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PO Box 13038 George St Post Shop BRISBANE QLD 4003

Tel:1300 308 420 Fax:(07) 3503-1199

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TRANSCRIPT OF PROCEEDINGS

O/N 78366

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER J.P. McALPINE

T No 13114 of 2008

RETAIL TRADES AWARD

**Application pursuant to the provisions of section 23(2)(b)
of the Industrial Relations Act 1984 lodged by the Shop,
Distributive and Allied Employees Association,
Tasmanian Branch to vary the above award re loaded rates**

HOBART

2.00 PM, WEDNESDAY, 9 APRIL 2008

**This transcript was prepared from tapes recorded
by the Tasmanian Industrial Commission**

THE COMMISSIONER: Can I have appearances, please?

MR P. GRIFFIN: Thank you, Mr Commissioner, I appear on behalf of the Shop
Distributive and Allied Employees Association, Tasmanian Branch, Griffin Paul.

5

MR C. DODDS: If it pleases, I appear on behalf of the Australian Services Union.
Dodds C.J.

MR D. McDOUGALL: If the Commission pleases, I appear on behalf of the
10 Australian Retailers Association, Tasmanian Division, McDougall, Duncan.

MR P. MAZENGARB: Good afternoon, Commissioner, Paul Mazengarb
representing the Tasmanian Chamber of Commerce and Industry Limited, if the
Commission pleases.

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MR K. RICE: If it please the Commission, Keith Rice, I appear on behalf of the
Tasmanian Farmers and Grazier Employers Association.

THE COMMISSIONER: Thank you. Okay. Who's going to kick this thing off.

20

MR McDOUGALL: Commissioner, if I may, I just have a threshold question, or a
matter to raise, and it concerns the – it's been put to me by my people that the lack of
notice for such a big increase in a wage rate is such that they haven't been able to
25 pass the increase, notwithstanding any agreements that might have gone in the past,
that they needed a little bit more time to pass the increases in discussion with their
members. I don't want to go any further than that, but I did want to make that
threshold position known. Thank you very much.

THE COMMISSIONER: Okay. Who's running this? Paul, go for it.

30

MR GRIFFIN: Good, thank you, Mr Commissioner. This particular application,
why we're here today, is to complete a decision of this commission which was
handed down on 20 December in 1990, which is extending from structural efficiency
principles of 1989 that were set about with award restructuring. And I think, Mr
35 Commissioner, it would be appropriate that perhaps I initially lead off with some of
the history - - -

THE COMMISSIONER: Please, yes.

40 MR GRIFFIN: - - - and how this particular event came about, and why we are here
today. And this goes right back to 1989, as I mentioned just a minute ago. Mr
Commissioner, the reason the process was so protracted at this time, it was due to
variations to the award in accord with the wage fixation principles at the time, which
incorporated the structural efficiency principle, and the minimum rates adjustment.
45 And the minimum rates adjustment was an amount for the Retail Trades Award to
increase wages by \$25. But that was to be protracted over a period of time, and they
were to be broken down to four instalments of – and I think at the time it was about
\$6.25, in order to reach that 25.

So that took two years to get that particular process implemented. In that same time, and I'm on memory here, also not on the structural efficiency principle, but I my understanding was there were two increases there as well of \$12.50, and I believe they were done on a yearly basis. The first year was 12.50 and the second year, but I
5 could be corrected on that. Both these processes were part of a review, or a final agreement, that had been subject to the ongoing review of the Retail Trades Award, under that award restructuring process. And on 29 June, Mr Commissioner, in 1990 Mr Paul Targett, who was then representing the association on that occasion, submitted to the commission an exhibit, entitled Retail Trades Award Agreed
10 Document on Award Restructuring.

And included in that document at the time was the operative date which was then, as I mentioned, 1 June 1990. It was to be an all-embracing award. The provisions in the award would include floristry apprenticeships. There was to remove award
15 provisions, or redundant award provisions that had a temporary life. The ability of the annual leave clause to – where that was extended that annual leave could be taken up to 12 months later than when it was due. Currently at the time it was six months. The managerial classifications, re-defining the senior sales assistant, re-defining managerial positions, section managers, and re-defining section as it stood at the
20 time.

