



*Tasmanian Industrial Commission*  
Industrial Relations Act 1984

**T No. 8963 of 2000**

**IN THE MATTER OF** an application by the Tasmanian Chamber of Commerce and Industry Limited to vary nominated awards of the Tasmanian Industrial Commission to remove obsolete training provisions, including:

Australian Traineeship System (ATS)  
Career Start Traineeship (CST);  
Career Start Trainee  
Jobskills  
Nettforce  
Australian Vocational Certificate (AVC)  
Industrial and Commercial Training Act  
1985

**FULL BENCH:**  
DEPUTY PRESIDENT WATLING  
COMMISSIONER ABHEY  
COMMISSIONER PEARCE

HOBART, 7 September 2000

**TRANSCRIPT OF PROCEEDINGS**

Unedited

**(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)**  
**(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)**

**HEARING COMMENCED 10.34am**

DEPUTY PRESIDENT: I'll take appearances in this matter please. Mr Edwards?

5 **MR T.J. EDWARDS:** If it please the commission, EDWARDS T.J. I appear for the Tasmanian Chamber of Commerce and Industry and also for Australian Cement Holdings Pty Ltd, the Metal Industries Association of Tasmania, the National Meat Association of Australia, [Tasmanian Division] and The Hop Producers' Association of Tasmania. Appearing with me is **MS V. STEWART.**

10 **MR P. TULLGREN:** Sir, my name is TULLGREN and I appear for the Australian Liquor, Hospitality and Miscellaneous Workers Union and I am also instructed to appear on behalf of the Tasmanian Trades and Labor Council and I understand, sir, you were provided with notice of authority yesterday.

15 DEPUTY PRESIDENT: Yes, thank you. Further appearances?

**MR T. JACOBSON:** If it please the commission, TIM JACOBSON appearing on behalf of the Health Services Union of Australia, Tasmania No. 1 Branch.

20 **MR R. FLANAGAN:** If it pleases the commission, FLANAGAN R., for the Australian Workers' Union, Tasmania Branch.

**MR K.J. RICE:** If it please the commission, RICE K.J. I appear on behalf of the Tasmanian Farmers and Graziers Employers Association.

DEPUTY PRESIDENT: Good. Mr Edwards?

25 MR EDWARDS: Thank you, deputy president. Before I commence to outline the background of this application, deputy president, I'd like to formally place on the record firstly, my congratulations and those of my organisation for your elevation to the status of deputy president in the recent reshuffle of the commission's commissioners, and also to formally place on the record our congratulations to Commissioner  
30 Abey on being appointed to the industrial commission and also to acting Commissioner Pearce on their elevation to the peerage. That's not only my personal congratulations but those of my organisation as well.

DEPUTY PRESIDENT: I'm sure it's appreciated - your sentiments.

35 COMMISSIONER ABEY: Thank you very much, Mr Edwards.

COMMISSIONER PEARCE: Similarly, Mr Edwards.

MR EDWARDS: This application, deputy president and members of the bench has resulted from the Tasmanian Chamber of Commerce

and Industry being provided with some funding by the federal government to undertake some work in respect of tidying up the awards of the Tasmanian Industrial Commission in respect to new apprentices, as the federal commission described them, which includes both apprenticeships and traineeships.

As the commission, as constituted formerly by Commissioner Watling, is well aware the TCCI initiated a process which falls into four or five different parts to try and address the results of that inquiry. A number of those have been processed before the commission, the most recent I understand or recall was T9050 of 2000 which was a section 23 application which was processed by then Commissioner Watling which sought to include additional industries into Schedule A of the National Training Wage (Tasmanian Private Sector) Award.

Other activities are ongoing by way of ongoing negotiations between my organisation, a number of other employer organisations and a range of employee organisations to update the National Training Wage (Tasmanian Private Sector) Award in respect not only to the nomenclature but also in respect to the content of that award that we would hope to be able to bring before the commission in the near future.

In the interim, one of the issues that we did discover was that a number of industry and even enterprise-based awards of the commission contain provisions which are no longer relevant. They are, as we are instructed, creating some confusion in the world inasmuch as some employers believe that they can continue to utilise the provisions in these awards for the engagement of trainees.

