

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 7087 of 1997

IN THE MATTER OF an application by the Tasmanian Trades and Labor Council seeking a flow on to all private and public sector awards of the minimum wage component contained in the decision of the Australian Industrial Relations Commission of April 1997 (Print P1997)

FULL BENCH

PRESIDENT
DEPUTY PRESIDENT JOHNSON
COMMISSIONER WATLING

HOBART, 28 August 1997

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Well this is a continuation of proceedings. Changes in appearances.

MR FITZGERALD: I'd be the only change in that regard, Mr President. I now appear with Mr Richard Brown on behalf of Tasmanian Chamber of -

5 PRESIDENT: I'm sorry, I might have misled everybody, it's not continuation is it? It's a separate application, a fresh application.

MR FITZGERALD: Well I'll resume my seat and wait for the others -

PRESIDENT: Yes, yes.

MS L.FITZGERALD: If it pleases the commission, LYN FITZGERALD, for the Tasmanian Trades and Labor Council.

10 PRESIDENT: Yes, very good.

MR G. COOPER: If the commission pleases, I appear on behalf of the Australian Workers' Union, Tasmania Branch, COOPER, G.

PRESIDENT: Thanks, Mr Cooper.

15 **MR P. NOONAN:** If the commission pleases, I appear on behalf of the Shop, Distributive and Allied Employees Association, Tasmanian Branch, NOONAN, P.

PRESIDENT: Mr Noonan.

MR C. BROWN: If the commission pleases, C. BROWN, appearing for the Health Services Union of Australia, Tasmania No. 1 Branch.

PRESIDENT: Yes. Thanks, Mr Brown.

20 **MR R. HUNT:** If the commission pleases, ROD HUNT, on behalf of the Tasmanian Trades and Labor Council.

PRESIDENT: Yes. Thanks, Mr Hunt.

MR I. PATERSON: If the commission pleases, IAN PATERSON, appearing for Australian Municipal, Administrative, Clerical and Services Union.

25 PRESIDENT: Very good. Thank you, Mr Paterson.

MR FITZGERALD: My turn?

PRESIDENT: Yes, your go, Mr Fitzgerald.

30 **MR W.J. FITZGERALD:** Thank you. I appear on behalf of the Tasmanian Chamber of Commerce and Industry, the Tasmanian Farmers and Graziers Employers Association, the Hop Producers' Association of Tasmania and the Metal Industry Association of Tasmania, FITZGERALD, W., J., and with me MR R. BROWN.

PRESIDENT: Very good. Thank you.

MR T. PEARCE: If it please the commission, PEARCE, T., for the Minister for Industrial Relations.

35 PRESIDENT: Yes, very good. Thank you, Mr Pearce. Ms Fitzgerald.

MS FITZGERALD: Thank you. This morning in - rather than actually proceeding, what I will be seeking from the commission is an adjournment to allow further discussions to occur between ourselves and particularly the TCCI. We have had some discussions with the TCCI and certainly don't have an agreed position at this stage. I
5 undertook to provide to the TCCI a response on two issues and some information to them. I've been unable to do that completely and therefore the TCCI have been unable to discuss this matter fully with their members and determine their position.

I've got a further meeting with my affiliates this afternoon in terms of the detail that I need. What our intention is, as you are aware, is to flow on the component of the AIRC
10 safety net adjustment that deals with the establishment of 359.40 as a minimum adult entry level classification rate, and that's what we will be seeking to do. We are not seeking, clearly, to vary the existing minimum wage provisions in some state awards. So matters that we have to address obviously go to matters of the public interest and we are keen to be able to put before the commission our understanding of
15 what the effect of establishing a minimum adult entry level classification rate of 359.40 will be in this jurisdiction. So as I say, what I'm seeking at this stage from the commission is an adjournment of these matters to allow firstly my completion of the information I need to undertake to get back to the employers to allow them to more clearly determine what their position might well be.

PRESIDENT: When you say you're not seeking to flow on the federal rate to some awards can you be -

MS FITZGERALD: No, what I'm seeking to do -

PRESIDENT: - more specific about that?

