

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 4493 of 1993

IN THE MATTER OF an application by
the Australasian Meat Industry
Employees Union, Tasmanian Branch
to vary the Meat Trades Award

re apprentices

COMMISSIONER GOZZI

HOBART, 27 September 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Appearances in that matter, please.

MR J.E. SWALLOW: SWALLOW, J.E., AMIEU.

COMMISSIONER GOZZI: Thank you, Mr Swallow.

MR M. FLYNN: FLYNN, Michael Dennis, Meat and Allied Trades Federation of Australia, Tasmanian Division.

COMMISSIONER GOZZI: Thank you, Mr Flynn.

MR T.J. EDWARDS: If it please the commission, EDWARDS T.J., and with me **SARAH TROWN** for TCCI.

COMMISSIONER GOZZI: Yes. Thank you, Mr Edwards. Mr Swallow?

MR SWALLOW: Mr Commissioner, as you are aware this matter in relation to apprentices has been subject to debate now for somewhere around about 3 years. The union eventually got to a position with the Meat and Allied Trades Federation on behalf of the employers in the meat industry and a new apprenticeship system was developed, and it started in January of this year.

The success has been measured on the basis that the retail butchery trade is the only trade in Tasmania that's increased its intake this year, and the success of it indicates that all of the hospitality trades are going into it from January next year.

There's other trades that have picked it up. The Electrical Trades are after something similar; the building trades have started up something similar, and are looking at some further developments. So it could well develop into a universal scheme.

Now the trouble the union has come up against is that it was a gentlemen's agreement that the apprentices be paid \$1,000 after the employer receives his first instalment from the Australian Training Incentive Grant - and that's a grant that's given to employers of apprentices throughout Australia when they take them on.

As I say, it was a gentlemen's agreement and we didn't expect any problems. We had no intentions of making it an award obligation. We believed a gentlemen's agreement would suffice.

However, there has been a couple of hiccups and I think rather than adopt the gentlemen's agreement approach the union requires provision to be put into the Meat Trades Award, and I have got an exhibit I would like to pass over and I will read it into the transcript.

COMMISSIONER GOZZI: Exhibit S.1 - well, we'll mark it Exhibit AMIEU.1.

MR SWALLOW: It's self-explanatory, Mr Commissioner. It's, 'Draft - New Clause 10(i)':

(i) Where an apprentice has successfully completed the required pre-apprenticeship training course prior to his/her employment, the employer shall pay \$1,000.00 to that apprentice upon receipt of the first instalment (\$1,500) of the Australian Training Incentive Grant from the Federal Department of Employment Education and Training.

This payment shall be for skills acquired during the successful completion of the pre-apprenticeship training course and the achievement of the required training outcomes.

Now it's self-explanatory but it just - any problems that could develop, that most certainly will rectify any problems that might occur.

The scheme itself there's been - there are two ways you can get in - you can either go in that way, you go to the apprenticeship training, it is a 10-week course, and you go to the employer, you do your probationary period which is the norm - nothing has changed in that area - and then you get your money.

The other way you can go in is if the employer - if any employer disagrees with this their other option is they apprentice them before they go down to the apprenticeship training and they pay the apprenticeship wages for the 10 weeks.

COMMISSIONER GOZZI: Don't they get paid by - who do they get paid by in the first 10 weeks?

MR SWALLOW: Nobody. They are not employed, it is just pre-apprenticeship training.

COMMISSIONER GOZZI: Why - if it is intended for these people to be paid - why doesn't the legislation make that clear?

In other words, why aren't the funds paid to those people doing the pre-apprenticeship training? Why aren't they paid by the Australian Training Incentive Grant Scheme?

MR SWALLOW: It's paid to the employer. It's an employer incentive, rather than an employee incentive.

COMMISSIONER GOZZI: Well, what's the legality of paying that money to an apprentice, having regard to the requirements of the scheme?

MR SWALLOW: What's the legality?

COMMISSIONER GOZZI: Mm.

MR SWALLOW: Well I didn't have much training in a law degree, to be truthful. I -

COMMISSIONER GOZZI: Well, it has got nothing to do with that. I am just simply saying is it able to be done, having regard to the details of the training incentive grant?

MR SWALLOW: Well I am saying it is.

COMMISSIONER GOZZI: Well, I am asking you the question, does it permit that to take place?

MR SWALLOW: Well the employer can give his money to anyone, can't he?

COMMISSIONER GOZZI: Mr Swallow, I am asking you the question. If that's the best you can do to answer it, well that will have to do.

MR SWALLOW: Well, that's all I know.

COMMISSIONER GOZZI: Well I am simply saying that within my knowledge that these types of schemes allow for the payment of those people undergoing the training. And I was simply saying, how can it be done, how can that money that's made available from the Australian Training Incentive Grant, how can that be paid, or a \$1000 of it be paid, to a person that's undergone pre-apprenticeship training?

MR SWALLOW: Well the answer to that, I'd say the employer gets a grant from the government of \$15000 and the employer can do what he likes with it. He doesn't have to check up with anyone. He can go and punt it on the horses of a Saturday if he wanted to. It's his money. It's his money for taking on an apprentice.

COMMISSIONER GOZZI: Well he is not an employee. It's an ex-gratia payment that you are asking that I endorse. The person is not an employee, is he, or she? So, I mean, why would you make a payment to somebody that's not an employee?

MR SWALLOW: Well, after he does his - he does 3 months' probation, right?

COMMISSIONER GOZZI: Yes, from the time that he finishes, or she finishes.

MR SWALLOW: No, they do their pre-apprenticeship training where they go into the class as an apprentice. Right? Then they are employed by the employer from the day they finish their 10 week training. They do their 3-month probation. They are employed at that time.

COMMISSIONER GOZZI: Mr Swallow, I am trying to keep an objective mind here to what you want to do, and I am finding it difficult to understand the rationale of how an award could apply to a person that's not an employee.

MR SWALLOW: Well he is.

COMMISSIONER GOZZI: He's not. He's not - your own draft here says, 'prior to his/her employment'. How can you impose an award obligation on somebody that's not an employee, for goodness sake? How would you ever enforce it? All you are asking me to do is to endorse the payment of an ex-gratia payment. Surely? And I am not even sure that it is legal in the context of what the intent and purpose of the Australian Training Incentive Grant is. I mean, I don't know. I am asking the question - I am not getting a very good answer - but leaving that to one side, you are asking for the imposition of an award obligation on somebody that's not an employee. That's the first question I want to be addressed on.

MR SWALLOW: Well, I've responded to the Australian Training Incentive Grant, about the \$1500, that the employer can do what he likes with that.

COMMISSIONER GOZZI: Yes. So why does it have to be - yes, alright, I hear what you say about that.

MR SWALLOW: Right. And he pays \$1000. This payment shall be for the skills acquired during his successful completion of the pre-apprenticeship training course and the achievement of the required training outcomes.

That's at the end of his 3 months' probation period. He's been employed for 3 months.

COMMISSIONER GOZZI: Alright, well look, I hear what you say. Is there anything further you want to add?

MR SWALLOW: No.

COMMISSIONER GOZZI: Alright. Mr Flynn?

MR FLYNN: Thank you, commissioner. The first thing perhaps I should point out at this time, commissioner, is the actual claim went to the amendment of Division G - Apprentices. I discussed that matter with Mr Swallow -

COMMISSIONER GOZZI: I'm sorry?

MR FLYNN: The claim actually says to vary the award, Division G - Apprentices.

COMMISSIONER GOZZI: Yes.

MR FLYNN: And, as you can see from the draft clause which I have discussed with Mr Swallow, that it's an amendment to clause 10 - it should be (i) - it is not a roman numeral.

COMMISSIONER GOZZI: Why should it be a new clause and not in the apprenticeship provision?

MR FLYNN: It is in the apprenticeship provisions, commissioner. It is just that Mr Swallow when originally making the application asked for it to be included in Division G of clause 8, which is the wage rates.

We have discussed the matter and thought perhaps that it was more appropriate to put under apprentices the actual clause No. 10.

COMMISSIONER GOZZI: It's certainly not a wage rate, Mr Flynn.

MR FLYNN: Sorry?

COMMISSIONER GOZZI: It's certainly not a wage rate, is it?

MR FLYNN: Well, commissioner, I note your comment on ex-gratia payment. There is no intention or to avoid tax on this amount. So, therefore, the amount of money paid to the employee will be taxable.

COMMISSIONER GOZZI: I'm not worried about that necessarily, I am just simply worried about how you create an award provision for a person who is not an employee.

MR FLYNN: But, commissioner, if you read the clause - just concentrate on clause (i) again: 'Where an apprentice - the word 'apprentice' means the person is employed. It doesn't say pre-apprentice it says apprentice.

COMMISSIONER GOZZI: Well, what's the \$1000 for?

MR FLYNN: The \$1000 is, commissioner, as you pointed out, or you found out perhaps I should say, the pre-apprentices are not being paid by the butchery school. They might pick up Austudy or Abstudy or something like that, but they are not being paid.

Now as part of a larger agreement, shall we say, that involves not just butcher pre-apprentices but a number of other

training initiatives within the meat industry that go as far as boning, slicing, slaughtering, small goods, packers, wrappers and sales assistants, as well as these butchery pre-apprentices, the Meat and Allied Trades Federation, its members, and even broader than its own membership, it's number of non-members in this industry, agreed to the payment of \$1000 to each of those apprentices in lieu of picking up the wages which they would normally do during the first year of block release training at the butchers school.

COMMISSIONER GOZZI: Well if they did that, what is the legality of it versus any money that they may receive from the government when they really aren't supposed to be getting any other income?

MR FLYNN: Commissioner -

COMMISSIONER GOZZI: From the same source. I mean, I don't care what you and Mr Swallow and the industry agree to do, I want to be satisfied that it is right and proper that this type of provision go in an award addressing this particular set of circumstances.

MR FLYNN: Commissioner, that's what we are attempting to do, and I can see no reason, no impediment at all, to the commission placing a \$1000 ex-gratia payment - whatever you might like to call it.

It is taxable. There is no intention to avoid tax on this matter, into the award. It is virtually a recognition of prior learning, commissioner, and I have no difficulty with that, and neither do my members.

COMMISSIONER GOZZI: It's not a recognition of prior learning, it's a recognition of somebody acquiring skills which an employer will use, but they are acquiring those skills before being employed.

MR FLYNN: That's correct, commissioner. It's called prior learning. And I have no difficulty with that, and neither do my members.

COMMISSIONER GOZZI: Well, Mr Flynn, let's just not get into these sorts of discussions all the time which sort of always tend to get off the rails one way or another.

I want to be satisfied that you can create an award provision to reimburse or pay wages for somebody when the award doesn't recognise them as an employee.

MR FLYNN: But, commissioner -

COMMISSIONER GOZZI: And occupational superannuation and award entitlements and all those sorts of things don't accrue to that employee until after the person is appointed.

MR FLYNN: And, commissioner, the payment isn't made until the person is appointed, until well after a person is appointed in the case of a 3 month probationary period.

