



*Tasmanian Industrial Commission*

Industrial Relations Act 1984

T No. **9692 of 2001**

**IN THE MATTER OF** an application by  
the Tasmanian Trades and Labor  
Council to vary the National Training  
Wage (Tasmanian Private Sector) Award

Re: award variations - wage rates - new  
Schedule B - Wage Levels - new  
Schedule C - New Provisions for  
Certificate IV and School Based  
Traineeships

DEPUTY PRESIDENT WATLING

HOBART, 2 August 2001

**TRANSCRIPT OF PROCEEDINGS**

Unedited

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

**HEARING COMMENCED 9.15am**

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

**MR I. PATERSON:** If the commission pleases, IAN PATERSON, appearing for the Tasmanian Trades and Labor Council.

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

**MR T. KLEYN:** Commissioner, TOM KLEYN, appearing for the Health Services Union of Australia, Tasmania No. 1 Branch.

10 **MR T. EDWARDS:** If it please the commission, EDWARDS T.J., and appearing with me, MR B. LIPSCOMBE for the Tasmanian Chamber of Commerce and Industry.

DEPUTY PRESIDENT: Thank you. Mr Paterson?

15 MR PATERSON: Thank you, deputy president. I propose at this stage to give you an outline or provide the commission with an outline of the purpose and effect of this application, however, there are some definitional matters and some rewording of conditions in clause 10 that have been proposed to us by the Tasmanian Chamber of Commerce and Industry that we will need some time to consider, probably of the order of half an hour, I would imagine. I also do have  
20 some documentation that I would like to provide to the commission. I'm in your hands as to when we break.

DEPUTY PRESIDENT: Right. Well, we might break now. How about that?

MR PATERSON: That's fine.

25 DEPUTY PRESIDENT: Go off the record, thanks.

**OFF RECORD 9.18am**

**ON RECORD 11.08am**

DEPUTY PRESIDENT: Mr Paterson?

30 MR PATERSON: Thank you, deputy president. The parties have had discussions and we'll proceed. We have, I believe, consent on how this matter is to be progressed today. I wish to tender a number of documents, which I'd seek to do in the first instance before making my submissions to you. There's essentially three documents that I wish to  
35 tender. The first is an annotated copy of the application; the second is a copy of the federal award - the order dated 10 May 2001 and the third is the safety net draft order, it's not the final order, but the draft order from the federal award.

DEPUTY PRESIDENT: We'll mark those **EXHIBIT TTLC.1, 2, and 3**, respectively. Thank you.

40 MR PATERSON: In respect of TTLC.3, I note, and I suppose partly for the advice of the parties, this application doesn't actually seek to vary the award to give effect to the safety net increase, however the TTLC proposes that the order resulting from today's proceedings be issued in a consolidated order with the flow-on of the safety net decision.

45 DEPUTY PRESIDENT: Yes. It would have the two T numbers on it. It would have the State Wage Case number on it and it would also have this application number on it?

MR PATERSON: That's correct, and the application as drafted and provided to the commission and the annotated TTLC.1 do incorporate those increases.

DEPUTY PRESIDENT: Good. Thank you.

MR PATERSON: Deputy president, this application seeks to essentially achieve two primary objectives. The first is to align the wage levels in the National Training Wage (Tasmanian Private Sector) Award to certificate levels and to encompass new provisions to deal with wage rates and other provisions for Certificate IV Traineeships. It also encompasses some further matters related to school-based traineeships.

60 In addition to that, there is also variations to more closely align the provisions of this award with the actual requirements under the *Vocational Education and Training Act*.

In principle and in effect, this application flows on the changes made to the National Training Wage Award of the Australian Industrial Relations Commission which has been provided to the parties at TTLC.2.

70 I believe that it is in the public interest and consistent with the Wage Fixing Principles of the commission to vary this award in this way and we would be seeking, and I understand we have consent, on the operative date for this matter being the first full pay period on or after 1 August, such that there will be consistency with this order and that arising out of the State Wage Case.

What I propose to do now is to take the commission and the parties through the application. I'll go through the provisions clause by clause.

75 The title remains unchanged. The scope clause consolidates all those matters that were - or particularly the second paragraph. It brings into the scope clause what was previously in clause 5 but otherwise leaves that provision unchanged.

80 The third paragraph of the scope clause is drawn from the National Training Wage Award at clause 5.2 and deals with the application of Certificate IV Traineeships. Unless I say anything to the contrary, where my comment or the annotation is from NTWA, it is a straight counterpart of the federal award provision.

