



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. **7984 of 1998**

IN THE MATTER OF an application by the Australian Mines and Metals Association (Incorporated) to vary the Metalliferous Mining and Processing Award

Re: variation of award

T No. **9482 of 2001**

IN THE MATTER OF an application by the Australian Mines and Metals Association (Incorporated) to vary the Metalliferous Mining and Processing Award

Re: Variation of award

COMMISSIONER IMLACH

HOBART, 22 May 2001
Continued from 23 April 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING RECOMMENCED 10.33am

COMMISSIONER: I'll take appearances.

5 **MR W.J. FITZGERALD:** If it pleases and seeing we've got the most applications in, I'll go first. I appear on behalf of Australian Mines & Metals Incorporated, FITZGERALD W.J.

COMMISSIONER: Thanks, Mr FitzGerald.

MR R. FLANAGAN: If it pleases the commission, FLANAGAN R., for the Australian Workers Union, Tasmania Branch.

COMMISSIONER: Thanks, Mr Flanagan.

10 **MR G. COOPER:** If the commission pleases, I appear on behalf of AFMEPKIU, COOPER G.

COMMISSIONER: Thanks, Mr Cooper.

MR K. BECKER: BECKER K., I appear on behalf of the CEPU in these matters.

15 COMMISSIONER: Thanks, Mr Becker. Well, now, Mr FitzGerald?

MR FITZGERALD: I think it would probably be appropriate that I do the report-back because I think I've got more to report back than the unions. I don't think the unions are going to be able to report much on anything.

20 At the last hearing, on 23 April, commissioner, you will recall - and admittedly it was only the AWU who were present, but there was in fact an agreed process, I think, endorsed by the commission and that process was for Australian Mines and Metals Association to write to the other two unions, which we did and advise them of a meeting of
25 the week of May 7.

It was also agreed at that meeting, commissioner, the union parties would examine the application, the AMMA application if I can call it that, the most recent one before you and identify areas of agreement and areas of non agreement which would come back to the
30 commission to process.

As I indicated, following that hearing the association wrote to all three unions and set up a meeting for 11 May. All three unions attended but Mr Cooper was busy with other matters and he regrettably had to leave and the CEPU were represented by Mr Becker, here today, and
35 the state secretary, Mr Harkins.

I have to report, disappointingly, commissioner, it was not a productive meeting. Mr Harkins particularly, in my view, was not helpful to the proceedings. He took up a lot of the time of the meeting,

in my view, asking irrelevant questions and it was clear that as he hadn't been involved in the history of this award, and it appeared that he hadn't been briefed either because of the nature of the questions, that it wasn't particularly productive to have him there at that meeting
5 on that day.

It was also clear in our view that the unions had not discussed the AMMA application as a whole and it appeared to me that, certainly a couple of the unions had read the application for the first time that very day. So that was indeed disappointing.

10 We did have a cursory run through the application. There was a preliminary agreement on the issue of award interest and parties bound or parties bound and award interest, whichever order you want to take, however, there was no agreement indicated on any other matter at all, which is disappointing. Even some of the procedural
15 matters we would have thought there could have been some indication of agreement on but not to be.

We are of a view that given the position taken by the three unions, that the unions weren't bargaining in good faith and I'll address that issue in a minute.

20 The issue of award interest and parties bound, AMMA is not in a position now to agree to that. Given the lack of faith in the bargaining process by the unions, we believe that it's more appropriate that the parties agree to a document as a whole and the matters which we can't agree be arbitrated before the commission but we're not going to go
25 through a piecemeal process of agreeing to bits here and there and that's one piecemeal matter which we would withdraw our agreement from, which we indicated on the last occasion.

I think, if we're showing some good faith in the process that equally there should be some shown by the unions.

