

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T.2332 of 1990

**IN THE MATTER OF** an application by the Woolclassers Association of Australia for the making of the Shearing Industry Award

T.4325 of 1993

**IN THE MATTER OF** an application by the Australian Workers' Union, Tasmania Branch to vary the Shearing Industry Award

re insertion of wage rates and conditions of employment

COMMISSIONER WATLING

HOBART, 30 July 1993  
continued from 16/6/93

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances, please.

MR G. COOPER: If the commission pleases, I appear on behalf of the Australian Workers' Union, Tasmanian Branch, COOPER G.

COMMISSIONER WATLING: Thank you, Mr Cooper.

MRS H.E. WRIGHT: If the commission pleases, WRIGHT, MRS H.E., on behalf of the Woolclassers' Association of Australia.

COMMISSIONER WATLING: Thanks, Mrs Wright.

MR K. RICE: If it please the commission, RICE K.J. I appear on behalf of the TFJ Industrial Association.

COMMISSIONER WATLING: Right. In respect to woolclassers?

MR RICE: In respect of woolclassers and in respect of the other matter, too, sir.

COMMISSIONER WATLING: The other matter. Oh, right.

MR RICE: T.4325.

COMMISSIONER WATLING: Oh, yes. Well, fair enough. I'm just checking, Mr Rice.

MR RICE: Yes, sir.

COMMISSIONER WATLING: Right. Mr Cooper?

MR COOPER: We've finished, commissioner.

COMMISSIONER WATLING: I don't know whether I finished that. I don't think that appearance will ever finish, will it?

MR COOPER: Fair enough, commissioner. What I would like to do, commissioner, for proceedings today is I would like to tender a new exhibit which will supersede and replace the previous award exhibits.

COMMISSIONER WATLING: Right. Well, let's look at where we were before. We had Exhibit C.1 which was the Pastoral Award. Right, this will be C.2. We'll mark this Exhibit C.2, thank you.

MR COOPER: With respect to this exhibit, commissioner, what I would like to suggest is for - I suppose simplifying the process - is I would like to point out at some stage on the record what's contained in this exhibit, but I would like to suggest that we take the commission through the exhibit off the record, which I think will simplify the process, and having studied the document and understood what's contained in it, I would like to then come back onto the record and

recommend that the commission accept the document that's been titled now C.2.

COMMISSIONER WATLING: Right. Well, there's an application to go off the record and have a look at this matter. Mr Rice?

MR RICE: We don't have any objection, sir.

COMMISSIONER WATLING: Right. Mrs Wright?

MRS WRIGHT: No, we have no objection.

COMMISSIONER WATLING: No objection. Well we'll just go off the record for a moment, thanks.

OFF THE RECORD

MR COOPER: Commissioner, thank you for that time off the record with respect to Exhibit C.2. I think it has clarified a number of matters, or a number of questions that needed tidying up, and I appreciate that time.

I would then submit document C.2, as amended during the course of off-the-record discussions, to the commission to be made as an award of this commission.

I think it satisfies the principles that we currently work within.

It does reflect the current working arrangements that are carried out within the industry, albeit the industry is technically for those people that aren't covered by the federal award, award free.

They do comply with this award, or the federal award, and this award does merely mirror that in all respects, excepting for those provisions that are peculiar to the State of Tasmania, and those provisions are of course controlled by the Act of the State of Tasmania.

I would suggest - and I haven't discussed this with Mr Rice yet - but I would suggest an operative date should be a date a couple of weeks out that would allow the commission time to prepare orders. So I would be suggesting a period on or about the 14th or 15 of August - I'll just check what day that is - the 16th of August is a Monday so I would be suggesting Monday the 16th of August as being the operative date, which should allow time to get the decision and everything out to the people. That's providing of course that the commission does endorse the award.

I would like to say, commissioner, and I accept the very patient manner in which the commission has dealt with this, because it has taken a number of hearings and a number of drafts.

And I do understand that with respect to this commission that this award doesn't satisfy the normal presentation of awards that have been passed, especially with respect to yourself.

But I have taken that point up with our federal office, and bearing in mind that we are trying to make an award that does reflect national shearing industry standards, our federal office has said to us that we are free to discuss with the employer the modernisation of this award as it relates to the words and everything and also the general layout of the award.

And we have been given a free hand to do that, and I would like to place on the record here today that the AWU Tasmanian Branch will be entering into discussions with the employer association in earnest with a view to seeing if we can make this award more modern.

But, in the interim this award will be made as an award of the commission, and would stand the same as all other awards of the commission, and that is that it would cover an area that is at the moment award free, and where we do have a few problems in respect to that area because of the award-free situation.

