

COMMISSIONER: I'll take appearances, please.

MR D. STRICKLAND: If the commission pleases, STRICKLAND D., appearing for the Textile, Clothing and Footwear Union of Australia, Tasmanian Branch.

5 **MR R. BROWN:** If the commission pleases, BROWN R., for the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Mr Strickland?

10 MR STRICKLAND: Thank you, commissioner. The application before you today seeks to vary the Clothing Industry Award for the \$10.00 safety net adjustment. I do believe at the time of making the application, draft orders were forwarded with the application. Those draft orders had been checked prior by the TCCI and we've been advised that they do agree but for the exercise I would like to tender a copy of those draft orders just so they're there for the record.

15 COMMISSIONER: We'll mark this **EXHIBIT S.1.**

20 MR STRICKLAND: Commissioner, this is a continuation of the process that was commenced in a decision of the commission as currently constituted back in September of 1997 where there was a time frame established for the implementation of the \$8.00 safety net adjustments, the completion of the minimum rate adjustment exercise and then finally the implementation of the \$10.00 safety net increase as a result of the last State Wage Case decision.

25 There is no agreement between the parties as to an operative date that this increase should be effective from. It is the union's submission that the time frame established in the original decision, T7149 of 1997, should be maintained and that would give an effective operative date for the \$10.00 increase from 28 March this year.

30 The award was last varied for the fourth and final MRA on 25 March of this year. In correspondence with the TCCI, they have indicated that they oppose an operative date of 28 March and have indicated they will seek a period two months from 25 February which effectively would give an operative date of April. However, in their letter - and I'd like to tender a copy of that letter - it's a letter of Andrew Flood to Doug Shirkey, Secretary of the TCFUA.

35 COMMISSIONER: I'll make this **EXHIBIT S.2.**

40 MR STRICKLAND: In the letter, the TCCI quite clearly indicate in the last paragraph that they were prepared to have an extended period or delay the implementation beyond April if the commission was not able to list the matter prior, but given that the commission has been able to list the matter and in keeping with that originally agreed time frame, I

don't believe that there's any reason why the implementation of 28 March cannot be granted by the commission here today.

5 The application is consistent with current wage fixing principles in that nobody would be disadvantaged in sticking with the original time frame; that employers in the industry would have been very much aware of the time frame and there's been no argument put to us by any party an increase of the \$10.00 from 28 March would cause any difficulty or hardship to any employer within the industry.

10 So it's the union's submission that it would be within the public interest for the granting of the \$10.00 safety net adjustment from an operative date of 28 March given that is our understanding of the agreement.

And just for the record, I'd like to tender to you a copy of the T7149 of 1997 decision that outlines that time frame.

15 COMMISSIONER: With due respect, we'll mark this **EXHIBIT S.3** - even though you have a time frame, the commission has always said that they're subject to separate application and the wage fixing principles and the minimum rate adjustment principles say that as well.

20 MR STRICKLAND: I accept that position, commissioner -

COMMISSIONER: Just because you lock it in here, it doesn't mean - it's only indicative, isn't it?

MR STRICKLAND: Yes.

COMMISSIONER: It's always subject to separate application.

25 MR STRICKLAND: But I'm putting to you that there is nothing to prevent an operative date. This is a separate application being dealt with separately and I mean subject to hearing what the other party has to say, other than for the sake of delaying the implementation, there is no other grounds as to why it should be delayed.

30 COMMISSIONER: Other than the wage fixing principles; it says -

MR STRICKLAND: Well, the wage fixing principles, as I understand them, at point 7 allows for the commission, where there is no agreement, at 7.2, to determine an appropriate operative date.

COMMISSIONER: Mm. Yes.

35 MR STRICKLAND: And quite clearly there's no agreement in this matter.

COMMISSIONER: Yes. Right.

MR STRICKLAND: If the commission pleases.

COMMISSIONER: Good. Thank you. Mr Brown?

