

DEPUTY PRESIDENT JOHNSON: I'll take the appearances please for the applicant.

MR. T. BENSON: If the commission pleases, TONY BENSON. I appear for the Construction, Forestry, Mining and Energy Union, Tasmanian Branch, sir.

5 DEPUTY PRESIDENT JOHNSON: Thank you, Mr Benson. Ms Thomas.

MS. J. THOMAS: Yes, JENNY THOMAS, for the Tasmanian Chamber of Commerce and Industry.

DEPUTY PRESIDENT JOHNSON: For the Master Builders.

10 **MR C. ATKINS:** If the commission pleases, CHRISTOPHER ATKINS, appearing on behalf of the Master Builders Association of Tasmania.

DEPUTY PRESIDENT JOHNSON: Ms Thomas, is this your first time as a lead advocate? It certainly is before me.

MS THOMAS: Maybe before you, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: So you're already experienced?

15 MS THOMAS: Yes.

DEPUTY PRESIDENT JOHNSON: I called these two matters on together since in my mind at least I could see no objection why they should not be dealt with together. Is there any objection to dealing with them together, Mr Benson?

20 MR BENSON: No, Mr Deputy President, except that we have some amendments that -

DEPUTY PRESIDENT JOHNSON: Yes, well perhaps I can deal with them as I come to them.

MR BENSON: Yes, sir.

25 DEPUTY PRESIDENT JOHNSON: Ms Thomas, do you object to the matters being heard together?

MS THOMAS: No, there's no objection.

DEPUTY PRESIDENT JOHNSON: Mr Atkins?

MR ATKINS: No.

30 DEPUTY PRESIDENT JOHNSON: In that case, I formally order that the matters be heard and dealt with together.

Yes, Mr Benson, you have some amendments?

35 MR BENSON: Yes, Mr Deputy President. In the - I'll refer to the Building Trades Award if I might first, sir. On page 2, sir, actually some of the clauses have been wrongly numbered, Mr Deputy President. Clause 51 should be clause - should read clause 50. Clause 52 should be 51. Clause 55 should be 54. Clause 56 should be 55.

And on page 4, Mr Deputy President, 23(e)(iii) has been omitted. It should read 7.30 moved to 7.50. Clause 54(e)(iii) currently is -

DEPUTY PRESIDENT JOHNSON: Forgive me, I'm not with you. I thought you said page 4.

5 MR BENSON: Well yes, I'm referring to page 4, sir, because there's two of them together there - that's where clause 23(e)(iii) should be, sir. I'm probably confusing you.

DEPUTY PRESIDENT JOHNSON: You certainly are, because the page 4 I'm looking at is the arrangement clause. Are you sure you've got the right page?

10 MR BENSON: Well I haven't got my glasses on, Mr Deputy President.

ASSOCIATE: I think he's reading page 4 of the draft order.

MR BENSON: Of the draft order, I am, sir, yes.

DEPUTY PRESIDENT JOHNSON: Oh, I see. Forgive me. Yes, I have that, Mr Benson. Thank you.

15 MR BENSON: Clause 23(e)(iii) should be 7.30 moved to 7.50, sir. That's been omitted from the application.

Clause 54(e)(iii) currently is at \$7.10 in the award and should be moved to 7.50.

DEPUTY PRESIDENT JOHNSON: Perhaps I'll just take these in some order that assures me that I've got things by the right handle.

20 Clause 54 23(e)(iii), which, for the purposes of the record is, living away from home, distant work allowance - goes from - is to be included in the order and it changes from \$7.30 to \$7.50 - is that correct?

MR BENSON: Yes, Mr Deputy President. It sounded confusing when I said it.

DEPUTY PRESIDENT JOHNSON: And the next one - was that clause 24 - meal -

25 MR BENSON: Clause 54, Mr Deputy President. Clause 54(e)(iii).

DEPUTY PRESIDENT JOHNSON: Yes - and in that case again for the record it's the same allowance by the title of 'Living away from home distant work', except in this case the allowance in the award is \$7.10.

MR BENSON: That's correct, Mr Deputy President, and that's to move to 7.50, too.

30 DEPUTY PRESIDENT JOHNSON: There was some oversight previously, I take it?

MR BENSON: Yes. Yes. Yes, there was, sir, yes.

DEPUTY PRESIDENT JOHNSON: All right, I'm with you, Mr Benson, this far.

35 MR BENSON: Thank you very much, sir. Clause 55, that's page 6 of the draft order, sir. It's shown as clause 56 there, sir, it's now 55. The old rate there should be \$7.00 to reflect the award, to be moved to 7.50.

DEPUTY PRESIDENT JOHNSON: So that's the meal allowance clause; the current figure of \$7.00, I take it, has been omitted on some previous adjustment, whereas it

ought to have read consistently with other meal allowance clauses, \$7.30, but like the others in the order it is now to move to 7.50.