COMMISSIONER GOZZI: Alright, so you are saying this is part of a wider arrangement in the industry, and what else is happening? How has that arrangement been given effect?

MR FLYNN: Well, commissioner, it is being given effect, and I have got a number of -

COMMISSIONER GOZZI: Is there agreement between the parties in a training sense that allows that to happen?

MR FLYNN: There certainly is, sir.

COMMISSIONER GOZZI: Can you apprise me of that?

MR FLYNN: I certainly can, sir, and perhaps if I - and if you wish to do it in this order that was the last thing I was going to put forward as an exhibit today - but I will hand up an exhibit that actually demonstrates I'd say the latest position on what has been agreed.

COMMISSIONER GOZZI: Exhibit MATFA.1.

MR FLYNN: Commissioner, this document with all the little squiggles, etc., on it demonstrates a considerable period of work. As Mr Swallow says, nearly going on 3 years, and I have other exhibits that I would like to put forward at a later stage in this hearing.

But this demonstrates the work that has been done between the AMIEU and MATFA and the industry working group under the guide of the Tasmanian Food Industry Training Board.

Now if we look down the left-hand side, commissioner, you'll see the second box in from the left: 'TCOH apprentice and pre-appointment training stage 1' - pre-apprenticeship/pre-appointment, whatever its name is.

That, commissioner, demonstrates the position that we're talking about today. That is a new pre-apprenticeship course that's been arrived at following 3 years of negotiations with the union and with the Department of Employment, Industrial Relations and Training and the Department of Employment, Education and Training for the federal government.

COMMISSIONER GOZZI: And have they agreed to this payment of \$1000?

MR FLYNN: It's not their position to agree to those payments, commissioner. They haven't been asked if they agree to it. That matter, and again that's the subject of a further exhibit, was a matter to be agreed between the AMIEU and MATFA, and that was the case.

Commissioner, what I am trying to point out here is that we have that box at the top headed 'TCOH' which then moves off into two streams. One is a butchery stream and one is a smallgoods stream.

What we are suggesting there is that currently there is no apprenticeship training for a smallgoods apprentice in this state, although a smallgoodsman is a declared vocation under the - I am not sure of the name of the Act, commissioner, but anyway under the Act it is relevant.

We're suggesting there that possibly the pre-apprenticeship training for both butcher and smallgoods could be exactly the same.

We then move further down to perhaps a little bit of shall we say dreaming where we may have in a number of years or months a MATFA/AMIEU scheme for employment, and that might see MATFA and the AMIEU has the employer of apprentices in this industry in Tasmania. Not necessarily all but at least some.

Those that would see us maintaining the current level of employment. As Mr Swallow advised, I'm not aware of any other apprentice trade in this state that has actually increased numbers over the last 12 months. We are in the midst of a recession whereas in the butchery area, commissioner, I think we've increased it last year and the year before by some eight or nine apprentices, and that has been as a direct result of the pre-apprenticeship course that we have developed.

I might also add, commissioner, that some years back we had a pre-vocational course in place which was much the same. It ran on two or three occasions, I believe.

It had exactly the same effect. It did increase employment numbers. But Mr Swallow, for obvious reasons, was uneasy about those pre-vocational courses because the apprentices were receiving no recompense at all for the 6 weeks - sorry, it was 12 or 13 weeks, I think at the time, commissioner, that the pre-apprentices or pre-vocational students were in training.

Therefore, Mr Swallow and I and the industry working group negotiated this current arrangement, and we have now pre-apprenticeship courses which are of 10 weeks' duration as compared with the ordinary 6 week apprenticeship block release training during the first year.

I move on down through the lines and arrows, commissioner.

As well as having the MATFA and AMIEU scheme we have a recognition on the right-hand side there of private enterprise, and that means any employer currently in the industry that can or does or wants to employ an apprentice can still continue to do so, and they of course would go off into private shops and factories as the arrow follows down the line.

In the case of the MATFA and AMIEU scheme where it may be that we will indenture apprentices or ABC's or whatever they like to be called in the future.

We are looking at providing two skill centres, one in the north and one in the south. Those two skill centres may actually be operating butcher shops and, commissioner, I have canvassed that with my membership, and whilst I have a number of questions I have no objections to MATFA and AMIEU operating butcher shops for the purposes of training and for the purpose of putting back into the industry.

At the same time those two skill centres could provide a permanent or relief employee feeder system back to industry, which on occasions finds itself short of employers.

I think the intention of the union in this case, and certainly of ourselves at MATFA is to remove the - what do we call it, John - the backyarders - from the scheme -

MR SWALLOW: Yes.

MR FLYNN: - that are currently wandering around the industry working for a bit of cash here and there and a bit of free meat.

MR SWALLOW: The Mafia.

MR FLYNN: We're out to ensure that youth receive training and that we are building the future of this industry, not living off the old memories of the past.

People that have retired on no doubt good superannuation schemes and living quite nicely and picking up a little bit of cash here and there.

From there down, commissioner, you will see that we've branched off from butchery into smallgoods training. Smallgoods training will be separately designed and would obviously be a specialist trade.

Butchery training at stages 2 and 3 is to be competency based. At least that's our discussion at this stage, and that

training and the second year - the first group that went through in February of this year - will be up for training February/March next year, and they will go into a 2/4 week block. That 2/4 week block for those apprentices that have actually carried out the requirements of a training manual for year 1 students, which is given to all year 1 students, which I am sorry, commissioner, I have only got one copy here, but I am happy to hand it up so you can examine it, provides for the requirements for training in the workplace, or on the workplace, and actually demonstrates to the employer the abilities of the pre-apprentice when they graduate from the butchery school at the end of their pre-apprenticeship courses.

Now if these items, tasks, are actually carried out in the workplace to a level of proficiency - the employer volunteers that they are proficient, the college tests them out in their first week when they are back there at the 2/4 week block.

If they are up to scratch, commissioner, and they are absolutely brilliant they will be back with their employer within two weeks.

If they're average, commissioner, and perhaps do most of the tasks correctly they'll be back within 3 weeks and if they're not and therefore the employer has not paid his part and perhaps the employee has not paid his or her part, then those employees will stay at the butchery school for some 4 weeks in total. In other words, paying a penalty not training on the job, commissioner.

We then incorporated a further stage, commissioner, in - it currently says TCOH stage 4. This section is still under discussion with the union but we're now looking at making that 2/4 week block release training in third year to incorporate a management type training. We're finding that the industry is getting a lot of new blood into it, buying butcher shops and managing butcher shops but are currently not well trained for that particular task. That's demonstrated, I guess, commissioner, by the state of the industry at the present time where those people who are actually required to do that training on the job are already finding difficulties themselves.

And so we intend to train them in a number of areas that we believe will help them either to run a butcher shop or a supermarket meat department or perhaps even own their own. Commissioner, as I say, that's still under discussion. As well as that, commissioner, we've drawn in there on the left-hand side the post trade courses.

Now, commissioner, without going in all details on the other side - I could quite easily do so - I think I've demonstrated there are a number of ongoing discussions of which there will

be tangible benefits for both sides of the industry, for both employees and employers in the butchery area alone, and we are actually developing the smallgoods course and that should be ready to commence, I would imagine, if not early in '94, late 1994 after we have a further industry working group.

Much the same with boners, slicers and slaughterers. We have a number of initiatives there which actually provides career path skilling or training that allows the employee to move through the industry to various stages to go across various paths to rejoin other sectors, and to actually provide a complete meat industry career pathway and a network for employees to pursue whatever role they are qualified to assume and that they decide to assume. If they wish to stay at the level they're currently operating at, that's their choice too. But we wish to provide them with a career pathway.

So, commissioner, perhaps if that answers your question on what else is being done, I guess that's part of it.

COMMISSIONER GOZZI: Mr Flynn, I'm very much aware of what the detail - not the detail - but certainly very much aware of the discussions that have been going on in this area. You've been involved in it for a considerable period of time, as Mr Swallow has. The basic questions I want answered are simply this.

The proposal that you're putting forward to me obviously has the endorsement of MATFA. Has it the support of the Tasmanian Food Industry Training Board?

MR SWALLOW: Yes.

MR FLYNN: Certainly, commissioner. No objection at all from the Food Industry Training Board.

COMMISSIONER GOZZI: And who comprises the Tasmanian Food Industry Training Board?

MR FLYNN: It's a tripartite organisation - state, commonwealth government, unions. I think there are about six or seven unions - is that right -

COMMISSIONER GOZZI: Well -

MR FLYNN: I'm sorry, commissioner.

COMMISSIONER GOZZI: Yes, all right. So the proposal has been supported by the Tasmanian Food Industry Training Board.

MR FLYNN: Correct, commissioner. They've supported everything. Everything has been done under the guise of the Food Industry Training Board.

COMMISSIONER GOZZI: Secondly, how does the commission create an obligation on all employers in the industry in respect of somebody, the payment for somebody that is not an employee?

MR FLYNN: Well, commissioner, again we've got a hiatus here. It's obvious -

COMMISSIONER GOZZI: No, we haven't. They are subsequently an employee but they are not an employee for the period for which you want to create an award provision for. You want them to be paid for a 10 week period when they are not an employee, as I understand it.

MR FLYNN: Well, commissioner, you can take it either way. I guess you can read that clause either way too. It does say 'pay' and that's exactly what it means, pay them \$1,000. Can I just make a point that the use of any reference to the Australian Training Incentive Grant from DEET is merely, shall be say, coincidental, but certainly coincidental from my point of view in that part of the agreement was that employers would not have to pay the \$1,000 to the employees until they receive that grant. In other words, they would have liquid funds available to pay the grant. And it was on that basis that it was sold to the membership of the Meat and Allied Trades Federation, and other non members too, commissioner.

COMMISSIONER GOZZI: Yes, but I guess the question I'm asking you seeing as DEET are in the council, has DEET agreed that the traineeship fund available to be paid - part of it to be paid to those pre apprenticeship training people.

MR FLYNN: No, commissioner, again I'd support Mr Swallow's submission that when the employer receives the \$1,500 he can do what he likes with it.

COMMISSIONER GOZZI: Yes, but look, I think I'm asking a fairly straightforward question.

MR FLYNN: I'm trying to give a straightforward answer, commissioner.

COMMISSIONER GOZZI: Yes. I'm simply saying, how can the commission in respect of an arrangement that's obviously been entered into after long negotiation, how can the commission create a valid award provision to provide for a payment for somebody to pay for work or training or whatever, to an employee when that person - to a person who's not an employee?

What if - what if - let me turn it around - I mean I think the question is quite easy - but let me turn it around the other way - what if - what if an employer doesn't pay it - what's your redress?

MR FLYNN: At the present time, commissioner, none.

COMMISSIONER GOZZI: What would it be if it was in the award?

MR FLYNN: Well, commissioner, if it's an award provision, then I guess it could be policed by the commission or by the Department of Employment, Industrial Relations and Training through their - of their office.

