility of exposure to dangerous goods and/or situations.

[14] Ms Frenzel submitted that the Commission ought conclude from its own inspections that the physical environment in which security screening was undertaken was now completely different and had changed substantially in recent times. The work performed by security guards who dealt with passengers

was undertaken in quite a different environment to that performed by security guards involved in checked baggage screening and the screening undertaken by the former involved different items to those screened for by the checked baggage screeners. The circumstances were much more demanding now than they had been at the time that SDP Polites had undertaken his inspections and made his conclusions. She noted that both Qantas and Chubb had acknowledged that there were " *extra pressures and strains, challenging times and turbulent days* " [exhibits A12 and A15]. She noted the versatility of employees who were required to work at different security sites within Tullamarine and were transferred from time to time as needed.

[15] Ms Frenzel took the Commission to various observations in the Full Bench decision in the section 170MX decision Australian Liquor, Hospitality and Miscellaneous Workers Union and **Chubb Security Australia** Pty Ltd McIntyre VP, Harrison SDP, Grainger C [**PR910553**], particularly paragraph 3, which noted the demanding and important nature of the security screening performed at the airport. That decision went on to state:

> *". . . one matter raised during the case was whether consideration had been given to the making of applications to vary the awards to increase the pay of persons engaged in the aviation sector. This is an approach which, if pursued, may (and we put it no higher) lead to a pay increase."*

[16] In addition to drawing the Commission's attention to the passages in various exhibits tended by the respondents which were consistent with the assessment of that Full Bench decision in that they acknowledged the importance of the work, Ms Frenzel also contended, drawing on the evidence of Messrs McPherson, Stevens & Greenaway, that the respondent had not countered the union' s evidence regarding the various changes which had occurred in the performance of the work and the working environment which supported the union's claim that there had been an increase in the work value of the duties performed and therefore an allowance should be awarded.

[17] The union submitted that apart from the evidence of Mr Fuentes and Mr Davies none of the respondent's witnesses had direct experience of the duties performed or of the working environment in which the security screening took place. She noted that it was only made clear during Mr Fisher's evidence which was primarily concerned with the provision of the history of award variations in relation to screening classifications and a critique of the union's evidence that the respondent was seeking the removal of the airport location allowance. In her submission Mr Fuentes' evidence involved the invalid comparison of circumstances pre- September 2001 with evidence concerning the post 11 September 2001 situation. As to Mr Diamond's evidence regarding the operation of gate 35 it was clear that he did not understand the requirements placed on the security screening at that point and was unaware of the need for persons entering through that gate to obtain an Airside Security Identification Card [ASIC]. In comparing the operations of the ANZ control room and the airport control room he acknowledged the fact that the training of other security guards was a requirement at the airport, that the security guards were not paid any more in recognition of the changes that had occurred in their work including the training of other screeners and that the award classifications did not comprehend such work. Moreover whilst Mr Diamond gave evidence that there was no difference in the surveillance carried out at the airport when compared with that performed at the courts he was unable to provide any figures in relation to the security operations at the courts and acknowledged that the hours of work, the shift arrangements and the working conditions were different as between the airport and the courts.

[18] In relation to Mr Davies' evidence concerning defence contracts Ms Frenzel submitted that during cross-examination it had been established that the sites under his supervision did not entail the use of x-ray screening of incoming personnel, there was no data kept in relation to the numbers of personnel entering the sites and that his experience of security screening at the airport amounted to one and a half days, that he had not undertaken the necessary mandatory training and had not worked at the airport, post September 2001. His evidence also indicated that the number of guards employed in security screening at the airport had increased as a consequence of 11 September.

[19] Mr West had provided a comparison between the working conditions at the ANZ bank and Qantas control rooms. It was Ms Frenzel's submission that his evidence should be given little weight as he had prepared the statement utilising the written evidence of Mr Greenaway and had also reflected the outline

of the employer's submissions. Moreover Mr West had prepared his evidence prior to visiting the Qantas control room. During that visit, which was undertaken one week before his appearance as a witness before the Commission, he had not interviewed any one of the employees. In her submission it was clear that had he not had had access to Mr Greenaway's statement then he would not have been aware of the finer details of the operations of the control room at the airport. In summary therefore Mr West's evidence should be given very little weight because his comparison had not been properly undertaken and when examined closely demonstrated the differences between the control rooms without establishing the similarities.

[20] Ms Frenzel then turned to the evidence of Mr Fuentes regarding the differences and the similarities between screening at the law courts and that the airport. She believed that his evidence was designed to demonstrate that the work was similar. She contested the view that that inference could be drawn as Mr Fuentes had been unable to indicate the number of people who passed through the security screening process at the courts, she noted that the courts hours of operation were between 9.00 a.m. on 5.00 p.m. Monday to Friday, and that he was unable to provide clear evidence about the comparability of the confiscation requirements at the courts and the numbers of confiscations vis a vis what occurred at the airport.