That is clearly not so and it is a matter that we decided we needed to deal with as a matter of reasonable urgency as a consequence of which we have lodged this application with the commission which seeks to amend a significant number of awards of the commission by removing traineeship provisions that arise from previous traineeship programs that have existed throughout Australia.

As has already been identified by your associate, deputy president, in reading out the application, they include the Australian Traineeship System, Career Start Traineeships, Jobskills Traineeships and uses of terms for bodies such as Netforce, the use of terms like the Australian Vocational Certificate and references to the *Industrial and Commercial Training Act 1985* which has been repealed and replaced by the *Vocational, Education and Training Act 1994*.

To commence this process, we wrote to all organisations, both union and the employer, who had an interest in the awards that we had through our research identified as contained in these obsolete provisions. For the completeness of the commission's file I'll table a copy of that correspondence and attached to the back of it is a schedule of the organisations to which it was directed.

DEPUTY PRESIDENT: We'll mark this **EXHIBIT TCCI.1**.

MR EDWARDS: I don't take the commission through the exhibit in any great depth. What it does say is that we've undertaken a review of all private sector awards in order to identify obsolete training provisions. The review indicates that you have an interest in the following award or awards and the term 'awardint' is a place at which would have been inserted the awards relevant to the organisation in question.

We've identified the training provisions that we deem to be obsolete and indicate that we believe they ought to be removed. I don't take the commission further through the letter.

The third page of exhibit TCCI.1 is in fact a letter sent at the same time to the Tasmanian Trades and Labor Council which is couched in similar but not identical terms and obviously that's because of the nature of that organisation.

Annexed thereto to those pieces of correspondence is a schedule of unions that this correspondence was forwarded to and the awards in which they had a registered interest, which those awards would have been those that were included at that place that I identified in the first piece of correspondence.

I haven't annexed the list of employer organisations but I assure the commission that all registered employer organisations with an interest in the relevant awards were likewise sent correspondence in similar vein.

COMMISSIONER ABEY: How did you identify those particular unions, Mr Edwards? There's presumably a common denominator?

MR EDWARDS: The common denominator is their registered interest in one of the awards that was identified as containing obsolete provisions. My faithful assistant, Vivienne Stewart actually undertook the research and went laboriously through absolutely every award of the commission and all of those that were identified as containing obsolete provisions we then took the parties and persons bound clause of that award and that formed the basis for the creation of that database.

COMMISSIONER ABEY: I am sure it was done very thoroughly.

MR EDWARDS: Absolutely. The then CEO of the organisation would have ensured that that was so.

In those letters to the unions and to the employer organisations, we asked them to advise us whether or not they had any concerns with the nature of the application and whether or not they believe the

provisions resident within their awards did retain an element of relevance that we were unaware of.

5 We received a variety of pieces of correspondence in response. They included a correspondence from the Australian Services Union wherein that union advised us that they believed that the provisions in their awards did retain relevance, consequent upon which we undertook further research. We had further dialogue with the ASU and I can now advise that that organisation has sent us recent correspondence advising that they consent to this application; that they have no objection to these provisions being removed from their awards.

15 We also received correspondence from the Health and Community Services Union which likewise indicated that it did not consent to our application, indicating that they believed that there was relevance remaining in the provisions in their awards. Subsequent discussions with Mr Brown from HACSU I understand have resolved those differences, but I'm sure Mr Jacobson will advise the commission accordingly.

20 We received a letter from the Tasmanian Trades and Labor Council which objected in a generic sense to the nature of parts of the project we were undertaking but noted that we had an intention to remove obsolete provisions and raised no objection to that and further indicated that they would seek to coordinate the response from trade unions which has subsequently occurred.

25 The Construction, Forestry, Mining and Energy Union have indicated that they were prepared to continue discussions with us although they had no objection, as I understood it, to the removal of obsolete provisions, but it relates to the ongoing use of trainees in awards within which they have an interest.

30 The Australian Workers' Union indicated that they supported our application to remove obsolete provisions. And I understand that Mr Flanagan will confirm with the commission today that in fact as they are doing the award review process that's occurred since the date this application was lodged, they have in fact removed some of the provisions that we're seeking to remove today. So there's an element of duplication. But because the commission hasn't issued orders on those awards yet where they have been simplified, we're unable to accommodate them in terms of our draft orders, but Mr Flanagan will, I understand, advise the commission accordingly.