30 The AWU indicated that the response to the AMMA application was going to be in the form of a counter application which was going to be with us the following Friday but they did indicate that it was their preferred position that they would get it to us earlier. We waited until the following Friday and we didn't receive any response at all from any
35 of the unions, so we sent an e-mail and just to be sure we also faxed that e-mail through to each of the three unions and I'll just quote. It's addressed to Mr Flanagan, Mr Cooper and Mr Becker:

40 *As a consequence of our discussions last Friday there was an undertaking by the three unions to provide a copy of a counter application by today. I've not received a document and I will report that back to the commission next Tuesday.*

The response to that was a fairly much tongue in cheek response by - and a pity I didn't keep a copy but I can certainly recall what was in it.

It was fairly brief, by Mr Harkins, and he indicated, that I hope that I was going to report about the significant progress we made at the meeting on the Friday.

5 Now, if that's the way the unions want to take that tongue in cheek approach, I think demonstrates clearly their lack of faith in this whole process and we'll be looking to the commission to tighten up the time frame from here on.

10 In any event, the association indicated that the receipt of a counter application was clearly not in accord with the directions which the commission gave back at the hearing on 23 April and that was to discuss the AMMA application. Certainly, there was no talk of a counter application and I think that's only going to complicate the process. I think it would be better, commissioner, just to deal with one application.

15 That's a report-back. Just to briefly finish off, commissioner, AMMA has an existing application, T7948 of 1998 which we would, by leave, seek to withdraw and we would proceed with our current application. I think that makes it cleaner. We'd also seek to amend our application to delete the references to the operative dates in regard to award
20 interest and the retrospective effect of those.

It's our position, commissioner, as I indicated, that given the events as they've transpired, we're not going to proceed now with our agreement in respect to award interest but that's one matter that should be included with all the others as part of the award making process.
25 Certainly, the association wishes to proceed as quickly as possible. We know there's been some lengthy delays but given the conduct displayed by the three unions in this instance it's clear that there's no intention to speed it up on their part.

30 There are uncertainties relating to the alleged application of the Pasminco (Rosebery) Mining Award and how that applies in terms of ascertaining the correct relevant award for the purpose of state and federal agreements. That needs to be cleared up, I believe, commissioner, and it's in the public interest I think to remedy this situation quickly.

35 The process has bogged down for far too long and the unions are not demonstrating good faith in this process and we're asking the commission to set down a rigid timetable from here on so this process can be brought to finality. If it pleases.

COMMISSIONER: Are you ready to proceed today, Mr FitzGerald?

40 MR FITZGERALD: I think we should hear what the union's response is but given that we don't know exactly what matters - and I would be reluctant to proceed with the full award because that's what's being indicated today. We're not sure whether that action indicates a correct

position. I don't think it would be but that's what was indicated at the union meeting, the meeting with the unions, so at this stage, commissioner, we would be reluctant to proceed until we ascertain the extent of agreement or otherwise by the unions.

5 COMMISSIONER: Yes, all right. Thanks, Mr FitzGerald. Mr Flanagan?

MR FLANAGAN: Thank you, commissioner. Commissioner, if I can just respond to the report that's been given by Mr FitzGerald. It's certainly the case that the parties met on 11 May and unfortunately it is true that the unions as a group had not had the opportunity to discuss the application amongst themselves prior to the discussions with Australian Mines and Metals.

Nevertheless, we didn't regard it as an unproductive meeting. One of the key features of that meeting - so I'm a little bit surprised in this sense of the report-back which has been given by Mr FitzGerald, is that at that meeting we actually agreed that when this matter came on today the award interest provision would be consented to so that it would take effect from today and we saw that as a positive step. It is an outstanding issue and each of those dates which are identified in the application, as I understand it, have a relationship to proceedings which were previously before the commission when the Act's structure was slightly different. So we had anticipated that today that part of the application which deals with award interest would in fact be approved by consent.