Mixed functions, the minimum period of engagement, which I think it was reduced down to – and again I'm on memory – to three hours for casuals, I think, at the time. Enterprise agreements, that enterprise agreements could be part of an industrial
25 instrument, as well as the award, at that time, and probably the most important issue back then, which was believed to come in, was trading, an extension of trading hours. And that incorporated four other aspects that had to be dealt with that, if trading hours were extended, and that was the span of the ordinary hours, classification structure, the minimum rate adjustment process, and probably the
30 reason we're here – and that was the penalty rates, how that would be addressed.

And it's probably paramount, or we should remember, that also at that time if extended trading hours did not occur, then that would not affect any other aspects of that award restructuring process, including three of the things that I've mentioned
35 with penalty rates, the minimum rate adjustment, and the classification structure, and – well, not necessarily the span of ordinary hours, because that would relate obviously to the trading hours extension.

Just on that time, I would like to quote from a decision of this commission, and that was from President Westwood's decision on 29 June 1990, and I just submit that, but
40 I'll read it out first, and what it said at the – in that particular decision, and this will give an opportunity for all parties here that may not have been at that – in the process at that time, or even for us, if we were, to refresh our memories.

45 THE COMMISSIONER: I think I was still at school, but anyway.

MR GRIFFIN: Well, it does go back some time, Commissioner, yes.

MR MAZENGARB: I wish I was at school.

MR GRIFFIN: And in that decision what the advocate for the association did say, which was Mr Targett, and I quote:

5

This document was to be quite an historical agreement within the retail industry.

And he went on to say that:

10

To be able to come to this commission with an agreed position on an ongoing process is of great significance. The mere fact that the ongoing process will involve the commission by the very nature of the type of processes that we have to go through is one which will ensure that the commission is well informed and in control of as time goes by.

15

Now, this was supported by Mr Abey, who was then representing the TCCI, and he reiterated that view that it was an historical agreement, and submitted that it was reflective of the commitment of the parties, both employer organisations and unions, to what he described as the big picture down the road. And that's what it was talked about at the time, that it would be a big picture, as far as this whole total award restructure. And I just submit that particular document to you, Mr Commissioner, for the parties.

20

25 THE COMMISSIONER: Okay. We'll just call this A1 for completeness.

EXHIBIT #A1 DECISION OF THE COMMISSION DATED 29/06/1990

30

MR GRIFFIN: Mr Commissioner, following that decision, or that – the actual commission hearing of 29 June 1990, the parties did then go away and carry out the aforementioned award restructuring that I've been talking about, and that particular time culminated in a Full Bench hearing of that same year on 20 December, and that is in 1990. And the Full Bench said in concluding remarks at that time, and I take you specifically to what we are here about today in respect of the changes to the loaded rates for Thursday, Friday nights, and Saturday. And what it does say in that decision is:

35

Saturday may be part of ordinary hours from 7 am to 6.30 pm. However, penalty rates will be expressed in the future as fixed money amounts, and will apply to work performed on Saturdays, and during the late night trading hours. The money amounts determined will not be made the subject of an application to vary, until they equate with time and one half on Saturday, and time and one quarter for late night trading.

40
45

THE COMMISSIONER: Can you just explain that to me, what that actually means?

MR GRIFFIN: Well, what it actually – at the time the loaded rates, whenever there was a wage increase through a state wage case, or whatever we were doing at the time through the other processes I mentioned, the loaded rates on Thursday nights, or time – they were time and a half and double time at that time. Those rates, let’s say
5 for argument’s sake, the double time for Saturday was \$20, and it was \$15 for Thursday night and Friday night. Well, any future wage increase would not include those particular times, so they would still be frozen at \$20 and \$15 respectively. And as I say, they would not come out of that frozen rate status until the base rate had reached time and one quarter, and time and one half.

10 THE COMMISSIONER: Of that original number?

MR GRIFFIN: Exactly. Exactly.