COMMISSIONER GOZZI: In respect of that period when a person is not an employee.

MR FLYNN: But, commissioner, as I say, I've got this hiatus here, we are not seeking a payment during the non-employment shall we say. The payment is a recognition of prior learning

COMMISSIONER GOZZI: We are not in a hiatus, Mr Flynn, I'm having difficulty expressing the question, I suppose. If there is an award breach for underpayment of wages, how would that award breach be enforced in respect of this particular type of employee? I think you're saying to me -

MR FLYNN: I guess, commissioner, it's a bit like if an employer doesn't supply his employee with coats and aprons as per a provision of the award would be progressed exactly the same way wouldn't it?

COMMISSIONER GOZZI: Well if that's - if - you know, I mean I - I think I've -

MR FLYNN: It's a condition of employment; it's a - the \$1000 dollars is like coats and aprons to me.

COMMISSIONER GOZZI: Alright, thanks, Mr Flynn. Anything further you want to add?

MR FLYNN: I've got a number of things, commissioner.

COMMISSIONER GOZZI: Alright.

MR FLYNN: Okay, just to go back to where perhaps I was going to start, as Mr Swallow said, this debate has been going on for some 3 years now, and I've got a number of exhibits that I'd like to hand up. It may help the commission to - to perhaps get a grip on exactly what we are talking about. We've got a letter here that dates back to 14th September 1990 to a Mr Rob Richardson who was some form of executive officer at the Department of Employment, Education and Training. At that stage, commissioner, there was a meat trades training advisory committee which had a number of subcommittees, and we will see from the - the reason I've included that - that typed letter, commissioner, is because the actual minutes of the butchery apprenticeship subcommittee attached haven't got a date on them so I included the covering letter - but at that

stage, commissioner, you can see there that we were looking at a number of recommendations and unfortunately at that particular meeting Mr Swallow wasn't present, but we had Brendan Cohen from Purity, Steven Davey from the butchery school, Phillip Robinson - an employer, and myself acting as secretary, I believe, at that stage.

Now again, commissioner, remember this was under the guise of the Department of Employment, Education and Training as it was called at the time, which is the old state government department, and these training subcommittees or advisory committees were the precursor to the current Industry Training Boards and their industry working groups.

Now at that stage, commissioner, we looked at a number of points which included compulsory pre-apprenticeship course for butchers, smallgoods men, 10 weeks at TAFE plus 2 weeks work experience in the industry, or nine plus three. We were looking at anything. Down towards the bottom, commissioner, at point No.9, you will notice that it's recommended that 6 weeks pay at that stage, commissioner - sorry - go back - point No.7 - funding: currently employers receive \$1500 upon signing indentures and a further \$1500 when an apprentice successfully completes their apprenticeship.

Then it makes point No.8: employers shall not have to send a first year apprentice to the butchery school for the first year training if pre-training, therefore a saving of some 6 weeks pay.

Commissioner, if I just go over the way - the block release training system works in this state, after employed, an apprentice is required to be - to be trained at the butchery school and it's either in one 6-week block or a four and a two, whatever it might be, that has now, and since this time been changed to a 10-week first year block. And as Mr Swallow said, if people wish to continue to employ apprentices they can do so. Nobody is in there trying to stop anybody have employment.

Down to point No.9: recommend that 6 weeks pay times \$150 (plus or minus) which is roughly the apprenticeship figure, weekly payment, equals \$900 plus the TAFE government levy of \$160 equals \$1000 (plus or minus) - very rubbery figures, commissioner, but you can see where it came from - to be collected from the CRAFT rebate, CRAFT being the now ATI scheme - that is, 1500 reducing first payment to \$1000 and second payment to \$1000.

Now we are looking at something different at this stage to what actually came out at the end, but the point I'm making, commissioner, is way back in 1990 this was our vision and today this is what we have, but albeit a gentlemen's agreement that has worked in well, say, 90% of the cases.

Commissioner, following that meeting, I think that it was about that time that we had another meeting, and this actually is a bit of a jump there because most of the meetings were - were rather - rather verbal, shall we say, and there were very few minutes kept at the time. But we then come to a document headed 'Butchery Apprenticeship Training Points of Agreement', and this is dated 11th March 1992.

COMMISSIONER GOZZI: We'll mark the previous document MATFA.2 and this will be MATFA.3.

MR FLYNN: Now, commissioner, without going into great depth with this document, you will notice that Mr Swallow is president at this meeting, with Ken Dobbie from the Food and Industry Training Board, Mr Mueller from the college, Mr Day from the college, Mr Mundy - President of the Meat & Allied Trades Federation and myself. And we were again moving forward in our agreement on certain points.

I'd like to take you to point No.6 on that first page: students successfully completing the pre-apprenticeship course to be compensated by employers upon the receipt of the CRAFT payment by way of a training allowance of \$75 to \$112 per week to be decided between the AMIEU and MATFA and included in the Meat Trades Award.

Now, commissioner, I guess that what I'm demonstrating there is this has been going on again since March of '92 and we're getting closer to the \$1000 again - we went round in a bit of a circle and came up with that. That is a document that was under the guise again of the Food and Industry Training Board and employers were well aware of it.

It also details other matters, commissioner, on page 2 - you will have to excuse the chicken scratch on it, this was a working document that was used afterwards - and a number of other matters are included in that which again demonstrates the agreement of the parties to move forward in this training arena, rather than perhaps sitting on our hands as we have been in the past.

It gets into detail on the new 4th year management block which, as I say, commissioner, is now under discussion, including that in 3rd year, but no actual agreement has been concluded on that.

The training manuals which before I waved at you, commissioner, but we don't have further copies. These training manuals are available. They were included in that same document. It was about that time that they started working to put that training manual together.

Commissioner, perhaps going back through that document there is more supporting information and there is a paper in there headed, 'Butchery Apprenticeship Training - Time To Change' which is a paper I was asked to put together at the time, and after perhaps shall we say a few gruff statements made in the Meat and Allied Trades Federation newsletter 'No Bull', and perhaps a number of unkind statements were made there, but they did reciprocate with debate and they did actually get to where we are today in this gentlemen's agreement as I mentioned.

Commissioner, from that point on we move to something a little bit more formal, an actual meeting with Trevor Leo. I'm not aware of his title - perhaps chief executive officer, Department of Employment, Industrial Relations and Training.

COMMISSIONER GOZZI: General Manager (Training).

MR FLYNN: General Manager (Training). Thank you, commissioner.

When it came to -

COMMISSIONER GOZZI: MATFA.4.

MR FLYNN: When we came to an agreement, and it was from this document which again was under the guise of the Apprenticeship Training Board, but held in Mr Leo's office, that we arrived at an agreed format for butchery trades, which is attached to that covering letter.

It was this document, commissioner, that was forwarded to the Training Authority of Tasmania requiring that body's endorsement of that documentation, following the union and MATFA's discussions.

Commissioner, there is not much point reading everything into the transcript, except to perhaps just concentrate on No. 3 on page 2 of that document, which states:

Students successfully completing the pre-apprenticeship course will be compensated by employers upon receipt of the first CRAFT payment by way of an allowance at a rate agreed to by the AMIEU and MATFA.

Now, commissioner, as I said before, the occurrence of the CRAFT or ATI payment and the allowance is - well, it is coincidental - but it is by design, but commissioner, it doesn't require any approval from DEET as we are not actually taking any money from DEET.

I have got to admit that we did ask DEET if the \$1000 could be forwarded straight to the apprentice; we were told no, that

it is the employer's property. It is up to the employer to do what he likes with it. And in this case the employers like to give the \$1000 to the Apprentices Commission - at least in most cases.

As well as that, commissioner, we have got a couple of attachments there which talk about the actual flow chart and the way that we saw the butchery training going.

As I mentioned to you earlier today that is exactly what's happening except that perhaps stage 4 is a little bit different.

It provides for the 2/4 week training blocks and, commissioner, those 2/4 weeks training block must be I suppose the first adoption of competency based training which we are being driven towards - willingly, I will say - for the training of apprentices in this state.

The last Attachment 2 talks about the summary of employer consultations, commissioner.

This was put together following those meetings, and I'll just take you to the last point:

A summary of comments by employers is provided as follows:

It goes down to the last dot point, and says:

. The two largest employers of butchery apprentices in Tasmania, Coles and Purity Supermarkets, have given their full support to the proposals.

Now I subsequently find out that is not the case now. However, at the time there was no doubt that there was a tacit agreement from Coles, and there still is an agreement from Purity and Roelf Vos. There was a tacit agreement from Coles that they accepted the new scheme and, in fact, were in support of it.

Commissioner, I think it would also be of assistance if I handed up a further exhibit. Something that is handed to the pre-apprentices as they actually leave the butchery school to

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COMMISSIONER GOZZI: MATFA.5.

MR FLYNN: - commence their employment with their employer.

Now, commissioner, in a number of cases these lads, and girls if they come forward - we'd like to have more girls in the butchery school, but at this stage we haven't had any, but

that will change. At this stage all apprentices get a copy of this so they know what is happening, and it talks about the standard of dress; it talks about various industrial items covered by the award that they should be aware of, and you will notice it is signed by me and it is on the Meat and Allied Trades Federation letterhead.

So we are not trying to hide from anything, commissioner, and if you turn quickly to page 4 we have got, 'Payments to Apprentices':

Apprentice wages for a 40-hour week in a butcher shop, 38 in a supermarket, are included herewith for your information.

They are then noted, commissioner.

Where pre-apprentices have been indentured after the initial 10 weeks' training period and therefore not paid for the 10 weeks whilst at college a payment of \$1000 must be made to the apprentice upon receipt of the Australian Training Incentive Grant of \$1500 which is payable to the employer at the end of the probationary period.

This is an arrangement that was agreed to by all employers of MATFA -

- that should be 'to all members of MATFA' -

- and other meetings of employees, together with the AMIEU.

Default of this payment to an apprentice may lead to the termination of this method of training by the Training Authority of Tasmania.

Commissioner, it is not a threat, it is just a fact of life that if the \$1000 or the payment to the apprentices did not occur - at least at the date of writing this letter - then the Training Authority were looking - well, it is under constant review - but we were looking at terminating this form of training for pre-apprentices.

COMMISSIONER GOZZI: If that's the case why doesn't the Training Authority put that in their - given their involvement as I understand it on the committee - why isn't it part and parcel of the conditions that attach to employers when they agree to take on these particular people after they have completed their training?

MR FLYNN: Commissioner, it was originally part and parcel of the document that was submitted to TAT, that was approved by TAT. Subsequent to that time there has been correspondence from Coles which may draw more attention to that matter.

If you would like me to submit that, too, commissioner, I'd be more than happy to do so.

COMMISSIONER GOZZI: Well, it is just a question I am interested to know the answer to.

MR FLYNN: Well, commissioner, the Training Authority actually did include it, and it was part of the approval mechanism under TAT, and it was subsequent to a letter from Coles whereby the Training Authority agreed with Coles that the matter was not a matter that could be covered under the Training Authority guidelines and the Act that controls the Training Authority of Tasmania.