25 To that extent, we're also surprised that in fact rather than the association seeking by consent for clause 6 to be approved by the commission, in fact what they're seeking to do is amend the application to remove the operative dates of that provision. So, that's news to us. We're still in a position where we're prepared to consent to the application for the award interest to be made, including the operative date sought by the application.

In terms of the title of the clause and we did identify it to Australian Mines and Metals at the meeting on 11 May, it's the unions' understanding that the correct reference to that provision is award interest and not award interest and parties bound. That's something for the association to further have a look at.

The association also indicated at the meeting of 11 May, the AWU indicated that it intended to forward a counter application by the following Friday, which in fact was last Friday, and that if we could do that beforehand we would. That was an intention of the AWU but unfortunately there were developments on the west coast last week which required the union to avert its resources to deal with that matter as it was one which needed immediate attention.

5 It is and remains our intention to provide Mr FitzGerald with a counter application and the effect of that counter application will at least allow the parties to, very concisely, identify the agreement or lack of agreement and identify the issues which need to be considered by the commission where the parties are unable to reach agreement. We don't see that as a complicating factor. In fact, we see it as something which facilitates this whole process moving forward and we still intend to file that application.

10 In terms of the application by AMMA to withdraw matter T7984, I presume that that's the previous application which Australian Mines and Metals made for a new award. They speak here today about the need for this matter to move forward with some haste. That was an application which the association made some two years ago, I believe.

COMMISSIONER: Going on three, I think, Mr Flanagan.

15 MR FLANAGAN: It was the subject of many discussions, many hours had been put away as a part of that process. There had been some discussion at the time about what the appropriate way forward was and the commission forwarded correspondence to the parties in respect of that and for some reason, since that correspondence, the
20 the association has done absolutely nothing with the application. It's laid dormant and it was at their control, not the unions. It's laid dormant and nothing's been activated on it by the association following that correspondence other than what we now have, on 9 April this year, a fresh application by the association.

25 It's a bit amusing that we spent so much time and put so many resources into discussions in relation to T7984 and today we have the Australian Mines and Metals, for whatever reason, for whatever agenda known only to them, seeking to withdraw that application but for our part, we have no objection to that application being withdrawn.
30 If the vehicle they now wish to adopt is the present application, as I've indicated, that, read together with the counter application we intend to file, will at least identify where the parties are at.

In that context, we don't see that it's appropriate at this stage for the commission to set some rigid timetable, now some two years after their
35 last application has seen fit to reactivate the process of identifying conditions within this award. In our submissions, commissioner, the award interest clause, clause 6, as we indicated on 11 May, we are prepared to consent to that with retrospective dates. We see that as a step forward and we believe at this stage it would be premature for a
40 rigid timetable to be established.

We would have filed our counter application except for the events on the west coast last week and I think it also needs to be borne in mind, and I'm sure that he can speak for himself shortly, that the representative for the AFMEPKIU was at that stage also involved in a

very significant industrial matter elsewhere. If it pleases the commission.

COMMISSIONER: Yes, thanks Mr Flanagan. Mr Cooper?

5 MR COOPER: Mr Commissioner, with respect to the applications, I'm
a little bit behind the 8-ball here but I understand as far as the award
making process, the award is made in title and scope. That's the first
step. Parties and persons bound is obviously the second step and
usually that's subject to appeal but it's reasonably straightforward. I
10 understand that's already been done, so all we need to do then is vary
the award. Whether that goes in today or tomorrow or when the award
is made, it doesn't really matter. It's of little consequence but that's
usually what happens. The commission issues those decisions and
they are made accordingly. We can soon work through that, so I don't
have any problem with that.

15 In terms of the process it would be fair to say that unions today are
generally under-resourced and generally very busy. That doesn't take
away anything from the importance of this application. This
application is significant and we welcome it, if it's done properly. We
tried to do this 10 years ago, commissioner, when I was with another
20 union. We welcome this application, we welcome the award being
made and I accept that Mr FitzGerald would report with some
cynicism, that the unions weren't bargaining in good faith. I'd like to
correct that. That was not the intention at the meeting. There was a
significant amount of pressure on myself anyway and I was only able
25 to attend for a limited period of time and there are a number of
problems with the draft that's been prepared by Mr FitzGerald that
we're happy to work through and I think a constructive approach to
that would be, if we need to, to involve the commission in chairing
some of those, just to give you some idea with respect to the
30 application.