15 THE COMMISSIONER: So the base rate has moved – so what we’re saying is a rate was struck way back, penalty rates were put in at a figure, as opposed to a percentage?

20 MR GRIFFIN: Yes.

THE COMMISSIONER: As this base rate has moved on, when it reaches a particular point of whether it’s double time or one and a half - - -

25 MR GRIFFIN: Yes.

THE COMMISSIONER: - - - then we say we’ve got to either re-negotiate or move it on?

30 MR GRIFFIN: That’s right.

THE COMMISSIONER: Okay. Got you.

MR GRIFFIN: Yes.

35 THE COMMISSIONER: It’s not the quickest thing, but it’s got there. Okay.

MR GRIFFIN: And that, you know, clearly has taken some time to reach that. But each time a wage increase came through, whichever process was in place, that reduced that percentage of double time and time and a half to time and - - -
40

THE COMMISSIONER: Whatever it was, yes.

MR GRIFFIN: - - - 90 per cent or time and 45 per cent, whichever, yes. Yes. Also in that particular decision it was outlined that Mr Abey, like Mr Targett, urged the
45 commission to approve the tabled package, which his organisation believed represented the most profound and worthwhile change to have ever occurred in the retail arena. And his view were supported by Mr Rice for the Retail Traders

Association of Tasmania at that time. And that is the document that I've quoted from.

THE COMMISSIONER: We'll call this A2.

5

EXHIBIT #A2 FULL BENCH DECISION DATED 20/12/1990

10 MR GRIFFIN: Mr Commissioner, in my discussions with the parties through this week, and initially last week, it is my view that all understand that this was a total package, and that's what this whole award restructuring was about. And those things that I have mentioned previously were part of all that package, and we are here today to finalise that arrangement of the penalty rate structure, whereby those rates were
15 frozen, and until they equated to the time of time and a quarter, and time and a half, then we would come before the commission to re-implement back to that particular percentage rate, if you would like to call it that, time and 25, or time and 50 per cent.

The late night and Saturday nights were frozen, and it's taken – you know, here we
20 are approximately 17 years, that employees in the industry have benefited financially for, you know, for that particular time. But that was part of the arrangement, that those rates were frozen, and when it came to that then we would go to what was agreed to at the time, an appropriate rate for late nights and Saturday work. And I would put it to the commission that that part of the arrangement that was handed
25 down in the decision by the Full Bench, which was headed up by President Westwood at the time, be endorsed through this process today.

THE COMMISSIONER: All right. Sit down. I need to ask some questions now. So, if I've got this right, if say the standard rate was – it would probably have been,
30 what \$10 an hour we say.

MR GRIFFIN: All right.

THE COMMISSIONER: And it came to Thursday nights and the normal would be
35 time and a half?

MR GRIFFIN: Yes.

THE COMMISSIONER: Right. But what happened was they didn't get time and a
40 half, they got a sum, rather than time and a half; is that right:

MR GRIFFIN: Well, yes, but whatever the - - -

MR RICE: Had a fixed rate.
45

THE COMMISSIONER: They got a fixed rate?

MR RICE: Paul, can I just - - -

THE COMMISSIONER: Please.

MR GRIFFIN: No, well - - -

5 MR RICE: On that one what was happening it equated to time and a half at that time.

MR GRIFFIN: Yes.

10 THE COMMISSIONER: At that time, all right.

MR RICE: Yes. From 6 to 9.

THE COMMISSIONER: But then that rate was frozen?

15

MR GRIFFIN: That's right.

MR RICE: And then that rate was frozen in time.

20 THE COMMISSIONER: So after a period of time they weren't getting - - -

MR RICE: No, there were no increases on that.

THE COMMISSIONER: So they were just - - -

25

MR RICE: Had to sit on that frozen rate until the base rate equated to time and a quarter for Thursday and Friday.

30 THE COMMISSIONER: All right. So basically what we're saying is there was a wage freeze, if you like, on the penalty rates until the base - - -

MR RICE: On the - between 6 to 9 Thursday and Friday, and all day Saturday.

