

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No 5214 of 1994

**IN THE MATTER OF** application by the  
Tasmanian Trades and Labor Council to  
review the current wage fixing principles of  
the Tasmanian Industrial Commission  
consequent on recent decisions of the  
Australian Industrial Relations Commission  
in relation to wage fixing principles,  
arbitrated safety net adjustments,  
superannuation and other related matters

re State Wage Case

**FULL BENCH**

PRESIDENT  
COMMISSIONER WATLING  
COMMISSIONER GOZZI

HOBART, 7 November 1994

**TRANSCRIPT OF PROCEEDINGS**

Unedited

PRESIDENT: Could we have appearances, please?

**MR J. BACON:** Mr President, if the commission pleases, I appear on behalf of the Tasmanian Trades and Labor Council and unions generally, BACON, J., together with **RICHARD WARWICK** who is doing some late copying and is on his way.

5 PRESIDENT: Thanks very much, Mr Bacon. We'll wait on Mr Warwick in due course.

MR BACON: As I speak.

PRESIDENT: Very good.

10 **MR K. O'BRIEN:** If the commission pleases, I appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, and also on behalf of the Bakery Employees and Salesmen Federation.

PRESIDENT: Thank you, Mr O'Brien.

**MR G. COOPER:** If the commission pleases, I appear on behalf of the AWU-FIME, The Amalgamated Union, Tasmania Branch, COOPER, G.

PRESIDENT: Thank you, Mr Cooper.

15 **MR A. GRUBB:** If the commission pleases, GRUBB, A.J., on behalf of the Australian Municipal, Administrative, Clerical and Services Union.

PRESIDENT: Thank you, Mr Grubb.

**MR T. KLEYN:** If the commission pleases, appearing on behalf of the Health Services Union of Australia, Tasmania No.1 Branch, TOM KLEYN.

20 PRESIDENT: Yes, Mr Kleyn.

**MR P BAKER:** I appear on behalf of the Automotive, Food, Metals and Engineering Union, P. BAKER.

PRESIDENT: Thank you, Mr Baker.

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

PRESIDENT: Thank you, Mr Griffin.

30 **MR T. EDWARDS:** If it please the commission, EDWARDS, T.J., and with me **MR S. GATES** for the Tasmanian Chamber of Commerce and Industry, the Metal Industry Association of Tasmania, the Australian Mines and Metals Association, and the Hop Producers Association of Tasmania.

PRESIDENT: Thank you Mr Edwards.

**MR K. RICE:** If the commission pleases, RICE, K.J. I appear on behalf of the Tasmanian Farmers and Grazier Employers Association and the Retail Traders Association of Tasmania, sir.

35 PRESIDENT: Very good, Mr Rice.

**MR J. HARGRAVES:** If the commission pleases, HARGRAVES, J. I appear on behalf of the Printing and Allied Trades Employers Federation of Australia.

**PRESIDENT:** Thank you, Mr Hargraves.

5 **MR T. PEARCE:** If the commission pleases, PEARCE, T., for the Minister for Industrial Relations, section 27.

**PRESIDENT:** Thank you, Mr Pearce. Very good. Mr Bacon?

**MR BACON:** Mr President, members of the bench, firstly I would like to hand up an amended application in this matter which we believe more accurately reflects where we are with - or how we want to proceed with this matter.

10 **PRESIDENT:** Very good. Shall we mark this as an exhibit, Mr Bacon, TTLC.1? We'll mark it anyway.

**MR BACON:** Well it's an amended application.

**PRESIDENT:** All right. We'll mark it anyway. TTLC.1, so it doesn't get lost - TTLC.1 being the amended application. Have other parties been provided with copies prior to today?  
15

**MR BACON:** Just prior, Mr President.

**PRESIDENT:** All right. Thank you. Okay. Thanks.

**MR BACON:** Really, what the amended application does is, as I said, more accurately reflect where we are with this application. Clearly, following on from the National Wage Decision in line with normal practice, we would seek to make application in the State Commission for a State Wage Case. Whilst we certainly recognise that the Tasmanian Industrial Commission has normally followed as closely as possible AIRC decisions, in fact, the full benches in previous State Wage Cases has said that it's only in exceptional circumstances that that path would not be followed, however, - and in the past any changes from a National Wage Case to a State Wage Case as our previous application said, would only be to make amendments in line with minor differences in legislation and so on.  
20  
25