[21] Moreover whilst Mr Fuentes had worked 30 shifts at the airport only two of those had been after 11 September 2001. He acknowledged that his evidence in relation to the alleged changes in the attitude of airport clients towards confiscation was not based on his own knowledge. Whilst Mr Fuentes sought to compare the regulatory frameworks applicable in relation to court and aviation security it was clear from his responses during cross-examination that he was not aware of the requirements of the regulations in relation to court security. As to his allegations that he had been the subject of harassment during the shifts that he had worked post 11 September Ms Frenzel made no submissions in that regard. She submitted that his evidence lead to the conclusion that the security screening performed at the airport could not reasonably be compared with that undertaken at the law courts. It was clear that the working environments were different, the regulatory frameworks were not the same, the methods of recording confiscations at the courts were not available and that his experience post September 2001 was limited to two shifts.

[22] In relation to the evidence of Mr Johnson, Ms Frenzel submitted that it confirmed various witnesses evidence regarding the changed requirements for security screening at the airport including the need for experienced screeners to train new guards as well as acknowledging that the regulatory requirements of the aviation industry were not applicable at the other sites which he had compared with the airport in relation to the competencies and work requirements needed by security guards at those sites. In relation to his comparison between the operation of the ANZ control room and that of Qantas he acknowledged that he had never visited the Qantas control room although he had on three occasions visited the domestic screening at the Qantas terminal. In her submissions, Mr Johnson demonstrated only limited knowledge of the training and competencies required of security screeners at the airport in relation to dangerous goods, defibrillation etc and he also acknowledged that defibrillation training was not common within the security industry.

[23] Ms Frenzel submitted that Mr Johnson's evidence regarding the training of new guards by experienced supervisors and the history of the regulation of aviation security training generally ought be accepted, but in relation to the work requirements and training needs for other areas of the airport which he had not visited his evidence should be given little weight. She submitted that on the evidence of Mr Russell it was clear that the changed working conditions applicable to the passenger screening security guards since September 2001 had not been experienced by the checked baggage screening guards. She also noted that the ACCC have approved increased charges by the airlines as a result of the government mandated changes to security requirements and tended as exhibits, its publications to that effect. Reliance was also placed on an extract from the Herald Sun which contended that charges for increased security, particularly in relation to baggage screening had been introduced at the airport.

[24] Finally Ms Frenzel addressed the union's draft order which sought an operation date of 13 September 2001 because of the exceptional circumstances which had developed from that time and therefore it was only proper that the allowance sought should apply from the date. In relation to the 50 cents per hour allowance which had been applied as a result of the Commission's recommendations made pursuant to **section 111A** A, the union submitted that that

should be absorbed in the allowance sought. In relation to the quantum of the proposed allowance Ms Frenzel submitted that it was not excessive. In support of the order she tended a comparison of comparable awards which provided recognition of the particular difficulties faced by security guards and that:

> *"... the awards have been varied at different times for different reasons... and "5.7 It is also clear that each award has its own set of allowances, different shift penalty rates, weekend penalty rates and overtime rates."*

[25] The granting of the application was in her submission, important in maintaining the integrity of the award safety net in fulfilment of sections 3(d)(ii), 88A(b) and 88B(2) of the Act. She observed that SDP Lacey when terminating the bargaining period had observed that Chubb was not prepared to negotiate beyond the processes for the arbitration of the dispute.

[26] Ms Frenzel noted that the employer's application to remove the airport location allowance should have been made by way of a **section 113** application, that such an application involved a reduction in the safety net and therefore it was a special case which should not be entertained by the Commission as presently constituted. She denied that the union had not kept the terms of a deal which had been reached with the employer in relation to the arrangements to apply pursuant to APAM's requirements at gate 35.

RESPONDENTS OUTLINE OF SUBMISSIONS AND RESPONSE.

[27] Mr Wood, for the respondent, submitted that **Chubb Security Australia** Pty Ltd ("Chubb") employed nearly 250 employees in fulfilment of its contracts to provide security services at the Melbourne airport (Tullamarine). Those services include General/Building Security Services; X-rays Screening Services; Gate and Basic Services; and Site Location Control including Control Room Services. He then turned to set out briefly the history of the matter which had ultimately lead to the current proceedings. That summary was as follows:

> *" On 8 June 2001, the union served s.170MO notices and organised industrial action.*
>
> *On 15 June 2001. Chubb made an application to terminate the bargaining period. This application was refused on 18 June 2001.*
>
> *On 20 June 2001, Chubb made an application to terminate the bargaining period. On Friday 21 June 2001, the Commission terminated the bargaining period.*
>
> *Hearings were held on August 21 (inspection), August 22, 23, September 27, 28, October 4 and a decision was issued by the Full Bench on 31 October 2001, which dismissed the union's application.*
>
> *After unlawful industrial action had been taken by the union and its members following the Full Bench decision, the Commission made a recommendation on 2 November 2001,* inter alia *that the union make the current application."*

[28] In relation to the " *new* " post 11 September 2001 duties Mr Wood submitted that they could be summarised in the following terms:

> 1. Aviation screeners were being required to do duties which non-aviation screeners had been undertaking for years. In that regard he relied on the evidence of Messrs Diamond, Johnson and Fuentes. He relied in particular on Mr Fuentes' evidence that:

". . . the standards at the airport changed more to the standards that we have in the courts. . . . items that generally would be taken at the courts are now been taken at the airport, which beforehand were not taken": [PN 2666];

2. the current duties are in essence unchanged from the previous duties which entailed looking for prohibited material and that all that had occurred was that additional material had been prohibited after 11 September and that the processes involved in recognising that material remained unchanged. Reliance was placed on the written and oral evidence of the three witnesses referred to in (1) above;

3. the duties currently performed were within the scope of the duties which the security screeners had been trained to undertake; and

4. entailed no more than the duties which the security screeners were expected to perform as a result of their reclassification from the level 1 to level 2. Reliance was placed heavily on the written evidence of Mr Fisher.