Commissioner, it might be just as handy to hand up these letters from Coles and from myself, and a further one from the Training Authority as exhibits.

COMMISSIONER GOZZI: MATFA.6.

MR FLYNN: Right, the first letter, commissioner, is the agreed format for butchery trades. That's from Mr John Forster, the Senior Executive Officer of TAT:

At the most recent meeting of the Training Authority Board on 9th July the format of butchery trades policy was considered.

In particular, a report on the validity of Clause 3 in the abovementioned paper was discussed, i.e. '(3) Students successfully completing the pre-apprenticeship course will be compensated by employers upon receipt of the first CRAFT payment by way of an allowance at a rate agreed to by the AMIEU and MATFA".

We intend to finalise this matter at the next Training Authority Board meeting and therefore I seek consultation with your industry training board, as a matter of urgency.

Now that was addressed, commissioner, to Mr John Swallow, the Chairperson of the Tasmanian Food and Industry Training Board. That matter was addressed and it was fully discussed at the time of the meeting which was coincidental with further correspondence I have got attached.

We go then to the next letter, commissioner, which was addressed to the State Manager of Coles Myer Limited.

Dear Sir,

And this is a letter from myself to that state manager.

There seems to be considerable confusion within your company regarding the new arrangements for butchery training implemented this year following industry meetings (including Coles representatives) throughout this state.

Support for the new training arrangements was, at that time unanimous, and your representatives Ray Baldock and Tony Snell were fully informed of the arrangements during the meeting in my office with Brendan Cowan of Purity.

In addition to this, Tony Snell attended an industry meeting at the Olde Tudor Motor Inn at the request of John Swallow, the A.M.I.E.U. Secretary, and the writer where he indicated that he could see no problems with the scheme of arrangement proposed.

No further contact was made with this organisation or the union by your company until Tony Snell rang the writer seeking two (2) of the pre-apprentices for the Kingsmeadows and New Town stores.

Numerous telephone conversations between Tony Snell and the writer occurred over a period of months regarding the new arrangements and it was on the understanding that the Coles representative would meet all responsibilities of the new arrangements - particularly the payment of the \$1,000 to the apprentices at the completion of the three month probation period when the A.T.I. grant of \$1,500 was received.

In a number of conversations with David Smith of your Human Resource department over the past few weeks your company's changed position has become clear and yesterday culminated in a number of moves by the writer aimed at facilitating the Coles position including encouragement of the A.M.I.E.U. to make application for the \$1,000 payment to graduates of the pre-apprenticeship course as requested by David Smith to be included in the Meat Trades Award - Mr Smith stated that Coles required award amendment forcing the payment of the monies.

In the most recent telephone conversation held yesterday at 4.00 pm David Smith advised the writer

that Coles would not pay \$1,000 to the two graduate apprentices I arranged for Tony Snell.

I trust this is not a company position that is being espoused by Mr Smith and I seek your urgent confirmation that Coles will honour its commitment to these employees and this organisation.

It would be unfortunate if the working relationship that has developed between our organisations ended over this issue.

I have also included some attachments that may further clarify the position for you and trust the advantages provided to employers with these arrangements will be appreciated by your company.

Commissioner, I haven't included those attachments and unfortunately my office could not find them over the last couple of days. However, Mr Edwards may actually have copies of them with him. But what they actually provided, commissioner, was the benefits to employers of the pre-training scheme and why we pay the \$1,000 and why we agreed to pay the \$1,000 to those pre-apprentices.

Now, commissioner, following that letter which was dated the 4th of August I requested that Mr Kevin Gee the State Manager of Coles Supermarkets in a fax I forwarded to him respond to Mr Trevor Leo in some form because of our meeting on that date, the 6th of August.

The response is the further letter.

In regards to the matter of \$1,000.00 payment to apprentices completing the pre apprentice course.

The attached letter outlines the Company's position on the matter. We are currently seeking legal advice on the jurisdiction of the Tasmanian Training Authority to endorse the said provision for payment.

As the matter has now been raised by the AMIEU as an application to vary the Award. The Company will with any such application, consider the ramification and put forwards its position in the appropriate arena.

And then the attachment referred to addressed to Mr Darcy McGuarr:

Dear Sir,

It has come to light that the TASMANIAN training authority has endorsed an "AGREED FORMAT FOR BUTCHERY TRADE TRAINING". Included in this is section three, which reads;

"Students successfully completing the pre-apprenticeship course will be compensated by employers upon receipt of the first Craft payment by way of an allowance. At a rate agreed to by the AMIEU and MATFA"

This amount we believe to be \$1,000.00. That is, two thirds of the Craft allowance. This matter raises concerns on a number of issues.

Firstly, we believe the proposal was put forward by MATFA as a "representative of employers". We would like to point out that MATFA does not represent Coles Supermarkets. Therefore their proposal cannot be viewed as a representing of the entire industry.

Coles Supermarkets was not given proper consultation on the details of the proposals. The completed document was never documented and circulated for comment and review.

Discussions on the topic were raised at a meeting where the principle agenda item was of a vastly different nature. Indeed the two meetings attended by Coles representatives, the topics revolved around "Lean Lamb Promotions" and discussions on trading hours. The meeting held in Launceston on the 11th August 1992 was most informal and could be best described as a "social gathering".

Given that such an issue falls into the industrial relations arena, the matter should have been tabled separately in the correct forum. Such a forum would give each and every player an opportunity to examine the proposal in detail and an opportunity for comment and discussion.

There are also issues as to the legal status of the endorsed payment to the apprentice (\$1,000.00). Under what jurisdiction can the Training Authority of Tasmania impose a payment where a contract of employment or a contract of training has not yet commenced. Under what Award provision has this endorsement been made.

COMMISSIONER GOZZI: Well, it is almost deja vu, Mr Flynn. I mean -

MR FLYNN: I agree, commissioner, and I am pointing out -

COMMISSIONER GOZZI: Maybe that's why people are being so prickly because I was asking all the right questions.

MR FLYNN: Well, commissioner, I am sure you've had discussions on this matter prior to the hearing, anyway, and -

COMMISSIONER GOZZI: Mr Flynn, the only discussion on this matter was a matter that you raised with me saying it would come up. There has been no discussions with me -

MR FLYNN: Correct, commissioner. That's what I am referring to. As a matter of fact, commissioner, I've included it in my newsletter which is circulated in the Industrial Commission.

COMMISSIONER GOZZI: And I wish, Mr Flynn, seeing as you have a habit of referring to conferences that take place between the commission and other parties that perhaps we shouldn't have those conferences or discussions.

MR FLYNN: That's up to the commission.

COMMISSIONER GOZZI: Well, it certainly is, Mr Flynn.

MR FLYNN: Commissioner, I just want to take you back to two points in that letter. Perhaps to the - it must be about the fourth paragraph on the first page addressed to Mr McGuarr from Mr Gee:

Coles Supermarkets was not given proper consultation on the details of the proposals. The completed document was never documented and circulated for comment and review.

Commissioner, Coles were kept informed, particularly Mr Baldock and Mr Snell all the way through the discussions. All the way. They were well aware of what was included, and they were well aware of what the agreed position between MATFA and AMIEU was.

And I can't provide any formal evidence of this, commissioner. I guess it is my word against Mr Snell's, if it gets down to that, but that's exactly what the position was.

Mr Gee also refers to a number of meetings they'd heard, and whilst I can agree there were other matters dealt with the prime reason for the meeting in Launceston that he refers to on the 11th of August, while he may have seen it as a social gathering it was specifically to decide and to gain members, and in this case Coles' reaction to the new training plan for butchery pre-apprentices.

Now that meeting endorsed and specifically at the end of it I can recall that we had two speakers present - one was Stephen Davey the senior teacher of butchery and the other one was Mr Mark Nicholson who is an outside consultant actually writing the new training format - and as I waved to you before, commissioner, this training manual which goes to all pre-apprentices and employers.

And at that stage I can recall either Mr Davey or myself asking Mr Snell whether he had any reaction to it, and I think Mr Snell's comments were, 'I can see no problems with that arrangement at all'.

Now from that point of time I guess we can't say that Coles endorsed it, commissioner, and I wouldn't suggest that Mr Snell did endorse it on behalf of Coles, but he certainly had no objections to it and we heard nothing else from Coles after that point.

The next time I heard from Coles that I can recall regarding the pre-apprentices was perhaps to discuss me trying to gain employment for a number of them and at that stage again reiterating the conditions that applied to these pre-apprentices as per the agreement between the AMIEU and MATFA, and the industry generally, and then followed with a discussion with Mr Snell where he actually requested two of the apprentices.

Now I can say no more, except that Mr Snell understood the conditions. Mr Snell was the representative of Coles at the time and Mr Snell gained those two apprentices that we made arrangements to have provided to Coles after they carried out the relevant interviews at the butchery school.

Commissioner, I think that's probably enough from me. I think I have told you about the innovative arrangements that we are trying to put into place.

I think I would also have to say that the AMIEU and MATFA are at its most cooperative level at the present time and we are I would say moving ahead for the benefit of the industry generally.

This is not a one-sided arrangement. This suits employers and employees and future employees.

The \$1,000 payment is not a bribe, it is not a pay off, it is not a sweet cop to the union. This is merely a payment for skills that have been gained at the butchery school prior to employment, and it is, commissioner, a recognition of that prior learning; and, of course the employee does not have to go back to block release training in the first year, there is a saving of 6 weeks on the job when the employer would normally lose those apprentices.

MR FLYNN: Just reiterate, commissioner, anybody aggrieved with this position, doesn't like it, doesn't like the way the AMIEU, MATFA and the butchery school pick their apprentices, or pre apprentices, they're at liberty to pick their own and - and send them to this particular course. I will point out that it's now 10 weeks duration, not six, and they can attend that course as apprentices and pay them for the 10 weeks. Neither Mr Swallow and myself have got any objections to that, commissioner. As a matter of fact, that's been going on this year. We see it perhaps as a bit of a hangover from the old system and we - we hope and anticipate that fewer employers will take that particular method.

I guess, commissioner, to get down to tin tacks, I've got a problem, that Coles are now refusing to pay the \$1000 to the two apprentices and I guess the reason why I've got the problem rather than Mr Swallow at this stage, is because I told the two apprentices they would be receiving that amount of money based on the commitment from Mr Snell.

Now, I'll be very honest, commissioner, one of the mothers of one of these apprentices rang me about a month ago, perhaps a month and a half, and I know her husband - the boy's father - quite well, and she said, this \$1000 I'd rather you forgot it, I want him to keep his job. Now, commissioner, I'm not saying a threat was made to the - to the apprentice, but there was certainly a degree of urgency in her statement to me to forget the \$1000.

COMMISSIONER GOZZI: That's got nothing to do with me, Mr Flynn, has it?