However, we believe that since the last State Wage Case because of the major federal legislation substantially amending the Federal Industrial Relations Act, in the form of the Industrial Relations Reform Act of 1993 that really what has resulted is legislation which is markedly different from the State Legislation that this commission operates under. In fact, the different legislation of course arises out of different approaches to both enterprise bargaining and we believe industrial relations generally of the Keating and Groom governments. Consequently -  
30

35 **PRESIDENT:** Before you move on, may I ask the parties whether there is any objection to amending the application in the manner sought? Mr Edwards?

**MR EDWARDS:** From our point of view, Mr President, there would be no objection. This was flagged with us verbally by the Labor Council last week and were provided with an application this morning. It seems to be a more accurate way to portray what it is that's been sought by the Labor Council.  
40

**PRESIDENT:** Yes. Very good. No, Mr Pearce?

**MR PEARCE:** No objection from the minister, no.



PRESIDENT: Mr Rice, Mr Hargraves?

MR RICE: No objections.

MR HARGRAVES: No.

PRESIDENT: No objection. Very good. Carry on, Mr Bacon.

5 MR BACON: Mr President, members of the bench, in looking at the situation that  
arose after the National Wage Case decision it did seem apparent to us and in our  
initial discussions with other parties that we couldn't readily follow the path that we  
had in the past and that there was a need for us to do more than just make minor  
10 amendments to the National Wage Case decision to make it fit in with State  
Legislation.

Now, whilst that's the situation which could be seen as leading potentially to  
difficulties between the two jurisdictions and for us in Tasmania, we do believe that it  
also provides the parties in Tasmania with an opportunity, therefore what we have  
done is initiate discussions with the other principal parties to State Wage Cases, that  
15 is, the TCCI and the State Government and of course have also discussed it with the  
affiliates of the TTLC to see whether we can take a different approach aimed at  
achieving a wage fixing system based on a set of principles suited to the Tasmanian  
situation and of course to provide access to safety net adjustments where workers  
have not had wage increases by other means. Broadly speaking we've taken as a  
20 starting point the principles adopted by this commission at the last State Wage Case  
and what we are attempting to do is arrive at agreement on a set of principles suited to  
our needs and our legislative framework in Tasmania.

Now I can report to you, Mr President, members of the bench, that substantial  
progress has been made between the principal parties to this case towards that end,  
25 however, I should make two points about that, firstly, that the principal parties have  
not finalised an agreement on what we would see as being the appropriate principles  
to be adopted, though I must say that I think the reason that that agreement hasn't  
been finalised is more due to the pressure of time than very broad differences between  
the parties and I think in fact the discussions we've had have indicated that while  
30 we've made substantial progress that we're certainly not in a situation where it is very  
clear that agreement cannot be reached between us, so we are confident that with  
more time that the principal parties at least would be able to reach agreement.

That of course leads to the second point which is that it has only been discussions  
between the principal parties to the State Wage Case in the form of the TTLC, a small  
35 subcommittee the TTLC was formed to have discussions with the TCCI and the State  
Government. We have had one meeting which - between them, but clearly there's a  
number of other parties to this case here today who have not been involved in those  
discussions and whilst they may have heard on the grapevine bits and pieces of them  
or indeed had some informal discussions with one or other of the parties. I think to be  
40 quite fair to them, we would say that they have not been involved in the discussions  
and are probably unaware of how far or what direction we're going.

Therefore what we are seeking this morning is for these proceedings to be adjourned  
and for the parties to the case to be directed into a conference to be chaired by you, Mr  
President. We believe that this will allow us to have further discussions with all the  
45 parties to this case and we believe that at least substantial agreement could be  
achieved during a conference of that sort to which all the parties to the case - or in  
which all the parties to the case would feel comfortable.

