

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 5178 of 1994

IN THE MATTER OF an application by the
AWU-FIME Amalgamated Union, Tasmania
Branch to vary the Roadmakers Award

re minimum rates adjustment,
restructuring of award, structural efficiency
principle and 2.5% wage increase

COMMISSIONER GOZZI

HOBART, 12 May 1995
continued from 4/4/95

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Apologies, gentlemen, for keeping you waiting this morning. Are there any changes in appearances? Mr Cooper?

5 MR COOPER: Commissioner, if I may, I have provided your associate with a fresh draft. I think the last one we worked on was dated the 4th April, and I think it was C.1. So I have provided a new draft this morning.

COMMISSIONER GOZZI: Right.

MR COOPER: And there should be two parts to it. There should be a rather large document which consists of some 68 pages.

COMMISSIONER GOZZI: Right.

10 MR COOPER: And then an attachment to that which is one page titled 'Enterprise Flexibility'.

COMMISSIONER GOZZI: All right, we'll mark that exhibit C.2, the large document, and C.3 for the enterprise flexibility sheet.

15 MR COOPER: With respect to those two documents, sir, there has been a change in what we were intending to do today. I'll explain that to you. What we've done, sir, is we have effectively agreed - it was my understanding Mr Gates will comment on that - effectively agreed on the contents of C.2, and the additional document, C.3, is to be inserted. And you'll see, sir, in that document that there - on page 2 of C.2, in the arrangement, we have inserted the words 'enterprise flexibility', but I didn't have
20 enough time to renumber all those clauses.

COMMISSIONER GOZZI: Right.

MR COOPER: So there is - and it does need to be some work done on that. But I've already spoken to your associate about that and I can provide that updated information.

25 COMMISSIONER GOZZI: Yes.

MR COOPER: So what we're seeking to do is with C.2, that C.3 is inserted into C.2 at the appropriate juncture as clause - I think it will be 16.

COMMISSIONER GOZZI: Yes, that's right.

30 MR COOPER: Now the rest of the document, sir, reflects changes that occurred as a result of the many conferences we've had, both with yourself and ourselves. But what we haven't been able to do at this point in time is to agree on the wage rates and the definitions that apply to them. And the reason we haven't been able to do that is because there is a significant case going on in the federal commission, which you have been alluded to in other proceedings. Basically, it has a number of titles to it. The first
35 one that appears on the document I have is that it's December 2795 Print L.8499, and it's called the Australian Workers Union C No. 20734 of 1991.

40 And that is the document where the unions have tried to, in all the industries of civil construction, building construction and metal construction, to come up with an agreed relativity classification structure. Now I don't want to reinvent the wheel, and so for that reason my union has taken an unusual position in that we are prepared to allow the existing definitions and wage rates remain in the award at this point in time. And we are still having further discussions on them.

And what we want to do this morning is to upgrade the award in respect to the other clauses.

COMMISSIONER GOZZI: Right.

MR COOPER: And they are there in document C.2 and C.3.

5 COMMISSIONER GOZZI: Right.

MR COOPER: Now there are a number of things that we have to advise you of that are leave reserved. Included in the document is three clauses that are actually titled 'Leave Reserved'. They are the traineeships, which appears at clause 44 of the document, and it has actually a notation next to it, 'Leave Reserved', to that.

10 COMMISSIONER GOZZI: Right.

MR COOPER: There is a clause 'Trade Union Training Leave', and a clause 'Work Done Through Contractors'. So there are three clauses included in this document that are actually notated as 'Leave Reserved' items. And that is because we will come back later and fix them.

15 Now there is also one clause included in the document that has no notation next to it. And that is 'Fares and Travelling', which is at clause 16.

COMMISSIONER GOZZI: Well the old clause 16.

MR COOPER: Yes, in this document here.

COMMISSIONER GOZZI: Yes, clause 16.

20 MR COOPER: Yes. And what we have done with that, commissioner, is we have included with an increase in the rate the existing fares and travelling clause that's contained in the award. As you recall, we had some discussion with yourself about that clause. So we have simply put a provision in there that allows for fares to be paid at \$10.30 a day and where the employer provides transport, there's no cost to the
25 employer in terms of fares, whereas the old award had some provision about that.