85 Clause 5 - Award Interest, has been reformatted in accordance with the commission's current drafting practices. The operative date, as I said, the first full pay period commencing on or after 1 August. Supersession and Savings, that's an omission. It probably should just be Supersession, I believe, now, in terms of the commission, so I would be happy for the commission to - well, we can vary that when we  
90 consolidate the draft order.

DEPUTY PRESIDENT: It's something we can pick up when we -

MR PATERSON: It deletes the obsolete provision that referred to ATS or CTS arrangements.

95 The definitions, I won't speak to any great length to these because these will be the subject of submissions from the Tasmanian Chamber of Commerce and Industry, however, I'll just quickly go through them. The approved training reflects - it's a consequential change reflecting the fact that the award now refers to certificate levels. Netforce is deleted as an obsolete provision. Certificate is defined so that  
100 parties out there in the industry world can't develop their own thing and call it a certificate and then seek to apply this award to something they've invented.

105 The school-based trainee is defined and defined in line with the office of post-compulsory education and training guidelines. Traineeship scheme in this application is redefined, however, as I said, Mr Edwards will address you on those matters and I can pre-empt that to some extent by saying, we've reached consent on the matters that Mr Edwards will talk to you about.

110 The weekly wage rates includes two definitions. In respect of an adult trainee from the National Training Wage Award and brings up to this clause the out-of-school definition. The wage rates are the substantive change. The wage rates here are from the National Training Wage Award. In (b)(i) there is an omission. After (v) it should also include (vi). That was an oversight.

115 The wage rates then continue, in effect, in comparable application to what the award has now, however, they are defined by wage level rather than industry skill level.

120 Apart from that and the consequent changes I'll get to later, there's no changes in the wage rates. Subclause (c) is a new provision, wage rates for Certificate IV Traineeships and again that is a direct copy of the

provision in the National Training Wage Award of the federal commission.

In (d)(i) it says: the wages levels as above are determined in accordance with Schedule B.

125 (d)(ii) is a provision that I have developed and included which effectively provides a saving to traineeships that are not covered by the certificates listed in Schedule B and effectively says that the existing arrangements will continue where the new arrangements don't have application.

130 I'm not sure what the numbering of the next paragraph is in the application, but to make it clear, we propose that there only be a (d)(i) and (d)(ii) and that the paragraph that starts, the determination of the appropriate skill level, is in fact a subparagraph of (ii). So, that only has application where we're talking about the continuation of the  
135 existing arrangements and that is the same as the current award provides.

The obsolete provision related to in subparagraph (e) is clearly obsolete and is deleted and the clauses (e) and (f) are included from the National Training Wage Award, particularly in respect of (e) to deal  
140 with existing employees and adult traineeships and the progression or conversion from Certificate I to II and the wage rates that then apply.

The part-time traineeship wage rate clause - I'll speak briefly to this. This is slightly different to the federal award in that the federal award effectively has, what I call here, table 1. It then just leaves the  
145 deduction of 20 per cent to be worked out by who ever is using the award and I propose here to include the actual rates rather than to leave it to somebody to work it out. So that is in effect a new provision to give effect to the award, the National Training Wage Award, in a different way.

150 Under school-based traineeships, again, that is from the National Training Wage Award and it was one of the omissions that I don't understand where it came from in the history of this award in this commission, that there was only ever full-time rates for school-based trainees and school-based trainees would never be full-time trainees.  
155 So, this rectifies that.

For clarity and clarification, we propose to add before the word, 20 per cent, wage levels A, B and C, so it just clarifies and maybe perhaps there should be a space between the two sets of rates.

160 Clause 11(b) provides that a part-time school-based trainee may elect to have a loading in lieu of leave.

There are minor changes in the definition of a full-time rate. I think that's self-explanatory and doesn't need that subclause reference.

In clause 10 - Conditions, there is a provision in (a) that has been effectively incorporated or superseded by the changes to the scope clause and further, in relation to clause 10, I don't propose here to make any further submissions because this is also a matter that has been the subject of Mr Edwards' development and again he has provided us with a document that will be incorporated into the order to reflect a new clause 10 and again I'll indicate in advance that we've consented to the document in principle and we'll, probably as with all of this, need to see a final draft order to ensure that we are giving effect to what we have agreed to.

I believe that Mr Edwards' matters do extend to the full effect of clause 10, in which case I shall move to clause 11, which is consistent with the current provisions except that it includes the provision for the 20 per cent loading in lieu of leave for a school-based trainee.