40 And finally, we received correspondence from the Shop Distributive and Allied Employees Association indicating their support for the actions we were taking in respect of obsolete provisions and we received correspondence from the Australian Liquor, Hospitality and Miscellaneous Workers Union indicating that at that time they did not consent to our application but that that was an interim position and that they would advise further at a later date.

I since understand that the concerns of the ALHMWU have been resolved but I haven't had that directly from their organisation, but I understand that would probably be advised to the commission today.

5 The TCCI, I think, have been fairly thorough in the way they've approached this question and we've done that quite deliberately because the employment of trainees in the field is becoming somewhat problematic. It's causing a number of disputes and I understand a further number of disputes could come before the commission in the near future if some of these issues aren't addressed with a matter of  
10 some urgency.

The first point in that is the removal of provisions which people have endeavoured to rely upon erroneously. Obviously there is a need and a public interest being served by the removal of obsolete provisions from awards, because if people rely on them in good faith believing them to  
15 be the extant law, they may well find themselves in considerable difficulty.

It's also been true and our experience of recent times, that the organisation - or the government body that has the responsibility for vetting applications for new traineeships and new apprenticeships  
20 haven't perhaps been as astute as they might have been to ensure that the industrial relations underpinnings have been correct when nominated in the applications for new training agreements and, as a consequence, some people have been led to believe that their reliance on some of these award provisions is the correct legal situation so far  
25 as industrial relations underpinnings is concerned.

It's quite clear to us that that is not the case and therefore we would urge the commission to react favourably to this application.

I think the commission, as currently constituted, in all three instances is fairly well familiar with the development of traineeships in this state  
30 through the Australian Traineeship System which started in about 1985 and through its various evolutionary stages through a number of different federal government programs through the CST, AVTS, et cetera, so I won't take the commission through that as a detailed trip down memory lane. I think all of us understand very clearly that none  
35 of those programs is currently running and as a consequence the obsolescence of the provisions is, I think, self-evident.

I am prepared to go through them should the commission require me to but I don't believe that would be necessary.

40 DEPUTY PRESIDENT: No, from my point of view it's not necessary, Mr Edwards.

MR EDWARDS: Thank you, deputy president. What I'd like to do at this stage is table a revised document by way of orders seeking to vary the awards that are before the commission.

DEPUTY PRESIDENT: We'll mark this document **EXHIBIT TCCI.2**. Thank you.

MR EDWARDS: This list, deputy president, is by way of a variation on the document that was lodged with the commission with the application. It accommodates a number of things. There were some minor errors made in the original application in terms of the reference to certain clause numbers and they mainly came about, not through errors as such, but through awards being varied during the interim period. This matter has been in the possession of the commission for a reasonable period of time but has been somewhat delayed, as I understand it, by changes within the bench of the commission, and was in fact lodged back in early June, as I recall it.

DEPUTY PRESIDENT: And, I think, the request of the parties.

MR EDWARDS: Yes, absolutely. There was an original request for the matter not to be programmed subject to the finalisation of the discussions.

DEPUTY PRESIDENT: That's right.

MR EDWARDS: That was subsequently overridden by further correspondence, I think, in mid-June.

The document you have before you is our attempt to clean up the previous version. The Aerated Waters Award has now been removed from the schedule.

The Farming and Fruit Growing Award has been amended. There was previously a point number 4 which sought to consequentially renumber remaining clauses. That's been removed. I won't refer to that in each and every case, deputy president. There were a number of awards in which we sought to consequentially renumber remaining clauses where in fact the training clause was the last clause in the award so it was an unnecessary provision.

The Barristers and Solicitors has been removed from the orders.

DEPUTY PRESIDENT: So that means the provision for trainees in that award remains?

MR EDWARDS: They have been dealt with by way of the award simplification process in a matter before Commissioner Shelley, as I'm advised, deputy president.

DEPUTY PRESIDENT: Barristers and Solicitors Award?

MR EDWARDS: Yes.

DEPUTY PRESIDENT: Commissioner Imlach, do you think?

MR EDWARDS: I think it might have gone to Commissioner Shelley in Commissioner Imlach's absence, deputy president, but I could be corrected on that.