THE COMMISSIONER: Yes, until the base reached that?

35

MR RICE: Yes.

THE COMMISSIONER: Okay. And what was the agreement at the time then, once the base had reached that, because this is where we're at today, I guess?

40

MR RICE: Well, my recollection of it, Commissioner, is that at that particular time, when it reached that time, and we didn't know when that time would be.

THE COMMISSIONER: Yes.

45

MR RICE: It would be some time well into the future, that there would be an application made, the union would then be able to make an application to then increase the rate each time - - -

THE COMMISSIONER: Yes.

MR RICE: - - - there was a wage movement, provided it was time and a quarter, and time and a half.

5

THE COMMISSIONER: So what I'm saying, if we talk about someone who's working in, say, Myer, for example, who normally gets 10 bucks an hour, and they were getting 15 bucks an hour for working Thursday nights, right.

10 MR GRIFFIN: Yes, that's precisely - - -

THE COMMISSIONER: Just let me keep going, because I'm on a roll here. Now, what we're currently saying is that that guy now earns 15 bucks for a normal hour, but he still only earns 15 bucks for his penalty; is that right? Am I reading that correctly?

15

MR GRIFFIN: Yes. Look, if - when - and it's - - -

MR RICE: No, his rate wouldn't have caught up.

20

MR GRIFFIN: No.

MR RICE: He wouldn't have got to \$15 yet on his normal rate, his normal rate would have only got the 12.50, so when you apply time and a quarter to it, it gives you - - -

25

MR McDOUGALL: That's right.

THE COMMISSIONER: Right. So he's currently getting 12.50?

30

MR RICE: Yes.

THE COMMISSIONER: And his penalty rate is now 15, which is only a quarter - - -

35

MR RICE: Time and a quarter.

THE COMMISSIONER: - - - time and a quarter?

40 MR RICE: Yes.

THE COMMISSIONER: And now we're saying, right, guys, now it's time to change?

45 MR RICE: Yes, yes.

THE COMMISSIONER: That's what we're saying. And what my question then was, at this point in time was it agreed what they would go forward with? Would it revert back to the time and a half?

5 MR GRIFFIN: Well, it can't. It has to go up.

MR RICE: No, I think the - - -

10 MR GRIFFIN: The rate – the base rate - - -

MR RICE: I think what the Commissioner suggested that it would be now increased - - -

15 MR GRIFFIN: Yes.

MR RICE: - - - in line with the agreed formula of time and a quarter, and time and a half.

20 MR GRIFFIN: Yes.

MR McDOUGALL: So time and a quarter on late nights for those three hours on each of those nights, and time and a half on Saturday for the ordinary hours, yes.

25 THE COMMISSIONER: All right. Let's just take it then. So what we're saying is last week I'm earning \$12.50 an hour, and when I do my Thursday nights I get 15, right?

MR RICE: Yes.

30 THE COMMISSIONER: And we're saying, okay, that's now come to the point of change?

MR RICE: Yes.

35 THE COMMISSIONER: So the new point of change is I take \$12.50, which is my normal rate, and instead of only get 15 I now get a new overtime rate?

MR GRIFFIN: Yes.

40 THE COMMISSIONER: That's what we're saying? Now, what I'm asking is what is that overtime rate? Has it moved up to one and a half?

MR RICE: No, it still stays at one and a quarter.

45 THE COMMISSIONER: So it's one and a quarter?

MR GRIFFIN: Yes.

MR RICE: It's caught up. The base rate has moved up and up that when you apply one and a quarter to it it moves past that frozen rate.

5 THE COMMISSIONER: It comes to that. So what we're saying is now we're actually in balance?

MR RICE: Yes.

10 THE COMMISSIONER: So now it's a case of for the next wage increase, whenever that happens to be - - -

MR GRIFFIN: It will include those - - -

15 THE COMMISSIONER: - - - we include - - -

MR GRIFFIN: That's right.

THE COMMISSIONER: Right.

20 MR GRIFFIN: To get that percentage, whatever it is, yes.

THE COMMISSIONER: Gee, I'm quick.