The old award then went on and listed a whole range of applications of fares. And when I brought the original draft up, which was C.1, there was three or four pages of fares and we had various comments, both from yourself and from Mr Gates and myself about that. So to expedite the matter today we have included basically the existing
30 clause. We've removed subclause (a) of that clause because that's covered by camping. We've left in the bulk of the travelling and taken out the other parts that were confusing the parties. And we will come back and discuss that later. But we've agreed on that provision that's there at the moment.

COMMISSIONER GOZZI: All right, so \$10.30, is that the existing allowance?

35 MR COOPER: No, the existing allowance it was \$6.80 or something. That's been improved. That's been increased.

COMMISSIONER GOZZI: Yes. So how have you increased it?

MR COOPER: We've worked it out since 1989 - we haven't done the actual figures -
40 and we've looked at what's in the current award, which has been adjusted through CPI since '89.

COMMISSIONER GOZZI: But don't you need to run that if you're going to increase the allowances?

5 MR COOPER: It will - technically - that's something you can require. If you require us to do that, then we'll put the existing rate in there and come back and vary it through the CPIs and do that. The federal award had that rate in 1989, that's in our award at the moment. And then they have done the CPI adjustments.

COMMISSIONER GOZZI: So what's the current state award rate?

MR COOPER: \$6 something, sir.

COMMISSIONER GOZZI: \$6 - \$6.80?

10 MR COOPER: I'll tell you exactly, commissioner. It's \$6.11.

COMMISSIONER GOZZI: \$6.11.

MR COOPER: Yes.

COMMISSIONER GOZZI: Well how's that been updated in the past?

15 MR COOPER: This award hasn't been updated, sir. But usually it's done through CPI or - yes, through CPI.

COMMISSIONER GOZZI: Yes. So when was that operative from, the \$6.11?

MR COOPER: Well since pre 1989.

20 COMMISSIONER GOZZI: So really what you're saying is that if you applied the CPI in accordance with the reimbursement of expense related allowances, you get to \$10.30, would you?

MR COOPER: Yes, from the relevant date, yes, that's right.

COMMISSIONER GOZZI: Would you?

MR COOPER: Yes.

COMMISSIONER GOZZI: Right.

25 MR COOPER: The reason I say that, commissioner, is - I haven't done it, I haven't done the exercise, but I have checked the record from the federal award, which was \$6.11 at one stage, and through the variations they've made it's come up to \$10.30.

30 COMMISSIONER GOZZI: I mean, there is a full bench decision that expense related allowances can be adjusted by the CPI, eight capital cities CPI, and that's done from time to time in respect of a range of awards.

35 MR COOPER: If you've got a problem with that, commissioner, I don't have a problem putting \$6.11 back in there and coming back and doing the process. I really don't. But I'm in your hands in respect to that. If you're more comfortable with the existing allowance staying there and me coming back and varying it later, and providing all the exhibits that show you movements, then I'm happy to do that.

COMMISSIONER GOZZI: Well see what Mr Gates has got to say in a moment.

MR COOPER: Okay. So in respect to the rest of the document, we would be seeking to come back later and put up, hopefully, an agreed definitions clause and an agreed wage rates clause. Now if we can't do that, sir, then we will have to reinvent the wheel with yourself and inspections, the lot, and then you'll have to determine the relativities. But we hope that we will be able to deal with that at a later stage.

So you'll see in this draft, clause 7 and 8 are left blank. And we would seek to leave in this - as a result of this variation, the existing clause 7 and 8, with one exception. That is in clause 8 at the moment, at page - in a decision of Commissioner Imlach, there is a point 2 disability allowance, which is catered for under the allowances clause. And we would seek leave to delete that from existing clause 8.

COMMISSIONER GOZZI: Right.

MR COOPER: That's point 2 disability allowance.

COMMISSIONER GOZZI: Right. That comes up in the allowances clause then.