We need to work through it. The wage rates, for instance, need to be -
you need to have a wage rate clause that not only provides the
minimum but allows for the appropriate rate to be reflected and
protected for employees. The wage rates that are shown there, \$490.00
35 for a tradesman, this does not reflect what someone on a 12-hour shift
arrangement would be getting. These awards are supposed to be safety
nets and they're supposed to protect people.

For example, if we were to go to the Renison Bell Tin Mine where
there's been recently 80 redundancies, a fitter on a 12-hour shift there
40 gets in excess of \$31.00 an hour and that's based on a rate that's
arrived from an award. It is then set down as an annual salary.

I think we need to be a little bit progressive if we're going to make this
award and if we are going to make it as a safety net, let it have proper
safety net procedures in there that will protect the workers that the
45 award will underpin. I'm happy to work through that with Mr

5 FitzGerald. My organisation is committed to finalising this because we think it is necessary. Pasminco Rosebery (Mining) Award, as we all know by an earlier decision of the commission, is the underpinning award that applies to this date and in some respects it's not appropriate. It has Pasminco specific references in it that would obviously not apply to anybody other than Pasminco. There is an urgency to move forward with this.

10 I think the urgency and pressure is being put on though and I don't know what the agenda is and I can accept that the employer has the right to do that but let's be sensible about it and let's work through it appropriately and I'd like to talk to Mr FitzGerald, with his draft, about the definitions clause, about whether part-time arrangements are appropriate, about mine operations definition in particular, that needs to be clarified. The contract of employment clause has a number of errors in it and it needs to be addressed with respect to a significant number of clauses and I've identified six or seven subclauses. We need to work through with him.

20 The wage rates, for instance, are too low. There are no juniors in the mining industry. You're not allowed to work in a mine underground anyway unless you're an adult, so I don't know what junior rates are for. We need to talk about that. Apprentice rates, the percentages would appear to be a little bit low for the mining industry. The payment of wages clause, would appear to be something that would be acceptable. The deductions clause in that needs to be talked about. 25 The hours of work clause has a number of provisions in it that are not common to the mining industry, so why are we wanting to produce something that wasn't the norm is of concern.

30 Penalty rates - penalty rates in this industry are double time and always have been and yet there is time and a half provisions been noted in this award. The rest breaks are obviously insufficient. If you are going to have a 12-hour shift, you need more than an 8-hour rest break and that's what's specified in the award. A time off in lieu provision has been allowed for. That's not common practice in the mining industry. The enterprise flexibility clause, only has the union in at the end and the union would obviously need to be involved at an enterprise level about decisions that affect people. 35

40 It's got an annual leave clause, where you can put annual leave up as a single day and that can be signed off and then it goes through a whole process for dealing with that. I think we need to have some proper steps in there to deal with that. Continuous service - there's a provision there that's not consistent with the mining industry. The carer's leave clause, we'd be happy to talk about, as for bereavement leave and parental leave which would appear to be standard clauses but we're happy to work through them.

45 Holidays - again, it talks about what you get for holidays and payment of those. We need to clarify that. The disputes clause - I think is

designed in the right manner but it's probably worded so that the parties have to get involved in the first stage, well, I think we need to sort that out. Medical examinations are in there. I don't know that the employer necessarily needs those sort of provisions in the award and there's a mention of codes and practice in the award as well. I don't know how the commission can enforce a code of practice when the employer can change things from site specific to general. I think we just need to sort those things out.