5 MR BROWN: Thank you, commissioner. In respect to the draft order and the rates contained within the draft order as alluded to by Mr Strickland, the TCCI do agree with the rates that are contained within that draft order and also that those rates are not contrary to the public interest in that - the \$10.00 increase is not contrary to the public interest.

10 In respect to the operative date as outlined by Mr Strickland, again it is proposed by the TCCI that the operative date would be two months from the last increase through the fourth MRA. The reasons behind that date would be that in accordance with that original timetable as provided under exhibit S.3, once that timetable was published, employers were provided with that and advised that there would be
15 two months between each increase.

20 Now as a result of the delays which were wholly and solely at the discretion of the TCFUA, it has come to bear that the last increase, that being this \$10.00 application, if it was to undertake the two month period in between the increases would give it an effective date of 25 April and as our members were advised that there would be two months between each increase and they've set themselves up to manage that, it is our position, as stated, that we'd be seeking an operative date of 25 April 1998.

COMMISSIONER: Where do you get the 25th from?

25 MR BROWN: That being two months following the fourth MRA decision - being on 25 February.

COMMISSIONER: So you're following the decision or following the operative date.

30 MR BROWN: The operative date - sorry. The information I've got here indicates that around 25 February. If that is slightly incorrectly it would be two months from the operative date.

COMMISSIONER: Well the fourth MRA operative date for some reason is 25 February but that doesn't conform to your program either, does it?

35 MR BROWN: No, but again it is delayed due to the - there's a one month delay all the way through due to the delays in the applications which, as I stated, were purely at the TCFUA's discretion.

COMMISSIONER: But it does say that it's no earlier - the program say no earlier than the 27th and you've got it on the 25th.

MR BROWN: 25 of February rather than January.

COMMISSIONER: Yes - January.

MR BROWN: Yes.

COMMISSIONER: Yes, it's a month late.

5 MR BROWN: And that's what we were saying; that that - to keep the consistency there and in line with what the employers are expecting to be there, a two month period between that increase and the next increase.

10 COMMISSIONER: So you want me to arbitrate on that particular matter

MR BROWN: Yes, that would be the case.

COMMISSIONER: Could it not be argued that the employers have had the advantage of no increase during that earlier month?

MR BROWN: That would be the case? Yes.

15 COMMISSIONER: They've saved, haven't they?

MR BROWN: There was a month - there has been a month through that period starting back in - I'm not sure when the operative dates became applicable for each of those increases but - from July - but -

COMMISSIONER: And did your members know of the program?

20 MR BROWN: The program outlined to you?

COMMISSIONER: Yes. And I've outlined it clearly in every decision haven't I?

MR BROWN: You have.

25 COMMISSIONER: Yes. Would not they have planned for 28 March - no earlier than 28 March?

MR BROWN: Originally they would have planned - that would have been their plan but following the first delays, they've reassessed where they're at.

30 COMMISSIONER: Yes, so I'm just trying to test the veracity of your argument because if they got the plan - the five point plan - they would have known that the operative dates would have been as per the five point plan.

MR BROWN: Yes, although they have varied earlier - from it - in earlier decisions by up to a month already, so they are of the

assumption it would be a minimum of two months between each increase.

COMMISSIONER: How would they arrive at that conclusion?

MR BROWN: How would they arrive at that conclusion?

5 COMMISSIONER: From the -

MR BROWN: From the time table that it ran that it was the intention that there would be two months between each increase which would allow them to come to grips with those increases in terms of the financial implications on them.

10 COMMISSIONER: So was there two months between the second safety net adjustment and the third safety net adjustment?

15 MR BROWN: That information I don't have to hand. My colleague from the north, Andrew Flood, provided this information to me this morning to state that it was always the intention that there would be two months between each increase and that he even stated that he had agreement with Darryl in regard to that; that employers would not have any increases closer than two months apart. But I don't have any physical evidence to that effect. That was his statement.

