

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

**MS J. ARCHER:** JILL ARCHER, representing the Australia Liquor, Hospitality and Miscellaneous Workers' Union, Tasmanian Branch.

5 DEPUTY PRESIDENT JOHNSON: Thank you, Ms Archer. For the respondent employers?

**MR S.J. GATES:** Yes, if it pleases the commission, GATES, S.J., from the Tasmanian Chamber of Commerce and Industry.

10 DEPUTY PRESIDENT JOHNSON: Thank you, Mr Gates. Ms Archer, I've called these matters on together, although I understand that you have some hesitation about that. I don't see that that's to your prejudice but if it appears to be so during the proceedings, I'll deal with it at that time.

15 I understand that there is no consent in this matter and perhaps you might like to make your submissions.

MS ARCHER: Right. It appears that right down the line, the LHMU's attempts to have these second and third safety net adjustments included in the Veterinary Services Award have been hindered on procedural grounds. Just to go back, a little bit of history, only a very  
20 small fist full of employers in Tasmania would not have been paying their employees the second eight dollar safety net adjustment after August '96 and again, a small group of employers only would not have been paying the third arbitrated eight dollar adjustment after June - sorry, I've got the dates mixed up. The second arbitrated one was due  
25 in June '95 and the third one was due in August '96.

Since then of course, we all know the union movement, along with the employer body, the TCCI, have argued for an inclusion of a further 10 dollar adjustment.

30 I relate the history of the eight dollar safety net adjustments to remind the commission that the great, great majority of employers have paid those reasonable arbitrated safety net adjustments and have coped with such adjustments well into the past. To reiterate the points made earlier, attempts by the LHMU to include the second and third safety net adjustment into the Veterinary Services Award have been held up  
35 on questions of procedure.

The union made application to include the second eight dollar safety net adjustment on 5<sup>th</sup> June 1997. Mr Gates objected to that application being heard because it fell outside the wage fixing principles. I think they relate to 7.3 as set out in the appendix of the  
40 July 1997 decision and at that time Mr Gates gave no further reason for his objection to the inclusion of that second safety net adjustment, save that including an arbitrated wage rise at that point would not be

in accord with the wage fixing principles and the dates set for hearing such applications.

5 Further applications to include previous state wage increases was not made by our organisation until after 14<sup>th</sup> September 1997, the date the principles enabled the commission to hear application for both the second and third eight dollar increases concurrently.

10 A date was not set in '97. Apparently the commission didn't receive our facsimile or the document was lost in the process, whatever. Earlier this year, 2<sup>nd</sup> February, I re-faxed the application for the third safety net adjustment and a covering letter requesting the matters be heard concurrently and again that covering letter was faxed in '97 and it was dated 24<sup>th</sup> November.

15 I phoned Mr Gates on that date, 2<sup>nd</sup> February, to ask if he was going to raise any objections to these matters being heard concurrently. He returned my call two days later and said that he would have to get in touch with his constituents. I requested that he let me know if he would have any argument against our application. I phoned Mr Gates again last Friday, because it was getting close to the date of the hearing. Mr Gates returned my call yesterday at 3.15 pm - that's 20 Tuesday 24<sup>th</sup>, and left a message to the effect that he didn't agree with the second application. He left no reason. He invited me to call back but at that time I was involved in meetings. I rang him at five but he'd already gone home. The lucky man.

25 So, the matter of having the safety net adjustments - the eight dollar ones, included in the Veterinary Services Award has been somewhat of a saga and as such, has afforded Mr Gates ample opportunity to explain to his constituents that such inclusions into the award were imminent sooner rather than later and these people had - I think Mr Gates should have warned them that provisions - I think should be 30 made in their budget to account for those two eight dollar increases.

I think it's reasonable to ask Mr Gates to give - although he's just related to me quickly this morning, that affordability is the issue. I'm not sure of the details. I think that it's beholden upon him to give 35 detailed evidence to show that the employers in this instance cannot afford an adjustment that might have been included into the award one and a half years ago.

DEPUTY PRESIDENT JOHNSON: Is that the end of your submission?

MS ARCHER: Yes.

40 DEPUTY PRESIDENT JOHNSON: So, effectively, you're asking for the award to be varied to accommodate both these increases effective as on and from either today's date or the first pay period commencing on or after today's date?

MS ARCHER: Yes, Mr Commissioner, sorry.

DEPUTY PRESIDENT JOHNSON: Thank you, Ms Archer. Mr Gates?

MR GATES: Yes, thank you. Perhaps if I address some points of my  
colleague's submissions first. In relation to the not advising the  
5 ALHMWU, that is in fact correct and it is erroneous of me to have not  
done that and in that regard I certainly apologise.