5 DEPUTY PRESIDENT: In an award like that, does that mean that it overrides the National Training Wage Award?

MR EDWARDS: I think the National Training Wage Award continues to only have application where there is nothing to the contrary in the relevant industry award, as I understand the relationship between the two awards.

10 DEPUTY PRESIDENT: So in the Barristers and Solicitors Award, for example, where it has provision for trainees, then employers in that industry will follow that award and not the - Barristers and Solicitors Award and not the National Training Wage Award.

15 MR EDWARDS: That would be my understanding. Now if that is the case and that's borne out to be the case, it would require a consequential amendment to the National Training Wage (Tasmanian Private Sector) Award -

DEPUTY PRESIDENT: To remove -

20 MR EDWARDS: - to delete the Barristers and Solicitors Award from the schedule. Now I would have to say at this point, and I have said it to the commission as constituted by yourself previously, deputy president, that the TCCI position is that we believe the appropriate way to deal with trainee provisions is in a centralised way through a single award, and I think the reasons for that become self-evident if  
25 you look at the disarray that this area has been allowed to fall into through inactivity by the parties respondent to the relevant awards and things have been allowed to fall into some disarray as a consequence.

30 By having it in one place we can concentrate on keeping it up to date at all relevant points in time. The unfortunate fact with traineeships is that they're subjected to considerable political interference; almost every time there's a change of federal government we will find a new traineeship system will be created. It may only be a change in name or a change in emphasis, but every time it is going to require an  
35 amendment to the awards of the commission to keep it relevant and up to date. Now if it's kept in one place that would be a lot easier to deal with, and that is most definitely part of the discussions we're having currently with the TTLC and other registered employee organisations in respect of the National Training Wage (Tasmanian  
40 Private Sector) Award.

DEPUTY PRESIDENT: I thought it might have been a new direction seeing that we're putting traineeships in a restructured award. We're

taking them out of the National Training Wage Award and putting them in individual awards now.

MR EDWARDS: Yes, and that would be our preferred option. Now I understand this one has been -

5 DEPUTY PRESIDENT: No, just be careful of what I said. I said I thought it was a new change in direction that you now take them out of the National Training Wage Award and put them in a new restructured award, e.g. Barristers and Solicitors.

10 MR EDWARDS: That's certainly not our direction. I understand that what's happened in the Barristers and Solicitors and to a lesser extent the Aerated Waters Awards has been an exercise by the ASU to, in effect, hedge their bets on this application.

15 Now what I haven't got is the consent of the ASU to remove those provisions from those two awards. It would certainly be our wish that that take place, but what we will do is make a separate application to deal with that issue on its own, particularly given that Mr Paterson was unable to be at these proceedings this morning because I understand he's appearing before one of your colleagues in hearing room number 2 seeking to restructure another award.

20 DEPUTY PRESIDENT: And put traineeships in?

MR EDWARDS: Well, I think not, as I understand it. I think we've been able to head that one off at the pass, but unfortunately we were a little bit late in heading off a similar thing happening in respect of Barristers and Solicitors.

25 DEPUTY PRESIDENT: Right, I understand that, thank you.

MR EDWARDS: The next amendment would be at the Photographic Industry Award - P016 - where we've deleted the provision dealing with consequential renumbering.

The same can be said for the Insurance Award - P040.

30 DEPUTY PRESIDENT: My document hasn't got Photographic Industry Award in it.

MR EDWARDS: At the second page of the document, deputy president. The second entry.

35 DEPUTY PRESIDENT: Sorry, I'm one of those poor mortals that think it runs alphabetically.

MR EDWARDS: Oh, no. No, no, we wouldn't do that, commissioner.

DEPUTY PRESIDENT: You've certainly won me on that. You've confused me.

MR EDWARDS: We try to refer to the codes that the commission use.

DEPUTY PRESIDENT: Right, so you're running by the codes. Thank you.

5 MR EDWARDS: We've done it that way because we actually asked the commission to provide us with a list of awards and they gave it to us in award code order. I'm sorry.

DEPUTY PRESIDENT: No worries.

MR EDWARDS: So we've now located the Photographic Industry Award.

10 DEPUTY PRESIDENT: Yes.

MR EDWARDS: Thank you. I've dealt with the Insurance Award on the way through.

15 In respect to the Medical Practitioners Award which is P046, point 4 - or amendment number 4 - it says delete Clause 31 - that has been renumbered to Clause 30 - Trainee Clerk.