Schedule A remains unchanged. Schedule B is a direct copy of the provisions in respect of the National Training Wage Award Schedule C and in terms of foreshadowing the approach of the Trades and Labor Council in respect of this matter, we would submit that as further traineeships and training packages and certificates are developed that we would be seeking to have those matters progressed in the first instance through the National Training Wage Award and through the processes that the Trades and Labor Council is involved with. The consultation, as with this schedule, the consultation with the affiliates of the Tasmanian Trades and Labor Council took place at the time of the variation of the federal award. So, that we're relying on the federal award being maintained and the Trades and Labor Council will actively pursue the relevant officers in the ACTU to make sure that is done and then it is our intention to flow through to this award variations to the federal award.

Schedule C retains, as I mentioned earlier, the existing industry skill levels for those traineeships that are not subject to Schedule B.

If the commission pleases, I'd seek to have that application as varied and as foreshadowed in terms of Mr Edwards' submissions, incorporated in the document to be approved by the commission.

DEPUTY PRESIDENT: Thank you. Any other union's submissions?

MR FLANAGAN: Deputy president, we'd simply endorse the comments of the TTLC and consent to an award in the terms of TTLC.1 without the annotations. In doing that, we recognise that it's appropriate for maintenance of training arrangements to be focused at a national level and appropriate in those circumstances that state arrangements reflect to the extent appropriate the federal arrangements.

We've indicated in the course of the discussions with the employers and the TTLC that our consent is a qualified consent and we reserve

our right to make application to vary the terms of the proposed award if, in our view, there is an inappropriate outcome. If it pleases the commission.

210 DEPUTY PRESIDENT: Thank you. Mr Kleyn?

MR KLEYN: The HSUA consents to the orders as proposed by the TTLC, deputy president.

DEPUTY PRESIDENT: Thank you. Mr Edwards?

215 MR EDWARDS: Thank you, deputy president. Firstly, in respect to the comments made by the Australian Workers' Union, whilst I understand fully the basis upon which those comments have been made and whilst the TCCI itself often does have proper regard for developments at a national level and there is a need for an element of consistency between the state training system and the federal training system to the extent that they can both operate simultaneously and side by side, I wouldn't want the record to show that we would necessarily slavishly follow what might occur at a national level and we would obviously view what happens at that level and flow appropriate outcomes into the state arena.

225 In terms of exhibit TTLC.1, the TCCI gives its consent to the principles that underpin that document, and I've very cautiously framed it that way, deputy president, because there are a few issues that we wish to raise as has been flagged already by Mr Paterson and additionally, for reasons which are probably more my fault than anyone else's, I did all of my research against a slightly outdated copy of the TTLC proposal and I've asked Mr Paterson to give me the benefit of a day to just quickly go through the actual words, to make sure I didn't overlook anything and Mr Paterson has been good enough to agree to that. Given the need for us to produce to the commission a consolidated draft document, we could do those two thing simultaneously.

230 Deputy president, I would like to table two documents that have been the subject of discussion this morning between the parties.

240 DEPUTY PRESIDENT: The document headed, Clause 10 - Conditions is **EXHIBIT TCCI.1** and the other document starting off, Clause 7 - Definitions is **EXHIBIT TCCI.2**.

245 MR EDWARDS: Thank you, deputy president. On that basis, could I commence by taking the commission to exhibit TTLC.1 at page 3 and refer, if I might, to TCCI.2 at the same time. TCCI.2 has been prepared on the basis of an amendment to the provisions contained in TTLC.1, so where I am deleting it is from the TTLC documentation and I'd ask the commission to note that we have substituted a new provision related to approved training to that that was proposed by the TTLC. This has been discussed between all of the parties present this morning and agreed.

250 The foundation for that revised wording is to more closely reflect the  
requirements of the *Vocational Education and Training Act* and some of  
the bodies that are created by and operate within that Act and to  
ensure some consistent nomenclature between provisions of this  
award and the nomenclature used within the 'training industry' as it  
255 were.

Because of the use of the term, training plan, in that definition of  
'approved training', I've sought to add a new definition to a term which  
is used and that is 'training plan', which is a program of training  
which forms part of the training agreement and where I've said,  
260 registered with the relevant state or territory training authority, it's  
pretty obvious that I stole that from the federal award and if I could  
ask the commission to please make that the Tasmanian State Training  
Authority.

Whilst I believe that set of words set out like that is a bit of an  
265 oxymoron to call it a Tasmanian State Training Authority, that's the  
actual terminology used within the *Vocational Education and Training  
Act*.

We've amended the definition of 'trainee', from that proposed in  
TTLC.1, to align it more closely with the federal award. In fact, what  
270 you have in front of you is a take from the federal National Training  
Wage Award and I have had a check for its consistency with the  
requirements of the *Vocational Education and Training Act 1994* and  
I've been assured that there is that level of consistency.