So I do undertake to do that, and I would say for the record as well that I would seek to involve the commission from time to time in respect of that review to ensure that the review itself doesn't get too far off the rails, and will in fact provide the commission with a draft that is more consistent with the modernisation process that this commission has embarked upon in the last few years, and also is consistent with the general standard of presentation of awards.

And what that would do, I think it would make it easier for us and make it easy for the people that do use the award, and they are the people that we have to actually consider, especially my members.

The award itself is now somewhat different to the original award that was put up. It does contain a Division B for woolclassers which is quite separate and distinct, and Division A goes to the shearers.

It does also exclude quite clearly people that are employed on a full-time basis under the other state awards, which is the Farming and Fruitgrowing Award, provided they have been employed for at least a week prior to the commencement of shearing operations.

I would suggest that the award doesn't offend the public interest, and would be something that this commission could endorse, subject to the application of the principles test.

I would say that this award, too, in respect to the wage rates that are contained therein does contain the 2.5% wage increase that was granted in the Federal Commission some time ago, but it has not completed the minimum rates process, and of course that process is subject to further application from the parties.

COMMISSIONER WATLING: Right. So has it got any minimum rates adjustments at all?

MR COOPER: Yes, sir.

COMMISSIONER WATLING: So the figures in this take us up to, what, No. 1, No. 2?

MR COOPER: No. 1.

COMMISSIONER WATLING: So it has completed the first MRA?

MR COOPER: That's correct, commissioner, yes.

COMMISSIONER WATLING: Now is that for both divisions?

MR COOPER: I could only comment on my division.

MR RICE: It's right up to date for shearers - they didn't get any MRAs. They are not entitled to any MRAs being on piecework as a result of a full bench decision regarding this matter, sir.

COMMISSIONER WATLING: So, what's got the 2.5 then, Mr Cooper?

MR COOPER: Well I understand all the wage rates do have the 2.5.

MRS WRIGHT: No.

MR COOPER: For Division A.

MRS WRIGHT: Yes, for Division A, yes.

MR COOPER: Which is all that I can speak on.

COMMISSIONER WATLING: Division A have 2.5, yes, and the first MRA?

MR COOPER: Yes, for the shed hands. The shearers' wage rates are complete, as I understand it in Division A.

COMMISSIONER WATLING: So we are really looking then at your clause 8, subclauses (2), (3), (4), are we?

MR COOPER: Well, perhaps if we can just go off the record and I will clarify that, commissioner.

COMMISSIONER WATLING: Yes, we might.

OFF THE RECORD

MR COOPER: With respect to that, commissioner, thanks for that. It's subclause (1) and (2) of clause 8 are finished - that is with respect to the 2.5 and the minimum rates.

Subclause (3), (4) and (5) have the 2.5 and the first minimum rate adjustment. That's in Division A. And Mrs Wright can obviously speak on Division B.

COMMISSIONER WATLING: Right. Now is there any program for the MRAs?

MR COOPER: I understand it is an agreed process, subject to application, yes.

COMMISSIONER WATLING: Yes. At what intervals?

MR RICE: The whole award is subject to Part I of the pastoral industry, subject to incapacity to pay hearings before the Federal Commission at the moment, sir.

And the three MRAs are still outstanding.

COMMISSIONER WATLING: So incapacity to pay the second, third and fourth MRA?

MR RICE: No, incapacity to pay the 2.5. And the applications are outstanding, waiting for the AWU to make application for the MRAs.

MR COOPER: That's correct. We have to make application, but I understand the process was agreed so it would have been - there should have been a second MRA -

COMMISSIONER WATLING: Well you just told me that you have got the first MRAs in 8(3), (4) and (5).

MR COOPER: That's correct, we have.

COMMISSIONER WATLING: Are they subject to appeal?

MR COOPER: The 2.5 wage increase was subject to appeal. It's been appealed and dismissed and appealed again, as I understand it - that's in the federal jurisdiction.

COMMISSIONER WATLING: But you've included them in here.

MR COOPER: No. Well, these rates that are here are rates that are currently in place nationally as far as the federal -

COMMISSIONER WATLING: I'm wanting to get it a little clearer. You are saying to me that for shed - for shearers and crutchers - they have got the 2.5?

MR COOPER: Yes.

COMMISSIONER WATLING: It is not subject to incapacity to pay argument federally?

MR COOPER: Yes.

COMMISSIONER WATLING: But you have included them in here?

MR COOPER: That's correct.

COMMISSIONER WATLING: Right, so it is not an argument before me?

MR COOPER: No.

COMMISSIONER WATLING: Right. In relation to clause 8, subclause (3), (4) and (5) have they the 2.5?