[29] Mr Wood contended that the union's application and its submissions in support thereof focused very heavily upon the work of the security screeners and the increased confiscations that had occurred since 11 September. In that regard he submitted however that such work in identifying and confiscating prohibited items was in fact the very essence of the screeners' function. In support of that contention he drew upon the evidence of Mrs McPherson who under cross-examination described her work over the past 23 of the 24 years in terms as described in clause 15.2.3 of the Award. Moreover the purpose of her job and the way in which it has been performed had not changed over those 24 years. He contended that similar evidence was given by Mr Stevens.

[30] In his submission, all that changed was that a wider range of items are now being confiscated. The types of those items which were set out in an annexure ("A") to his written outline of submissions were the same as those which had always been confiscated at the Courts. In relation to the union's submissions which had highlighted the fact that the number of items which had been confiscated had increased dramatically since 11 September 2001, he submitted that that issue was irrelevant because the Commission was concerned with an application based on increased work value and not an increase in work *load* . Moreover in relation to the number of items confiscated Mr Wood submitted that the suggestion by Ms McPherson that one in two items were confiscated was inaccurate and that the number was in fact approximated 1 in 100. An examination of the material before the Commission would reveal that there had been a decrease in the number of items which were being confiscated some months after September 2001 and in his submission that dimunition would continue over time.

[31] Turning to the contention that the security screeners are working " *harder* " than they had previously he submitted that that was contradicted by the evidence of Messrs Diamond, Fuentes and Johnson. There had been a significant increase in the number of screeners employed, the nature of the clients with whom they were required to interact had not changed significantly and they fell into two groups, business travellers and holiday makers. The type of duties that they were required to perform had not changed significantly. Moreover it was clear from the evidence of Mr Davies that in many sites throughout Victoria there has been a recent increase in the number of security guards.

[32] He went on to submit that even if Chubb had not increased the number of security screeners at the airport, the increasing workload was an irrelevant consideration to the Commission's deliberations in relation to a work value application. In that regard he drew on the authority of the decision of Leary C (as she then was) in *TWU v Altona Petrochemical Company Limited* (Print H3683). He went on to submit that even if the increasing workload was of relevance that in fact there had been no increase in the workload because there had been a 50% increase in the number of screeners employed by Chubb at the airport from 80 to 124 and that evidence was accepted by the union's witnesses particularly Mr Stevens who had accepted that in relation to the Qantas domestic terminal a third screening point had always been opened.

[33] Given that the increased level of confiscations did not justify work value increase, Mr Wood contended that the union had placed considerable reliance upon the secondary screening function. In his submission those screeners were over classified at level 2 and should more properly be classified at level 1. In his submission that assessment had been accepted by Mr Stevens in his oral evidence. The skills performed by the secondary screeners were in fact no different to those exercised by security screeners some 24 years ago before the advent of x-ray screening.

[34] Mr Wood submitted that the union sought to rely on peripheral evidence which either had not been set out in its outline of submissions or if it had, did not emphasise its significance in its oral submissions. Some of the oral evidence which related to the effect of split shifts and the questioning of security screeners by members of the public was not relied upon by the union in its final submissions. He contended that an examination of that peripheral evidence indicated that there had been no change. He cited the fact that the checking of screening points by Federal departmental inspectors was comparable to that carried out in relation to the County and Magistrates Courts. In relation to the frequency of such unannounced checking he relied on the evidence of Mr Stevens who after detailed cross-examination acknowledged that their incidence was " *about the same* " after the 11 September as it had been before. In relation to the training required in Dangerous Goods handling, he contended that it had been a requirement for the airport security screeners for a number of years and was very similar to that performed at other security sites.

[35] In relation to defibrillation training Mr Wood submitted that an examination of the evidence would reveal that it was required on other sites and that in relation to first aid training generally it had always been a requirement at the airport and a first aid allowance had been paid for the performance of such duties. In relation to the increased checking of the x-ray equipment and detection gate there had only been a minor change in the testing requirements with the number of testing points being increased from 3 to 17. As to the union's reliance on the change in rosters Mr Wood submitted that this was an irrelevant consideration given that rosters are changed every year or so and that the last change that had occurred was some 18 months ago. Moreover the union's contention that rostered changes had occurred in contravention of the award provisions was not germane to a consideration of work value issues.