25 MR RICE: There's no doubt about you, Commissioner.

THE COMMISSIONER: All right.

30 MR McDOUGALL: May I just say that what happens if we're at \$13.86 now that's going to go to \$19.27. That was the point of my opening remark.

THE COMMISSIONER: Yes, no, I understand.

MR McDOUGALL: You see, so it's a big \$6 an hour leap.

35 THE COMMISSIONER: I know what you're saying, so currently it's \$13.86 - - -

MR McDOUGALL: Yes.

40 THE COMMISSIONER: - - - for - is that for the time and a quarter?

MR McDOUGALL: Yes. That's theoretically the frozen, the frozen time and a half, which we were working back to time and a quarter.

45 THE COMMISSIONER: Right. So it's now time and a quarter?

MR McDOUGALL: Yes.

THE COMMISSIONER: Right.

MR McDOUGALL: That's what it ought to be.

THE COMMISSIONER: Yes.

5 MR McDOUGALL: But I think it's a bit behind, isn't it, Paul?

MR GRIFFIN: It is behind, because this application was originally made last year,
even though it was still a little bit behind, but at the time the Saturday rate was still
10 above, but the time and a quarter rate had caught up, and was actually was behind,
and could have been applied - - -

THE COMMISSIONER: Before now.

MR GRIFFIN: - - - before now, yes.
15

THE COMMISSIONER: So all the different rates, do they – what you've asked me
to look at today, is this going to happen three or four times when all the different
rates come up, or is it only going to happen once?

20 MR GRIFFIN: What will happen, if I could just hand up what I've proposed in
respect of what these new rates would be under the formula that we're talking about
at the moment.

THE COMMISSIONER: All right. This is helpful. We'll call this A3, it's the new
25 rates.

EXHIBIT #A3 NEW RATES

30 THE COMMISSIONER: So if I can just go back to the dim and distant past, there
was an agreement that this process – by everybody, that this process would happen?

MR GRIFFIN: Yes.
35

THE COMMISSIONER: And today everybody is stuck with that process?

MR GRIFFIN: That's right. It was impossible to name a date - - -

40 THE COMMISSIONER: No, I understand that.

MR GRIFFIN: - - - because no one knew - - -

THE COMMISSIONER: Because you don't know whether it's a - - -
45

MR GRIFFIN: That's right.

THE COMMISSIONER: So we've now come to the point where we've got to break new ground; is that right?

MR GRIFFIN: Well, I don't believe we do break new ground - - -

5

THE COMMISSIONER: Well, okay.

MR GRIFFIN: - - - in respect of what was put in place back then.

10 THE COMMISSIONER: We just keep going? That's your contention?

MR GRIFFIN: Is to put in place what was agreed back then - - -

THE COMMISSIONER: Which was to revert to the percentage?

15

MR GRIFFIN: - - - whenever it came about, yes. And that time has come about, yes.

20 THE COMMISSIONER: All right. So before we go through these, can I hear from - do I need to hear from your side? Are you

MR MAZENGARB: Commissioner, whilst I don't necessarily want to do this, I am going to throw a bit of a spanner in the works.

25 THE COMMISSIONER: That's unusual.

MR MAZENGARB: And I say this quite advisedly, I am not doing it for any intention other than we need to clarify an issue. There were submissions made by Mr McDougall on behalf of the organisation. I understand he has raised a threshold matter as, basically along the line, as I understand his submissions, that his organisation has some concern with regard to the fact that this matter is being listed, in their perspective, in such a way that they have not had an opportunity to go out to their membership with a view to gaining their views etcetera. Whilst I am ready to make some submissions, and some of those submissions may address some of the issues that you have raised in your questions, I am a little bit loathe to proceed with those submissions in light of the fact that an employer organisation being respondent to the award has raised this threshold matter which I don't think has been addressed.

30 THE COMMISSIONER: Well, to be honest, I don't see it as being a threshold matter. We are not changing - from what I understand, and you can argue this, but my understanding is there was an agreement made, and it has now come time for that agreement to be enacted.