MR COOPER: Yes.

COMMISSIONER WATLING: And they have the first MRA?

MR COOPER: That's correct.

COMMISSIONER WATLING: Right. There's no incapacity to pay argument before me?

MR COOPER: No.

COMMISSIONER WATLING: Right. Is there going to be?

MR COOPER: I wouldn't imagine so, unless the Federal Commission - unless they get up in the Federal Commission.

COMMISSIONER WATLING: Well, what does that mean?

MR RICE: If they got up in the Federal Commission we'd be seeking to have whatever came out in the Federal Commission reflected in the rates in this particular award because a decision from that -

COMMISSIONER WATLING: Ooh. Well, you'll want to address me on it. I tell you what, if that's the case, if that's going to be the case let's get back to my original argument in this hearing - are we creating an unbreakable nexus?

MR COOPER: Commissioner, with respect to that application it has already been heard once and dismissed, as I understand it, and there is further applications been made.

COMMISSIONER WATLING: Why would I put rates in an award now if you're saying that you are going - if it gets up in the federal arena you are going to alter it?

MR RICE: We would be seeking to, and my understanding with Mr Cooper that he would support that rate, that he would support that action.

MR COOPER: It does .... a question that I hadn't actually put my mind to, because I understood that this was to be a consent award here today.

COMMISSIONER WATLING: Well, that's right, and that's why I am saying if it is a consent award it is all up and running. It is not subject to incapacity to pay.

That's what I would be saying as well, but that's something we may need to address.

MR RICE: Well, that's something we had addressed. We were aware when we came before here.

COMMISSIONER WATLING: Otherwise you shouldn't be telling me it is by consent. Why would I actually endorse the figures you've put in this document if next week or the week after you are going to come along and argue incapacity to pay?

MR RICE: Well I wouldn't see that we would be arguing incapacity to pay before this commission, that we would bring an application to say it's changed in the federal award and therefore that - likewise if it went up, Mr Cooper would come before you and say it's changed in the federal award, we want to increase it. We'd be making the same application to say that because of action in the Federal Commission we're seeking to have those rates reflected in this award.

COMMISSIONER WATLING: So, that's to increase them?

MR RICE: It would be to decrease them.

COMMISSIONER WATLING: Well, we might just turn the record off.



OFF THE RECORD

COMMISSIONER WATLING: Mr Cooper?

MR COOPER: Thank you, commissioner, for that short break off the record.

What I think needs to be said for the record is that in respect of Clause 8 - Wage Rates, Division A, the rates that we are seeking to get the commission to endorse today, to be operative on or after the first full pay period commencing 16th August, are interim rates and they will be subject to further review by the parties, which may result in two options: (a) an increase to those rates that are contained in Division A, or (b) a decrease in those rates in Division A.

But it needs to be said that that review won't take place until the completion of proceedings that are currently in train in the Federal Commission as it relates to the federal Pastoral Award.

I think that needs to be said so that this application in fact would stay open and you would be advised - this commission would be advised - as soon as possible following the completion of those proceedings as to where the application will go.

COMMISSIONER WATLING: Right.

MR COOPER: So, with respect to the rest of the award that relates to Division A, that is the shearing part of it, I'd submit that the award should be ratified by the commission in the manner set out in C.2, as amended, from the first full pay period to operate on or after 16 August 1993, subject to Clause 8 - Wage Rates, Division A being further reviewed into the future. If the commission pleases.

COMMISSIONER WATLING: Good. Thank you. Mrs Wright.

MRS WRIGHT: Mr Commissioner, I would like on behalf of the Woolclassers' Association to support Mr Cooper in his remarks as to what he said about the formation of the award, the exhibit as in C.2, only to state that the Division B rates of pay for woolclassers does not include the 2.5% or any MRA. It, therefore, is not subject to the incapacity to pay case on the federal level. So, therefore, those rates could -

COMMISSIONER WATLING: They are not interim?

MRS WRIGHT: No, should not be interim.

COMMISSIONER WATLING: Your rates are not interim?

MRS WRIGHT: They will be the rates that would come into effect. And so that would be the only exception to Mr Cooper's submission that I would like to make.

And, therefore, just keeping it brief, I would like to ask that the Exhibit C.2 with all the clauses that relates to Division B - Woolclassers be ratified.

COMMISSIONER WATLING: Right. Thank you.

MRS WRIGHT: If the commission pleases.

COMMISSIONER WATLING: Good. Mr Rice?

MR RICE: Thank you, commissioner.

Sir, this application and this award has come into being as a result of a number of matters previously heard by the commission really going to the old Agriculturists Award being totally reviewed and abolished and another award coming into its place.