I give the commitment from my union, the Metal Workers Division of the AMWU, that we are happy and willing to cooperate with Mr FitzGerald. It is unfortunate that Mr Flanagan has reported that events of recent weeks have diverted activities to things that we think are probably less important.

Again, I state, I think this is an important application and one that needs to proceed fairly quickly with people that are involved in the industry. But we do need to probably involve ourselves in having a look at what is going on and we do need to involve ourselves in making the award relevant because there's a first clause provision in the principles and I think if we are going to make a new award, then we have to obviously consider it as a first award or extension of an existing award.

We're not going to necessarily let Mr FitzGerald put a draft up and then ram it through and go backwards but we are happy to work through it.

This is a significant industry in Tasmania and is one that needs to be regulated properly and that will get rid of the cowboys and we accept that. I'm happy to work with that.

In terms of process, commissioner, I'm happy to take advice from yourself about how we manage that. I think the award does need to be finalised. I don't know that we have to do it in a fortnight. I think we're better off to take our time and make it right rather than have something arbitrated on that neither of us like and I know my experience in the industry has been for over 10 years. Mr Becker has been the same, probably a little bit longer and Mr Flanagan's union has been involved in it for a long time. I think together we can make a good award of it. Let's not make a fist of it for the sake of expediency. It's too important for that.

I accept the frustration that Mr FitzGerald is feeling but I don't necessarily think that should sway the commission to starting about on an arbitration process just yet. I think it is early days and I would think it would be appropriate that you do direct certain things be done and they be done within a reasonable time frame and I think that would be appropriate and I would accept a direction from the commission with respect to that. If the commission pleases.

COMMISSIONER: Thanks, Mr Cooper. Mr Becker?

MR BECKER: Thank you, commissioner. Yes, I did attend the meeting on Friday, 11 and rather than reply to some of things that Mr FitzGerald said about the state secretary of the Electrical Trades Union, it was basically his first foray into the state system, having come recently from Victoria where you would understand, sir, that they don't have a state system and he was purely interested in those things and I think to say that some of the things that he might have said - it was a clarification for him and so I think I will just leave that there.

In relation to our position, I concur with Mr Flanagan and Mr Cooper that in that particular meeting we went there and it is unfortunate that the events overtook us. However, from the CEPU's point of view, unfortunately, we were unaware until just prior to the meeting that the AWU were going to make a counter application. It would have been pointless to sit around that table and try and reach agreement on the draft that was there because it would have been counterproductive. We did sit down and there was some agreement and in relation to the award interest, if there's an assertion that the union, or in particular, that our union doesn't want to be involved in it, then why did we make an application to become parties bound.

Really, commissioner, we are and have been for a long time wishing to make this award but we want to make it a fair and just award for all the parties, including the employers. If the commission pleases.

COMMISSIONER: Thanks, Mr Becker. Mr FitzGerald?

MR FITZGERALD: I'll be brief in response. There's not much point in going tit for tat, if you like, on what happened at that meeting but I think I can just -

COMMISSIONER: I agree with that, Mr FitzGerald, not much point.

MR FITZGERALD: I just reiterate, it was unproductive and I certainly hadn't seen anything coming out of that. I suppose in terms of this application, at least we've had the benefit of an acknowledgment of the responses to the clauses from Mr Cooper, indicates - I don't think there were too many clauses which he indicated agreement with but it wasn't a bad effort. He may as well just included the whole lot rather than having to read them all out separately.

At least we've had some official response there because we haven't had that before. For the unions to try to deflect the blame, if you like, in saying there was a delay in previous applications, I think is simply that and should be seen for what it is and that is, there were commitments given at this hearing back on 23 April. Admittedly, the other two unions weren't involved but for their own reasons, they

chose not to be there and there was an agreed process which hasn't been followed. It's as simple as that.

5 To go back and say that we've sat on applications previously, really isn't relevant. The fact is, we have an application here before the commission which we wanted to proceed on. The commission gave certain direction which haven't been complied with by the union and you can't dress it up any other way, as much as Mr Flanagan did such a good job in trying to do so.