MR COOPER: Yes, it comes up as an industry allowance. Now with respect to the rest of the document, I advise the commission that it does comply with the wage fixing principles in that it does contain, as a result of the inclusion of exhibit C.3, the enterprise flexibility clause. It does contain a structural efficiency clause. It does go to directing employees to carry out work up to their skills and competence. It does have facilitative provisions in respect to hours of work, annual leave, and those leave provisions. It does contain flexible provisions in terms of shift work. So those facilitative provisions are included in the award.

So I would seek, on the basis of those submissions and your intensive involvement in discussions prior to these proceedings today, to seek the award to be varied in the manner sought in exhibit C.2 and 3, with an operative date from the 19th May 1995. And hopefully, come back in the not too distant future with a restructured definition and wage rate clause where we can discuss with you a phasing in period and the appropriate relativities. Now hopefully that will be agreed. If it's not we advise the commission that we would obviously have to undertake a task similar to the one taken at a national level to get agreement on that.

So that being the case, sir, that concludes my submissions in respect to this matter this morning.

COMMISSIONER GOZZI: That's fine. Just a couple of things. The 19th, is that the first pay period?

MR COOPER: Sorry, the first full pay period on or after the 19th. And the reason I've done that, sir, it's the week out. It gives the TCCI the opportunity to advise its members.

COMMISSIONER GOZZI: Right. Now with regard to, particularly allowances, are they existing allowances or have they been also updated?

MR COOPER: No, the allowances have also been updated by consent.

COMMISSIONER GOZZI: Yes, well how do you do that?

MR COOPER: We've taken the rates that are currently being applied in the federal award.

COMMISSIONER GOZZI: How do you overcome the wage fixing principle?

MR COOPER: Well again, I can satisfy the commission by doing the exercises.

COMMISSIONER GOZZI: Well are they cost related allowances?

MR COOPER: Sorry, sir?

COMMISSIONER GOZZI: Are they cost related allowances?

5 MR COOPER: Some of the allowances are, yes.

COMMISSIONER GOZZI: Because some allowances are adjusted in the National Wage Cases and State Wage Cases and some are not.

MR COOPER: That's right.

10 COMMISSIONER GOZZI: Now I don't think it's just a simple case of picking up the allowances in the federal award without going through the mechanics of it in the context of the Principles.

MR COOPER: Well if that's what's required, commissioner, I don't have any problem with that. I have the information from 1989 in terms of CPI movements and like in my office. I can certainly do that exercise.

15 COMMISSIONER GOZZI: So you're saying they're all expense related allowances, are they?

MR COOPER: No, they're not.

20 COMMISSIONER GOZZI: Well you can do that in respect of expense related allowances, and again I'll see what Mr Gates has to say about that. But where they are not expense related allowances, don't you have a problem under the wage fixing principles, that you can't do it?

MR COOPER: I thought we could, by agreement, put in the allowances that we deemed appropriate to the industry, by consent.

COMMISSIONER GOZZI: Doesn't it say no new allowances?

25 MR COOPER: Well I thought that was where they - I just couldn't come along and make application and get them. I thought where it was consent we could do that.

COMMISSIONER GOZZI: I didn't think so.

MR COOPER: Oh, if that's the case, sir, I've misunderstood the Principles.

30 COMMISSIONER GOZZI: Well I'm prepared to be convinced, Mr Cooper. If you can read it different to what I can read it, then that's fine.

MR COOPER: I understood that if you had a consent document you could come along to the commission and ask that to be put in place. If that's not the case, well -

COMMISSIONER GOZZI: What's it mean? I mean, how many new allowances - I mean, let's look at the wage fixing principles. Just go off the record for a moment.

35 **OFF THE RECORD**

COMMISSIONER GOZZI: Right, Mr Cooper.

MR COOPER: Thank you, commissioner. Thanks for that adjournment. What we have clarified now is in respect to the clauses that are going to be dealt with later. And we have leave reserved in exhibit C.2, clause 9, which is an allowances clause, clause 25, which is a further allowances clause, and clause 39, which is a special rates clause. The other clauses that we've agreed to leave reserved were trade union training leave, 43, traineeships clause 44, and work done through contractors, 46.

