

**HEARING RECOMMENCED 10.40am**

COMMISSIONER: I'll take appearances, please.

**MR I. PATERSON:** If the commission pleases, IAN PATERSON,  
appearing for the Australian Municipal, Administrative, Clerical and  
5 Services Union.

COMMISSIONER: Thank you.

**MR A. CAMERON:** Thank you, commissioner. ANDREW CAMERON  
from the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Thank you. On my reading of the voluminous file  
10 this was to have been the first award of the new year and by consent,  
but looking at what has transpired since that time it appears that  
there is still quite a number of issues in dispute and I'd be interested  
in knowing how the parties would like to proceed.

MR CAMERON: Thank you, commissioner. Commissioner, we have  
15 had some areas of dispute for some time now between the union and  
the TCCI. It basically comes down to probably two areas. One is the  
provision of piecework rates of pay under the award and secondly, the  
span of hours. It's the TCCI's position in these matters that it's not a  
situation where we can just superimpose an existing award onto an  
20 industry that's previously not been covered by any award and that the  
standard provisions that apply in industry should also be applied in  
the award.

In that regard, we've had discussions with the union in relation to  
piecework rates of pay and the span of hours. In that regard, we've  
25 received a document this morning with a draft clause from the union  
which we see as a positive step towards implementing a piecework  
provision in the award. There are a few points in there that we are still  
discussing. We would hope today perhaps that we may adjourn into  
conference and with the commission's assistance work through these  
30 provisions, maybe come to some agreement in relation to those  
piecework provisions in particular.

I understand that there may still be a problem between the employers  
and the union as to the span of hours. Again, industry has been  
operating for a number of years in this area with certain patterns.  
35 They work particular hours which suit the industry. The application  
before the commission and the draft agreement has a span of hours  
that finishes at 6.30pm whereas a part of the industry that will be  
covered by this award have normal operating hours that go until  
8.00pm at night, Monday to Friday.

40 We would be seeking, if it went to arbitration, that the span of hours  
be extended to include those ordinary hours of work so that the  
operations of these employers can still continue as they have for a

number of years. They would be the main sticking points between the parties. There has been some toing and froing by e-mail between Mr Paterson and myself, just making some slight alterations to the agreement. As Mr Paterson puts it, I don't think either side is going to die in a ditch over these smaller matters but the piecework provisions and the span of hours are the main concerns that the employers have in relation to the proposed award.

COMMISSIONER: Is there now agreement in relation to the level of skills for telemarketing?

MR CAMERON: That's another matter that we may need to discuss slightly. I did send a draft copy of a new grading to Mr Paterson when I sent the copy of our draft to yourself. It does interpose an extra level at the lower end of the scale. The intention of that is, that some of the employees that are employed in the industry at the moment purely do telephone calls, they are not using computers, they're not doing data entry of any sort whatsoever. Therefore, we thought it appropriate that a lower level be put in just to cover those people that are making out bound cold calls. They're operating the telephone only. They're not required to do any data entry. That would be covered by the higher grades and there are some organisations out there that are doing both.

We acknowledge that they should be paid at a slightly higher rate but we need to cover those classifications where a person is just making phone calls which we would argue is not highly skilled in terms of technical expertise that is set out in the draft award put forward by the union.

We would propose that the parties adjourn into a conference with yourself. Mr Paterson has given a draft clause for piecework. There are a couple of things in there we would like to discuss with him and with yourself. We may be able to come to some agreement on a compromise clause that suits every party.

COMMISSIONER: Thank you. Mr Paterson?

MR PATERSON: Thank you, commissioner. As well as the matters that Mr Cameron has mentioned, there are a couple of other issues that have arisen since the matter was last in the commission. The union has proposed, and I'm not sure that Mr Cameron has in fact received them, a second stream of call centre employee both in classification and rates of pay. As I indicated in e-mail to the commission and to Mr Cameron, reference to previous transcript in this matter at page 16 - line 36, page 36 - line 27 and page 44 - line 34, the union has always indicated that it saw as necessary and appropriate for there to be further development of classifications.

However, it would remain our intention to progress the matter that we have here as a stage 1 matter, if you like, with the seven level classification structure.