The old Agriculturists Award contained a provision in that which said something along the lines of: persons employed in and around shearing sheds shall be paid in accordance with the award known in federal jurisdiction as the Federal Pastoral Industry Award.

This has always been of some concern to this commission, is just that pure reference rather than the rates of pay and everything being implemented in an award form.

So, as a result of that, when the new Farming and Fruitgrowing Award was implemented on the 13th of March 1992 it was decided at that particular time that there shouldn't be any reference to shearing in that particular award and that a new state award should be implemented.

Following extensive discussions between the AWU and the Woolclassers' Association and the Tasmanian Farmers and Graziers' we have put an exhibit before you today and on many occasions prior, but we have a final document here at the moment which in reality reflects the current positions in the awards - the federal awards known as the Pastoral Industry Award Part I and the Woolclassers Award.

Sir, we don't oppose this new award, however we should put on record that if the award as you know it, as you see it, in C.2, as amended, known as the Shearing Industry Award, is on an interim basis only, we would not like to put before this commission that we are in total agreement with each and every clause of this particular award, simply because within the federal jurisdiction we have argued and are continuing to argue on a number of fronts, and we believe that its

application to Tasmania is in need of urgent - or is in need of review - to such an extent that it may be some time in the future that we may seek to revisit parts of this award going to the wage rates and the formula, travelling, hours of work, provision of wet sheet, breakdown of machinery, agreements, messing and cook.

They are just a list of some of them that do not fit comfortably with what we believe the Tasmanian shearing industry, and we have great misgivings regarding creating a total nexus with the federal Woolclassers Award and the federal Pastoral Industry Award.

Sir, in agreeing, or consenting to this particular application, we wish to place on the record that our consent should not be taken as total support for the terms and conditions of the Pastoral Industry Award or for a total nexus to that award or the Woolclassers Award, because as we said previously it may be some time in the future, and it will be in consultation with the Woolclassers Association and the AWU that we seek to perhaps make it a purely Tasmanian award that reflects Tasmanian conditions as they apply to the shearing industry in this state.

In reference to Division A of the award, the wage rates relating to shearers, we wish to again place on the record that these are rates of pay on an interim basis only, and they may be subject to further consideration or review which will depend totally upon an outcome of a current economic incapacity to pay case being mounted in the federal jurisdiction in the award known as the federal Pastoral Industry Award regarding the shearing industry.

Now that case, depending on the outcome, may either leave the rates as they are or they may decrease. They may increase, for that matter, and we would seek to come back to you at the end of the - or the completion of that case - and when a decision has been arrived at, sir, and either ratify these rates or seek some variation, depending on the outcome of the federal decision.

And we would ask the commission to - in view of that - and if the commission is agreeable to - having read C.2 and the terms and that in there - and recognising the commission's concerns regarding some of the terminology in this award, which is out of step with this commission's terminology, we would ask the commission to ratify this particular award. If it please the commission.

COMMISSIONER WATLING: Good. Thank you. Mr Cooper?

MR COOPER: I have nothing further to add.

COMMISSIONER WATLING: Mrs Wright, any right of reply?

MRS WRIGHT: No, I have nothing further to add.

COMMISSIONER WATLING: Well, I can indicate to the parties that I will hand down an interim decision which will endorse Exhibit C.2. However, I will in my interim decision make a number of observations about the interim nature of the rates of pay that are contained in C.2 for Division A only.

I note at this stage that the award is very much in line with the Pastoral Industry Award - the federal Pastoral Industry Award and the Woolclassers Award - and I am taking it that this is to get this matter started in the State of Tasmania.

Obviously the parties have taken on board some comments that I have made in private conference that the award - especially in relation to shearing - probably needs modernising, and some of the language that's contained therein could be improved, plus it could be made more user friendly.

But I am going to endorse it because I think we need to start somewhere, and it is probably better off starting with the document if we are looking at modernising it and projecting it into the sort of language that is going to be easier for not only the employer to follow but the employees that may be required to follow it.

But I will leave this application open, and I will await the parties contact with my office requesting a resumption of this matter to either finalise the wage rates in Division A or close the application completely.

Therefore it is only an indication that I give you today that I'll be endorsing this document with some - how shall I put it - well, I will be endorsing it, but I will be endorsing it with great care, and my decision will reflect some of those cares that need to be taken with it.

But I just want to let you know you can leave here understanding that it will go ahead.

I will also note that we are not creating an unbreakable nexus, and therefore it will be subject to review at any time by the applications of either or all the parties.

It's just coincidental at the start, I think, that we have lined them up with the federal award to get things going.

But my decision will make certain comments about it not creating an unbreakable nexus.

Thank you for your participation. This matter is now adjourned sine die.