MR FLYNN: I'm just making the point, commissioner, that people are feeling I'll say threatened in that case, by our application, or by the union's application and - and I guess, as you say, commissioner, it's got nothing to do with you, however, I believe it's incumbent upon me to do my best to make sure that these - these boys get their - their \$1000 payment, as all other employees taken on at the time from that pre-apprenticeship course, either have or would be receiving in the very near future.

COMMISSIONER GOZZI: Mr Flynn, the only thing I'm concerned with is the validity or otherwise of putting a provision like that in the award.

MR FLYNN: Well, commissioner -

COMMISSIONER GOZZI: And I think you would understand that there are some very valid questions that need to be addressed. I've asked a number of them - I'm sure there are a whole lot more - there are whole lot more that - that I could ask about this particular proposal, and if you and Mr Swallow and -

others perhaps don't like me asking those questions, that's - that's a bit tough. The fact of the matter is, I need to be convinced that what I'm doing stands up to proper scrutiny and I guess one of the questions I'd like to ask you at the moment is to say, well how does the proposal that you're advancing comply with the wage fixing principles?

MR FLYNN: I'm sorry, commissioner, I - I wouldn't have any idea. As I say, this was originally - was intended to be a gentlemen's agreement. It is a gentlemen's agreement. The only reason we're here today is because Mr Smith from Coles, who's sitting at the rear of the room asked Mr Swallow - I believe it was Mr Swallow - if he would make application to include it in the award, I guess for the purposes of debate. And that happened in front of witnesses at the butchery school, commissioner, and that's why a number of weeks passed by. I had that discussion, I referred to Mr Smith, to the manager, Kevin Gee, of Coles, and -

COMMISSIONER GOZZI: I mean - Mr -

MR FLYNN: - at that time I was told, well there's no application in, so I rang Mr Swallow straight away, I said put your application in.

COMMISSIONER GOZZI: Yes. It's an easy thing to say, look we'll just put an award provision in, and I understand the background, and I say - I hear what you're saying, but I - I think the questions nevertheless need to be answered in the context of you asking me to create a payment in the award of \$1000 to be paid by - an obligation of employers to pay to somebody who, during the period of training at least, isn't an employee - that's point one.

MR FLYNN: That's correct.

COMMISSIONER GOZZI: Point two - I don't know the legalities of - of the payment of training moneys and the impact on other - amounts of money that other people might receive. I've heard what Mr Swallow said about that; I've heard what you've said about that and certainly I'll consider that.

Thirdly, I think it's relevant to ask you how the payment sits in the context of the wage fixing principles. I mean I get the wage fixing principles from you and Mr Edwards on a whole lot of other occasions -

MR FLYNN: Commissioner, I just correct you, you don't get them from me. They're not getting them from me.

MR SWALLOW: Oh, no, there's only one bloke you get them from.

COMMISSIONER GOZZI: And I think they are legitimate matters that the commission needs to consider and I think that if people look at this in a professional way - and I hope that that can take place, because what we're looking at here is at what can and cannot be done in the award context, then they're the questions and issues that need to be answered, as I'm being asked to answer them in other matters that are before the commission.

Now I'm not here to stitch up a deal between the parties; I'm here to say, look, from where I'm sitting there could be some fundamental problems and you've got a number of choices about that - you can seek to address them, you can spit the dummy, you can tell me whatever you want to tell me - I'll take it all on board, but the bottom line is, I believe that what I have to do as a commissioner is to satisfy myself in accordance with the requirements of all - all the dicta that's before me, whether or not it can be endorsed.

Now some of what I believe to be legitimate questions to you have either been dismissed, not answered in any real way, and that some of the important issues, as far as I'm concerned go to this question of creating a contract of employment for somebody, who to all intents and purposes isn't an employee for the period that the payment is being made, the wage fixing principles, and to a lesser extent but of concern to me, to create a provision in an award to provide for the payment of moneys which may or may not have an impact for what those people receive from the government by way of the Austudy moneys or anything else.

Now, as I say, in respect to that last point, I've heard what Mr Swallow has said and I've heard what you've said about that, but we've discussed a whole range of matters and I think it's important that you and Mr Swallow understand that I don't sit up here to put road blocks in your way, what I'm trying to do is to get the information I believe that I need if I'm able to consider this properly to try and do what you want me to do.

And I'm saying, from where I'm sitting at the moment I have some fundamental concerns. When we started this hearing off today, I knew from you, and you referred to it earlier, that this application was coming and what the intent was. Obviously there have been since that time - and let me say for the record, seeing as we've raised this subject - there was no prior discussion about the details and the context of this particular application.

Let me say that the questions raised here and some of this material are, I believe, legitimate questions to be - that need to be addressed, and it might be different between - for the parties to enter into an arrangement between them and do

what they want to do by way of agreement or whatever, as opposed to seeking full endorsement in the commission.

I'll be interested to see what Mr Edwards has got - has to say about some of the - some of those particular key issues. I mean I don't think it's good enough or fair to the commission, quite honestly, to just brush them off and attempt to say to the commission, look, you're being a nigger in the wood pile - that's just not good enough.

Now I'm not going to keep debating those type of issues with you or Mr Swallow or to in other matters with other people in proceedings. I'm just going to let you know that as far as I'm concerned the quality of what I get is what you're going to get back. You're either going to succeed or not succeed on what is put before me in these proceedings. And if you don't address - what I'm saying there, is that if you don't address what I regard to be the important issues and the - the fundamental criteria such as the wage fixing principles that you have a problem with, Mr Swallow, I can't help that you've got a problem, but your union, the TTLC and everybody else said, look, we want you to work in accordance with those - I can't walk away from it. Now it's about time the people understood those type of issues for as long as we've got these particular principles left in place - however long that may be.

I don't do it to make your life difficult, I do it to try and explore avenues where I can address the issues. So I want to make sure that you've got every possible opportunity to put your case and I'll certainly do my best to consider it within - within the guidelines - all the guidelines that I have to have regard for.

Is there anything else?

MR FLYNN: Yes, commissioner, I'm just taking down a couple of notes here - you're particularly interested in how we can make a payment that recognises the 10-week pre-apprenticeship course - is that correct?

COMMISSIONER GOZZI: Yes, well that's - that's one point.

MR FLYNN: Well, commissioner, this is going to be the subject of another matter that we're coming to on the _ I think it's 26th October this month - we're - I've got an application in there to include career start trainees. In that case there is a recognition of prior learning, I believe, in that clause that includes varying payments for Year 11 students - graduates, sorry - Year 12 students - and I believe that's a standard of this commission.

COMMISSIONER GOZZI: Well, look there's no doubt that the trainee systems - Australian Trainee System provisions have

been included in awards - I included one just recently - I had a hearing of one on Friday and they are included. I - I don't necessarily equate this to a trainee system type of arrangement. The Australian Trainee System type arrangement as you would be aware covers a 39-week period of training with a rate of pay determined - having regard to the untrained junior rates - which is the 75% rate of the junior rate - and it provides for a 52-week period and it might provide at the end of that training period some accelerated progression in a salary scale or a wages scale.

Now -

MR FLYNN: Again, commissioner, I just make the point, the application you'll receive from me will be for career start trainees, and as I understand it there will be varying levels of payments applicable to those trainees depending on whether they're Year 10, 11, or 12 graduates. And that is because there is a recognition of prior learning and I guess what we're doing here today, commissioner, or the union and myself are trying to do is to perhaps put - put something further forward before that document gets to you and - and I guess eventually we're all going to be swallowed up in these career start traineeships and the ABC generally, but the recognition of prior learning is a matter of some debate federally and within this state and - and it's not just talking whether you've been to Year 11 or Year 12, we are looking at other studies as well, in this case, pre-apprenticeship butchery - 10 weeks of intensive training that will provide an employee with the ability to - to carry out tasks from day one rather than perhaps 6 months in the apprenticeship.

So we are accelerating their training and we are acknowledging that prior learning that they've carried out. Now, commissioner, as you said, you can only do what you're able to do within the wage fixation guidelines. I'm afraid I'm no great knowledge on those. Obviously I'm going to have to study up on them, perhaps myself and Mr Swallow both.

But at this stage I would be more than happy and I'm sure Mr Swallow would too, if the industry generally stuck with the gentlemen's agreement. For my point, my members will all stick with the agreement and whether there's an award provision or not, the \$1,000 will still be paid to these apprentices. I just make the point, commissioner, that the whole of the industry backs this within MATFA, and that is all sectors of the industry. They are happy to go along with it regardless of the precedential nature of what we're doing here today. I don't think anyone was particularly uncomfortable about me coming forward to support the union claim in this matter. However we were much more comfortable with the gentlemen's agreement that existed before, which was flexible, which we could move about if we needed to as things change.

COMMISSIONER GOZZI: If the employers are so gung ho on this and so happy with it, why wouldn't they put these people on as trainees, as employees from day 1 -

MR FLYNN: Some of them do, commissioner.

COMMISSIONER GOZZI: - with a training rate applicable from day 1. The training rate could be - it's a matter of discussion, but they then are employees and the award obligations apply to those people right from day 1.

MR FLYNN: Well why not, commissioner, adjust the percentage of the tradesman's rate for the first year apprentice, for instance? Dozens of different things. It just happens to be that we came up with \$1,000, and that was the agreed position. The union supported it, we supported it, it was nice and clear cut and perhaps it was - it was easy for the meat industry because it was so clear cut. Perhaps it was just a little bit too simple.

COMMISSIONER GOZZI: I mean, the payment by way of award prescription, of an amount of money would either be by way of, I would imagine, a wage rate - if they are employees - an allowance or a reimbursement of expenses incurred -

MR FLYNN: Reduction of the apprenticeship period.

COMMISSIONER GOZZI: - or something. But, quite clearly -

MR FLYNN: They were all canvassed, commissioner.

COMMISSIONER GOZZI: But, quite clearly, it needs to be able to be given, what I regard, legal enforcement by way of what the award purports to do. It's no good having an award provision just to hold up to somebody and it doesn't stand up to scrutiny. It's all right as long as everybody does it, but if they don't do it and you seek to enforce it, I'd be interested to know what would happen. I would be interested to know what would happen if this provision went in and you said to me: Okay, Coles - taking that example - haven't paid it, how you would seek to enforce it. An interesting question.

MR FLYNN: Well, as I say, commissioner, the same as you would try and enforce any other award provision.

Commissioner, perhaps with the draft clause, AMIEU.1, would it be of any assistance if we had said: The employee shall pay \$1,000 to that apprentice within 3 months of the completion of the probationary period.

MR SWALLOW: Or within a reasonable time.

MR FLYNN: Or within a reasonable time, I don't mind, rather than having any reference at all to the ATI grant. I mean, commissioner, all that is, as I said before, was something so that the employer could see it come in with one hand and push it back out with the other, at least part of it back out with the other, if that's not necessary. They get their money within 4 to 6 weeks of signing the form at the end of the probationary period, as I understand it.

COMMISSIONER GOZZI: I mean, you're really looking to provide \$100 a week over the period of this pre apprenticeship training when these people, for all intents and purposes, are not employees. They only become employees after they are engaged. What obligation is there on somebody to pick these people up, none?