10 I don't see much point in dwelling on those. I see that we need to progress with a way forward. There's one interesting point which Mr Cooper made, however, that he saw it as a safety net award and he did allude to 12-hour shifts and annualised rates. Clearly, the award system is designed to be simply that, a safety net, upon which enterprise bargaining is based and I think we should note that the rates of pay should reflect that low base and with the build up of hours and the shift arrangements and the annualised arrangements in place, I think we'll find, commissioner, that those rates of pay are in fact reflective of what's being paid.

20 Mr Cooper alluded to those in the federal award, in the industry, being paid \$30-odd a shift. That may be the case but that is reflective of the annualised arrangements and the continuous shift arrangements in place and if we're treating this as a safety net award with penalties involved over weekends, which it does do, it doesn't attempt to skip those by any means - and talking about the build-up of rates, then in my view, in our submission, those rates which are there are in fact reflective of what a true safety net award should be.

30 In terms of the award interest, which has received a bit of conjecture, we would be happy to go into conference on that matter, if that's concerning the commission and I think it concerned the commission last time and if the clause - on reflection from what Mr Cooper said and Mr Flanagan said, they saw it as some huge milestone, I don't see it as that way at all. It's fairly much a procedural issue. There's no barrier to the unions having a continued involvement without that clause being in place but in the interest of good faith to move the thing on, I think we're prepared to reconsider that aspect and if it was confined to award interest only, not as prescribed by our application, if there was an agreement on the matter of award interest, the three unions would have an interest in this award, then the association would be prepared to reconsider that.

40 However, I think in terms of making that retrospective, that may present some difficulties but if it is in the interests of moving this matter on, we're prepared to agree to a clause which goes to award interest only, not parties bound, indicating prospectively that the three unions have an interest in this award as does our organisation. That's all I'd want to say at this point in time, commissioner.

COMMISSIONER: Thanks, Mr FitzGerald. Do you want to proceed today?

MR FITZGERALD: I think, given that we've only just been told officially the extent of agreement or disagreement, and I'm not sure whether that's the same position of the CEPU and the AWU, we can start arbitrating each clause here now but I think that process is clearly going to be objected to by the unions, given the state of negotiations. It's very early stages of negotiation so I don't see much point in proceeding here today, but we would certainly like some stringent time frames and commitments from the unions, commissioner, that the process will at least this time be adhered to because it wasn't on the last occasion.

COMMISSIONER: Yes. Thanks, Mr FitzGerald. I'll make a few comments and then we'll adjourn so the parties can agree on the next steps and the matter will be adjourned today.

I make the point that the commission is ready to proceed today and has been on this matter for quite some time. The commission, as presently constituted - I like that phrase, does not see itself as an interventionist. This matter, as I'm sure I've said before, is really a matter for agreement to a large extent. I think if I were to proceed today and Mr FitzGerald were ready to go and if I were to impose an award on the parties, an appeal on the basis of peremptory imposition or unfair imposition, in my opinion would fail because as Mr Cooper said, his union - or the union then, applied 10 years ago. The matter has been on the table all that time. So no one can get up, in my opinion, and say, we didn't know, we weren't ready. What I'm saying is, if we were to proceed today, I would have no compunction in doing so and I'm ready to proceed whenever a party is ready to pursue it. I feel that I'm repeating myself.

Going further, matter T7984 of 1998 will be withdrawn. I approve of that.

As to award interest, I'll see what Mr FitzGerald wants to do and the parties of course, but if the applicant does not wish to proceed with that today, well the commission will go along with that but I think it's a disgrace really that certain parties do have an interest. All the commission has to do is endorse it, put it in writing, but it can only do it on application. The application has been made by the employer but the applicant does not wish to proceed today - we'll go into that in a minute, as to just how far.

