

PRESIDENT: Appearances, please.

MR P. BAKER: Sir, I appear on behalf of the applicant organisation, P. BAKER.

PRESIDENT: Thank you, Mr Baker.

5 **MR T. BENSON:** Mr President, TONY BENSON, Construction Forestry, Mining and Energy Union, Tasmanian Branch.

PRESIDENT: Thank you, Mr Benson.

MS J. THOMAS: JENNY THOMAS, Tasmanian Chamber of Commerce and Industry, if it pleases the commission.

PRESIDENT: Thank you, Ms Thomas. Mr Baker.

10 **MR BAKER:** Sir, before I commence, I would seek the leave of the commission to vary our application in the following manner by varying clause 10 Annual Leave, subclause (d) - reference to clause 32 Shiftwork by adding the words, subclause (d) of this clause, excluding overtime as there is no subclause (d) in clause 32.

PRESIDENT: Is that adding those words, or deleting those words? I'm not certain.

15 **MS THOMAS:** There's no subclause (d).

PRESIDENT: Yes. The words are already there.

MR BAKER: Yes. The words are there.

PRESIDENT: So you are seeking to delete those words?

MR BAKER: Yes.

20 **PRESIDENT:** Yes.

MR BAKER: And secondly, in clause 34 Special Rates, under subclause (f) it contains the words, 'mentioned in this division' and divisions of course, sir, have been removed from the award.

PRESIDENT: Yes. So, you want to amend that clause -

25 **MR BAKER:** Amend that clause, yes.

PRESIDENT: So that there's no -

MR BAKER: There's no reference to divisions in clause 34.

PRESIDENT: Yes.

MR BAKER: It just simply says:

30 *Where in the circumstances arise wherein a class of employee mentioned in this division of the award -*

PRESIDENT: Yes.

MR BAKER: So the word 'division' needs to come out.

PRESIDENT: So, we delete, 'this division of', so it would read , 'mentioned in this award'.

MR BAKER: Yes.

5 PRESIDENT: Yes. I understand those two amendments to your application. Any objections from the other parties?

MS THOMAS: No. There's no objections to those amendments.

PRESIDENT: No. All right. Well, your application is amended accordingly. Thanks, Mr Baker.

10 MR BAKER: I suppose, to follow on from there, sir, I would then seek to vary the award in the manner as outlined. It's really just a procedural matter.

PRESIDENT: Do you have your orders - draft orders?

MR BAKER: Yes. I have the orders. I sincerely hope your associate has a copy.

PRESIDENT: We might be one short then, Mr Baker, I think. No, I'm sorry, I wasn't talking about that one. I was talking about your other orders.'

15 MR BAKER: Yes, sir. The other matters, yes.

PRESIDENT: Yes. For the purpose of the record, we'll mark this exhibit AMWU.1.

20 MR BAKER: In relation to the fourth minimum rates adjustment, this is an ongoing issue which was commenced several years ago. It has been a long, involved history but in so far as this proposal is concerned, this will in fact now end the minimum rates adjustment process for a tradesperson under this award. That will lift them to the \$433.20, which is the consistent wage rate for tradespeople within state awards in Tasmania and it'll provide the fourth minimum rates adjustment to employees other than tradespeople who are classified as employees levels 3, 2 and 1 in the award structure.

25 There are two further minimum rates adjustments to go, which will in fact lift employee level 1 to the \$359.40 bench mark.

PRESIDENT: Sorry. Did you say there are -

MR BAKER: There are still two further -

PRESIDENT: Minimum rates?

30 MR BAKER: Yes. - as far as the award is concerned. There was agreement reached because of the very low wage rates that were in this award - it had been an agreement of the parties to move the classifications but below trades level by six safety net adjustments. This is the fourth one today, subject of course, sir, to the ratification of the application by the commission. They were to give effect to the
35 fourth minimum rates adjustment as far as levels 1, 2 and 3 are concerned.