On that particular issue and the reference by Mr Cameron, I'd probably need to seek clarification from him either on the record or in transcript, as to where I locate this lower classification rate of pay.

5 COMMISSIONER: The one that Mr Cameron referred to? We received that last Friday, I think, very much at the 11th hour and I understood a copy had been also sent to the union.

MR PATERSON: I have that copy.

COMMISSIONER: Page 18 and also there's a descriptor at page 7.

10 MR PATERSON: I'm not sure that I am in fact working off the same document then - the particular reference being, if the commission pleases?

15 COMMISSIONER: At page 7 of the document that I've got there's a Business Services Employee Grade 1 which always existed but in fact it's taking it down a level and at page 18 of the document provided by Mr Cameron, there's a weekly wage rate for grade 1 of 418.80. I think the previous document was 423 at that level. Is that correct?

MR CAMERON: Yes.

MR PATERSON: I must have made some error in actually copying Mr Cameron's e-mail. That's not what I was working to.

20 COMMISSIONER: If we go into conference we can sort that out there.

25 MR PATERSON: We would need to look at the detail of that. To more substantial rather than detailed matters, we still have a difference on a couple of other matters as well. The union has proposed a probationary employee clause where the employer believes that our provisions are too proscriptive. As I say, the span of hours issue is really two issues. One is the actual span of ordinary hours and the other is the rate of pay or the loadings that apply.

30 I'm quite happy to put on the record that the union would recognise that there is a two shifts a day approach in a lot of, particularly the telemarketing fundraising, something like a 9.00 to 1.00 period of work and a 4.00 to 8.00 or something like that period of work. However, we still have reservations about the way in which the split shift provisions are worded. In particular, I believe that full-time employees shouldn't be required to work split shifts. I think there  
35 needs to be some arrangement put in there that would require full-time employees to still have a single engagement per day.

40 However, part-time employees, to argue against split shifts is not only to argue against the existing nature of the industry but arguably to disadvantage people who may pick up more work under two periods of engagement per day arrangement.

I do have two people here today who, depending on how we progress this matter, I would like to have their evidence heard today. Caroline Everett works for Australian Red Cross Society as a telemarketer on their fundraising. Red Cross Society is covered by an industrial agreement with the union and Michelle Absolom works for a commercial firm called, Cool or Cosy, and does phone-based telemarketing of an insulation product. I have a third person who I would like to call but I've been unable to make contact with him or inform him of the change of these arrangements. I've informed him but I've not heard back from him and particularly if we go to the capacity of the industry to work and live with penalty rates, I believe John Cotton, who was formerly the telemarketing supervisor-coordinator for Red Cross, would be able to bring important evidence from the union's point of view.

I have no objection into going into conference. I do note that we're probably closing today on three years of this award. I did check our files and my first correspondence to Mr Edwards of the TCCI was in August 1997, so this has been a slow process which I think also says that, to any employer who has a genuine interest in what's been happening in this arena, there has been plenty of notice as to what's been in the pipeline. If the commission pleases.

COMMISSIONER: Thank you. There were a couple of other issues that may have been resolved that neither party has mentioned, or you may have and I missed it. One was the question of juniors. Is that no longer an issue? Both the numbers of juniors as a ratio to the adults and the question of adult juniors, people over 18. Is that all now resolved?

MR PATERSON: I don't believe we have any issue on that.

COMMISSIONER: Okay.

MR PATERSON: We certainly did in terms of the drafts that the union has been working from, we've agreed not to carry over the ratio provisions of adults to juniors. The other issue being -

COMMISSIONER: Superannuation?

MR PATERSON: Superannuation, we have a clause in the current draft that I believe is identical, both to base.

MR CAMERON: I think the only provision with relation to superannuation is the requirement that the employers make monthly contributions. We would argue that the *Superannuation Guarantee Act* legislation sufficiency covers that by federal legislation.

Mr Paterson, in some correspondence to me, pointed out that some funds require monthly contributions. If that's the case, then the employees would be required to comply with the requirements of the

particular funds. The argument would be, that constitutionally, the federal Act would override the provisions of the award and if the employers are complying with the requirements of the federal Act then they're meeting the requirements of superannuation contributions.