[36] The respondent contended that the evidence in relation to the changes which had occurred was really supportive of nothing more than the " *mere change* " that occurred in relation to any job. It drew on the decision of the Full Bench in *State Electricity Commission of Victoria v. The Federated Ironworkers Association of Australia* [Print G7498] [*SECV]* which in turn had been adopted by NSW Industrial Commission Re *Crown Employees (Toll Collectors) Department of Main Roads Award* [(1987) 23 IR 254 at 258-259] (Toll Collectors' case). In both those decisions the conclusion had been reached that there was no change in the value of the work performed but rather " *the skills which qualified a person for a particular category of work may become fully tested* ". Mr Wood contended that there was evidence that the workload of security screeners had in fact diminished even though this was not a consideration relevant to work value issues. In that regard he pointed to the evidence of Mr Stevens that the number of training hours had been reduced over time from 120 hours to about 40 and moreover that the training provided now is as it had been over the past 11 years by " *experienced aviation screeners or leading hands* ".

[37] Mr Wood acknowledged that there may have been some basis to a work value increase claim in relation to a limited number of screeners namely an additional first aid allowance for those guards who had undertaken defibrillation training (some 10 to 12) and possibly an additional allowance/classification for those " *experienced aviation screeners* " who number between seven and ten who train the new entrants on the job. An application based on these grounds would have constrained any work value increases to those screeners who in fact have had a work value increase in the nature of the work, but in no way did that evidence justify a 20 percent wage increase for each of the 124 screeners. Rather it justified a small additional first aid allowance for the former and an additional training allowance for up to 20 screeners. Of course had the union taken that approach, Mr Wood submitted, Chubb might well have relied on the witness evidence of Mr Fischer that the reclassification of screeners which occurred in 1998 - 2000 was based in part on the increased training of other staff which had been accepted at that time.

[38] Drawing on the decision of the Full Bench in *SECV* Mr Wood submitted that just as a work value wage increase to aviation screeners was not justified simply because they were required now to undertake work which non-aviation screeners had always done, nor would it have been permissible for the classification of aviation screeners to have been reduced prior to 11 September 2001 because they were undertaking duties which required lesser skills than the classification in which they were then placed. In his submission the justification of a work value increase solely on the ground of the " *conditions under which work is performed* " devalued the concept of work value because it ignored the requirements of the work value principle that the nature of the work and the skill and responsibilities of the work must have changed. To grant such an increase was contrary to the principles set down by the Full Bench in *SECV*. In his submission the alleged changes which had occurred in the conditions of employment had in no way changed the nature of the work even though some of the screeners may be somewhat more stressed than they had previously been when performing their duties.

[39] Mr Wood went on to contend that if the union's claim was granted for a 20 percent wage increase then it was quite probable that because of the change in the relative position of aviation security screeners, wage leapfrogging would occur and that was contrary to Principle 6(a). He raised questions as to how the increase could be constrained to the aviation security screeners and what would prevent the flow on of that increase to security screeners performing similar duties in the Courts and to other Government employees. In this regard he drew on the evidence of Mr Davies in the context of an increased focus upon security issues currently throughout Australia. In sum because there was no real increase in the work value of the duties performed by aviation security screeners, (which was the real reason why the union had not sought a reclassification or a new classification as it clearly accepted that the current classification descriptions described encompassed the work performed by the aviation security screeners), it had sought instead a 20 percent allowance calculated on the base salary which if granted would result in wage leapfrogging.

[40] Mr Wood then took the Commission to the detailed written submissions which had been prepared on behalf of the respondent in relation to duties performed in the Control Room, at Gate & Basic Services and General/Building Security Services. In those written submissions the written and oral evidence of Messrs Greenaway, Diamond, West, Fischer and Ms Musumeci were drawn upon to support the respondent's contention that there had been no increase in the work value of the work of security screeners located at these security sites. I do not propose to set out the detail of those submissions. In summary they stated that the work performed by the security screeners at Melbourne airport had not changed since 11 September 2001 save as to an increase in the numbers processed, and the range and number of items confiscated, and that the duties were now comparable with the those undertaken by security screeners in the banking industry and in the courts.

SUBMISSIONS ON BEHALF OF VECCI.

[41] Mr McIlroy on behalf of VECCI lodged a written outline of submissions and written final submissions as well as making brief oral submissions to the Commission. Those submissions in most part mirrored the submissions which had been put by Mr Wood on behalf of Chubb and therefore I do not propose to restate those arguments. In brief VECCI supported the submissions of the respondent and submitted that there was no basis for granting the application given that it did not meet the requirements of the work value principle. The basis of the union's claim in effect fell within the scope of the classification descriptions contained within the award and the increase in classification awarded by Gay C had recognised the significant net addition to the value of the work performed by a person classified at level 1 by reclassifying those positions at level 2. The submission provided a detailed analysis of and rebuttal to each of the contentions contained in the union's written outline of submissions.

[42] Again those submissions were in a large part a reflection of the position put, albeit in different words using a different structure by Mr Wood. Mr McIlroy contended that the circumstances in which security screeners worked was quite different to those which had led SDP Polites to create a " *check baggage screening* " allowance. He submitted that rather than the circumstances in which the work was performed having become more complex, in fact as

a result of recent changes there was an " *improvement and simplification of work processes with new equipment, procedures, work organisation and training* " and therefore the work circumstances were less complex than they had been prior to 11 September. He also set out in considerable detail his analysis of the decision of Schmidt J. referred to above. He also referred to the criteria established by Senior Commissioner Taylor to submit briefly that:

"... the facts in this matter demonstrate as follows:

(a) Responsibility and accountability have not increased.