Now the reason that we've agreed to adjourn those allowances clauses is as the commission has quite rightly pointed out, both on the record and in conference, we would need to satisfy the Principles that that's appropriate for that to continue. And we have no problem with doing that at a later date.

In respect to clause 7 - Definitions, and clause 8 - Wage Rates, we will come back with, as I said before, an agreed position on that. So we would seek to include - sorry, we would seek to have the existing clause 7 and clause 8 included or remain as they are, that is we don't vary existing clause 7 and existing clause 8 in the existing award. Nor do we vary existing clause 38 - Special Rates. That would simply come in this draft as clause 39 and, as I said, we will come back to the commission if we have to, to satisfy the Principles in respect to movements of those allowances.

So, sir, having done that off the record - and I appreciate that - that would conclude my submissions, unless you have any further questions.

COMMISSIONER GOZZI: No, thank you, Mr Cooper. Mr Gates?

MR GATES: Thank you for that, commissioner. Thanks, Mr Cooper, that was an accurate summary as to where we currently sit at this point in time. We're in rather the insidious position in which I would rather see a complete restructured award come through at one point in time. Obviously we're not in a position to do that, given the pending - well given that the parties at a federal level are awaiting the decision of Deputy President Watson of the Australian Industrial Relations Commission with the relativities in all of the federal building industry awards. Now those will obviously have an impact upon what we in the state do with our relativities.

We don't want to be in a position where we jump the gun, assign relativities and then find we're coming back before the commission in a very short period of time to amend those relativities again. And that would be quite a process at that point. So given that as a basis for coming before you today, we can give - we're in a position where we can put an award to the commission which reflects agreed - or is a consensual matter, and that is the conditions as it pertains to the Roadmakers Award.

I will flag with the commission on transcript that the TCCI seeks to have leave reserved on the following matters, and that is clause 16, which is Fares and Travelling, clause 18, which is Hours, and clause 28, which is Payment of Wages.

COMMISSIONER GOZZI: Hang on, now, you want leave reserved on those.

MR GATES: Yes.

MR COOPER: And you want to come back at a later date and argue them.

MR GATES: Yes.

MR COOPER: You want to reserve your rights.

MR GATES: Yes, we simply reserve our rights to come back at a later date and seek a variation to those.

COMMISSIONER GOZZI: So I'll put them, as well as the ones that Mr Cooper mentioned.

MR GATES: Yes.

COMMISSIONER GOZZI: They're additional leave reserved clauses.

5 MR GATES: No, I think - could we just go off record for a moment?

COMMISSIONER GOZZI: Yes.

OFF THE RECORD

10 MR GATES: Yes, thank you for that brief adjournment. To clarify the previous statement, we consent to the clauses going in, in the draft C.2 put forward by my colleague, Mr Cooper. However we signify at this stage that we may be coming back and varying those clauses.

COMMISSIONER GOZZI: Seeking to vary them as part of these proceedings - as part of these proceedings?

MR GATES: Yes.

15 COMMISSIONER GOZZI: At the time that you might be looking at wages and definitions and - the completion of the exercise, in other words.

MR GATES: Yes, that is correct.

COMMISSIONER GOZZI: Right.

20 MR GATES: But at this stage we are - that we can put our consent to those clauses as they currently are, simply that we may seek some further variation to them.

COMMISSIONER GOZZI: That's clause 16 and 18.

MR GATES: 18 and 28.

COMMISSIONER GOZZI: 18 is Hours of Work.

MR GATES: And 28 being Payment of Wages.

25 COMMISSIONER GOZZI: What page is that on? Yes, Payment of Wages. Page 27. Okay.

30 MR GATES: We are further in the position where, whilst we've had other drafts of this particular exhibit C.2 previously, we obtained a copy of the current exhibit C.2 on the hearing this morning, approximately half an hour before, and we give our consent subject to errors and omissions.

35 But it would be our submission, taking on board the comments in relation to allowances, both disability and to expense related, that we're in a consensual position with the expense related allowances and if the commission deemed it appropriate then the parties will have to come back and run another case to increase those. But at this particular point in time we are content with the position of ALHM - sorry, AWU-FIME, and the rates presently contained in the draft.