20 In respect of the next entry, Optical Industries - P049 - at variation number 3 where it says: delete from Clause 8 - Wage Rates - (2) Clerical Employees, it used to read '[c]', that has been amended to read '[b]' which I think more properly aligns with the proper reference in the award.

Variation number 5 has been deleted from the Printers Award which is P053.

Similarly, variation number 4 has been deleted from the Public Vehicles Award which is P056.

25 At P061 - amendment number 5 has been removed.

At P067 - Timber Merchants - amendment number 5 has been removed.

At P073 - Wholesale Trades - amendment number 5 has been removed.

30 At P165 - Clerical and Administrative Employees (Private Sector) Award - at amendment number 8, the word 'remaining' was previously between words 'renumber' and 'clauses', and that's been removed that's because there's a fairly fundamental renumbering required in that award both before and after the place at which the award was varied.  
35

Plant Nurseries - P168 - amendment number 4 was removed from the original application.

And at P179 - Wholesale Pharmaceutical - variation number 4 has been removed.

5 Now I think with a bit of luck and a fair breeze, with that little exercise, we've gone through and picked up those areas in which the orders that we lodged with the commission were at odds with the proper references in the awards or contained provisions which in themselves were superfluous by trying to renumber clauses which didn't exist.

10 COMMISSIONER PEARCE: Mr Edwards, at the commencement of your commentary in relation to the draft orders, you spoke about the Farming and Fruit Growing Award.

MR EDWARDS: Yes.

15 COMMISSIONER PEARCE: Did I understand you to say that the consequential renumbering clause, clause 4, had come out? It still appears on my draft but it's unnecessary, as I understand it.

20 MR EDWARDS: You correctly recorded what I said, Commissioner Pearce. Now I'm trying to explain it. I have two conflicting documents in front of me on that point; one tells me it's been removed and the other one tells me it's still in there. Could I perhaps leave it with the commission on the basis that we will confirm immediately following these proceedings whether or not that amendment is required. It's simply a question of fact; if the training provision was the last provision in the award then variation number 4 is not required. If there are other clauses still within the award they need to be renumbered and therefore variation number 4 would be required.

25 COMMISSIONER PEARCE: The answer to that, Mr Edwards, is that 4 will come out.

30 MR EDWARDS: Thank you, Commissioner Pearce. Could I seek to further amend my amended draft orders which are TCCI.2 by deletion of variation number 4 in P003 - Farming and Fruit Growing Award.

35 I don't intend to labour this point any further. It would be our submission that the public interest is best served by this application being granted in the way that it's been presented. It's consistent with the Wage Fixing Principles of the commission which were most recently handed down in the decision of the full bench on 6 July 2000 in T8413 of 1999 and T8483 of 1999. In that regard we would suggest that this matter is consistent with the award review process principle of the commission at principle 12.1(iii) which refers to the removal of obsolete or amendment of inaccurate award provisions. Whilst that principle tends to occupy itself predominantly with doing that through individual award applications, the degree of urgency required to progress these matters we would put to the commission is a reason to

move away from that award-by-award approach and allow this application to proceed on the basis on which it's been lodged.

5 We would additionally make the submission that the principle 4 of the Award Safety Net - and particularly the requirement for it to be adjusted from time to time to ensure its relevance - also gives appropriate ground for this application to proceed on the principles of the commission.

10 We would also make the submission that there is in section 35 of the Act ample scope for an application that seeks to amend five or more awards of the commission to proceed on the basis that this application is proceeding, that is, before a full bench and not otherwise and therefore it's properly founded in law. We would also make the submission that the requirements of section 36 of the Act would be best met by the successful prosecution of this particular application.

15 Unless there is any specific questions from members of the bench, I would stop at that point.

DEPUTY PRESIDENT: Any view on the operative date, Mr Edwards?

MR EDWARDS: The beginning of the first pay period to commence on or after today. If it please the commission.

20 DEPUTY PRESIDENT: Good. Thank you. Mr Rice?

MR RICE: Thank you, Mr Deputy President. Sir, before proceeding, I would like to also extend our sincere congratulations to all members of the bench, on yourself being a promotion to deputy president, and Commissioner Abey to be appointed to the commission, and Deputy  
25 President Pearce; our warm congratulations from the farming community and we look forward to working with you in your new capacities.