In relation to some other points which probably need some discussion  
prior to putting our position in relation to the eight dollars. The TCCI  
has not hindered the insertion of the second nor third eight dollar  
10 safety net adjustments. That is solely a matter of the ALHMWU and is  
solely a matter that they possess an unfettered right under the Wage  
Fixation Principles to make an application to this commission to vary  
the award for their inclusion.

The fact that the union has not complied with procedural elements of  
15 those Wage Fixation Principles or has not made those applications, is  
not something which ought be used to penalise the industry and used  
as a ground for the insertion of both the second and the third eight  
dollar safety net adjustments in one sum at this point in time.

Furthermore, the industry, through our organisation, has been  
20 actively pursuing and cooperating with the union in relation to a  
restructured award to modernise this particular industry. Now, I give  
credence to the ALHMWU that that was an initiative of them and they  
started the ball rolling. Albeit, the ball started rolling, I think, in 1991  
and was then left for a few years. When it resurfaced, we responded to  
25 them. I think we've responded to them a couple of times now. I don't  
have the file in front of me but where it is left off is some substantial  
period of time before Christmas.

We put an amended position to them and to date, we've heard no  
response. Now, that's another avenue for increasing wages and  
30 correcting the conditions in that particular award but it's at a  
stalemate at this point in time. So, it goes to the seriousness in which  
the ALHMWU varies - or views this particular award.

To specifically deal with the issue of the second and third arbitrated  
safety net adjustments, I will recount some history to you, for your  
35 benefit. The first arbitrated safety net adjustment was operative in the  
Veterinary Services Award from the first full pay period on or after 28<sup>th</sup>  
October 1996, which is not that long ago. The second variation to the  
award in relation to wage rates was the 10 dollar safety net adjustment  
which in this award, as in the majority of state awards, was operative  
40 from the first full pay period on or after 14<sup>th</sup> July 1997. That is eight  
months ago. Not a substantial period at all.

So the industry has had to absorb 18 dollars since October of '96,  
which is a period of some 15 months. The union is seeking today to

vary the Veterinary Services Award to include the second and third  
arbitrated safety net adjustments, each of eight dollars. The  
cumulative total of this will be 16 and if the union's submission was  
upheld today and an operative date of today was granted for both, then  
5 since 28<sup>th</sup> October 1996 to now, the industry will have had to absorb a  
net wage increase, or gross wage increase, of 34 dollars in 15 months.

To do so, by this commission, would be unprecedented and would, I  
suggest, as I'll deal with further, have deleterious effects, not just upon  
the industry and the viability of the employers but also upon the  
10 public and their access and utilisation of fairly fundamental veterinary  
services and it's a point which I'll dwell on at some length.

It's interesting to note the history of eight dollar safety net adjustments  
in this commission. If one goes back to the full bench decision, dated  
24<sup>th</sup> July 1996, which was the decision which dealt with the first, the  
15 second and the third eight dollar safety net adjustments, the first eight  
dollars was available at an award level no earlier than 20<sup>th</sup> December  
1994. The second eight dollars was available at an award level no  
earlier than 20<sup>th</sup> June 1995 but they put certain provisos in place.

20 One of the provisos was that the award had been varied for the first  
eight dollars. The second proviso was that no less than six months had  
lapsed between the first eight dollars being granted and the second  
and they then had certain provisions pertaining to offsetting and  
double counting and that is, if there are other increases granted  
25 through enterprise agreements, then it could be offset and there  
wasn't to be double counting.

The third eight dollars was available at an award level no earlier than  
the 20<sup>th</sup> June 1996 and it too was subject to certain provisos. Now,  
30 some of those are no longer relevant and some, in our submissions,  
are still relevant. The proviso, the first, was that the award had been  
varied for the first and the second eight dollars and secondly, that  
twelve months had lapsed between the second and third eight dollar  
safety net adjustments.

So there was a phasing-in over a period of no less than - well,  
35 essentially two years, between all three eight dollars and they were  
phased in over time. Now, what we can safely say is that if we varied  
the award today and bearing in mind, I'll be submitting to you that we  
don't vary it today -

DEPUTY PRESIDENT JOHNSON: Is that in respect of both  
40 increases?

MR GATES: Oh, absolutely.

DEPUTY PRESIDENT JOHNSON: Goodness me. You certainly ask for  
a lot, Mr Gates.

MR GATES: Well, it's an issue which I'll put at length some submission to you, deputy president. If we varied the award for the second eight dollars today, then six months will have lapsed since the last increase. Now, the last increase would be the 10 dollar safety net adjustment. So, we've virtually done it in accordance with the principles pertaining to the second eight dollars. That is, that six months have lapsed, except that we're calling the ten dollar safety net adjustment really the first.

DEPUTY PRESIDENT JOHNSON: You're opposing the eight dollars - the second eight dollars.