As to operative date, my colleague has put up the 19th May 1995. I would ask that an operative date be given a week later, and that would be the 26th May 1995 - the first

5 full pay period on or from. And the rationale for that is that it will take TCCI at least a week, if not 2 weeks, to put exhibit C.2 into our system and have it distributed to members before the award is actually operative, which is going to be particularly important in this case. And I don't believe a week would be appropriate in the circumstances.

COMMISSIONER GOZZI: It would not be inappropriate.

MR GATES: Yes, a week would be inappropriate.

10 COMMISSIONER GOZZI: I know what you mean. Extending the operative date by a week would not be inappropriate to allow you to do the work that you need to do to get the variation out in the system.

MR GATES: Yes. And to give it out to members before the award actually has full effect, the less they find themselves actually breaching the award. And we wouldn't want to see that happen.

15 COMMISSIONER GOZZI: All right. Now is somebody just going to briefly tell me what some of these restructured items are? Is it simply a variation of existing conditions? Are they aware there's a structural efficiency issue come in, in this document?

20 MR COOPER: If I may, with respect to that comment, we did take the commission through that in a number of private conferences. There are some facilitative provisions - and I thought I did touch on that - in respect to hours of work, and in respect to annual leave.

COMMISSIONER GOZZI: Mr Gates wants to come back on hours.

25 MR COOPER: Yes, I accept that but there is - in this draft there are more flexible arrangements than is currently contained in the award. The current award prescribes a 19 day month. This provision prescribes a number of varieties to that, and it does not make the 19 day month a compulsory item, as it currently is prescribed in the award. So it contains flexibility in respect to organising hours of work. It has agreement for RDOs to be banked. It has agreement to work in excess of 8 hours a day where that's deemed appropriate. It does contain facilitative provisions in respect to taking of leave, and it does contain those clauses that have become a requirement of
30 the state commission in respect to enterprise flexibility and structural efficiency.

35 So in respect to those clauses, they're included. There also is a facilitative provision in the holiday clause, which allows for, by agreement, to vary those as well. So there is quite a deal of flexibility contained in the draft C.2 that you have - exhibit C.2. Also, sir, in respect to the general structure of the award, it is - in terms of the hours of work clause that is contained in this, it is, I will put to the commission, more flexible than the current national standard. And we have recognised that, given that we do have a number of agreements registered in the state that contain similar types of flexibility. The one thing we don't want to do, sir, is hamper the industry. So those flexibilities are contained and I thought I did allude to them earlier, so I apologise if I
40 didn't.

COMMISSIONER GOZZI: Mr Cooper, is there a nexus between this award and the federal award? What is the title of the federal award again?

45 MR COOPER: The AWU Construction and Maintenance Award 1989. Sir, in respect to a nexus there was a very close nexus initially and there is still a relationship, but we wouldn't say it was a direct nexus. It's very similar to a number of awards that we've done in Tasmania, and that is we do like to keep them similar but not

necessarily identically the same. So to answer your question as directly as I can, there is a relationship but not a nexus.

COMMISSIONER GOZZI: Right. But it's that award that is before Deputy President Watson.

5 MR COOPER: Yes, sir, along with a number of other awards which, if I can advise
you of, are the National Metal and Engineering On Site Construction Industry Award,
the National Building and Construction Industry Award, the Plumbing, Trades
(Southern States) Construction Agreement - and I can give you a copy of this, sir - the
10 Plumbing Industry (New South Wales) Award, Plumbing Industry (Queensland and
Western Australia) Award, Sprinkler Pipe Fitters Award, National Building and
Construction Award 1990, the National Building Construction Industry Award 1990 -
there's two different awards with different respondents - and again, the National
Building Construction Award 1990. One is for the Master Builders, New South Wales,
one's for the old Federation of Industrial Manufacturing and Engineering Employees,
15 one's for the CFMEU. And then you've got the Plumbing, Trades (Southern States)
Construction Agreement.

So there's a whole range of awards that are party to what's been titled Building, Metal
and Civil Construction Industries applications to restructure.