In other words, if I were to put that into the award, it's against the wishes of the applicant and the other parties are not applicants and that's why the AWU is anxious, I presume, to put in its application. That award interest has already been decided. In other words, if someone requests formally that I put it into the award, it will go in. There's no doubt about that but I'm not going to do it until someone

pursues it and Mr FitzGerald brought it to the brink today but he's withdrawn. So, I'm not going to proceed on that basis with the matter of interest.

5 I think we've covered it. I repeat, because this is important, if any party wishes to pursue this matter the commission will cooperate and it will be completed but it won't be completed if a party does not wish to proceed formally. In other words, if Mr FitzGerald comes back in an agreed period of time or a set period of time and wants to get on with the next clause after interest, he will have to fix up interest first, I'm
10 ready to proceed with it and therefore it will be arbitrated and we all know that that is a most unsatisfactory situation but if that does happen, it's on the heads of the other parties.

Having said all that, Mr FitzGerald, what's your position about interest, please?

15 MR FITZGERALD: I'd be happy to adjourn to discuss it with the unions because I don't want to be seen, in the one breath wishing to proceed with it and the other breath, wishing to hold it up on a technicality, if I can call it that and that's why I offered to move forward. However, to reflect those earlier decisions, if that's what they
20 were, it should be confined to interest only. So, our clause 6, award interest and parties bound, in our submission, we would be happy to consent to a clause going in to reflect clause 6(c) and then naming all the unions and the association. I've also got a question mark beside the Tasmanian Chamber of Commerce and Industry but I think they
25 are still party to every award. I'm not sure about that.

Also, commissioner, I realise there's been some technical deficiency in the past or abnormality in terms of date. I think to avoid any technical challenge to it, it would be cleaner and better that that be consented to from today's date rather than trying to retrospectively adjust it. I
30 haven't thought through the machinations there but it could become somewhat complex and I think, subject to challenge possibly from either side, so I think it would be cleaner and we're prepared to, as a gesture of good faith, to move it on if the unions see that it is something which is holding up the process and we certainly don't want
35 that to be the case, that we're prepared to agree to a clause there which would be simply titled, award interest, and it would read exactly the same as our application which is 6(c) onwards, so it would be: Award Interest - The following organisations of employees in respect of whom the award interest has been determined, then cite the unions
40 and then site the employer groups. If that helps, commissioner, I'm happy to do that.

COMMISSIONER: I don't know whether it does, Mr FitzGerald. The operative dates are really a technical matter that if people want to rely on them, I have to agree to it in each case but I'm certainly agreeable
45 for the parties to have a discussion about it and I, personally, would

prefer that the whole clause went in because what it applies to is nothing except that when it is prescribed it will apply.

MR FITZGERALD: Commissioner, if I could say, in terms of those other matters, I think the award interest clause is - the one which the unions are saying they need to have an interest to be able to progress it, that takes care of that. In terms of the actual parties bound, that along with the scope and operation in every other clause is, if you like, a more material-type clause, in our view, so if we get agreement by the parties along with the other matters, that will then form an amendment to the award which will subsume this award interest matter.

I don't think, commissioner, the matters which you've previously determined relate to parties bound. I think they relate to award interest only, from memory, because that was the process. Somewhat of a convoluted process, I understand, so I don't think we're in a position to actually include parties bound at this point but certainly if it concerns the commission and the unions, we're happy to endorse the award interest at this point in time, but only the award interest.

COMMISSIONER: Yes, all right. I think I've made my position reasonably clear. What are you saying, Mr Flanagan? Are you happy to proceed with that?

MR FLANAGAN: We're happy for an adjournment to discuss the matter, commissioner.

COMMISSIONER: Good. Mr Cooper?