The award has been varied elsewhere in accordance with that. The dunnaging rate has been increased, the apprenticeship rates have also been increased accordingly. The only other comment I might make in relation to the application, is in fact that the hourly rate is shown beside the award.

Now, I'm not sure what Ms Thomas' position is in respect of that. I suppose I got in a decision early as far as putting it in there, so I simply - as far as that is concerned, I'm in the hands of the commission as to whether or not - and indeed, Ms Thomas, I suppose, in so far as whether or not you require those figures in there at this point in time.

PRESIDENT: From my point of view the answer is, no.

MR BAKER: Right. Well, in that case -

PRESIDENT: I don't require them. The commission doesn't require them. I really would prefer to wait until the principles are varied. If that's what you're relying on. I don't know what the position of the parties is.

MR BAKER: Yes. Well, they were simply done on the basis that - I wasn't too sure where we were with the National Wage Case when I prepared the draft order, so I just did them at the time, so -

PRESIDENT: It would be my preference that they not be included. What's the position of the other side?

MS THOMAS: I advised Mr Baker in writing, Mr President, that we would not be prepared to consider an hourly rate provision in any award until at least the MRA process was completed and of course until the new principles are handed down as well.

PRESIDENT: Yes. I think that's the line that I'll be adopting too, Mr Baker.

MR BAKER: Well, that's answered the question.

PRESIDENT: So, if you're happy we'll just amend your draft order accordingly.

MR BAKER: Mm. Subject to any questions from yourself, I'd ask that the draft order as amended, reflecting the fourth minimum rates adjustment process, be given effect to from the first full pay period on or after today's date. Thank you.

PRESIDENT: Yes. Can you give me some information as to when the last adjustments were made for the second safety net adjustment and the third minimum rates?

MR BAKER: Yes. The third minimum rates adjustment and the second safety net adjustment was varied on the 9th July in 1996. We've actually, some how or other, overlooked putting an application in in December, or thereabouts, to give effect to it. So, we've actually slipped a notch - in a decision of Commissioner Imlach of T.6243.

PRESIDENT: Right. So, what was the phasing in periods for the MRAs?

MR BAKER: They were designed, as I indicated earlier, six-monthly periods -

PRESIDENT: Six-monthly.

MR BAKER: - and there would be four increments for the tradesperson and six adjustments for levels 3, 2 and 1.

PRESIDENT: Yes. So, a tradesperson is at the top?

MR BAKER: The tradesperson's there now.

PRESIDENT: Yes. And there are two more to go for levels 3, 2 and 1?

MR BAKER: There are two more to come, yes.

PRESIDENT: And were they to be at six-monthly rests?

MR BAKER: They're at six-monthly rests.

5 PRESIDENT: So, really, those last three classifications could have had their MRA in January?

MR BAKER: In January, yes. We've missed it.

PRESIDENT: And in respect of the arbitrated safety net adjustment, that of course by virtue of the principles, has got to be at 12-monthly intervals?

10 MR BAKER: That's right. I was coming to that next. Yes.

PRESIDENT: Yes. All right. Continue.

MR BAKER: I think, as far as the percentage figures are concerned, the 87.4, and 82 per cent and the 78 per cent, when that process is complete that'll bring it into line with other awards of the commission, notably the Metals and Engineering
15 Industry Award, which as far as the 78 per cent of course, is the desired minimum rate for awards which will be the subject of further arbitral proceedings before the full bench later this year.

PRESIDENT: Yes. So, now your application addressed minimum wage?

MR BAKER: Yes. Well, the minimum wage doesn't vary as a consequence of this
20 decision - sorry, of the proposed decision. It is at \$273.40 currently. It was at \$257.00 but the two previous safety net adjustments have been applied to that, which are listed at \$273.40 and there was a subsequent draft order which I'll address next which will bring the - well, it's proposed to bring that rate to \$281.40, consistent with the -

25 PRESIDENT: So that includes the third arbitrated safety net adjustment?

MR BAKER: We'll include that when I deal with that matter.

