

HEARING COMMENCED 4.40pm

COMMISSIONER: I'll take appearances please.

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

5 COMMISSIONER: Thank you, Mr Flanagan.

MR M. WATSON: May it please the commission, MARK WATSON; I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Thank you, Mr Watson. Mr Flanagan?

10 MR FLANAGAN: Thank you, commissioner. Commissioner, this application seeks to vary the Plant Nurseries Award in accordance with principle 16 of the State Wage Case 1999. Principle 16.1 requires that:

15 *Consistent with the decision of the Tasmanian Industrial Commission in the July 1996 and July 1997 State Wage Cases the parties are to continue to pursue their commitment to review Awards in the context of:*

- (i) *consistent award formatting;*
- (ii) *removal of discriminatory provisions;*
- 20 (iii) *removal of obsolete or amendment of inaccurate award provisions;*
- (iv) *updating Clause 6 - Parties and Persons Bound;*
- (v) *re-writing of the award in plain English;*
- (vi) *the appropriate use of facilitative provisions;*
- 25 (vii) *the inclusion of an appropriate enterprise flexibility clause.*

Consistent with that, the union forwarded to the Tasmanian Chamber of Commerce and Industry an award which has been reformatted in accordance with the president's letter to the parties dated 5 February 1998, and the effect of that reformatting is to divide into parts, as per the federal drafting guidelines, existing at the time that the conference was held in 1998 - the award, and those parts can be described as the Application and Operation of the Award, the Employment Relationship and Associated Matters in Part II, Wages and Related Matters in Part III, Allowances in Part IV, Hours of Work, Penalty Payments, Shiftwork and Overtime in Part V, Leave and Holidays With Pay in Part VI, Consultation and Dispute Resolution in Part VII, Occupational Health and Safety, Tools and Amenities in Part VIII and Award Compliance and Union Related Matters in Part IX.

If I can take the commission to the schedule attached to the application, if I could simply summarise the distinction between the reformatted award and the award as it presently exists and then I'll take the commission through the award.

- 5 Firstly, the new award in Clause 6 - Supersession, deletes reference to No. 2 of 1994 (Consolidated), No. 3 of 1994, No. 1 of 1995, No. 2 of 1995, No. 1 of 1996 from the existing supersession provision, and the union would be seeking the assistance of the commission's officers in identifying the appropriate awards which need to be included in the supersession part of clause 6.
- 10

The second thing which the award does is introduce a new clause titled Employment Categories at Part II, clause 1.

The allowances which are identified in Part IV have been relisted in alphabetical order.

- 15 The parties and persons bound provision has been replaced by the award interest clause which is modelled on the Meat Industry Award in accordance with the president's letter of 5 February 1998.

20 In Part I, Clause 7 - General Definitions, the union has deleted the reference to structured on-the-job training, structured off-the-job training, trainees, traineeships, training agreement, career start traineeships and career start trainee. Those provisions, to the best of the union's knowledge, are now obsolete and it is in accordance with the requirements of 16.1(iii) that the union has removed what we believe to be obsolete provisions.

- 25 Having said that, TCCI have expressed some concern that there may still be people out there bound by the provisions. The union is quite confident that that is not the case. However, we do give an undertaking that if the TCCI does identify persons presently operating under those provisions, then we would agree to a retrospective variation to the new award operative from today's date to place the provisions back into the award if they still have some relevance. But as I indicated, commissioner, we're quite confident that that won't be the case.
- 30

- 35 The next change which appears is that the arrangement clause has been retitled Index and has been amended to reflect the requirements of the commission in the 5 February 1998 letter from the president.

In addition, the union has inserted the new standard parental leave clause in Part VI, clause 4, which commences at page 25.

- 40 The union is seeking an operative date for the making of the award from the date of approval by the commission.

You will find attached, commissioner, to the application an Appendix 1,

1, and Appendix 1 has been drafted in accordance with the standard of
the commission - the standard form - which identifies the clause on the
left-hand side of the existing award which is called Previous Award
Clause, and then identifies under the heading New Award on the right-
hand column, the specific variations which have occurred as a
consequence of the reformatting and redrafting exercise which we've
been involved in.

5 The summary table is deficient in one respect and if I can take the
commission to the proposed new Part III, Clause 1 - Wage Rates, in
10 particular to page 9, Supported Wage System, in fact the supported
wage system is now \$51 and that appears in the new Clause 1 - Wage
Rates, under the heading Supported Wage System, but that change is
not reflected in the summary table or Appendix 1 to the award. In every
15 other case then, commissioner, the appendix identifies specifically
where the present award provision is to be found in the new award.

20 Other than those matters, commissioner, the award which is before
you does not seek to alter or amend existing rights or obligations which
apply to employers and employees, but what it does do consistent with
the award review process is provide for consistent award formatting. It
has removed obsolete provisions, it has updated Clause 6 which was
Parties and Persons Bound and replaced it with Award Interest, and if
the commission goes to Part VII - Consultation and Dispute Resolution,
25 you will see that the award already had within it appropriate enterprise
flexibility provisions and so they have remained.

30 In those circumstances, it would be the submission of the union that
the parties have satisfied the requirements of principle 16.1 of the
Wage Fixing Principles and satisfied the requirements identified in the
president's letter of 5 February 1998 and that the schedule attached to
the application should be approved by the commission. If it pleases the
commission.

COMMISSIONER: Thank you. Mr Watson?

35 MR WATSON: Commissioner, I'll be brief in response. The issue
regarding the traineeship provisions being deleted, that is fine, however
that safeguard that Mr Flanagan told you about is simply to ensure
that if there are any people out there in the system now who are
currently employed on those traineeships, then obviously we'd need
those provisions to go back into the award. I don't believe there are any
40 either, however we don't cover all membership in this area.

COMMISSIONER: Would they need to go back into the award? Could
it not be done by a section 55 agreement in respect of those employers
and those employees?

MR WATSON: Well, I suppose as long as we've got the safeguard that something will be done to make sure that people can finish their traineeships under the current award provisions, then that's all we're looking for. I don't think we'll be back here -

5 COMMISSIONER: It would be easier than -

MR WATSON: What's that?

COMMISSIONER: It would be easier than changing the award around.

10 MR WATSON: Yes. Well, whatever. I mean I don't think we'll be back here doing it but it's just simply a safeguard.

We accept on good faith that the document as presented does not change anything other than the schedule at the back of the award that Mr Flanagan's taken you to and on that basis we believe the award meets the commission's Award Review Process principle as currently 15 constituted and we advise of consent to the variation.

20 COMMISSIONER: Thank you. Well, in that case I indicate that a decision will be issued varying the award in the way that's been outlined by the parties. That will take place once the officers of the commission have gone through the document in some detail and worked their way through it.

So at this stage the hearing is adjourned.

HEARING ADJOURNED 4.55pm