45 MR GRIFFIN: Precisely.

THE COMMISSIONER: Should there be other issues, then that's a different story, but my view is I don't see it, and you can argue this of course, I don't see that as

being a threshold matter. We are not in producing something that isn't already set down. Am I reading that correctly?

MR GRIFFIN: That's how I read it, Commissioner.

5

MR McDOUGALL: The only issue I – sorry, the only reason why I raised it as a threshold matter was (a) because of its timing, and because of the significant increases which I think – be very careful of what I say, I can't really go on to say what I should be saying.

10

THE COMMISSIONER: Well, I can turn the mike off if you want.

MR GRIFFIN: Duncan and Mr Commissioner, that was always going to be the case.

15

MR McDOUGALL: Yes, I know, but what I am saying that I think probably, and I am arguing against myself a little bit, it should have been raised a little earlier than it is now, that is all I am saying.

20

THE COMMISSIONER: All right, okay.

MR GRIFFIN: Well, you know, that was always going to be the case when this arrangement was made that - - -

25

MR McDOUGALL: I don't disagree with Mr Griffin.

MR GRIFFIN: - - - at some stage the rates would have to go up, they just couldn't go any other way.

30

MR McDOUGALL: I don't disagree with Mr Griffin at all. No, never have.

35

THE COMMISSIONER: Well, my concern, and I accept you may well have an issue, but my concern is if we are not altering anything I really don't think I have got any power not to agree to this, unless you can come up some reason why I shouldn't agree. Capacity to pay might well be an issue which you might want to raise, but if there was an agreement made and we have reached that time and there's a foiler to go on, unless you can argue otherwise, I can't see I have got any option but then to agree. Would you like to argue with me?

40
45

MR RICE: Not to argue with you, Commissioner, but the point is really it comes back to commencement date as to where we are – as to when commencement date might be. I am not sure from the documents of when that might be given the significance of the increases. But you did raise an issue a moment ago, I think, that my colleague, Paul and I, there may have been a misunderstanding. You asked what would happen in the future with the multiple increases or one increase, as I though - - -

THE COMMISSIONER: No, no. My thing was from now on then it would just be standard time and a half, time and a quarter, whatever it happens to be.

5 MR RICE: And it would come about, one would assume, when there is movement in the Retail Trades Award or by the State Wage Case or some other movement.

THE COMMISSIONER: That was my point.

10 MR RICE: And I was of the view there would be that one movement, if you like - - -

THE COMMISSIONER: Yes.

15 MR RICE: - - - at that particular time but I don't know whether Paul was - - -

THE COMMISSIONER: Yes.

20 MR McDOUGALL: My view is that what Keith said is right. That it should now – we shouldn't have this problem.

THE COMMISSIONER: No.

25 MR McDOUGALL: Again, once we have got this settled we shouldn't have a problem, should we?

MR MAZENGARB: Not at all, it just settles it. Just finalising all that was set down and the whole award restructuring process until 1989 and 1991.

30 THE COMMISSIONER: You mentioned this big increase, but surely this be in, a big increase. Because if the rates are met then isn't it just paying the one and a quarter per cent, one and a half per cent.

MR McDOUGALL: Can I just say, perhaps, column 1A - - -

35 THE COMMISSIONER: Sorry, where are we talking about?

MR McDOUGALL: Mr Griffin's, this one.

40 THE COMMISSIONER: Yes.

MR McDOUGALL: Yes.

THE COMMISSIONER: Column 1A.

45 MR McDOUGALL: It shows that retail employee grade 2, which is the standard shop assistant, grade 2 is 19.27. Currently they are paying them, theoretically, \$13.86. So it is a pretty big leap.

THE COMMISSIONER: \$30.86.

MR McDOUGALL: Thirteen.

5 THE COMMISSIONER: Thirteen, yes. So what are you telling me? You are underpaying them?

MR McDOUGALL: No, no, no. We are paying them according to the award. But that is a big leap in the award, and that was the issue that we mentioned earlier, that
10 was all.