(b) Training requirements have not increased.

(c) Necessary attributes have not changed.

(d) There have been no demonstrable positive or negative work value effects from technological change.

(e) There is no requirement for increased technical knowledge or ability."

[43] In his submission the application should be dismissed.

CONSIDERATION OF THE ISSUES.

[44] In considering and determining the application before me, I must apply the wage fixing principles of this Commission. Given the nature of the application the relevant principle is Principle 6 - Work Value Changes which states:

"6. WORK VALUE CHANGES

" (a) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.

In addition to meeting this test a party making a work value application will need to justify any change to wage relativities that might result not only within the relevant internal award structure but also against external classifications to which that structure is related. There must be no likelihood of wage leapfrogging arising out of changes in relative position.

These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this Principle.

(b) In applying the Work Value Changes Principle, the Commission will have regard to the need for any alterations to wage relativities

between awards to be based on skill, responsibility and the conditions under which work is performed (s.88B(3)(a)).

(c) Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification, or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.

(d) The time from which work value changes in an award should be measured is the date of operation of the second structural efficiency adjustment allowable under the August 1989 National Wage Case decision *(August 1989 National Wage Case) [Print H9100, (1989) 30 IR 81].*

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

(f) Where the tests specified in (a) are met, an assessment will have to be made as to how that alteration should be measured in monetary terms. Such assessment will normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work.

(g) The expression "the conditions under which the work is performed" *relates to the environment in which the work is done.*

(h) The Commission will guard against contrived classifications and over-classification of jobs.

(i) Any changes in the nature of the work, skill and responsibility required or the conditions under which the work is performed, taken into account in assessing an increase under any other principle of this Statement of Principles, will not be taken into account under this Principle."

[45] It is clear from an examination of Principle 6(a) that " *Changes in work value may arise from changes in . . . . the conditions under which work is performed* " without any concommitant requirement that there be any changes in the nature of the work, skill and the responsibility required.

[46] It is also essential that in applying that principle I have regard to the approach which has been followed by this Commission in considering work value changes for decades. That approach has been referred to in these proceedings, the relevant authorities include:

· Coldham J, Cohen J and Griffen C in *State Electricity Commission of Victoria v. The Federated Ironworkers Association of Australia* [Print G7498];

· Senior Commissioner Taylor in *Vehicle Industry Award (1953)* [124 CAR 295 @ 308];

· Harrison SDP in S *ecurity Industry (NSW) Award 1996* - 8 July 1998 (Print Q3230),

· Gay C. *Security Employees (Victoria) Award 1998* - 27 April 1999 (Print R4276),

· Larkin C. *Security Employees (A.C.T.) Award 1998* - 18 July 2000 (Print S8238),

· Schmidt J. Road And Traffic Authorities of New South Wales and Public Service Association of New South Wales re: *Toll Plaza Officers on the Sydney Harbour Bridge* (1997) NSW IR Commission 96 (21 August 1997).

[47] In the light of these principles and authorities I have considered the detailed and comprehensive evidence submitted by all the parties to the proceedings, my own inspections of the various sites at the Melbourne (Tullamarine) Airport which took some 5 to 6 hours on 21 January 2002 and my own personal experience when travelling in a personal capacity. In the latter regard I travelled on Qantas Flight QF93 which departed Melbourne for Los Angeles on 14 April 2002 and returned on Qantas Flight QF94 which Departed Los Angeles for Melbourne on 13 May 2002. There was a significant difference in the security clearance arrangements applying as between those airports. Put briefly I was required to undergo a second hand search of my carry on hand luggage at Melbourne just prior to boarding the plane as I had observed was carried out during my inspections at the airport in January 2002. At the Los Angeles Airport the normal first security arrangements involving the use of x-ray machines and the walk-through detector were applied but there was no second search by hand or by any other means of my carry on luggage. I must say that I was somewhat surprised by this experience given the heightened security concerns in the USA and the fact that I was boarding a fully fuelled plane flying to Auckland.

[48] It is clear that the application before the Commission relates to a select group of security employees covered by the Security Industry (Victoria) Award 1996 and thus the category of employees covered by the application falls within the scope of Principle 6(c). The focus of the submissions of the parties was predominately on paragraphs (a) and (e) of Principle 6.

[49] On the evidence before me I find that there has been a significant change in the security requirements of the Commonwealth Department of Transport and Regional Affairs as is demonstrated by exhibits A12 to A15 and A17 to A20 inclusive. That documentation includes memos to staff of Qantas, determinations of the Australian Competition and Consumer Commission concerning applications for increases costs by the Australia Pacific Airports Pty Ltd (APAM). As well I was provided with further confirmation during my questioning of employees including management during my inspections of the various sites. It is also clearly evident that there have been significant increases in the number of clients passing through the Domestic Qantas Terminal as a result of the closure of Ansett and since September 11 a marked increase in the number of items which have been confiscated [exhibit A7].