MR BENSON: That's what I understand, sir, yes. I wasn't involved in the early movements in that area but that's what I believe.

5 If I might just back track a little bit, deputy president, on page 5 Division A, clause 24 at the bottom of the page, sir.

DEPUTY PRESIDENT JOHNSON: Yes, that's a meal allowance clause again of the same nature as the clause 55 that we've just been discussing.

MR BENSON: Yes, sir.

10 DEPUTY PRESIDENT JOHNSON: And the variation sought is the same to move the figure of \$7.00, as currently provided in the award, to \$7.50, again for the same reason to accommodate an oversight on some past occasion and to bring the clause into line with other meal allowance clauses.

MR BENSON: Yes, sir.

15 DEPUTY PRESIDENT JOHNSON: Yes. And that is the extent of the amendments in terms of the Building Trades Award?

MR BENSON: Yes, sir.

DEPUTY PRESIDENT JOHNSON: Perhaps I should just for clarity in the record, I summarise those amendments; in the first place order is defective in the sense that
20 some clauses are wrongly referred to, and I as understand it, that is clause 51 which should read clause 50; clause 52 which should read clause 51; clause 55 should read clause 54; and clause 56 should read clause 55. Thereafter, there are amendments by way of addition to the order to include adjustments already referred to connection with clause 23(e)(iii) - Living away from home and distant work
25 allowance. Clause 54(e)(iii) - an allowance of the same title. And clause 24 - Meal allowance.

I think that's all the amendments as I understand them. Is that the case Mr Benson?

MR BENSON: Yes, Mr Deputy President.

30 DEPUTY PRESIDENT JOHNSON: Ms Thomas, do -

MR BENSON: Did you include the final one - the -

DEPUTY PRESIDENT JOHNSON: Clause 24?

MR BENSON: Clause 55 - Division B - Clause 55 - Meal allowances.

DEPUTY PRESIDENT JOHNSON: Yes, I mentioned it in the middle before -

35 MR BENSON: Thank you, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: - coming straight after clause 23.

MR BENSON: Thank you, sir.

DEPUTY PRESIDENT JOHNSON: Ms Thomas, do you object to the amendment of the application in matter T.No.6539 in the manner described both by Mr Benson and by me?

MS THOMAS: No, I have no objections to those amendments.

5 DEPUTY PRESIDENT JOHNSON: Mr Atkins?

MR ATKINS: Certainly no objections.

DEPUTY PRESIDENT JOHNSON: I formally that the amendment be varied in the manner described.

Yes, Mr Benson, if you would speak to the application as amended please.

10 MR BENSON: Mr Deputy President, the Construction, Forestry, Mining and Engineering Union, Tasmanian Branch, wishes to maintain the nexus with our federal award in regards to the increases in expense related allowances, sir.

15 I have a copy here that I would like to offer up as an exhibit, Mr Deputy President, with regards the variations being approved by Commissioner Jones federally and being made effective on the 23rd September, 1996 and the CFMEU Tasmanian branch now wishes to - or seeks to have that flow-on to our state award, sir.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Benson. I'll mark that as exhibit CFMEU.1. That exhibit is in fact an order - a copy of an order of the Australian Commission. The identity of that order is N5303. Yes, Mr Benson.

20 MR BENSON: The reasons for the application, sir, is to compensate employees for the rise in the cost of living over the previous 12 months, sir. The application, sir, refers to old rates, sir, which are the existing award rates, sir. The calculations - the CPI calculations are as per the information we received from the Australian Bureau of Statistics, sir, and the column marked 'New Rates' are the variations sought.

25 DEPUTY PRESIDENT JOHNSON: Is that as far as you wish to go, Mr Benson?

MR BENSON: Just -

DEPUTY PRESIDENT JOHNSON: What do you have -

30 MR BENSON: - one further point, Mr Deputy President, that is, that the CFMEU would seek of the commission this morning that the operative date for the variations be the first full pay period on or after today's date, sir.

35 DEPUTY PRESIDENT JOHNSON: Mr Benson, I'm aware that my next question might cause you some difficulty but perhaps you'll bear with me since in the sense I'm a new kid on the block, too; the grounds for the application as lodged with this commission indicate that the application is consistent with previous commission decisions and industry custom and practice. Presumably, therefore, there is some prior decision of this commission perhaps taken at a full bench level that authorises individual members of this commission consistent with the Wage Fixing Principles to vary awards in relation to expense related allowances.

40 MR BENSON: Yes, Mr Deputy President. The - well the application conforms with the allowance principle of the commission, that being 9.1.1, sir. And I might quote, sir:

Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time where appropriate to reflect the relevant changes in the level of such expenses.

- sir.

5 DEPUTY PRESIDENT JOHNSON: Well that's the Wage Fixing Principles, isn't it?

MR BENSON: Yes, sir.