Equally, the definition of 'traineeship agreement', under the existing  
275 award that terminology is used. In fact, the terminology used in the  
*Vocational Education and Training Act* is a training agreement, not a  
traineeship agreement, so I've amended that and have simplified the  
terminology used in the existing award down to just a few words and  
again, this is consistent with the National Training Wage Award.

280 There's also a need to define the term, training package, in our view  
and we've sought to do that. Again, this is a provision that's been  
drawn from the federal National Training Wage Award and tends to  
provide a meaning to the term that we then use, particularly in the  
schedules to the award.

285 The definition of a 'traineeship scheme' has been amended to align  
itself with the federal award provision and try and make it slightly  
simpler and easier to understand and we've deleted the definition of  
'parties to a traineeship scheme', which exists in the existing state  
award on the basis that it is inaccurate in terms of the *Vocational*  
290 *Education and Training Act* in as much as the parties listed there are  
not in fact the parties to a traineeship scheme.

They are the amendments that we would propose to TTLC.1 and just  
for completeness sake and may be belts and braces, if I can just

295 indicate therefore that we agree to the definition of 'certificate' contained in TTLC.1. We agree to the definition of 'relevant award', 'relevant union', 'school-based trainee' and the definition of 'traineeship'. The rest have been amended in some form or another by our document and that's the subject of the consent that Mr Paterson spoke of.

300 I hope that's sufficiently clear for the commission.

If I could take you then, sir, to TCCI.1 and to page 11 of TTLC.1. Again, what I've prepared is by way of a complete clause to replace the clause in TTLC document. Having done that, of course the discussions this morning have changed things considerably. If I could work  
305 through TCCI.1 and I'm sure I'll be corrected if I get this wrong because I'm relying on my hieroglyphics. If we could add to the first paragraph under (a) - Objective, the following sentence:

*It is not intended that existing employees shall be displaced by trainees.*

310 That's a provision in the existing award which I omitted to include in preparing this document. Other than that, what we've taken is the existing objective clause and considerably simplified it and made it, I think, a slightly more accurate statement of what the intent of this award is because the intent of this award is not to assist in the  
315 establishment of the system of traineeships at all because that couldn't be the role of this tribunal. Rather, it is to provide the industrial relations underpinning to the system of traineeships which exists separately to the system.

In (b)(i) - Training Conditions, if I could ask the commission to please  
320 add the words 'State' between the words 'Tasmanian' and 'Training', on the third line of (b)(i). That provision is consistent with the existing (b)(i) of clause 9 of the award.

Our proposed (b)(ii) is a simplification of the existing provision which states, shortly and sharply, that a traineeship can only be commenced  
325 in accordance with the provisions of the *Vocational Education and Training Act*. On balance, I chose to go for the very simple and straightforward approach and I think it's better than us trying to describe it, only to have things change over time and inconsistencies between the VET system and the industrial relations underpinning.

330 That's a simplification of the existing (b)(ii). Also drawn from the existing (b)(ii) is our (b)(iii) which is just to ensure that the trainee is permitted to attend a training course or a program and that they receive appropriate on-the-job training. That's an existing provision. Our (b)(iv) is consistent with the existing award (b)(iii), the provision of  
335 supervision and our (b)(v) is consistent with the existing (b)(iv). If I could again ask the commission just to add the word 'State' between 'Tasmanian' and 'Training'.

Perhaps to leave that unsaid for the future, if where ever I've taken the word 'State' out, it could be included.

340 DEPUTY PRESIDENT: You're going to give us a fresh document anyway.

MR EDWARDS: Yes. Just to save me referring to it each time. Under employment conditions then, I have in my document sought to put a degree of precision into it and we've chosen in fact to move away from what I've proposed and indeed away from the TTLC prescription to now  
345 have a provision at (c)(i) which would read:

*A trainee may be engaged on a full-time basis for the maximum period specified in the training agreement.*

We found in our discussions this morning, sir, that the simplicity with  
350 which we tried to describe this was in fact inaccurate, that there are Certificate I and II level traineeships that extend for longer than 12 months and that's regulated by the training agreement. To save trying to have an inconsistency between the award and the actions of the Tasmanian Training Agreements Committee, we've referred this back  
355 to the training agreement where we think it's properly regulated.

It then becomes inconsequential renumbering, which I won't bore the commission with on the record now. Our number (iii) sets out the probationary periods that apply to traineeships. This is an extract from the Tasmanian Training Agreements Committee policy documents that  
360 have been formulated and are published now, I understand, on the Net, if I can use that shorthand description, and it states exactly what the appropriate probationary periods are and it continues over the page, which deals with a way of which a training agreement might be terminated by either of the parties during a probationary period.