[50] Whilst I do not propose to set out in detail a comparison of the evidence and submissions in relation to each of the sites which were the subject of my inspections I will briefly set out my overall assessment of all of the material before me in relation to the major sites.

[51] I turn first to gate 35 which is the main entry and exit point for commercial vehicles on to the " *Airside* "/Tarmac Area of the Airport. It is clear from the evidence before me and the detailed exchange that I had with the security manager and the security screeners when inspecting that site and my observations of the duties they performed, that there has been a significant change to the procedures which apply at the gate. The security staff are not only required to stop vehicles and search inside the cabins including under the seats and inside any storage area in the cabin e.g. CD storage boxes/personal storage areas between the front seats, glove boxes etc but also conduct a proper search of boots, utility trays, truck storage areas etc. This process is significantly more rigorous than what applied prior to 11 September 2001. In addition unacceptable material such as machetes, knives and the like are to be confiscated and have been confiscated. It is also necessary for the security staff to arrange for an APAM escort vehicle to take the arriving vehicle to the appropriate site which has already been contacted by the security staff to establish the need for that vehicle to attend that site. In addition to logging in those events the security staff also need to establish that the driver has been cleared by the relevant authority ASIC for entry on to Airside.

[52] Whilst it is true that the objective and role of the security staff at that site is unchanged from that which obtained previously i.e. to prevent the entry of any unauthorised vehicles, [unauthorised or prohibited] cargo and illicit equipment/weapons it is my assessment that as a consequence of the events of 11 September 2001 there has been a significant increase in responsibility placed on the security guards working at this site and more onerous procedures are required to be followed and are being followed.

[53] Whilst there has also been an increase in the workload as a consequence of the significant construction being undertaken particularly in relation to alterations to the freight area and prior to that to the terminal buildings, that of itself does not justify a work value increase.

[54] All in all I am satisfied that there has been a change in work value as a consequence of not only a change in the conditions under which work is performed at that site but also that there has been a change in the level of responsibility required to be applied at that site as identified in [51] and [52] above. Consequently I propose to recognise that increase in the terms specified below.

[55] As a result of my inspections of the security site at the Qantas Maintenance Workshops I have come to a similar conclusion in relation to the security employees engaged at that site for the reasons set out above albeit the circumstances are somewhat different in that the vehicles that enter into that site do not go " *Airside* " but rather enter highly secure areas which are concerned with not only the maintenance of many aspects of operational passenger aircraft but also Defence/Armed Services equipment. Again as a consequence of the events of 11 September 2001 the conditions under which the security duties are performed at that site have gained far greater importance and an intensification of the application of security surveillance. I am satisfied on balance that an increase in work value has occurred and that it ought to be recognised by way of special allowance.

[56] In relation to the Qantas freight operations area I am led to conclude that the circumstances pertaining to the security arrangements at that site have also changed since 11 September. During my inspections of that site it was clear from my discussions with the number of the staff employed in that area and also with the security manager that there had been a tightening of security particularly in relation to access by non-unauthorised airport staff, transport drivers etc. Operations within that site are also affected by the fact that significant construction activities had commenced and would continue for quite some time. Of particular importance in this area was the almost daily movement of precious metals and minerals which required highly regimented procedures to be strictly enforced to ensure their secure storage and egress. There was a degree of commonality with the operations of the security site at the Qantas maintenance workshops and at gate 35. I have arrived at the same conclusion for this site.

[57] I turn now to the x-ray screening services site. An examination of the evidence before me as well as the submissions put reveals that there has been a significant increase in the number of clients passing through the sites primarily as a result of the closure Ansett airlines operations. This is clear from an examination of the detailed statistics provided in relation to the number of passengers and visitors set out in Attachment I to the witness statement of Ms Pickering - an increase of between 30 and 50 percent for the week ending 20 September 2001 and subsequently, over the average data for the preceding quarter. As regards the number of items surrendered/confiscated - whilst there is some lack of comparability in relation to some of the data contained in the same exhibit because for one five week period from 13 September to 11 October the recording of surrendered items related particularly to items forwarded in the hold of the aircraft, the subsequent statistics include all items taken, most being confiscated - there has been a marked increase. It is clear that from a weekly average of some 25 surrendered articles for the period 22 June to 6 September 2001 the number rose to an average of approximately 1,500 for the six week period from week 11 October to 29 November 2001. Such a marked increase in the number of confiscated items does in my view add significantly not only to the workload but also the inter personal interaction and client frustration thereby affecting the working environment quite markedly.

[58] There have also been changes to the testing arrangements of the detection gate through which passengers are required to walk such that at the set up

each day and at each change of shift rather than there being three testing points the Department of Transport has increased that number to 17 which in my view requires greater technical skills by the operators. Whilst the evidence varies somewhat in relation to the impact of the greater range of articles which are to be confiscated on the attitude of the clients i.e. travellers and visitors to the airport, and the related increased surveillance by the security officers. It would appear that business travellers and US citizens more readily accept the more intense surveillance whilst holidaying travellers are more resentful and at times abusive to the staff, that generalisation is just that. I am led to conclude from time to time that fractious and abusive behaviour is demonstrated toward security staff much more frequently from individuals falling into either category than was experienced prior to the introduction of the increased surveillance following 11 September 2001 and as a consequence of the increased workload resulting from the demise of Ansett.