PRESIDENT: All right.

MR BAKER: But other than that, as far as the application's concerned, I don't think there's much else I can add.

30 PRESIDENT: And the special rates?

MR BAKER: The special rates, again perhaps if I sort of turn to the second document, which is the third safety net adjustment.

PRESIDENT: You've got a second document, have you? Okay. Has everybody else got - I've got a copy of this. This is AMWU.1.

35 MR BAKER: Yes. There's two. One is headed the Fourth Minimal Rates Adjustment and there's one headed the Third Safety Net Adjustment.

PRESIDENT: The one that was handed to me was the Third Safety Net Adjustment.

MR BAKER: That's probably why we're having some difficulty here in coming to terms with what's going on.

PRESIDENT: Yes, I've been struggling, I can assure you. I thought, one day, you were going to get to it, Mr Baker.

5 Yes. All right. Well, you were addressing the fourth minimum rates?

MR BAKER: The fourth minimum rates, yes.

PRESIDENT: Okay. It does make a lot more sense now. All right. I understand that. We will retain that marking of the exhibit, AMWU.1 and the Third Safety Net Adjustment document will be AMWU.2.

10 MR BAKER: Now, the second exhibit - and due to a little in the scheduling as far as - I suppose as far as Ms Thomas and myself is concerned, it wasn't until this morning we were able to actually compare notes about the draft orders and as a consequence of that, the one which I've handed to you headed, Third Minimum Rates Adjustment, actually does in fact -

15 MS THOMAS: The Third Safety Net Adjustment.

MR BAKER: The Third Safety Net Adjustment, does in fact -

PRESIDENT: Look, I understood what you meant.

MR BAKER: - contain a couple of slight changes. One is in relation to (b) Employee Level 3 where the figure as shown should read \$360.40.

20 PRESIDENT: Yes.

MR BAKER: And there is a change to the figure on dunnaging, and I'm not too sure where I got my calculation from but I have corrected the draft order there for you. And if we turn to the minimum wage as contained in clause 3, you will note that it's been increased by an additional amount of \$8.00, which is the three eight
25 dollar amounts.

The application arises, consistent with the full bench decision of last year and as I earlier indicated, this matter was previously before the commission before Commissioner Imlach in matter T.6243 of 1996, in which he, by decision of 29th July 1996 varied the award on 9th July 1996 to give effect to the third minimum rates
30 adjustment and the second safety net adjustment.

The application before you is consistent with the wage fixing principles. It is consistent in as much as that the union has continued to seek to review the award and in fact there were applications before this commission of last year in relation to the annual leave provision of the award in matter T.6584 of 1996, which in fact was
35 not - following discussion between the parties and before yourself, I think it was, on the occasion, the matter in fact was withdrawn and it was to be relisted following the completion of the minimum rates adjustment process.

So I would submit to the commission that there is a situation there that we have continued to sort of examine the provisions of the award and indeed there was an
40 extensive review undertaken both by the TCCI and yourselves last year, and also the CFMEU, as far as the structuring of this award is concerned and we would argue that it's consistent with the principles.

I understand Ms Thomas is going to address the principles, so I'm not going to pre-empt what she has to say but subject to any questions that you have, I would submit that this application in so far as the third minimum rates adjustment is concerned, meets the requirements of the principles and we would seek an operative date of 9th July 1997.

PRESIDENT: The first full pay period?

MR BAKER: The first full pay period on or after the 9th July.

PRESIDENT: Yes. All right. Thanks, Mr Baker. All is clear.

MR BAKER: Thank you. I do apologise for the confusion. I just handed your associate the two -

PRESIDENT: Yes. I should have queried you when you started talking about the fourth minimum rates adjustment instead of thinking to myself, well, it will all come clear in a moment, which it did. Mr Benson.

MR BENSON: Mr President, the CFMEU has got no problem with the submission at all and totally agrees.