MS FITZGERALD: Yes, I can. I can be very specific. What I'm seeking to do is to
25 establish in all private sector awards where there is an adult entry level classification of less than 359.40, that 359.40 be established as the minimum rate. I am not seeking to vary. In some state awards there are minimum wage provisions and they're largely relating to the payment of a minimum wage in lieu of a seventeen and a half per cent annual leave loading. I am not seeking to deal with those provisions.

COMMISSIONER WATLING: But won't you have a conflict there, because the
30 minimum wage clause in awards talks about the minimum wage applicable?

MS FITZGERALD: Yes, I'm -

COMMISSIONER WATLING: It's only used if you turn to the annual leave clause as
35 a method for determining the annual leave loading in some areas. So if that particular clause remained in the award you would have a conflict between your entry level case and the minimum wage.

MS FITZGERALD: I don't think I do, I'm not seeking to establish a minimum wage. What I'm seeking to do is vary the adult entry level classification rate where it is
40 currently less than 359.40. That minimum wage provision is not uniform across state awards. There are some awards where it exists and some where it doesn't -

COMMISSIONER WATLING: That's right.

MS FITZGERALD: - and that's a matter of discussion with the TCCI, in fact, how that might well be dealt with on an award by an award basis and what the TCCI
45 response might be to an application by a party to seek to, for example, remove that provision and provide for a seventeen and a half per cent annual leave loading that would relate to the appropriate rate of pay.

COMMISSIONER WATLING: Yes. I still have to say that I think you may have some troubles if you have it there as a clause in the award and then you have an entry level clause for minimum rate as well, because which one would apply?

MS FITZGERALD: All right, well, I'll have a look at that.

5 DEPUTY PRESIDENT JOHNSON: Ms Fitzgerald, where does your position leave you in respect to Part IVA of the act which provides that the minimum wage will apply in enterprise agreements where the parties are allegedly at any rate award free?

MS FITZGERALD: My understanding is the test on the Part IVA Agreement is that it is the lowest paid classification in an award and in terms of the test now, the 'in all
10 circumstances fair' test, I'd like some information in terms of how the enterprise commissioner would in fact apply that test where there is no award. I mean, surely there would be a test against a relevant award, so it would be the lowest paid classification which would be the 359.40.

DEPUTY PRESIDENT JOHNSON: Forgive me, while I have a look at this. I think the
15 direction for the enterprise commissioner is rather more specific than that, is it not? In section 61F(1)(c) of the act and for purposes of the record, perhaps you will bear with me while I quote it:

*in the case of a person who is an adult and whose conditions of employment are
not covered by an award or industrial agreement, an hourly rate calculated by
20 reference to the minimum rate as established by the Commission under section
35 (1) (b)*

of the act et cetera.

MS FITZGERALD: But which the commission has not done.

PRESIDENT: Is about to do.

25 MS FITZGERALD: No, that's not what I'm seeking for you to do. I'm not seeking for the establishment of a minimum wage in this jurisdiction -

PRESIDENT: Well -

MS FITZGERALD: - I'm clearly not seeking that.

DEPUTY PRESIDENT JOHNSON: That's the very point I'm raising -

30 MS FITZGERALD: Yes.

DEPUTY PRESIDENT JOHNSON: - because the existing minimum wage will apply in these cases, \$257.40 or something, I think, isn't it? And that's what I'm getting at and I'm sorry if I'm tending to confuse you. It is not the intention of the TTLC and this application, as you express it to -

35 MS FITZGERALD: Yes.

DEPUTY PRESIDENT JOHNSON: - effect the operation of section 61F (c) of the act.

MS FITZGERALD: I'll have to look at that. What I've said it's not the intention to do, is, to deal with provisions in award - clauses in the awards that go to the notion of a minimum wage. I'm not attempting to vary those or deal with those matters.

DEPUTY PRESIDENT JOHNSON: Yes.

MS FITZGERALD: They will be dealt with on an individual award by award basis.

DEPUTY PRESIDENT JOHNSON: I do understand what you're saying. But if you are not moving in these proceedings to seek to have this commission establish a minimum wage -

MS FITZGERALD: No.