[59] Whilst evidence has been given in relation to the impact of changed shift rosters I am not satisfied that that material is of any significant weight and it has been so treated in my consideration of the application in relation to this site or for that matter any of the sites. It is clear on the evidence, which is agreed by the respondent, that a number of the security staff are required to undertake higher first aid training not least in relation to the use of defibrillation equipment. The use of that equipment is not of course limited to these particular sites but also applies in relation to incidents which occur elsewhere within the terminal buildings i.e. in general publically accessable sites. Another factor warranting consideration is the increased training responsibilities placed upon various security screeners in that they are required to train new entrants to the work site. It is of interest that the respondent whilst claiming that the training responsibilities had been diminished because the number of training hours had been significantly reduced, did in its closing submissions, acknowledge that a special training allowance may well have some justification for those security screeners involved in providing such training. It did of course indicate that it reserved its position had such a claim for a special allowance for those employees been pursued. Again from my examination of the oral and written evidence before me such as it is, I am led to conclude that there has been greater concentration on the training of surveillance screeners located at the various domestic and international screening points.

[60] A corollary of the more stringent security regulations is the nature of the random and unannounced inspections conducted by Department of Transport officers who by direct observation from various parts of the airport and by the secreting of prohibited items on and in their person and items contained in their hand luggage test both the x-ray operators, the detection gates, the operators of the handheld screening devices and the screeners engaged in searching hand luggage to ascertain that the appropriate level of efficiency and accuracy in surveillance is satisfied and in accordance with the relevant regulations.

[61] In light of these considerations I am also of the view that an allowance to reflect the increase in work value which has resulted from the changed conditions under which the work is performed and the increased responsibility which has been placed on security screeners working at the sites which included the Southern airlines site, is justified.

[62] The next site to be considered is the Qantas Control Room. A detailed witness statement regarding the functions performed at this site was provided by Mr Greenaway which set out in considerable detail all of the responsibilities of this position. It is the focus for all Qantas security functions within the Melbourne airport area including responsibility for the general supervision of each and every Qantas post, which are manned by Chubb, as well as responsibility for overnight security for the whole airport when the Duty Airport Manager leaves after the departure and/or arrival of the last flight each day. It was his evidence that post September 2001 there was a higher in the incidence of reporting of suspect bags/objects - which include unattended baggage that may or may not be perceived as dangerous - concern about Anthrax and dramatically increased responsibility and workload because of the greater awareness and concern by airport staff, passengers and the general public about security matters. The Commission during its inspections of this site benefited from the detailed information provided by Mr Greenaway and a comprehensive discussion with him about the activities centred at this site as well as observing the operations of that Centre.

[63] Evidence, both written and oral in relation to this site, was also provided by Mr West. That evidence was quite detailed and provided a comparison of

the operations of the control room at the airport and comparable control rooms operating within the banking system not least at the ANZ control room. However, in my view his evidence warrants being given a lesser weight because not only was his written statement largely based on the written statement prepared by Mr Greenaway but it was lodged prior to his own visit to the control room at the airport during which he did not converse with any of the security control room staff in relation to their role and responsibilities. Whilst his evidence in relation to the ANZ control room and similar evidence given by Mr Diamond have not been contradicted, the Commission is faced with the dilemma that there were no inspections of such sites arranged as part of these proceedings. The evidence of Mr West and Mr Diamond were based on relatively short visits to the airport and this has been taken into account when weighing all of the evidence regarding this site.

[64] It needs to be recognised that the circumstances of the operation of those non-aviation control rooms referred to by Mr West and Mr Diamond are somewhat different to those applying at the Tullamarine Control Centre, in that public accessibility to the controlled sites in the banking sector is limited by and large to normal banking hours which are significantly shorter than the operational period of Melbourne airport which in relation to domestic flights entail staff commencing duty at around 4.00 a.m. and the last passenger activity apart from the international terminal being around 11.00 p.m.

[65] The respondents to these proceedings presented, through the witnesses it called, detailed written and oral evidence regarding the comparability of the working conditions which applied at Melbourne airport with those which apply in both the banking sector and within the Court system with in Victoria. In the latter case special reference was made to the County Court and the Magistrates Court. In relation to the banking sector much of the evidence was concerned with security arrangements which apply at various banking headquarters rather than at the branch level. Certainly on the material before me no detailed information was provided as to the number of employees or members of the general public who were subjected to such security scrutiny nor was the regulatory framework if any, applicable at banking sites canvassed. Moreover the conduct of any third party testing was not addressed.

[66] From my consideration of the material before me in relation to the banking system it would appear that a relatively very small number of members of the public would be the subject of such surveillance. Most of that evidence really related to the question of the operation of control centres and the comparability of the banking control centres with the Qantas control centre. I have dealt with that material above and indicated my concern about the basis upon which the assessment provided, particularly by Mr West, regarding the comparability between the two industries was reached. In relation to other aspects of banking security which may or may not be germane to my deliberations, detailed evidence was not provided nor was the Commission given an opportunity to inspect the allegedly comparable sites in the banking industry in order to come to a considered view on that matter.