365 At (iv) - the parties to a training agreement may prior to the expiry of the probation seek an extension of that probation period for a period not exceeding the original probationary period.

That too is an extract from the policy documents of the Tasmanian Training Agreements Committee and is put here to ensure there's  
370 consistency between the operations of the two different parts of the training system.

DEPUTY PRESIDENT: Just when we're talking about probation. Does this clause actually give the right to the employer, just to terminate during the probationary period or is it your view that it still  
375 has to stand the test of fairness in accordance with the *Industrial Relations Act*?

MR EDWARDS: I don't believe this could override the test of fairness required by the Act, deputy president. It's my view, consistent with that statement, that no provision in an award can override a provision

380 of the Act and consequently the commission could test a decision or an action by an employer to terminate a training agreement or the employment component of a training agreement, at least, in accordance with the provisions of this Act that go to those questions, but I've got no problem with that.

385 DEPUTY PRESIDENT: Would the award actually be the place to say how the training agreement is terminated and does the *VET Act* override this particular clause?

MR EDWARDS: This particular clause is consistent with the *VET Act*. That's the first part. The second part, I think you might have seized on something that is correct, that perhaps this isn't the right place to describe the way in which a training agreement might be terminated, rather it's the employment that might be terminated. I think that's quite correct, deputy president, and I'd be more than happy to amend it to reflect that. I think that's certainly right but the provision itself is nevertheless consistent with the *VET Act*.  
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DEPUTY PRESIDENT: Yes, I can understand that.

MR EDWARDS: So that would, may terminate the employment - I suppose, contract of employment, is the correct term.

DEPUTY PRESIDENT: Yes. It's the contract of employment that forms part of the training agreement.  
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MR EDWARDS: Correct. I didn't want to go too far down that path, otherwise we would still be here this afternoon.

DEPUTY PRESIDENT: Anyway, you might have a look at that in your discussions.

405 MR EDWARDS: Yes. For my part, I'm quite prepared to see those words change there to contract of employment.

DEPUTY PRESIDENT: Sorry, you were up to -

MR EDWARDS: I think I dealt with (iv).

DEPUTY PRESIDENT: Yes.

410 MR EDWARDS: (v) is again a very simple statement, that the employment of a trainee shall not be terminated other than in accordance with the provisions of the *VET Act*. Again, I've chosen the simplistic approach because of the inconsistency that currently exists between the award and the *VET Act*. I thought that the simplest way is to make people aware that they need to go to the *VET Act* when considering that issue.  
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(vi) is an existing provision. (vii) is an existing provision. (viii) is an existing provision which exists in (c)(iii). (ix) is the existing (c)(iv). (x) is

420 the existing (v). (xi) is the existing (c)(vi). (xii) is the existing (c)(vii) and  
I've sought the deletion of the existing provision that's scored out, the  
reason being that that subject-matter is dealt with at clause 8 of  
TTLC.1 and therefore it's no longer required.

425 They are the amendments, deputy president, that we would seek to  
TTLC.1 and in going through those we would indicate for the record  
that we do consent to the application in principle. I repeat as I did  
before, subject to us just tidying it up and presenting it back to the  
commission in a consolidated and tidy form.

430 We also agree with the proposed operative date being the first pay  
period to commence on or after yesterday, being 1 August, so that it  
coincides and dovetails neatly with the State Wage Case increase  
enabling a consolidated order to be issued dealing with both questions.

435 In terms of the TTLC undertaking to keep the award up to date in  
terms of training packages and the like, that is of course a very  
important part of our agreeing to this particular application because  
without that, the use of packages becomes superfluous very quickly  
and we need to just keep an eye on that to make sure that that is done  
in an expeditious way.

440 Having said all of that, I don't think there's any further submissions  
we would make at this time, deputy president, except to say, that we  
concur with Mr Paterson's submission, that the application is in  
accordance with the public interest in our view and complies with the  
Wage Fixing Principles of this commission. If it please.

445 DEPUTY PRESIDENT: I can indicate to the parties that I have a  
prima facie position that the application should be approved from the  
date agreed and the document and the orders to include, or to reflect  
any increases coming out of the State Wage Case. However, I'll hand  
down a written decision in due course and I'll wait to hear from the  
parties to receive the draft orders they wish me to issue arising out of  
this matter.

450 That concludes these proceedings. Thank you.

**HEARING CONCLUDED 11.43am**