DEPUTY PRESIDENT JOHNSON: - then those persons who are in terms of Part IVA of the act award free will still be ineligible, if that's - well that's probably not the right word - will still be caught by the current quantum of the actual minimum wage.

MS FITZGERALD:

PRESIDENT: I'm sorry to raise this further question -

MS FITZGERALD: That's all right.

PRESIDENT: - while you're on your feet, but doesn't what you're saying you wish to do conflict with what your application says?

MS FITZGERALD: I don't think it does. It's - I think it's a difference in terms of the federal jurisdiction and the notion of the federal minimum wage and the application of that and the differences that exist in this jurisdiction in terms of the minimum wage. Now what I'm clearly seeking to do, as I said, is establish the lowest adult entry level classification rate as 359.40 where it is currently less than that and that's my understanding of the application of the federal decision.

PRESIDENT: Mm.

MS FITZGERALD: And certainly, from what I've seen of decisions of other commissions, that is what has been applied, what has been the application of the decision that the - in other jurisdictions.

PRESIDENT: Well there's been a common rate established.

MS FITZGERALD: Yes. Well in terms of how it actually - what - the timing of it and what has to happen in advance of it. But there's certainly - that an adult entry level classification rate of 359 be established as a minimum.

PRESIDENT: All right.

MS FITZGERALD: I'm not sure -

PRESIDENT: Well no doubt this will be the subject of further -

MS FITZGERALD: Yes.

PRESIDENT: - discussion.

MS FITZGERALD: Yes, obviously.

PRESIDENT: How long do you anticipate you'll need to -

MS FITZGERALD: Well given the matters that you have raised this morning, that I obviously need to look at further and how my application affects those, and perhaps

how we need to deal with them, if we need to deal with them, yes, I'd need some time to do that.

PRESIDENT: How long?

5 MS FITZGERALD: Well I'm certainly not - wouldn't be available before the end of October.

PRESIDENT: All right. Thanks very much. Mr Cooper.

10 MR COOPER: Mr President, the AWU supports the application for adjournment and obviously we'd be able to use that time to clarify with the TTLC the extent of the application. the application is to vary awards on an award by award basis where there is a minimum wage - where there's going to be introduced a minimum wage of 359.40. Some of our awards currently contain a rate higher than that and we'd like to talk to the Labor Council as to whether those awards are to be included in the application or whether they are to be excluded. If that's the case then we'd like to see the application be a little bit more specific and we'd like to take the time between the
15 adjournment to sort that out as well, and we take up the points that the bench has raised. Actually that was our view that that was what was going to happen. We are going to establish a new wage pursuant to section 35 of the act. So we are pleased with that clarification.

20 PRESIDENT: Yes. Any further comment from any of the unions present today? Mr Fitzgerald.

25 MR FITZGERALD: Well I'll be very brief in response, Mr President, members of the bench. We would certainly consent to the application for adjournment by the TTLC. The circumstances as indicated by Ms Fitzgerald as to the discussions we've had and the events since those I think, which are in the hands of the TTLC, accurately portray what has occurred and I suppose it's, unlike my normal position, I'm very happy to consent to the adjournment.

PRESIDENT: Did you say, unlike your normal position?

MR FITZGERALD: The record will show.

PRESIDENT: That's very good. Thanks, Mr Fitzgerald. Mr Pearce.

30 MR PEARCE: No, Mr President, I have no opposition to the application for adjournment. But it does seem to me that perhaps this matter is somehow possibly got the capacity to be caught up in subsequent proceedings before this commission in relation to award reform. I understand there was a hearing set down - or conference set down for September 15th. It seems to me that from the comments of the TTLC that
35 the award reform process of itself leads to an entry level rate. And I see that there is some consistency between what is being sought by way of the application and what might fall in relation to the award reform process. If it please commission.

PRESIDENT: Yes. We'll wait to hear the parties on that. Okay. Mr Deputy President? No.

40 Well your application for the matter to be adjourned is granted. The matter will be adjourned and the parties will be notified of a date post the end of October.

MS FITZGERALD: Thank you.

PRESIDENT: All right. No further submissions? The matter is adjourned sine die.

HEARING ADJOURNED SINE DIE