THE COMMISSIONER: Yes. No, I understand that. But again, I am still in a bit of a vice here. We have an agreement which everyone signed off on. It has now
15 come to fruition.

MR GRIFFIN: Well, Mr Commissioner, I can't see how anyone can depart from what was put down at that time, and an answer escapes me how we can go away from it now.

20 THE COMMISSIONER: Well, I guess the issue really is from your point of view you need time to raise this with your people.

MR McDOUGALL: That was the only issue, because a lot of people weren't in retail at the time that Keith Rice and I and, no doubt, Paul were around in 1990 and that's the only issue I raised, Mr Commissioner. I mean, it's your choice. I agree with everything Paul said. I haven't had any problems with the way he has presented his case.
25

THE COMMISSIONER: Okay.

30 MR McDOUGALL: And I think Mr Rice is quite correct, we need to be sure of what the commencement date is.

THE COMMISSIONER: Yes. Well, I guess that's the issue, is the commencement
35 date. Now, your argument would be?

MR GRIFFIN: Well, in accordance with what happened then that it would be from the first full pay period following your decision until - - -

40 THE COMMISSIONER: Okay. Now, can anyone argue against that?

MR MAZENGARB: Commissioner, I am quite happy now having heard your response to my issue, and again, I didn't mean to take us down a rocky path - - -

45 THE COMMISSIONER: No.

MR MAZENGARB: - - - but it was an issue I thought needed to be agreed.

THE COMMISSIONER: No, it's an important one.

MR MAZENGARB: On behalf of the chamber I will be putting a number of submissions and alluding to a number of issues which have already been alluded to
5 by Mr Griffin on behalf of his organisation and probably put in a more succinct manner than what I am going to say. But for the consistency of my submissions and for the integrity of the submissions I will repeat some things that he has said.

THE COMMISSIONER: Fine.

10

MR MAZENGARB: As has been indicated by Mr Griffin, Mr Commissioner, there were extensive negotiations over a range of issues that Mr Griffin has alluded to during the latter parts of 1990. My research indicates that those negotiations took a period of about eight to nine months and they were very intensive, as I understand it.
15 Mr Griffin has referred to some of the commentary that was made at the time by various sides of the table relative to those negotiations. Those negotiations resulted in an agreed position being put to the full bench of the Tasmanian Industrial Commission as it was constituted at that time. I do disagree with Paul to a very slight degree, my understanding was the full bench hearing was on 19 December
20 1990, not actually 20 December 1990. That was the date of the decision. But nothing hangs on that. The agreed position - - -

MR GRIFFIN: It says the 20th, Mr Commissioner.

25 MR MAZENGARB: That's the date of the decision. The agreed position was achieved following concerns expressed by the employers at the time at the then penalty rates applying to retail employees who may be rostered to work on evenings or on Saturday shifts. For instance, the rate at the time for an employee working a Saturday shift as part of their ordinary hours, not overtime, was double time. So an
30 employee working Saturday was going to get paid double time even though it might have been paid their ordinary hours. It was acknowledged at the time by the association, the union, that such penalty rates due to the imminent introduction of extended trading hours would be reduced.

35 There was an acknowledgement by the union at the time that there would be a reduction in those hours – sorry, in those penalty rates. It was agreed by all parties that employees engage pursuant to the award at that time should not suffer any reduction in their conditions, certainly no reduction in their income, and to ensure that there was a so-called level playing field so everyone was on the same plane, so
40 to speak. It was agreed at the time that applicable penalty rates in the award at that time be converted to dollar amounts as distinct from the penalty rates. And that they be frozen to ensure this fairness and equity so ensure the people didn't lose out on their salaries or their wage rate at the time.