MR GATES: No, what I am saying is, that their operative date is a matter which I'll address you in submissions. What I'll be coming to is quite simply this, that - perhaps I'll give it to you now. It will be our submission that the second eight dollar safety net adjustment be operative no earlier than the first full pay period on or after the 8<sup>th</sup> April of this year and there are reasons why we say that.

DEPUTY PRESIDENT JOHNSON: On what grounds?

MR GATES: Sorry, deputy president, I missed that?

DEPUTY PRESIDENT JOHNSON: On what grounds?

MR GATES: Well, I'll get to those grounds, if it pleases. The third eight dollar safety net adjustment, we will seek an operative date of being no earlier than 8<sup>th</sup> April 1999 and that that increase be subject to further application by the ALHMWU, so in that way it's being treated as a minimum rates adjustment, that it not be automatic but it must be subject to an application.

DEPUTY PRESIDENT JOHNSON: What would stop you then coming along and saying, 'Oh, well, we shouldn't proceed with this because there's been some intervening State Wage Case decision'? Why shouldn't it be granted now, from that date?

MR GATES: In the future, deputy president, we don't know what's going to occur. We don't know what the state of play in the industry is going to be.

DEPUTY PRESIDENT JOHNSON: No, and you're stacking the cards in your favour.

MR GATES: I don't necessarily believe it's to be viewed that way. What there will be from this commission is an order which is what you would ordinarily get on minimum rates adjustment process -

DEPUTY PRESIDENT JOHNSON: Yes. Can I interrupt this - have you gone through all of this with the union? Have you discussed all this

approach with the union? Have you given them an opportunity to respond to you by way of conciliation before these proceedings?

MR GATES: No.

5 DEPUTY PRESIDENT JOHNSON: Well, don't you think you ought to give them the advantage of doing that?

MR GATES: I'm quite happy to do that, deputy president.

DEPUTY PRESIDENT JOHNSON: Yes.

10 MR GATES: I mean - as I said earlier, it was remiss not to advise the union earlier of my position and, quite simply, the only reason that it had occurred was that I hadn't been appraised as to the law in the Wage Fixation Principles as it dealt with this particular issue at that point in time.

15 DEPUTY PRESIDENT JOHNSON: Ms Archer, I think I should, in the interests of the union, so that the union has an opportunity to pursue these claims other than by arbitration, that I should adjourn this proceeding today for a week. Do you have a view about that?

MS ARCHER: No, Mr Commissioner. I'll be very happy for the time.

DEPUTY PRESIDENT JOHNSON: Yes. Are you available - and I address both of you in this respect - at 2.15 on Friday the 6<sup>th</sup>?

20 MR GATES: I have no commitments.

MS ARCHER: Yes, Mr Commissioner, that's fine.

MR GATES: At 2.15?

25 DEPUTY PRESIDENT JOHNSON: Yes. Of my own motion, I adjourn these proceedings until 2.15 on Friday 6<sup>th</sup> March. With that order I accompany a direction that directs the employer to arrange with the union representative here today for such meeting or meetings, as need to take place at some convenient time to them next week for the purpose of exploring their capacity to settle this matter by means other than arbitration prior to the continuation of the matter on 6<sup>th</sup> March.

30 Do you have anything further for the record today, Ms Archer?

MS ARCHER: No, Mr Commissioner.

DEPUTY PRESIDENT JOHNSON: Mr Gates?

35 MR GATES: Yes. The only additional thing which I would put on record today is - probably two things. In the event that the parties don't reach a settlement as to the phasing-in, then I simply put the commission on notice that my original submission I will still be

pursuing but in the event that there is a retrospective order, in which case I'm unsuccessful, I won't take issue at all with the week. So, for example, if it was operative, then the operative date would come back to today's date and not being the week hence.

5 DEPUTY PRESIDENT JOHNSON: Yes.

MR GATES: I mean - I think that's the least I can do.

DEPUTY PRESIDENT JOHNSON: All right. Well, I don't have any comment to make about that, other than to remark upon its reasonableness. I think however in respect of your first comment, that  
10 if the matter cannot be settled, then I would expect that a very different and more comprehensive argument will be run by the union to begin with so that that might necessarily mean that perhaps the union will proceed with additional submissions on Friday 6<sup>th</sup> or I will, subject to the advice of the parties, adjourn the matter for a more  
15 extensive arbitration at a later date. I don't know, but I do expect that if there is no settlement, the union may wish to have more to say about the applications, which will mean that you should satisfy yourself, Mr Gates, at the conference that you will have with the union about the union's position so that you will know whether you will be  
20 going first or required to go at all on Friday 6<sup>th</sup>. I'll have to leave that up to you.

MR GATES: Yes.

DEPUTY PRESIDENT JOHNSON: Yes. These proceedings are adjourned.

25 **HEARING ADJOURNED**