We do recognise though that this may come as some surprise to some parties to the  
case this morning so what we would suggest is that formal proceedings be adjourned



for about a week to allow discussions to take place, both formally in a conference chaired by you, Mr President, but also particularly for those organisations who haven't been forewarned about this direction we are taking to consult back with their constituents or their clients or whatever. So we would propose that that is the direction we take, Mr President. We think that -

10 PRESIDENT: Are you suggesting, Mr Bacon, that the informal - or the formal conference between the parties should take place immediately after the adjournment, or do you think it would - might be appropriate to allow others to know that the conference will be proceeding at some future time to give them the opportunity to attend if they so wish?

MR BACON: Well, I - we had intended to proceed with the conference immediately today. I think all parties have been notified of the hearing -

PRESIDENT: They certainly have.

15 MR BACON: - and I would have thought that they would have made arrangements to be represented here today, assuming that the case would be proceeding as normal, so I don't think there is any need for it to be - for it not to proceed today. As I said we are looking at the formal proceedings being adjourned for certainly no more than a week and I think any delay to starting the conference will probably make that difficult.

PRESIDENT: All right. Yes.

20 MR BACON: If the commission pleases.

PRESIDENT: Yes. Thanks, Mr Bacon. Mr Edwards?

MR EDWARDS: No-one else seems to want to have a go.

PRESIDENT: No, it's -

MR EDWARDS: Oh, well -

25 PRESIDENT: very well structured side of the bar table.

MR EDWARDS: Yes, very much so, Mr President. Mr President, as has been outlined by the Labor Council, we have been have some private discussions with them in concert with the State Government to see what measure, if any, of agreement could be reached on a set of wage fixing principles which would apply to the Tasmanian Industrial Commission. As Mr Bacon has outlined, historically, the commission here have tended to follow fairly closely with the Australian Commission outcomes so far as principles is concerned, but the parties on this occasion believe that the legislative differences between the two commissions is such that it is not possible to have a set of principles modelled on the Australian Commission principles, at least that's what been discussed in conference thus far and I suspect will continue to be discussed as part of the conference procedure that Mr Bacon has outlined.

40 From the point of the view of the TCCI, we are very much of the view that the Australian Commission Principles cannot be easily adapted to fit within the legislative framework that the Tasmanian Industrial Commission operate and as such we very much pledge ourselves to be part of the conference procedure that Mr Bacon has outlined and to see if we can't find some Tasmania specific principles and we have got a number of ideas that we wish to put forward in that regard and will do so.

On the point that you raised, Mr President, as to whether or the conference ought to proceed today, we're very strongly of the view that it should for two reasons, the first

being, as Mr Bacon has outlined everyone has been notified of these proceedings and as such has had the opportunity to be present, either personally or by agent, and secondly, and perhaps more importantly, it will give the TTLC the opportunity to outline to those people that haven't been parties to the discussions to date exactly what it is they are proposing so that people that are here can go away and get instructions based on knowledge of what is being sought rather than some abstract notion of just trying to find a Tasmania specific outcome. So for that reason we would ask that the conference does proceed today, even if it is only of a limited duration. If it please the commission.

10 PRESIDENT: Yes. Very good. Thank you, Mr Edwards. Mr Pearce?

MR PEARCE: Thank you, Mr President, members of the bench. As indicated in both the submission of Mr Bacon and Mr Edwards, the Tasmanian Government has been involved in very informal discussions with the principal parties and we welcome the opportunity to have participated at that stage. We commend the processes being advanced by both the TTLC and TCCI as a state-based initiative. We similarly concur with their views expressed this morning that the relevance of the national decision is of a lesser consideration having regard to the legislative structure upon which that decision is based and we believe that this forum does provide an opportunity to do something which is relevant to the needs of the Tasmanian work force within the awards of this commission. If it please the commission.

PRESIDENT: Yes. Thank you, Mr Pearce. Mr Rice, Mr Hargraves, do you wish to make a contribution?

MR RICE: We support the submissions made by Mr Edwards, if it please the commission.

25 PRESIDENT: Yes. All right. Thank you.

MR HARGRAVES: Similarly.

PRESIDENT: Thank you, Mr Hargraves. We'll go off the record for a moment, thanks.

**OFF THE RECORD**

**NO FURTHER PROCEEDINGS RECORDED**

30