5 COMMISSIONER: That sounds as though that's something that's capable of being sorted out between the parties.

MR CAMERON: Yes.

10 COMMISSIONER: We're down to piecework rates, split shifts or spread of hours premiums - that's in one bundle, I guess - the level for telemarketers and probationary clause.

15 MR PATERSON: Looking back to the list of issues identified by Mr Cameron to the union, the other matters would be relatively minor and some of which have been addressed and I think we can address them in conference. They were the specific wording in the contract of employment, a provision in terms of the union representatives clause and a restriction on juniors working overtime. I'd have to have a look at the definitive documents to see exactly where we are on those.

20 MR CAMERON: Commissioner, just to raise on record a matter that will have to come to light. As the commission may be aware, there is an application currently before the commission concerning the Wholesale Trades Award and the intention of the National Union of Workers to insert into that award provisions for classifications covering telesales and telemarketing in particular.

25 Mr Paterson and I have had some discussions this morning about that and I understand Mr Paterson and his union are discussing the matter with the National Union of Workers. It's the employer's concern in all these matters that there could arise two awards that may have application to industries and that we need to ensure that the wording of each of the awards is sufficiently clear to guide employees as to the relevant coverage and the award that they should observe.

30 We note that in the draft Business Services Award currently before the commission, lodged by the union, that it does say that this award will not have application where another award of the commission has operation. That normally does help to cover things. We just want to make sure that in our discussions this morning perhaps that it is water tight, we do not have conflict, where employers are unsure as to the award that will have application to them.

40 Currently there is only the Wholesale Trades Award before the commission. It's not unlikely that other awards may also look to incorporate the classifications covering this area of work with the change in technology and the way businesses operate, telemarketing and telesales and those services that are provided are creeping into all areas of industry and we want to ensure that when employers look at

the award, they know they're looking at the right award and there's no confusion in the economy.

COMMISSIONER: Are you saying you want to revisit the scope clause?

5 MR CAMERON: I suppose we may just need to ensure that when we do look at the award, that that scope provision is sufficiently clear. Mr Paterson, as I indicated, is having discussions with the National Union of Workers. I think everyone recognises the possibility of conflict between the awards. We don't need to have parties before this  
10 commission arguing over the scope of awards and what application they may have.

COMMISSIONER: Thank you. We will adjourn into conference.

**INTO CONFERENCE 10.58am**

**HEARING RESUMED 2.25pm**

15 COMMISSIONER: There have been discussions with the commission and both parties. Who is going to report back for the record?

MR PATERSON: I'm happy to begin this part of the proceedings, commissioner. There are a number of matters where the union and the TCCI will have further discussions in an attempt to reach agreed  
20 provisions in the proposed award, particularly the matters that have been under discussion in terms of the categories of employee, coming to an agreed final set of definitions of permanent, full-time, part-time, casual and probationary employees.

Superannuation was another matter that is probably one that we can  
25 relatively easily resolve. A couple of minor differences in respect to annualised salaries and job descriptions that I think ought be easily resolved between the parties, taking into account, I may have overlooked something of lesser importance. The two substantive issues that remain outstanding are the issues of penalty rates as they relate  
30 to the ordinary hours of work within the award and the issues related to piece rates.

There's an ancillary issue tied to both of those in relation to the 8th classification level and weekly wage, which if the other matters are resolved, will probably evaporate as an issue. The position that I think  
35 we may need and may even usefully have some further discussions with yourself about is the issue of piece rates. The union's position is fairly firm, that I, as the person responsible for this, find it very difficult to see how a piece rate system can be generalised in this industry in this area beyond the enterprise level.

40 Accordingly, I think there is a very good argument for saying that it is the enterprise level of industrial regulation where the piece rates quite

properly belong. Notwithstanding that, we have suggested to the TCCI some proposals which would contain piece rates to the non profit fundraising sector and argued for an effective test against the award rate of pay that they would otherwise be entitled to. Even that remains  
5 relatively problematic. Are we to judge the average rate of pay against the productivity of the employee or the amount of time they spend at work.