20 COMMISSIONER GOZZI: Thank you. So that I'm clear, you are awaiting the outcome
of relativities in the AWU Construction and Maintenance Award 1989.

MR COOPER: That's correct.

COMMISSIONER GOZZI: To flow those into this award here.

25 MR COOPER: Well that's correct. But the only reason we are waiting is that there
has been considerable effort at a national level and a considerable number of
inspections. Deputy President Watson has inspected a considerable number of jobs to
determine those relativities. Now we don't have a problem with doing that exercise
ourselves here, but if they were brought down and we presented them to you -
obviously we'd do that in conference. If you were happy with that, then it would save a
lot of time and effort. If you weren't, then we would go through the exercise again.

30 COMMISSIONER GOZZI: Well, I mean, it's establishing a federal parity.

MR COOPER: Yes, a national standard, that's correct.

COMMISSIONER GOZZI: Which, you know, hitherto hasn't been the case without
running through the case. I mean, the teachers, the nurses.

35 MR COOPER: I accept that, and that may very well be the case, sir. But at least we'll
have something to work on. And they are assigned in here but they're not agreed. And
as Mr Gates said, we could put them in but then we would be foolish to come back and
vary them.

COMMISSIONER GOZZI: And what you're saying there, doesn't that establish a rates
nexus though?

40 MR COOPER: It would establish a rates nexus if you picked that up holus bolus, but
you haven't done that yet because we haven't put it to you yet. So at the moment there
is definitely no nexus between those rates and the rates that are in the award.
There will be a similarity in respect to the conditions, if you see fit to effect the
variation that we're seeking today. And that won't be a mirror image though because

we have modified certain clauses to suit Tasmania as well. So we could say there's a relationship but not a direct nexus.

COMMISSIONER GOZZI: All right, thank you, Mr Cooper. Mr Gates, the TCCI is entering into this arrangement by consent, I take it.

5 MR GATES: Yes, that's correct, commissioner.

COMMISSIONER GOZZI: And the same with the proposed federal rates that you're going to bring forward.

MR GATES: I'm sorry?

10 COMMISSIONER GOZZI: The same with the proposed federal rates that you intend to bring forward.

MR GATES: The important point is the relativities and where they sit. And obviously that might impact on - with the wage rates at the end of the day. That's not to say there won't be some variation in the state. Because - whilst we - sorry.

COMMISSIONER GOZZI: Yes, that's okay, I understand what you're saying.

15 MR GATES: Yes. It's quite important that there may be variation to what is adopted federally to pick up any idiosyncrasies which are apparent to either of the parties. But those will certainly save the parties in the state jurisdiction a substantial amount of work.

COMMISSIONER GOZZI: Right. Anything else?

20 MR GATES: No, commissioner.

MR COOPER: Sir, in respect to the operative date I thought I was being very generous a week. And given that the TCCI have had those drafts for some time I'm a little bit disappointed that they are seeking another week. But in the interests of not having you be required to arbitrate anything I would consent to the 19th, the first full pay period on or after the 19th.

25 COMMISSIONER GOZZI: The 26th.

MR COOPER: Sorry, is that what it was, the 26th?

MR GATES: Absolutely.

MR COOPER: Sorry, sir, I consent to the 26th then. If the commission pleases.

30 COMMISSIONER GOZZI: Very good, Mr Cooper. Well let me indicate to you that in respect of the draft, as submitted, with the variations that are proposed to be made in the nature of the discussion we had on the record, I endorse the draft with the operative date of the first full pay period on or after the 26th May 1995. And the award will be varied to reflect those changes.

35 Now I want to just simply say, so that you understand where I'm coming from, that I am not relaxed about the picking up of the federal wage rates without running through an exercise. That's my prima facie position. Now that's not in concrete. There might be discussions that we can have in conference about that. But at least you know where I'm coming from.

All right, the decision and order will be an interim one and will issue in due course. The only thing we need to do is set a resumption date, if that's necessary. We'll go off the record.

OFF THE RECORD

- 5 COMMISSIONER GOZZI: All right, well these proceedings are adjourned to 10.30 on the 28th June. Thank you, gentlemen.

HEARING ADJOURNED