MR FLYNN: Absolutely none. We offer them for employment and we have been extremely successful, so successful that Coles took two of them on.

COMMISSIONER GOZZI: So those that get employed get the \$1,000. What about those that don't?

MR SWALLOW: The ones that don't, don't - simple.

MR FLYNN: Don't get anything.

COMMISSIONER GOZZI: What about those that don't?

MR FLYNN: They don't get anything.

MR SWALLOW: They don't get anything.

MR FLYNN: And, commissioner, if I can refer you back to, I think it was, MATFA.1, you will notice the MATFA/AMIEU scheme and the MATFA/AMIEU skills centres, that's to allow for exactly that circumstance should it occur in the next couple of years. We are trying to cover all bases, commissioner, and perhaps you haven't been all that impressed with what we've done with our award over the years but we are certainly trying to get things done in the training area that will have positive results in the award criteria in the future.

What we're doing here, commissioner, is putting the foundations in place and we would hope to cap them off with appropriate award provisions at a later date in all areas, not just in this butchery.

COMMISSIONER GOZZI: I just want to make it clear that I'm not knocking the initiative -

MR FLYNN: Thank you, commissioner.

COMMISSIONER GOZZI: - not at all. I just want to make that very, very clear.

All right, anything else, Mr Flynn?

MR FLYNN: Commissioner, you referred a couple of times to - well monies provided by the commonwealth government. The commonwealth government and DEET is well aware of the arrangement with the \$1,000. How that impacts upon the Austudy or Abstudy, I don't believe it would have anything to do with it because the time of completing the pre apprenticeship course the apprentices, or whatever they are at the present time, the trainees, were not employed and therefore Abstudy and Austudy is appropriate. The other matters of a payment of \$1,000, it is, as you stated quite rightly before, sir, an ex gratia payment and it's a recognition of prior learning. I know that university students currently can receive Austudy or Abstudy or any of those others that are out there at the moment, commissioner, and I'm sure that some university students are paid a higher wage than perhaps somebody that doesn't have a university degree of relevance to the particular employment they're going to.

COMMISSIONER GOZZI: I'm just really unclear, and neither you nor Mr Swallow have told me yet, how I can create a provision which requires somebody to make an ex gratia payment.

MR FLYNN: Well, commissioner, as I've admitted, I think Mr Swallow might have done the same, under the wage fixing principles I can't today provide that to you.

COMMISSIONER GOZZI: Even -

MR FLYNN: I will study the wage fixing principles to see if I can find a way, but I haven't got that today. Mr Edwards might be able to help us, and then again perhaps not.

COMMISSIONER GOZZI: I mean, you know, in some other circumstances the recognition of prior learning - let's leave the apprenticeship side out of it - may be recognised by way of placement on the - on the scale, or that the person in progression - progressing from one rate of pay to another takes lesser time than it might be otherwise the case, and some of the traineeship arrangements are designed that way for that particular reason - that they get recognition for that and they miss out a salary level or a wage level and go to the next highest level 12 months earlier than might otherwise have been the case.

But they are arrangements which are, if I can put it, legally and technically correct and I really have a problem. I'm not saying it shouldn't happen, but I have a problem trading a

provision which in effect provides an ex gratia payment - I'm just saying, well I've heard what you've got to say about it.

MR FLYNN: Well, commissioner, as I said, we have looked - we looked at all those provisions - we looked at increasing the percentage and I didn't like that very much to be honest. We looked at - at reducing the apprenticeship period - my members didn't like that. We looked at a number of things and the common denominator was a thousand bucks for - as a recognition for prior learning.

COMMISSIONER GOZZI: Yes.

MR FLYNN: And, commissioner, the point I want to make to you is, it's working. We've made it work. I mean -

COMMISSIONER GOZZI: Yes.

MR FLYNN: - and we haven't had to bend any arms. I mean we've got a problem with Coles at the moment - sure, we'll get over it. If Coles wish to continue to employ these pre-apprentices then they'll do so and if that means that the boys have to be told, well if you go and work for Coles you won't a thousand bucks, then so be it.

COMMISSIONER GOZZI: Mm.

MR FLYNN: But other employers will pay you. So I guess that will be the lowest common denominator - the market forces will control.

I mean I was under the impression - I mean I'll be glad to hear from Mr Edwards on this - that Coles also believed it was a good idea. As a matter of fact we converted Roelf Vos Supermarkets in one interview in the north, where there representative actually sat in on those interviews and saw us - the way we went about selecting the pre-apprentices and saw the calibre of students we were actually - we were entertaining at those interviews.

Look, commissioner, this - this is a hiatus - the whole thing is a hiatus. I think somebody's got things back to front in Coles and - and perhaps they don't see the wisdom of what we're up to and perhaps they should have been involved more, or perhaps they should have had a different representative involved in those meetings. I can't - I can't speak for Coles except to say that they had a representative present; they were privy to discussions. As a matter of fact, commissioner, I would say that up until this matter arose, Mr Snell and myself - we've spoken on a one to four times a week basis, not just about pre-apprentices. We had a number of things - that hasn't happened since this all

COMMISSIONER GOZZI: Mr Flynn, whether it's Coles or anybody else really doesn't matter. I mean I'm not interested about the Coles view in their discussions with you or whatever, that the proposal stands up or it doesn't on the criteria that the commission needs to take account of.

MR FLYNN: Well thank you, commissioner. As I say I'll attempt to address the wage fixing principles and see if I can't find some way that we can do it at a later date.

COMMISSIONER GOZZI: Well I'm just really asking the question, do I need - do I need to take account of the wage fixing principles.

MR FLYNN: I imagine the commission has to take account of the wage fixing principles at every occasion it sits, commissioner.

COMMISSIONER GOZZI: And if so, what section - what part of it.

MR FLYNN: Well as - you know, I'm prepared to admit, commissioner, you've got me hanging on a line at the present time - I don't know.

COMMISSIONER GOZZI: Well I don't intend to have you hanging on the line, but obviously it's a requirement as far as I'm concerned.

MR SWALLOW: Yes, but there's also another argument that - there's also another argument that - that they don't apply - at least not necessarily - it doesn't necessarily follow that we've got a -

COMMISSIONER GOZZI: Mr Swallow -

MR SWALLOW: - put a proposition up in relation to wage fixing principles. What - the proposition I put up -

COMMISSIONER GOZZI: Mr Swallow, you've got a right of reply in a moment and I'll take it in right of reply.

Anything further, Mr Flynn?

MR FLYNN: No thanks, commissioner.

COMMISSIONER GOZZI: Alright, well we'll adjourn to 2.15. Thank you.

LUNCHEON ADJOURNMENT

COMMISSIONER GOZZI: Mr Flynn, I think you'd concluded - we're up to Mr Edwards.

MR EDWARDS: Thank you, commissioner.

Commissioner, the submission I would place before you today is - is a little bit at odds with - with those that have fallen from Mr Swallow and Mr Flynn inasmuch as I have - well, hold a real concern that the matter that's before you does properly constitute an industrial matter within the meaning of the Industrial Relations Act and I noted with some interest, commissioner, some of the questions you directed to both Mr Swallow and Mr Flynn this morning on that particular question and to a large extent they were a little bit pre-emptive, as it were, of some of the issues that I - I did intend to raise.

In my view, the claim that is before you constitutes a claim for a payment to persons who are undertaking a course of pre-employment training and subsequently become employees, and the claim seeks to reward them for the 10 weeks during which they were not employees but which during time they were undertaking some pre employment training.

I don't know that there's any simpler way of describing that. I think that tends to encapsulate it in a nutshell. I note that AMIEU.1 seeks to categorise the claim as something different as payment for a prior learning or skills acquired during the pre apprenticeship training course. But of course whilst one can call the payment anything they choose, one must go to the very basics of what the claim is about in order to ascertain what is really being sought, and one of the clearest statements of what the claim is really about fell this morning from Mr Flynn, when Mr Flynn, when asked by you, sir, what the \$1000 was for said very plainly that the \$1000 was being paid because these people were not paid during the 10 weeks of the pre apprenticeship period - and that's the nub of this claim, commissioner.

We can call it anything else, we can call it pre employment training, we can call it prior learning, but at the end of the day it's an agreement which has been reached to provide some measure of remuneration to these people who are undertaking a 10-week unpaid pre employment scheme - and I don't think there's any clearer way of saying it.

In my view, because there is an absence of a master-servant relationship during the period which the payment would accrue, there cannot give rise an industrial dispute or indeed an industrial matter within the meaning of the Industrial Relations Act. And of course the definition of industrial matter is spelled out in the act, sir, at section 3, and specifically the definition of an industrial matter means: any matter pertaining to the relations of employers and employees and without limiting the generality of the foregoing

conclusions - and goes on and talks about several different issues.

I think it's beyond contest that what we have here during the accrual phase of this payment, if I can use that loose term, is that there is relations between an employer and an employee because there is no employee - there is no contract of employment then on foot. In the absence of there being an offer and an acceptance which is the necessary prerequisite to the creation of a contract and indeed then being consideration which doesn't arise during this 10-week period a - on the submissions of both Mr Swallow and Mr Flynn, that there cannot possibly on foot a contract of or for services.

The definition of employee, as I'm sure you're very well familiar, commissioner, is particularly unhelpful in the act, inasmuch as it tells you an employee means a private employee or a state employee, and a private employee is defined as an employee other than a state employee. I guess that's a little bit circuitous but at the end of the day I think it's fairly common ground between any of us in this room for there to be an employee there must first be a contract of employment and that is clearly absent in this particular instance.

Mr Flynn sought to place before the commission a variety of exhibits, a lot of which go to explaining that in fact there is no master-servant relationship and that this is a payment for that 10-week pre employment period.

I take you in that regard, sir, to MATFA.2 on the second page at point No.9 where there is a rationale explained - this is the minutes of the Butchery Apprenticeship Subcommittee of the Meat Trades Training Advisory Committee from 11th September 1990 where there was a recommendation that 6 weeks pay by \$150 plus or minus equals 900.

What this is going to, commissioner - I don't want to go to the actual detail of what's there - what it is saying is, the payment accrues during the pre employment period, not during the employment period, not the probationary period as the claim would have us believe today, but rather, this is a claim that's generated during this non employment period when there is no contract of employment on foot, and that's evident from MATFA.2.

It's also evident from a number of passages in MATFA.3. If I can take the commission firstly to the first page of MATFA.3 at the bottom of the page at point No.6 where it says:

Students successfully completing the pre-apprenticeship course to be compensated by employers upon receipt of the first CRAFT payment by way of a training allowance of S75 - \$112 a week

(to be decided by AMIEU and MATFA and included in the Meat Trades Award).

I ask the question, is that what we're seeking to have included in the award today? A training allowance. It's not being categorised that way today. And again that provision clearly shows that the intent is that the payment accrues during this 10-week period when these people are not employees - where there is no contract of employment.

