

**HEARING COMMENCED 10.32am**

DEPUTY PRESIDENT: I'll take appearances for this, please.

**MR T.J. EDWARDS:** If it please the commission, EDWARDS T.J. I appear for the Tasmanian Chamber of Commerce and Industry and appearing with me, **MS V. STEWART.**

DEPUTY PRESIDENT: Thank you.

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

DEPUTY PRESIDENT: Thank you. Mr Edwards?

MR EDWARDS: Thank you, commissioner. I might perhaps deal with a couple of housekeeping style matters first, commissioner, by way of proceeding. I've had a number of lengthy discussions with a whole range of unions and registered employer organisations about this application and that's resulted in some amendments I would seek to make to the Schedule attached to the application.

Those amendments, commissioner, that I would seek to make would be in respect to the Building and Construction Industry, Building Trades, Civil Construction and Maintenance, all of which I would seek to set aside from today's proceedings, to perhaps be enacted at another time and I'll explain that a little more as I proceed with my submission.

DEPUTY PRESIDENT: That would mean that the application is only going to be dealt with in part today?

MR EDWARDS: Yes, deputy president. I'm sorry, deputy president, I'm living in the past.

DEPUTY PRESIDENT: No, I'm not fussed with those things.

MR EDWARDS: I'm quite happy to withdraw them completely at this stage and apply again later, if that's cleaner.

DEPUTY PRESIDENT: Yes, it might be easier because I think we've then got to keep this file open and it gets in the system somewhere.

MR EDWARDS: I'm quite content with that. It's not an issue of substance.

DEPUTY PRESIDENT: So will you be seeking to delete those awards?

MR EDWARDS: Those three, plus P184 - Metalliferous Mining and Processing and P157 - Shearing Industry. If I can, commissioner, to properly reflect that, I'd like to table a revised Schedule A which reflects that situation. I have provided a copy of this revised Schedule to Mr

to Mr Flanagan prior to the commencement of proceedings, deputy president.

5 DEPUTY PRESIDENT: Mr Flanagan, are you happy that the application be amended in such a way, to delete the five awards as suggested by Mr Edwards?

MR FLANAGAN: Yes, we consent to that, Mr Deputy President.

MR EDWARDS: Which is probably as well seeing it was at Mr Flanagan's insistence, predominantly, that the changes were made.

DEPUTY PRESIDENT: You're guaranteed a consent.

10 MR EDWARDS: Exactly. I'd like to be as sure normally of consent. Perhaps by way of proceedings, deputy president, I'll table another document - in fact, I'll table two documents at this time.

DEPUTY PRESIDENT: The amended application - **EXHIBIT TCCI.1**, the document, Schedule A - **EXHIBIT TCCI.2**. The draft orders -  
15 **EXHIBIT TCCI.3**.

MR EDWARDS: Thank you, deputy president. There are perhaps two separate and distinct matters dealt with by way of this application, deputy president. The first is the deletion from the existing Schedule A to the National Training Wage (Tasmanian Private Sector) Award of two  
20 awards of the commission. The first is the Emu Bay Railway Award which, I'm advised, has been rescinded and as a consequence it's retention within the list is superfluous and therefore we have reflected that in our draft orders which is now identified as TCCI.3.

The other awards we have sought to delete from the Schedule is the  
25 Musicians Award. I think it's common ground, deputy president, that the Musicians Award is a craft based award. There is a provision within that award which links it to the National Training Wage (Tasmanian Private Sector) Award as there is in the Clerical and Admin and Transport Workers General Awards and the Miscellaneous Workers  
30 Award, at least I think that's the case. If it's not, it shouldn't be in here anyway because it doesn't have an industry in the scope clause of that award to which this award might refer. So it would need to be removed. If there's need for other remedial action, we'll undertake that subsequently.

35 The second part of the application, deputy president, is to extend the operation of the award to a number of new industry areas, identified by the awards now listed within TCCI.1, being our amended application. If I might just give a very, very brief overview of what has been occurring in respect to this award of recent times, deputy president, it might give  
40 you a slightly better perspective of the reason for the application being brought forward at this time.

The history is simply that the Tasmanian Chamber of Commerce and Industry being aware of the state of this award - which is in a bit of disrepair because of a number of reasons, which I won't go through - applied to the Department of Employment, Education, Training and Youth Affairs, the federal department, for some funding in order to be able to progress this award with the degree of priority that it might not otherwise have attracted. That's because of a resource based issue internally within the TCCI, which I understand is shared by trade unions as well. As a result of which, we engaged Vivienne Stewart to conduct a project for the TCCI to do a number of things. Those things included amending the award to make it more relevant in terms of its nomenclature, the areas it referred to and the areas it covered. That isn't embraced by this application.