20 COMMISSIONER: It might bolster your argument if there was a pattern of two months between, mighn't it?

MR BROWN: Yes, we could certainly research that and get the information to you.

COMMISSIONER: So what if there wasn't a pattern of two months between each of the increases?

25 MR BROWN: Of at least two months?

COMMISSIONER: Mm.

30 MR BROWN: That would significantly alter the argument - you're quite correct. But if there were increases that were paid closer than two months apart, that would significantly alter the argument. I don't believe that would be the case.

COMMISSIONER: How about if I adjourn for five or ten minutes and let you do the homework to find out when the others came in so you can put a full submission to me on it.

MR BROWN: Yes, no problem.

35 COMMISSIONER: We'll just adjourn for ten minutes.

SHORT ADJOURNMENT

HEARING RESUMED

COMMISSIONER: Well, we were discussing whether or not there has been a consistent pattern to the program as outlined in my decision in 1997 arising out of T7149. Mr Brown, what have we got there?

5 MR BROWN: Thank you, commissioner. In respect to your question regarding the periods of time between each increase as outlined in the original timetable, the second \$8.00 safety net adjustment which was in that timetable contained within exhibit S.3, was to be the first full pay period to commence on or after 24 July 1997 was in fact the
10 operative date that was provided in decision T7042 of 1997.

In respect to the third \$8.00 safety net adjustment which was according to the schedule to be accessible by a separate application no earlier than 25 September 1997, was in fact operative from 25 September 1997 in decision T7149 of 1997. So those two are around
15 the two month mark if not slightly in excess of two months.

The third minimum rate adjustment was to be available no earlier than 26 November 1997 and it appears this is where the first delay commenced. That increase was made operative from the first full pay period following 17 December 1997 under decision T7356 of 1997,
20 therefore nearly an eleven week difference from the second increase in the schedule.

Then we had the fourth and final minimum rate adjustment which was to be available according the schedule no earlier than 27 January 1998 that was in fact operative from 25 February 1998 and that was from decision T7466 of 1998. So that does establish a pattern in
25 excess -

COMMISSIONER: So a two month gap.

MR BROWN: - two months in excess of - yes. And that was where we contend that - the employer's contention is that the final increase
30 according to that schedule would be two months apart from the fourth.

COMMISSIONER: So it actually fell down really in the third minimum rate adjustment.

MR BROWN: It would appear that was the case, yes.

35 COMMISSIONER: Yes. Mr Strickland?

MR STRICKLAND: Thank you, commissioner. Well, quite clearly there is that pattern there established two months apart, nevertheless it doesn't alter the union's view that as a result of those delays, particularly at the third and fourth minimum rate adjustment has

resulted in obviously significant savings to the employers of the industry.

We've heard in Mr Brown's submissions that from the beginning of the time frame back on 23 September 1997 that employers were made
5 aware of the proposed timetable. We still contend that an operative date of 28 March would not cause any hardship to the industry, nor has there been any suggestion to us in negotiations by the TCCI that that would be the case, and would ask that the commission give due consideration in the union's request for - and in terms of the
10 application that the blame from the TCCI seems to be laid fairly and squarely at the feet of TCFUA, I might add for the record that our applications, to the best of my knowledge, have been made with inside the time frames. It's been the workload of the commission that's not always been able to fit the hearings in to coincide, so it's not only a
15 result of the union.

COMMISSIONER: I suppose it does depend on too, when the applications are made.

MR STRICKLAND: Well, like I said earlier, this one has been made well in time and all things being equal, I think that if you were to calculate the overall costs to the industry by sticking with those implementation dates, as outlined in the decision T7149, and bringing that \$10.00 forward to the 28 March this year, there would be very little difference on cost impact to the industry as a result of the other delays. If the commission pleases.
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25 COMMISSIONER: Good. Thank you. Well, I'm going to reserve my decision on this matter and I'll give the submissions due consideration and hand down a written decision in due course. Thank you.

HEARING CONCLUDED