And still in MATFA.3 on the ninth page - and I'm sorry, I guess we're just going to have to count through it because there's a number of documents bracketed together here - but it's the one that's headed up with a 4. and the bold heading Financial Assistance.

COMMISSIONER GOZZI: I have it.

MR EDWARDS: Right. The second-last paragraph, commissioner, says:

A suggestion by MATFA - following meetings of Members throughout the State allowed for up to \$1,000 of the initial instalment of the Grant to be contributed by employers towards Course costs and/or payments to students.

Again, I'm going back behind the genesis of this \$1000 payment and it's clear from that particular statement that there is no intention there to be paying these non-employees, as they are at that point, for prior learning. It's to do with an agreement reached to make payment for this period of non-employment.

And again on page 14 of MATFA.3 at point number 7 of that page, it says:

Students successfully completing the full time six week pre-apprenticeship course to be compensated by employers upon the receipt of the first CRAFT payment at a rate of \$75 per week x six weeks.

And there's some of Mr Flynn's hieroglyphics there as well. Again that's showing that the payments are being computed on a weekly basis during this period when there is no contract of employment on foot.

COMMISSIONER GOZZI: What page is that on again?

MR EDWARDS: It's the fourteenth page - there's a heading at the top of the page in bold which says 'A Proposal for the Future to Commence in 1993', and it's got a number 9 at the very top of the page.

COMMISSIONER GOZZI: Oh, yes, thank you.

MR EDWARDS: So again the point I'm making, without going to the specific words is that it's a payment that's accruing during this non employment period. And again on a further 3 or 4 pages in, at page 17 of MATFA.3, which is the second part of an extract from Mr Flynn's 'No Bull 45'. And in the middle of the page - there's a heading across the top of the page, commissioner, that says 'Pre-Vocational Butchery Course Abandoned'. And that's saying halfway down the page:

Members would be aware from previous Regional Meetings where those present agreed to payment of up to \$1,000 of the CRAFT Apprentice Training Incentive could be made for the training of apprentices.

Well, of course, what's being sought today is not money for the training of apprentices, what's being sought is the payment of moneys for someone who has acquired some form of skill prior to the employment period with an employer being put on foot.

In MATFA.5 at the fourth page after the scale of payments the document shows:

Where pre-apprentices have been indentured after the initial ten weeks training period and therefore not paid for the ten weeks whilst at the college. A payment of \$1000 must be made to the apprentice upon the receipt of the Australian Training Incentive Grant of \$1500 which is payable to the employer at the end of the probation period.

This is an arrangement that was agreed to by all members of MATFA and other meat industry employers together with the AMIEU. Default of this payment to an apprentice may lead to the termination of this method of training by the Training Authority of Tasmania.

Again it's not recognition of prior learning, it's not talking about the imposition of any measurement of an employee's or non employee's progress through this particular course. It talks about the payment only going to those people who are not paid whilst undertaking this particular course. And that is the true nub of the claim. The designation of a claim going to the question of prior learning is, in my submission, merely colouration and it's really a mechanism being used to try and place this matter in the award by making it something that it is not, and that is an industrial matter. Because this is not an industrial matter. The payment is really for the 10 weeks of the pre apprenticeship course.

I undertook some research going back behind the origins of this particular course and in particular sought to identify the attitude of the Training Authority of Tasmania to the particular course. And I was provided by one of TCCI's representatives on that authority, Mr Danny Sutton, with a number of documents, and I would like to table those for the commission. One of them is already in the hands of the commission but I'll table it anyway for ease of reference.

COMMISSIONER GOZZI: Mark those TCCI.1.

MR EDWARDS: This document is the format or the agreed format of the butchery trades course which was presented to the training authority in July 1993, and it was identified as agenda item B31.2(i). And it goes through - and it's identical to one Mr Flynn placed before you this morning. So far as is relevant at point 3 on the second page, shows that:

Students successfully completing the pre-apprenticeship course will be compensated by employers upon receipt of the first CRAFT payment by way of an allowance at a rate agreed to by the AMIEU and MATFA.

A number of questions arise from that passage like compensated for what and the fact that it is called an allowance; it's not sought to be a payment that rewards an employee for prior learning. It's an allowance which is payable for the pre apprenticeship course.

That, as has been highlighted by Mr Flynn, caused some questions to be asked by a number of employers in the state and, most particular, amongst those was Coles Supermarkets. In that regard I'd like to table another exhibit, if I might.

COMMISSIONER GOZZI: TCCI.2.

MR EDWARDS: TCCI.2, commissioner, is a copy of a letter sent by Mr Kevin Gee, State Manager, Coles, to Mr John Forster, Senior Executive Officer, TAT, and the important question that's been raised is at point number 5 which says:

What legal status does the proposed payment of \$1,000 to apprentices have under the relevant award and regulations affecting apprentices? What government approval has been given on this?

As a result of that, that letter too became an agenda item before the training authority at it's July 1993 meeting and was identified as Agenda Item B31.2(ii) which is part of the hieroglyphics in the top right hand corner, commissioner. I haven't sought to remove any of the hieroglyphics that Mr Sutton himself has put on the document.

I'd like to also table an extract from the minutes of the training authority board of the 7th of July 1993.

COMMISSIONER GOZZI: That's Exhibit TCCI.3.

MR EDWARDS: For the purposes of brevity, commissioner, I've cut the document right down and I've only included the front page by way of identification of the what the document is and I've included page 9 which is that the entry that I wish to refer to. If I can take you, sir, to the second matter recorded on page 9 which is at item 31.2 - Butchery Trades - sub items of (i) and (ii): Documentation Agreed Format for Butchery Trades, December 3rd 1992 which I've tendered as TCCI.1 and Correspondence (01.7.93) from K Gee to J Forster which has been identified in these proceedings as TCCI.2. I continue:

J Forster explained that it is not within the Training Authority's power to endorse point 3 in the "Agreed Format for Butchery Trades."

It was decided that the Senior Executive officer will write to the Food Industry Training Board to request that the two parties who developed the agreement partake in further consultation.

Action: SEO

It's been explained to me that at that meeting it was discussed and generally agreed that point 3 should never have been included in the training authority's statement of policy which is what the TCCI.1 document became because it was beyond the power of the training authority to create an obligation on an employer to make any payment whatsoever, except in circumstances whereby a particular apprentice is award free or any other trainee would be award free as well. I think your previous experience with that Act of Parliament would hold you in good stead in that regard, commissioner.

I have subsequently sought further advice from both Mr Sutton and indeed Mr Forster of the training authority as recently as this morning, and unfortunately Mr Sutton wasn't able to provide me any precise details on what happened at the very most recent meeting of the training authority which is on the 18th of August 1993, but Mr Forster was able to do that and agenda item B.35.6(ii) resulted in the removal from the training authority policy on butchery training of clause 3, that going to the payment of the \$1,000 and I readily acknowledge that there as a further footnote with that particular motion which was: it was noted that there was agreement between the Meat and Allied Trades Federation of Australia and the AMIEU about the payment of an amount of money - but the amount of course was unidentified as it is in clause 3 of the original agreed proposal.

So that is now struck from the training authority annuls and their records as it has now been completely removed by the training authority from its statement of policy which is, as I've indicated, what TCCI.1 became, and the reason is quite simple, that the training authority acknowledge that they have no jurisdiction to deal with that particular matter. The creation of obligations on employers to make payment to trainees or apprentices is one that is quite rightly resident in the Tasmanian Industrial Commission, under the provisions of the Industrial Relations Act.

Accepting that the Tasmanian Industrial Commission does not have authority or power to make an obligation on any person who is not in an employment relationship, the powers of the commission are those that are derived from the definition of an industrial matter. If it is necessary I can take the commission to the relevant provisions in the act that require that the commission deal with industrial matters. I think the important arises at division 2 at section 19 of the act which says:

Subject to this Act, the Commission has jurisdiction to hear and determine any matter arising from, or relating to, an industrial matter.

But the precondition that binds the commission is the term 'industrial matter'. Industrial matter is one relating to the relations between employers and employees, if I can use the very most broadest definition that's available.

In this instance there is a very clear absence of that master-servant or employer-employee relationship which would be necessary to give rise to a jurisdiction in the commission, and I frankly feel, commissioner, that you have no alternative but to dismiss this application as being one that is beyond the general power of the commission to deal with because it doesn't relate to an employer-employee relationship.

I intend to go just a little bit further for safety sake, unless you're prepared to say that I'm right at that point and I can sit down.

COMMISSIONER GOZZI: Well in a very much more structured way, you're raising the issues that I attempted to canvass with Mr Swallow and Mr Flynn this morning.

MR EDWARDS: Exactly, commissioner. As I said, you somewhat pre-empted some of my strikes.

COMMISSIONER GOZZI: And I mean, obviously I -

MR SWALLOW: Not unusual.

COMMISSIONER GOZZI: - obviously I'm prepared to look at the submissions that have been made, but my prima facie view is that you are entirely correct in what you say and it's no good people grumbling about it - I mean, if they took the time and trouble to look at what the requirements are and what the act says, then obviously - unless there's something that I've missed - that's the only conclusion you can come to.

MR EDWARDS: I'm unaware of anything that would allow this to become an industrial matter. I'm not saying that simply to support the argument I've put. I'm genuinely unaware of any way in which the commission could deal with a matter that wasn't industrial in character and indeed, I don't think the commission is out looking for additional jurisdictions in an area where it doesn't currently have any.

I wish also to just make broad reference to the wage fixing principles of the commission which of course were handed down in February of 1992, the most recent set, and indicate that if this were to be categorised as an allowance which is probably being extremely generous:

New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses.

No-one sought to categorise before the commission the actual expense incurred by 'any employee undertaking this prevocational course'. I may add that a bit of private research has revealed that the cost of that course would be, at a maximum, somewhere of the vicinity of \$250 to \$260. I don't put that forward as being an appropriate figure incidentally, commissioner. I think the master/servant relationship is overriding, but I guess I'm putting a safety door on the back in case you rule against me on the primary point to just indicate that I think the principles don't allow much scope in this regard either:

No other new allowances shall be created unless changes in work have occurred or new work or conditions have arisen: where changes have occurred or new work and conditions have arisen, the question of a new allowance, if any, shall be determined in accordance with the relevant principle

The relevant principle in this context may be work value changes or first awards and extensions to existing awards principle.

Well this is not a first or an extension of an existing award matter. It's one that goes, very squarely, to work value and it may well be possible, in accordance with the debate between

yourself and Mr Flynn this morning, that if these people were to become employees during that 10-week period then it may be possible to include in the award a rate of pay for those employees whilst undertaking that training, or indeed it may be possible to have that 10-week period categorised as part of the total training period of an apprentice which of course currently it is not. The apprenticeship is not reduced by the 10-week period spent by the person in prevocational training, but the 10 weeks is a net addition to the apprenticeship period. So I think the work-value changes principle would fail too, the one that arises under the new allowances principle.