[67] In relation to the comparability of the security arrangements at Melbourne airport vis a vis the Court system I have had considerable experience in visiting Magistrates Courts throughout Victoria when performing my duties as a Commissioner when on country circuit in relation to **section 170CE** applications. Such visits have entailed sitting at each of the major regional centres throughout Victoria as well as a number of lesser centres. In not one instance have I ever been subjected to any security surveillance of any type even prior to announcing the purpose of my attendance. Within the last two years I was also required to attend under subpoena the Melbourne Magistrate's Court in order to give evidence relating to my past responsibilities as Director General for Labour (Victoria) regarding the appointment of inspectors under various pieces of State Occupational Health and Safety legislation. At no stage in that process was I the subject of any security surveillance. That experience does not of course negate the validity of the evidence of Mr Fuentes concerning his role as part of the security surveillance processes which apply within the Court system.

[68] I have given serious consideration to his evidence and I am concerned about his inability to advise the Commission as to whether there are any regulations setting out the nature and level of security which must obtain within the Court system. Moreover his inability, and that of other of the respondent's witnesses, to provide material in relation to the number of persons who are subjected to those surveillance procedures within the courts and the nature of the items which are to be confiscated and the frequency with which confiscations take place has not assisted my deliberations in relation to this

aspect of the matter and the concern that the respondents have expressed regarding the inevitability of leapfrogging occurring in relation to any work value increase which I might award.

[69] Having considered the material before me in relation to security operations within the Melbourne airport and the evidence put forward concerning the banking industry and the security arrangements in the Court system I am led to conclude that the special circumstances which have arisen since 11 September 2001 and 12 September 2001 at Melbourne airport are unique and do not provide in my view a basis for any claim for the flow on of the allowance I propose to award to those industries. In other words the requirement of Principal 6(a) that: " *There must be no likelihood of wage leapfrogging arising out of changes in relative position* " is in my view satisfied.

[70] Having considered all of the relevant material and evidence concerning the operation of the Qantas Control Room I am of the view on balance that there have been changes in the circumstances in which the work is performed in this area post 11 September and that on balance there has been an increase in work value and that I in accordance with the provisions of Principal 6(a) should award an allowance to compensate for that fact.

[71] I turn now to the question of the quantum of the allowance which I believe is justified on work value grounds to apply to security employees engaged under this award at Melbourne airport. I face the same dilemma that was faced by His Honour SDP Polites when deciding an analogous matter in relation to checked baggage handlers at Melbourne airport. Having considered all of the evidence before me and noting the evidence of Mr Mark Russell who is employed as a checked baggage screener under this Award in relation to international baggage and the reasons given by His Honour I am minded to grant the employees who are the subject of this application a comparable allowance which shall be known as the Aviation Security Allowance.

[72] I am not satisfied on the material before me that the union has made its case that such an allowance should be of the order of 20 percent of the base rate for each of the relevant award classifications. For me to conclude to the contrary would require a much more compelling case particularly in relation to the significance of the changed circumstances which had arisen as a result of 11 September 2001 events in New York and the impact of the closure of Ansett. Quite simply the material to warrant such an increase has not been put before me. I am satisfied on the material that is before me that an allowance of 97 cents per hour would be appropriate in all of the circumstances and that that allowance be for all purposes of the Award.

[73] In relation to the union's application that such an allowance should be applicable from the 13 September 2001, I am not satisfied that the union has made its case for the overturning of a long-standing principle of this Commission that retrospectivity in relation to award variations is only granted in exceptional circumstances. It is clear from the detailed history of this matter that other approaches had been taken prior to the making of this application in order to obtain additional benefits for these employees. I note that since my recommendation made pursuant to **section 111A** A affected employees have been in receipt of an hourly allowance of 50 cents. I therefore have decided not to grant retrospectivity in relation to this new allowance. I also note the union's submissions that the current 50 cent allowance resulting from my **s.111A** A recommendation as an interim arrangement should be absorbed in any allowance I awarded. I agree with that submission and so determine.

[74] Respondents in this case have submitted that the Commission should remove the Airport Location Allowance from the award. I note in Ms Frenzel's submission that the application has not been made in the normal way by the lodgement in writing in accordance with the rules of this Commission of an application pursuant to **section 113** of the Act. Nevertheless I have considered the application. I note that it is based on the fact that three of the witnesses called by the union have their primary residences within one to two miles of the airport. Put simply I am not convinced that that evidence is in anyway sufficient to justify the granting of the application particularly when one considers that it has an impact on at least some 124 persons employed at the airport by Chubb and may well have implications beyond that although there is no evidence before me to support such an observation. I therefore refuse the respondent's application to delete the allowance from the provisions of this award.

[75] The parties are directed to confer on the terms of the order and to lodge within seven days an agreed version of a draft order to be operative from today's date with the Victorian Registry of this Commission. I propose to issue the relevant order once I have considered the draft submitted.

BY THE COMMISSION:

COMMISSIONER

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