COMMISSIONER ABEY: Thank you, Mr Rice.

DEPUTY PRESIDENT: Thanks, Mr Rice.

30 COMMISSIONER PEARCE: Thanks for the elevation too, Mr Rice.

DEPUTY PRESIDENT: Yes?

MR RICE: I note, Commissioner Pearce, you did pick up that matter on the Farming and Fruit Growing Award. It was about all I was going to have to say because I didn't think that amendment 4 was going to be in there and I'm just rising to support the comments made by the  
35 TCCI - Mr Edwards - and it has our full support. If it please the commission.

DEPUTY PRESIDENT: Thank you. Mr Tullgren?

MR TULLGREN: Thank you, sir. I might indicate first that I note that Mr Rice had elevated Commissioner Pearce to a deputy president. I might note that perhaps my form of address should be your lordships as my learned friend Mr Edwards elevated you to the peerage. It's  
5 always been my ambition to appear before the lords of appeal. Perhaps we have them in Tasmania.

Having said that in relation to the members of the bench, the position of the Tasmanian Trades and Labor Council for whom I'm instructed to appear and which I'll deal firstly, is to support the application. There  
10 has been, as my learned friend's advised the commission, some extensive consultation in which those that instruct me have been directly involved and that has led to the application - the amended application - that is before the commission this morning.

Having said that, I would submit that the application is properly before the commission and that there is no legal basis, that is, no basis  
15 under the terms of the *Industrial Relations Act* not to approve the application. It certainly doesn't offend the public interest, whatever the public interest might be on any particular day or moment, but in this case it certainly wouldn't offend the public interest, and therefore the  
20 Tasmanian Trades and Labor Council does support the application.

In relation to the Australian Liquor, Hospitality and Miscellaneous Workers Union, it does not object to the application and in particular to those parts of the application which touch upon awards to which it is the principal party or a party of less exalted status in those  
25 particular awards.

So save for any questions that the commission might have, they'd be the respectful submissions on behalf of those that instruct me.

DEPUTY PRESIDENT: Thank you. Further submissions from the union side - Mr Flanagan?

MR FLANAGAN: Yes, if I may. Members of the bench, the Australian Workers' Union supports both the intention and the objective of this application. In our submissions it would be contrary to the public  
30 interest for the commission not to approve the application which is before you this morning.

The difficulty which Mr Edwards alluded to at the opening of his submissions is a very serious one in that a number of employers who have access to the award, obviously, form the view that they are able to use the training provisions which are currently within awards as the appropriate industrial regulation for employment arrangements. That,  
35 in our view, is a serious problem which needs to be addressed and we would hope that this is the first step on the path towards ensuring that there is appropriate industrial regulation in the state awards in relation to training matters generally. So on that basis we certainly  
40 support the intention and objection of the application.

But, having said that, members of the bench, there are some difficulties with the draft orders which are presently before you which I need to draw to your attention.

5 If I can take you firstly to - well, before I do, as part of the award review process, the AWU, like a number of organisations, have been reformatting the awards within this jurisdiction and in particular our organisation has, from recollection, reformatted the Dairy Processing Award which is P022 which appears on page 2 of the proposed draft order. Also, on page -

10 DEPUTY PRESIDENT: When you say 'reformat', has the commission handed down an order in respect to this matter?

MR FLANAGAN: No, but it has approved the reformatting and we are waiting on that order and as a part of that process we deleted the training provisions.

15 DEPUTY PRESIDENT: Well, it may be that a member of the commission that has to oversee the orders arising out of this matter may be saved a job.

MR FLANAGAN: Well, that may be the case. Well, the other awards which are affected, if I can just point them out to you -

20 DEPUTY PRESIDENT: Yes.

MR FLANAGAN: - so that the matter can be further examined, is the Plant Nurseries and Shellfish Industry Awards which appear on the last page to the schedule and on the second-last page the Fish -

25 DEPUTY PRESIDENT: No, just give me the numbers if you don't mind. I've been caught with this before.

MR FLANAGAN: P168, P169, P160 and P022.

DEPUTY PRESIDENT: Right. And all those awards you're suggesting have been reformatted in accordance with principle 12.