It also was required to identify industry areas not currently able to access traineeships because of the lack of there having been included within the Schedule A to this award and that is embraced by this application. It is also to identify a range of other industry awards which contain traineeship style provisions which are obsolete. They relate to Australian Traineeships Systems, the Australian Vocational Training System and the CST system, all of which are no longer operational and there can be no one engaged under those traineeships. That's the subject of a different application which you would be aware of, deputy president, which would need to go to a full bench because of the nature of it. They are progressing.

At the same time, we've had a number of very detailed negotiations with a whole raft of unions including the Trades and Labor Council who has led those negotiations and more recently we've involved the office of Vocational Educational and Training in those negotiations which are designed to amend the National Training Wage (Tasmanian Private Sector) Award content to make it more relevant to today's training industry which it hasn't been in the past. It's been allowed to fall into disrepair and dealing with a whole range of definitional matters, the proper inclusion of school based new apprenticeships - traineeships and apprenticeships, and the question of part-time traineeships has been more comprehensively dealt with through those negotiations.

It's our intention to bring that revised award before the commission at a reasonably early date to have that phase dealt with. There are a number of phases which remain after that, or even after the two applications that would then be before the commission. They would be to properly deal with the question of apprentices through Tasmanian private sector awards, whether it's by way of amendment to this award or some other mechanism remains to be negotiated but it's an issue that we are aware is a priority and the other question is trying to more properly identify who received which wage rates under this award and it's something we haven't been able to progress at a local level because of an intractable difference of opinion between the major parties at a national level about how that might be progressed and it would be

foolhardy for us to operate in a manner inconsistent with what is occurring within the federal jurisdiction. We have set that issue aside but have progressed a number of others.

5 That really is just a background brief, deputy president, of where we've been and hopefully where we're going to go.

10 In terms of this application, we wrote to all unions that had an interest in awards that were not listed in Schedule A and to all registered employer organisations on 7 April of this year indicating our intent to seek to make an application similar to this one to incorporate all awards that were not then incorporated within Schedule A. We received a number of responses to that from a fairly large number of unions and indeed from some employers which have resulted in amendments to our original proposition. They are reflected in the revised Schedule A, which is TCCI.1.

15 They have included setting aside the awards that I've set aside this morning. It has also incorporated the view that at this stage we haven't sought to include any of the enterprise specific awards. They require special consideration and how they're going to be dealt with, I'm not quite certain but I believe, or I'm advised that each of their enterprise agreement situations reflect properly a training regime which means naming them in here would probably be superfluous, but that remains to be examined in more depth and we will do that as we progress forward.

25 DEPUTY PRESIDENT: They may well end up with a provision in their enterprise award.

MR EDWARDS: Yes, that's correct, deputy president. That would probably be the way I would choose to amend those areas but obviously I'll take a fair amount of notice on the instructions I receive from the employers whose enterprise award it is because 'they own it'.

30 We've had a number of meetings with unions over a whole raft of issues but including this, the net result of which is - I think it's fairly readily evident today that only the AWU have turned up and I suspect Mr Flanagan is here more to keep me honest than anything else but he does have a large number of awards that are affected by the application and it's proper that he be here and he's a party to the award but none of the other unions have sought to be here today. I would suggest to the commission, that should be interpreted that they're quite content with the application. They're certainly aware of it. They've all been made aware of it. There is nothing underhand in this at all.

The intent of the application is to ensure that in the industries listed in Schedule A, employers are able to engage trainees under the *Vocational Education and Training Act* to undertake traineeships up to certificate II level at the moment and we hope to be able to extend that in the next

in the next phase of this process, without the fear of being in breach of relevant awards. There is also the question that under the training agreements that are issued by the Training Agreements Committee of TASTA there is a requirement that there be an industrial relations underpinning to each training agreement. Unless this step was taken, these industries would be precluded from engaging trainees and that's a situation which, in our view, couldn't be sustained using public interest arguments. The public interest is very much in favour of ensuring ready and easy access to traineeships which includes the industrial relations underpinning thereof. That's really the foundation for the application.

To advise the commission of the training packages that are available within Tasmania under each of the award areas that we've sought to include, I'd refer the commission's attention if I might to TCCI.2. TCCI.2 identifies each of the awards that are remaining within Schedule A and the name of the training package that has been approved by TASTA as having application within the state of Tasmania and that we believe applies appropriately to the industry concerned within the application.

If the commission requires it, I am able to go to more depth on that. By way of reference to the training package implementation guides they are available on the Internet and I do have a download here of the front cover of each of them, which I won't take the commission to at this stage.