PRESIDENT: Yes. Fine. Thank you. Ms Thomas.

MS THOMAS: Thank you, Mr President. The matters before you today are consent matters save and except for the operative date in relation to the third safety net adjustment. I wrote to Mr Baker this morning seeking that he reflect the intent of the recent - the intent of the parties in the recent negotiations concerning the state wage case that's been recently before the commission, that in essence, any increases that fall within close proximity to the \$10.00 safety net adjustment, which is yet to be approved by the commission, should be spaced at least two months apart on either side of that increase which is due to occur on the 14th July.

We have consented to the flow-on of the minimum rates adjustment, on the basis that that is late and we acknowledge that but employees in this industry face the prospect of a minimum rates adjustment today, an eight dollar safety net adjustment operative from the 9th July and a \$10.00 safety net adjustment operative from the 14th July.

This is the very scenario that the parties to those negotiations were keen to avoid where employers would have to pick up a number of increases in short succession.

I forwarded to Mr Baker a copy of exhibit TTL3 in the State Wage Case proceedings and I just table that as an exhibit here, if I may.

PRESIDENT: What would have been your submission if this hearing had occurred this time last week?

MS THOMAS: It would have been different because the parties hadn't concluded their negotiations at that stage as they were 'without prejudice' discussions at that stage.

PRESIDENT: Yes, it was. I mean - the application was lodged on the 20th May.

MS THOMAS: And is before the commission today.

PRESIDENT: Yes. Anyway, proceed.

MS THOMAS: Yes. In that document, it sets out a summary of the agreement that was reached between the parties late last week and in particular, I draw the commission's attention to the second page of that document, paragraphs 5 and 6. It states there: That the spacing in any outstanding increases to awards shall be
5 determined by agreement of the parties or failing agreement, by a decision of the commission.

And 6: Other increases will not be available prior to 14 September 1997 or otherwise with the consent of the parties to the award.

I've handed up that exhibit as an indication that it was indeed the parties' intention
10 that the parties look at the spacing of outstanding increases available under various awards and that is why we have appealed to Mr Baker today to consider a later operative date, which would in effect be two months after the 14th July, which would be the 14th September for the third safety net adjustment.

In making this submission, I'd also refer the commission to the public interest
15 requirements of the act and in particular, that the commission shall consider the economic position of any industry likely to be affected by the proposed award or proposed agreement. I just make, again, the point that the employers in this industry will have to cop, if you like, three increases within a short period of time and the commission should consider -

20 PRESIDENT: They've already been saved six months on one.

MS THOMAS: They have indeed but is not something of their doing.

PRESIDENT: No, I know, but it's still a saving.

MS THOMAS: I just make the submission that they will be hit by three increases in a short period of time and that that will undoubtedly -

25 PRESIDENT: What is the actual amount of the minimum rates adjustment increase?

MS THOMAS: I don't - let's have a look - at the trades level, that would have been six dollars, I think.

MR BAKER: Yes.

30 MS THOMAS: And then for the non-trades levels it would vary from - it looks like \$14.20, \$12.50, something like that, \$9.70. So between \$9.70 and \$14.20 for the other three.

PRESIDENT: So, effectively, the employees have been subsidising the employer to that extent for some six months?

35 MS THOMAS: Certainly the employer hasn't been required to pay those increases but under the proposed operative dates, the employer will now have to pay a total of - under the worst case scenario, of \$32.00 per week. So, if it pleases the commission, I would ask that you take into consideration those matters in deciding the operative date of the third safety net adjustment. If it pleases the commission.

40 PRESIDENT: Yes. All right. So, there's consent to the minimum rates adjustment from today's date?

MS THOMAS: That's right, yes.

PRESIDENT: And you're submitting that the third SNA should be no earlier than the 14th September. Is that right?

MS THOMAS: Yes, that's right. If it pleases.

PRESIDENT: Yes. Mr Baker?