MR COOPER: Mr Commissioner, with respect to that, T8044 of 1998 was an application by my organisation and that application was received and set down for hearing before yourself in December 1998. That application clearly says, variation of the Metalliferous Mining and Processing Award by addition of new clause, award interest and parties bound. We'd already established our interest and I see that you have a vehicle there to allow the variation to proceed and I don't have any problem with that. I agree with Mr FitzGerald. It's simply a matter of getting that done so it covers the next step. I don't have a problem with that.

The award, the Metalliferous Mining and Processing Award was made by order of yourself in T6140 of 1996 some time ago - 2 May 1996 you made the award in title and two years later, applications were made to vary the award to add the clause, parties and persons bound. So the vehicles are there for you to do -

COMMISSIONER: Why wasn't T8044 proceeded with? Do you know?

MR COOPER: I'm not sure, commissioner. I've got it here that it was set down before yourself. I have the application and I have application

for varying. That's been received by Mr Mahoney and I have a letter here to the president requesting that the Metalliferous Mining and Processing Award be added to our certificate. So those vehicles are there so I can't see any barrier in preventing you from putting my union in the award anyway. I'm happy, as Mr Flanagan said, to discuss that off record but I think we're covered.

COMMISSIONER: All right. I'm not saying we are, but fair enough, it's on the table. Mr Becker?

MR BECKER: I think going into conference would be the thing and I think I might be able to shed some light in conference on that application of Mr Cooper's because I was here on the day - sorry, the Metal Workers application.

COMMISSIONER: Thanks, Mr Becker. We will adjourn so the parties can discuss this matter of interest and I'll have a look at what those applications said and didn't say. I apologise to the parties in that I feel constrained by a technicality which may be a bit difficult but if the parties put an agreed document in front of me, I'm rather bound to go along with it. I'll leave it with you.

INTO CONFERENCE 11.15am

HEARING RESUMED 11.43am

COMMISSIONER: What good news do we have?

MR FITZGERALD: I can report some progress. It's a fairly minor progress, I would suggest, I don't classify it the same way as the unions but at least it's progress and we're happy to consent to an award interest clause.

We have drafted a document but it was done fairly hastily and if we could leave it to the commission to assist us. It includes the three unions, our own organisation, the Chamber of Commerce and the Trades and Labour Council - I think that's now called, Unions Tasmania - I'm not sure whether that's their legal name or not.

COMMISSIONER: Just for the record, it's not here. It's still the old name here.

MR FITZGERALD: So it's a trading name, it seems. If we can produce that we're happy to consent to that award interest clause but there will need to be some amendment to the provision which brings AMMA as a party having an award interest. If I can produce that and I think the others have actually got a copy. It's been done with the assistance of the commission here this morning. As I said, there will need to be some amendment in respect to - just to explain it further, section 62(2) which is 5(a) is not where AMMA derives its interest. It looks like we all

forgot our Acts this morning but our interest is obtained through another section of the Act, we believe.

5 I think section 62(2) is the deemed interest of the Chamber of Commerce and Industry. With that amendment, we would be happy to consent to that provision, commissioner.

COMMISSIONER: Yes. What do you say, Mr Flanagan?

MR FLANAGAN: We support the submissions of Mr FitzGerald, Mr Commissioner.

COMMISSIONER: Thanks, Mr Flanagan. Mr Cooper?

10 MR COOPER: Yes, thank you, commissioner, we support those submissions.

COMMISSIONER: Thanks, Mr Cooper.

MR BECKER: We support those submissions.

15 COMMISSIONER: Thank you, Mr Becker. That's very good. The award will be amended along those lines. I can't guarantee it will be exact terminology but certainly along those lines. I'll send you a draft anyway to make sure and then - we'll just go off the record for a minute, thanks.

OFF RECORD 11.45am

20 **ON RECORD 11.50am**

COMMISSIONER: Thank you, gentlemen. This matter will adjourn now sine die but there will be a private conference between the parties at which the commission will be in attendance here in the conference room on Friday 15 June, commencing at 9.30am.

25 This matter is adjourned.

HEARING ADJOURNED SINE DIE 11.51am