Outside of those two principles, the only other matter that would occur to me would, I guess, be conditions of employment and I think that's taking a bow which is far too long indeed for this particular claim, so my view would be that there is nothing within the wage fixing principles which would give you a hook to hang on to, as it were, in which to use to vary the award as sought by the applicant and endorsed by the Meat and Allied Trades Federation, and I think there would also need to be consideration of public interests tests, et cetera, but I think before any of that occurs, the most important and overriding consideration is that you must satisfy yourself that there is a master-servant relationship in this issue and it is our very clear and strong submission that there is no such relationship, and as such the claim really does have to fail for lack of jurisdiction. If it please the commission.

COMMISSIONER GOZZI: Thank you, Mr Edwards. Mr Swallow, before coming back to you and it's an unusual, but given the competing submissions from those on the applicant's side, Mr Flynn, you might want to exercise a right of some reply. As I say it's unusual. You probably should have been cojoined with the applicant in the first place, but you have a - I'm prepared to give you a right of reply before Mr Swallow finally wraps it up, and if you want to choose to exercise it.

MR FLYNN: Well, commissioner, I wasn't expecting to be able to, but -

COMMISSIONER GOZZI: I mean, in fairness, to all intents and purposes very much more structured approach and succinct in some respects adopted by Mr Edwards really picked up the points that we were debating this morning.

MR FLYNN: Well, commissioner, I make one brief statement. I'm well aware of what was in the exhibits that I put forward and what I was trying to demonstrate there was the amount of time that had gone into this negotiation. I don't think I'm hiding behind anything. I don't think Mr Edwards anything I was aware of before, that I've made particularly confidential. As I stated before, commissioner, we get copies

of that 'No Bull' wherein I write up what is happening within the industry to the best of my knowledge.

So it's fairly obvious what we have been doing. I will make the point though, that at the end of those negotiations with the union there was no doubt in my mind - and I guess Mr Swallow's mind - that what we are trying to do is reimburse - and the reason why MATFA agree with it is on the basis of a reimbursement for that - that prior learning.

I want to make the point, commissioner, that perhaps I haven't made earlier, is that from day one of employment after completing this pre apprenticeship course, those apprentices are extremely valuable to an employer because they are better than floor sweepers and really that's what most of the kids start off doing - they're just sweeping the floors, cleaning the mincer - that sort of thing. These pre apprentices can carry out tasks that are, in my opinion, almost up to second year standard, if not up to second year standard in some cases.

COMMISSIONER GOZZI: Well perhaps if you get the employers agree to put them on second year or an appropriate rate.

MR FLYNN: Commissioner, I canvassed that with my members but they were much more enthusiastic about the \$1000 payment.

COMMISSIONER GOZZI: Oh, yes, I can understand that.

MR FLYNN: And - and Mr Swallow and I discussed changing the rates from the 38% - percentage of the tradesman rate currently there.

COMMISSIONER GOZZI: Well why don't you run the argument?

MR FLYNN: Because -

COMMISSIONER GOZZI: I mean -

MR FLYNN: - that's not the position that we're putting forward.

COMMISSIONER GOZZI: - quite - quite clearly it's a position that the employers wouldn't like. I can understand why they wouldn't like it, but to my way of thinking there is - look, I don't want to get into a new line of discussion - but conceptually in the context of the industrial legitimacy of it all, there are some inherent problems, but, you know, it's an application before me. I think we're aired the issues very well, and I just wanted to, in light of Mr Edwards' submission which is different to yours in the context of the employers submission, both sitting there as respondents to the application made by Mr Swallow, to give you a right of reply on some of the issues that perhaps that -

MR FLYNN: Well the issue I choose to take up, commissioner, is that one.

COMMISSIONER GOZZI: Yes.

MR FLYNN: Exactly - because as I've stated earlier, it is a recognition of prior learning. It is for the ability of the apprentice to be able to do certain duties that currently take some time to train them in. They are valuable to an employer. We are paying for what they learned during the 10 weeks. It's an agreed position between MATFA and the AMIEU and - and as I will state, and I've said it before, Coles, the other party to this - this case today, were in agreement with the position from the outset too.

COMMISSIONER GOZZI: Right, well -

MR FLYNN: Anyway, I can't say any more.

COMMISSIONER GOZZI: Mm. Alright, thanks, Mr Flynn. Mr Swallow?

MR SWALLOW: Here we go again. I - I would just like to make it very, very clear, and say it in very precise terms what I'm here about today.

We can have all of these -

COMMISSIONER GOZZI: Mr Swallow -

MR SWALLOW: - we can have all of these -

COMMISSIONER GOZZI: - Mr Swallow, I'm sorry to interrupt, but you've made your primary submission, you are in right of reply, you can only address matters falling from Mr Edwards. We're not starting another round. Now I don't want -

MR SWALLOW: Well I intend to do just that, if you will only let me go.

COMMISSIONER GOZZI: I will let you go, but I'm just pointing out to you -

MR SWALLOW: And if I'm not you can stop me.

COMMISSIONER GOZZI: Mr Swallow, I'm just pointing out to you that you are cautioned by me that you are in right of reply -

MR SWALLOW: Well - well what about if you wait rather than caution to hear what I've got to say and then you can - you can rule me out of order.

COMMISSIONER GOZZI: Well, alright.

MR SWALLOW: Right?

COMMISSIONER GOZZI: Alright, Mr Swallow, let's just see what you're going to say.

MR SWALLOW: Now, first of all, let me say this, that this is part and parcel of the meat industry union and the meat industry's training reform agenda.

There's been a lot of time spent on it and Mr Edwards' interpretations I'd just like to respond to.

As far as the union and the Meat & Allied Trades Federation go, we believe it's well within this jurisdiction to be able to make a decision. We believe that. At the end of the day you might not agree, but at this point in time the union and the Meat & Allied Trades Federation, a spokesman for the meat industry in Tasmania, agree that it's - well within your jurisdiction to determine this matter.

COMMISSIONER GOZZI: I'd like you to show me how.

MR SWALLOW: Well if you only let me go I'm sure I can. Prior to this 10 week scheme we had prevocational courses which done nothing virtually to enhance the skills of potential apprentices, so the union agreed to two of those, we hit them on the head, discussions were taken up with the industry participants, this excluded the TCI, and they came across with a proposition that we believed would operate in the best interests of the meat industry in Tasmania.

All of the - all of the prevocational course done as far as skills went - they didn't get paid any money, they came on to the job, they were virtually worthless and we believed this scheme would be beneficial to the employers from day one.

In other words, they'd earn - they'd be in a position where they could earn the additional money that we could call a training allowance, we could call a bonus, we could call it anything we like. But the essential part of the - the scheme was that we endeavoured to get a better training apprentice into the industry and this has been the case. Without any doubt all of those apprentices that have gone into industry this year are better trained.

They are better trained for their - for their 3 months probation, the work value to the employer is enormous and it's obvious that this - this new system is a radical departure from what's considered normal working conditions - a radical departure.

The working conditions have changed; the work of the apprentice has changed dramatically. The apprentice goes

through more training in this method and he spends less time off the job. The savings to employers is enormous.

COMMISSIONER GOZZI: Mr Swallow, I've heard that previously, but look, this is a right of reply and I ask you to stick to it. You can only raise matters that have been raised by the other parties in response.

MR SWALLOW: I thought - I thought - I thought they - I thought they raised all that in - in - I thought Mr Edwards was saying it wasn't an industrial matter, I thought I was just putting those proposals forward to try - I must say try -

COMMISSIONER GOZZI: But Mr Swallow -

MR SWALLOW: - to influence you that it is an industrial matter.

COMMISSIONER GOZZI: - but the problem you've got, Mr Swallow, is in trying to persuade me that it is - you're not coming at it from the direction that Mr Swallow - that Mr Edwards pursued, and he -

MR SWALLOW: Do I have to?

COMMISSIONER GOZZI: Well you need to respond -

MR SWALLOW: What's -

COMMISSIONER GOZZI: - you - you are in right of reply to the submissions made by Mr Edwards on that point and he referred to the Industrial Relations Act in definition of employee.

MR SWALLOW: Yes?

COMMISSIONER GOZZI: You haven't addressed that at all.

MR SWALLOW: Section 3 - industrial matter. Mr Edwards claimed -

COMMISSIONER GOZZI: Yes.

MR SWALLOW: - that it's not an industrial matter.

COMMISSIONER GOZZI: Yes, that's correct.

MR SWALLOW: I'm putting forward those changes to working conditions - the more training the apprentice gets under this system - about 10 weeks more training rather than the old system - he's left time off the job, he saves the employer about \$2000. I thought those reasons might be able to influence you that they - that it could be an industrial matter.

COMMISSIONER GOZZI: Well it doesn't.

MR SWALLOW: But most certainly if those sorts of submissions are not going to influence you in any way, shape or form, that it is an industrial matter or could be an industrial matter we're wasting our time here.

COMMISSIONER GOZZI: There is -

MR SWALLOW: Because I - I believe that it was up to this commission to assist in facilitating these agreements that are worked out from time to time.

COMMISSIONER GOZZI: This is not.

MR SWALLOW: But if I'm wrong I'd like to withdraw the application.

COMMISSIONER GOZZI: Well -

MR SWALLOW: The union will pay -

COMMISSIONER GOZZI: - it's up to you -

MR SWALLOW: - but the union will pay one of the \$1,000 to the two Coles employees and hopefully MATFA will pay the other and we'll put some mechanisms in place that we won't have to come anywhere near this commission.

COMMISSIONER GOZZI: Yes, well maybe you'll have to do that. But the point - one of the reasons, Mr Swallow, and I'll say this to you in all sincerity, that we run into the problems that we do in these type of hearings is because there is a basic lack of understanding of the Industrial Relations Act, there's a basic lack of understanding of the operation of the wage fixing principles and it's about time that you as professional advocates get yourselves up to speed then we don't have to go around a circuitous and in a lot of cases irrelevant types of submissions.

MR SWALLOW: Again, that's only your interpretations.

COMMISSIONER GOZZI: It's not my interpretation, Mr Swallow. Look -

MR SWALLOW: I - I - it is.

COMMISSIONER GOZZI: No it isn't.

MR SWALLOW: It is.

COMMISSIONER GOZZI: If you've got anything further to add -

MR SWALLOW: Mr Edwards spoke about the award variations - it can't be legally done he said. It's outside the wage fixing principles.

COMMISSIONER GOZZI: You're simply saying that there is no -

MR SWALLOW: Aren't I allowed to - to respond to those?

COMMISSIONER GOZZI: You're simply - well if you want to address the question that there is an employer-employee relationship in the 10-week period of pre employment then you might be addressing the - the correct point - but you're not at the moment. You're in right of reply and you should address the submissions that have fallen in reply to the application.

Now I can't put it any simpler than that.

MR SWALLOW: Well the application is withdrawn.

COMMISSIONER GOZZI: Well you can only withdraw it by leave of the commission and it's my intention to issue a decision on that application, so leave to withdraw is not granted, Mr Swallow.

All right, if there is nothing further, these proceedings are concluded.

HEARING CONCLUDED