45 As I understand, the parties also agreed that they would not seek to vary those frozen rates either up or down until such time as Thursday and Friday nights equated to time and a quarter and the Saturday rate equated to time and a half. It was acknowledged that the frozen rates would not be locked in forever, and we discussed that in your

questioning, they would be locked in for a period of time only. Relevantly, such was reflected on page 3 of the TIC full bench decision in numbers 2399 and 2401 of 1990 dated 20 December 1990. And again, for consistency with regard to my submissions I will read the transcript from exhibit A2 as submitted by the SDA, three paragraphs which read:

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An important change is an extension of the spread of ordinary hours both during the week and on Saturday for the first time. Saturday may be part of ordinary hours from 7 am to 6.30 pm however penalty rates will be expressed in the future as fixed money amounts and will apply to work performed on Saturdays and during the late night trading hours. The money amounts determined will not be made the subject of an application to vary until they equate with time and one half on a Saturday and time and one quarter for late night trading.

Commissioner, in an industrial circular to employers just prior to that decision on 20 December 1990 the Tasmanian Confederation of Industries, as it was known then, stated, as I said, this letter was dated 4 December 1990 under the heading Retail Trades Award:

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A major structural efficiency agreement has been negotiated in the above award. This agreement, which is subject to ratification by a full bench of the industrial commission on 19 December, is a follow-on from an earlier decision of President Westwood –

and I understand that was referred to and you have been provided some information on that from Mr Griffin –

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which required the parties to address fundamental issues such as penalty rates, spread of ordinary hours, minimum rates, adjustments, etcetera. In summary, the major items in the agreement provide for the following –

and under a heading of 2 it says:

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Penalty rates. As a means of reducing unacceptably high penalty rates in this award compared to retail awards in other states, the following mechanism has been adopted: existing penalty rates for Saturday and late night trading will be converted to dollar amounts and frozen, and the unions have given an undertaking not to attempt to adjust these amounts until the Saturday rate reduces from double time to time and one half, and the late night rate from time and one half to time and one quarter. Sunday and public holiday rates remain unchanged.

45
Commissioner, as I understand the application to the union, as amended, and I understand that might be reflected in A3, the original application, as I understand it, being varied. I am not quite sure if that has been formally put to you but I am addressing, I think it was, A3.

THE COMMISSIONER: Yes.

MR MAZENGARB: I don't know whether it was lodged today. This amended application, as I understand, merely seeks to remove the frozen rates and replace
5 such rates with hourly rates based on calculations of time and one quarter on classification rates for rostered work performed on Thursday and Friday evenings, and time and one half on classification rates for rostered work performed on Saturday.

10 As the application appears to be consistent with the parties and the commission reached in 1990 I am pleased to advise that the TCCI does not oppose the application, but I do acknowledge the submissions made by Mr McDougall on behalf of his organisation. It is our view that the application does not offend the wage-fixing principles or the public interest requirements in the Industrial Relations Act.
15 If the commission is of a mind to grant the application the TCCI would seek that the variation to the award take effect from the first full pay period on or after the date of your decision in this matter. If the commission pleases.

THE COMMISSIONER: Thanks. You got anything to say?
20

MR RICE: Commissioner, we haven't anything further to add other than that presented to you by the TCCI at the present time and we support the submissions of the TCCI in full. Thank you.

25 THE COMMISSIONER: Okay. Mr McDougall, do you want to say any more?

MR McDOUGALL: No, I think I have made my point quite clear.

THE COMMISSIONER: You have certainly made your point.
30

MR McDOUGALL: Thank you very much.

THE COMMISSIONER: I am trying to be even-handed. I really don't see to have any latitude other than to approve it from the first pay period from today. Now, I
35 know that is going to present you with a problem but I can't see any way out of it and had you opposed it then perhaps we could have had some argument about it, but we haven't. No-one seems to have opposed it.

MR RICE: We can't oppose it.
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THE COMMISSIONER: No.

MR RICE: Because it's the way it is.

45 THE COMMISSIONER: Because it's there, but I agree with Mr Mazengarb, that it certainly doesn't offend the wage-fixing principles. The public interest, other than the interest of some of your members, might be an issue. But again, I think for the majority I can't see it offending the public interest. And in saying that I can only say

that I will approve these amendments from the first pay period from today. Sorry about that, but my hands are tied. All right, okay. Thank you.

5 **MATTER ADJOURNED INDEFINITELY**

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