30 MR FLANAGAN: Yes, that's my recollection, Mr Deputy President. And finally, we'd support the amendment of P003 to vary the draft order to delete variation 4.

In those circumstances we support the application. If it pleases the commission.

35 DEPUTY PRESIDENT: Thank you. Right. Mr Jacobson, have you any further submissions?

MR JACOBSON: Only, members of the bench, Mr Edwards referred initially to some objections that were raised by the HSUA with respect to a number of awards. All I'd like to say with regard to that is, yes,

now it is a consent application. We don't have any problems now with those changes that are being proposed. I believe it's consistent with the principles established by the commission and certainly meets the requirements of section 36 of the Act. If it please the commission.

5 DEPUTY PRESIDENT: Thank you. Mr Edwards?

MR EDWARDS: Just to tidy up those points raised by Mr Flanagan if I might, deputy president, the orders obviously have been drawn on the basis of the extant copies of the awards.

10 DEPUTY PRESIDENT: I appreciate that. I understand and that's all you could work off.

MR EDWARDS: If I had have drawn them up the other way I could have drawn more criticism I think.

DEPUTY PRESIDENT: No, that's right.

15 MR EDWARDS: To the extent that they're unnecessary, obviously we don't seek to make a point of that and if the commission has already removed those provisions through another process then all for the good.

DEPUTY PRESIDENT: No, you can only work on the awards that are out there now.

20 MR EDWARDS: Thank you.

DEPUTY PRESIDENT: No further submissions? Mr Pearce might have a question that he wishes to raise with probably you, Mr Edwards, and I think it comes down to, if we go through the awards and we find other clauses that need to be varied because of cross-referencing, how do we come to grips with this? I think Mr Pearce has an example.

COMMISSIONER PEARCE: A couple of examples. The Miscellaneous Workers Award, clause 9(d) makes reference to Clause 40 - Overtime; that clause 40 would then come back to clause 39.

30 DEPUTY PRESIDENT: So I just take it that you're suggesting we have licence to pick up all these consequential things?

35 MR EDWARDS: If there's anywhere I've removed the term consequentially renumber clauses, can I put it back in? Could I ask that the bench consider the orders to require or request that all consequential renumbering be effected as part of implementing the substantive changes to the awards. I took it out in a number of places where it said, consequentially renumber clauses. Consequential to me in that regard would have included cross-referencing but I think Commissioner Pearce is quite right to raise the point.

COMMISSIONER PEARCE: In addition to the consequential, another example under Broadcasting and Television Award under Clause 8(3) - Clerk, the preface words are, 'except as described in paragraph (d) hereof'. My understanding is, paragraph (d) will no longer appear in the awards, so I think those words 'except' to 'hereof' would be excluded and the clause would commence 'adults'.

MR EDWARDS: That's correct.

COMMISSIONER PEARCE: That sort of thing.

MR EDWARDS: That's the way I see it.

COMMISSIONER PEARCE: Fine.

MR EDWARDS: I'm not sure if there's a generic amendment I could make to the orders to facilitate that except to say that perhaps in every case if it were amended to allow consequential renumbering of any cross-referencing throughout the awards, or words to that effect.

DEPUTY PRESIDENT: Can I suggest that you leave it in the hands of the commission and if there's anything else, great shakes that we need to discuss, then I think individual members of the commission will take it up with the parties.

MR EDWARDS: Eminently sensible from our point of view.

DEPUTY PRESIDENT: But I don't think we're going to pick up every conceivable little thing in your TCCI.2 and I'm sure we'll have some queries when we start working on the awards themselves. In fact, if we didn't it would be the first time in my 16 years on the bench that we didn't so it might be something new.

MR EDWARDS: We don't want to surprise you, deputy president -

DEPUTY PRESIDENT: No.

MR EDWARDS: - at this stage of your career.

DEPUTY PRESIDENT: But can we leave it on the basis that we tackle it. If there is anything of significance - and I don't mean just tiny little things - that we get back to the parties.

MR EDWARDS: Thank you, sir.

DEPUTY PRESIDENT: Well, I can indicate to the parties that we will be approving the application and a written decision will be handed down in due course and the orders will be drawn by various members of the commission who have responsibility for those awards.

That now concludes this matter.

**HEARING CONCLUDED 11.15am**