A subsequent alternative that I have given some very passing consideration to may be a facility in the award for organisations where  
10 agreement can't be reached on piece rates to bring the issue to the commission for determination of what a fair and reasonable piece rate would be. That would be the matter that we'd seek some guidance from yourself, probably in conference, as to whether you would see that as a feasible, realistic and reasonable alternative.

The union's position on the issue of hours and rates remains firm, that work that finishes outside the ordinary span of day work being 7.30am to 6.30pm ought to attract at least an afternoon shift penalty of 15 per cent, that Saturday work ought to attract a penalty of 50 per cent and Sunday, 100 per cent. In saying that and on a without prejudice basis,  
15 what we are in fact at this point in time offering is a system which doesn't impose a penalty for broken shifts, that we recognise that there are two peak periods of work, particularly in the fundraising sector.

Saturday at 50 per cent, it would be my contention that that is a degree of concession compared to what would be payable as overtime,  
25 which would be double time after two or three hours, if this work was being done under the existing Clerical and Administrative Employees Award.

Given Mr Cameron's taking of leave for two weeks following this week, I would endeavour and intend to get those matters that I have  
30 undertaken to redraft to him and to yourself by the end of the week and to respond to anything that he puts to me as soon as I possibly can.

Failing agreement being reached, particularly on those two substantive matters of the penalty rates and the piece rates, we'd be seeking to  
35 have the matter brought back on. We've agreed, in principle, that it would take two days of submissions and evidence, which would hopefully see this matter concluded.

The other matter I'd like to put on the record at this stage is that the latest draft that we have provided to the commission and to the TCCI  
40 includes a second stream of classifications and wages for call centre employee. As I indicated earlier today, it has always been our intention to look at moving beyond the other classifications that are currently in the drafts before you. However, we did intend to set that aside from these proceedings and the hearings that we're seeking to finalise this  
45 matter and bearing in mind the commission's proceedings and

procedures, we effectively would be saying that we're seeking leave to return to that matter at a later time. I understand that effectively the commission would deal with that by either issuing an interim order and keeping this matter alive or closing this matter with the union clearly being free to make a fresh application at some later stage to vary the award to include those classifications.

I believe I've probably encapsulated most of our discussion.

COMMISSIONER: Thank you, Mr Paterson. Mr Cameron, have you got anything to add?

MR CAMERON: No, thank you, not to a great extent, commissioner. We did have some fruitful discussions this morning concerning those main areas. As Mr Paterson has indicated, there's a number of areas where a bit more discussion will probably resolve any impasse between us.

I suppose the TCCI's view is in looking at these new awards and the principles, that we need to take account of what industry has been doing, how the workplace has been structured to best suit the needs of the industry. That would in particular apply to the provision of piecework rates and a span of hours that accommodated the requirements of the industry.

We understand Mr Paterson's point in relation to the call centre employees and we agree with that at this stage. As I understand it, with the consent of the commission, we have had two dates put down, 31 August and 7 September and that would probably be on the basis that on 31 August the applicant's submission and evidence would be provided and on 7 September the TCCI's evidence would be put forward as well as the submissions in that regard.

Mr Paterson and I will continue to communicate in the meantime on the smaller aspects of the award differences and keep the commission fully appraised of what is going on and in that regard, there's probably not much more we can say at this stage but thank the commission for their assistance this morning.

COMMISSIONER: Thank you. A point that you raised, Mr Paterson, about the possibility of a further conference in relation to piecework rates and the proposal you said you gave passing thought to, did you have any idea about when that might be likely to happen?

MR PATERSON: I was thinking that it may only require 10 or 15 minutes after we close here and now, just do it in an exploratory way to see how and whether there is any potential in giving further detailed thought to such a proposal.

COMMISSIONER: If that's all right with you, Mr Cameron, we can meet briefly after these proceedings. I think we will just see it as a discussion rather than a formal conference.

5 MR CAMERON: I think it's just ascertaining whether the commission has the powers and the capacity to look at such a provision in the award. If there's no capacity for the commission to do it, then it's a path that Mr Paterson and I won't go down but if there is a possibility the commission can do what we're looking to do, then it may be worthwhile discussing it with you for a short time.

10 COMMISSIONER: Thank you. This matter is adjourned until 10.30am on Thursday 31 August.

**HEARING ADJOURNED 2.35pm**