DEPUTY PRESIDENT: No. I'm happy with your submission and your exhibit.

MR EDWARDS: What those training implementation guides do say is, the industries in which the packages might apply. So it just extrapolates a little and draws on - that's what we drew on to create the document you have before you. There is, in our submission, a training package available in each of the award areas subject to the application that could be exercised by a trainee or an employer in the industry to progress a traineeship if it were approved by the Training Agreements Committee of TASTA.

The final document that I've tendered to the commission is exhibit TCCI.3, which is a draft order which hopefully we've got correct. Ms Stewart hasn't given me any cause over the last few months to question any of the work she's done. It's always been accurate so I'd suggest I'd put a fair bit of trust in this one. What it does is take the existing Schedule A to the National Training Wage (Tasmanian Private Sector) Award and make the changes that are the subject of this application. That is, deletion of the two awards and the addition of the awards remaining through exhibit TCCI.1.

DEPUTY PRESIDENT: Ms Stewart, it's easy to see he's covering his back already and he hasn't even left here.

MR EDWARDS: That's quite right. That's how I've got to where I am. Protection. Deputy president, it would be our submission that this application is very much in the public interest and certainly it does absolutely no violence whatever to those items identified by way of section 36 of the *Industrial Relations Act* as public interest matters. It certainly does improve the capacity for employers to engage trainees and in our view that's very much in the public interest.

I have examined at some length the recent decision of the full bench of this commission which included yourself, deputy president, which was the review of the Wage Fixing Principles matter and the decision of the bench dated 6 July 2000. I don't believe there are any principles embraced within that decision that would impact on this. It would seem to me what we're perhaps doing is adjusting the award safety net to ensure relevance in industry but that's perhaps the only principle that would apply.

DEPUTY PRESIDENT: And that may be even drawing a long bow.

MR EDWARDS: It may be. I'm perhaps being overly cautious, because they are a new set of principles and I don't pretend to be completely au fait with them but I don't believe anything we're doing is inconsistent with the principles, if I could make that broad submission, sir.

Having said that, deputy president, we would request that the commission make the amendments that we've sought. We believe they will proceed by consent although Mr Flanagan may surprise me. I doubt it, but he may surprise me and on that basis, we'd ask that they operate in accordance with the operative date that we've indicated in TCCI.3 which is the first full pay period commencing on or after today's date, sir. Unless the commission has any further questions, I will pause at that point.

DEPUTY PRESIDENT: No, I haven't. Mr Flanagan?

MR FLANAGAN: Thank you, commissioner. As Mr Edwards has indicated, there has been substantial discussion between the TCCI and the unions regarding the issue of training over recent months, including discussions with the AWU. In the context of the development of a new award, the AWU consented to the expansion of access to a number of awards for training provisions which had previously not been available.

In further discussions following this application, the AWU did raise concerns regarding Metalliferous Mining, Civil Construction, the Shearing Industry Award and also touched on the Building Trades Award, which as you are aware has been removed from the application before you this morning. In respect of those awards in which the AWU is a party to, identified in TCCI.1 and further identified in TCCI.3, the AWU consents to the application as sought by the TCCI. In our

submission, it does not offend the Wage Fixing Principles nor the public interest. If it pleases the commission.

5 DEPUTY PRESIDENT: What about the other awards though? You're a party to this award. Whether you're a party to the other awards has some relevance but I'm only listening to parties to this award.

10 MR FLANAGAN: Yes. We would be uncomfortable addressing the commission in respect of the Furnishing Trades Award, the Independent Schools Award, the Professional Engineers and Scientists Award - those awards are awards of other organisations, presumably, the Labor Council and those organisations have discussed this matter and that explains their non appearance this morning but I've not had discussions with those organisations.

DEPUTY PRESIDENT: So you have no submission to make in respect of those awards?

15 MR FLANAGAN: None at all, Mr Deputy President.

20 DEPUTY PRESIDENT: Right. Any further submissions? In the absence of any further submissions especially in relation to the awards that Mr Flanagan declines to put an argument, I would have to say, I don't hear any opposition to the application and I've taken on board Mr Edwards' comment that he's notified all registered organisations, parties to those awards. It's my intention to vary the award along the lines sought in the amended application of the TCCI.

25 I'll hand down a written decision in due course. The amendments will be operative from the first full pay period to commence on or after 12 July and the awards sought to be deleted and the reasons for deletion of those awards is also endorsed by me. I think it's appropriate that they be deleted.

That's an indication only of my decision and I'll confirm that in writing in due course. This matter is now closed.

30 **HEARING CONCLUDED 10.52am**