DEPUTY PRESIDENT JOHNSON: And what do you have to say about the aspect of previous commission decisions?

10 MR BENSON: Well, this is the second time that I've done the expense related allowances, sir. It mightn't appear that way. We got off to a very bad start today but the method in which I put forward the application and the position as far as seeking to maintain a flow-on, maintain a nexus with our federal award is consistent with the last application that I put before the commission before Commissioner Imlach, sir, and there didn't seem to be a problem there, sir.

15 DEPUTY PRESIDENT JOHNSON: I'm not saying there's a problem, Mr Benson. When was this award previously varied then?

MR BENSON: On the 23rd November, 1995 with regards expense related allowances, sir.

20 DEPUTY PRESIDENT JOHNSON: All right. And what do you have to say about the requirements of section 36 of the act as to public interest? Does the application, in your submission, fall within the public interest requirements of the act?

MR BENSON: I can't see why it doesn't, sir.

25 DEPUTY PRESIDENT JOHNSON: I suppose I'm feeding you words, but your submission is that the application satisfies the public interest requirements of section 36 of the act.

MR BENSON: Exactly my thoughts, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Benson. Would you move on then to the Building and Construction Industry Award please.

30 MR BENSON: Thank you, Mr Deputy President. My submission with regard to the Building and Construction Industry Award, Mr Deputy President, is exactly the same as that with the Building Trades Award.

DEPUTY PRESIDENT JOHNSON: I think there are some amendments to make aren't there?

MR BENSON: Yes, I suppose they'd better be dealt with first of all.

35 Excuse me for a moment, Mr Deputy President. Yes, sir, there are two amendments that I would seek to make this morning to the application, sir. Clause 24(e)(3), currently reads \$7.30 and should be moved to \$7.50, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: That was an omission from the order that you submitted.

MR BENSON: Yes, sir.

DEPUTY PRESIDENT JOHNSON: Thank you.

MR BENSON: And on the final page of the application, sir, Clause 25 - Meal Allowance should read \$7.00, moved to \$7.50, sir.

5 DEPUTY PRESIDENT JOHNSON: Yes; and that, too, is to accommodate the previous omission of this allowance at the time of the last variations?

MR BENSON: Yes, sir.

DEPUTY PRESIDENT JOHNSON: Yes. Thank you, Mr Benson.

10 MR BENSON: On what you say, for the record, sir, that the last variations that were done by myself there was no movement in the meal allowance, so it goes back to beyond that period.

DEPUTY PRESIDENT JOHNSON: I see. Yes, a little bit of ex post facto glory, Mr Benson.

MR BENSON: Thank you, sir.

15 DEPUTY PRESIDENT JOHNSON: And, in the sense of the Building and Construction Industry Award, you make the same submission in respect of operative date and that the application falls within the provisions of paragraph 9.1.1 of the wage fixing guidelines and that the application satisfied the public interest tests of section 36 of the act?

20 MR BENSON: I do, Mr Deputy President, yes.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Benson. Ms Thomas, in making your submissions you might also - well, perhaps I will deal with it separately. Do you have any objections to the amendments to the Building and Construction Industry Award in the sense of including in the order Clause 25 - Meal Allowance
25 and Clause 24(e)(3) - Living Away from Home Distant Work Allowance?

MS THOMAS: I think you may have - yes, that is correct - I have no objections to those amendments, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: Mr Atkins?

MR ATKINS: I certainly have no objections.

30 DEPUTY PRESIDENT JOHNSON: I formally order that the order seeking variation to the award include those two amendments. Ms Thomas?

MS THOMAS: Yes. Thank you, Mr Deputy President. This matter is a consent matter. The increases sought being in line with those achieved in the national Building and Construction Industry Award.

35 The application is in accordance with 9.1.1 of the wage fixing principles and is also, in our submission, consistent with the public interest tests of section 36 of the act.

We would consent to the operative date being sought of the first full pay period to commence on or after today's date.

If it please the commission.

DEPUTY PRESIDENT JOHNSON: Thank you, Ms Thomas. Mr Atkins?

MR ATKINS: Certainly from the perspective of the Master Builders' Association I would concur with Mr Thomas' submission and would support it.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Atkins.

5 In those circumstances, I see no reason why the awards should not be varied in terms of the orders, as amended, in today's proceedings. I am satisfied that both orders fulfil the requirements of the relevant paragraph - that is, paragraph 9.1.1 of the wage fixing guidelines - and that there is no reason in these proceedings that suggest by virtue of section 36 of the act that the award should not be so varied.

10 Accordingly, I will issue orders in the form of the amended orders to vary the awards.

Those amendments will take effect from the first full pay period to commence on or after today's date.

15 That concludes the hearing of Matters T.6538 and 6539 of 1996. These proceedings are now adjourned.

HEARING CONCLUDED