5 MR BAKER: Thank you, sir. As I explained briefly to Ms Thomas this morning, I don't share her view of the agreement at all, in the way in which she has submitted to the commission this morning. I think the principles - there are two things that need to be said here. One is, that the application was made and certainly there was a period of uncertainty as far as what was going to happen - as far as the wage fixing principles were concerned. However, we do have a set of principles which apply if the full bench of course gives it's imprimatur to the principles and one would assume they will. But they would not operate from 14 July of this year. At the present time, there is an application before the commission which has been made consistent with the current wage fixation principles and the operative date of that decision will be the 9th July. The proposed operative date will be 9th July.

There is no impact on the other principles because they simply don't exist. Now one could say, and I think there are really two arguments here - one is an argument about a prospective set of principles which will apply as from a date in time.

20 This application was made prior to those principles. The operative date of any increase sought will be before the operative date of those principles and therefore I would suggest to you that the argument that has been put forward is invalid.

Certainly, as far as our reading, or our understanding of the principles is concerned. The application of these principles - in no way was it meant to be retrospective and that is what's being put to the commission this morning. The operation of these principles is in some way to be retrospective and I would argue that that is an impossibility.

25 The other issue which Ms Thomas raises in relation to - really is a public interest argument - it's an economic incapacity argument and that's a different argument all together, but as far as the principles is concerned, I would submit to you and submit to you quite strongly, it is our very understanding, certainly from the parties of this side of the table, that as far as the increases are concerned, other increases are to be interpreted. As far as points, 4, 5 and 6 are concerned, they are to operate from the 14th July and there was never any indication given that the increases that are due now are to be taken into consideration when determining the minimum wage increase of \$10 - when that's to be taken into account, or indeed any outstanding safety net adjustments are to be discounted in the view that they fall due on or about the present time.

30 I mean - in reality - I mean - are we - and I don't know this, but are we to take into account a situation whereby those awards which have been varied by the safety net adjustments in the last four or five weeks are to be similarly discounted. I'm not sure where that argument sort of ends but I would strongly urge the commission to give effect to this award from the 9th July of this year - from the first pay period on or after the 9th July. Any other subsequent applications to this commission should be dealt with at that time and then that falls under - as was pointed out, under the public interest principle - under the economic incapacity of the employers to pay and as indeed has been pointed out by the bench, the employers have had six months grace as far as the application of the fourth minimum rates adjustment is concerned because of an oversight in our office.

I'm not too sure how many employees there are running around being paid \$316.00 a week. I suppose if we looked hard enough, we might find one or two. But certainly, the principal employers in the industry do not pay those rates of pay. I mean - they simply couldn't attract labour to warrant their employment. That again is a hypothetical argument.

But as I said, there are two issues. One is the issue of the principles. The new principles are not in at the present time. The issue as far as the eight dollars is concerned is that it is due now and the parties have met the conditions of the principles and therefore it should flow as from the first pay period on or after the 9th July of this year. Subsequent applications to the commission, be for it for the \$10 or eight dollars or six dollars, or whatever the amount of money might be, becomes a separate argument before the bench and as I said, that becomes an argument for economic incapacity and as has been demonstrated both by the federal and state commissions, then the employer needs to run a far more detailed argument than simply standing before the commission and arguing that it's an impost on an employer. Thank you.

PRESIDENT: Yes. Thanks, Mr Baker. Mr Benson?

MR BENSON: Yes, Mr President - CFMEU mentioned earlier that we completely supported the application and submission of Mr Baker. We continue to do that. He hasn't left much for me to say really, except that in my opinion the argument put up by TCCI is irrelevant - completely irrelevant under the circumstances.

PRESIDENT: And would you like to elaborate on that?

MR BENSON: Yes. With regards to the proposed principles that Ms Thomas is referring to, it hasn't yet, I understand, been accepted by the commission. Completely irrelevant.

PRESIDENT: Yes. All right. Is there anything further you want to put in support of your objection to the operative date, Ms Thomas?

MS THOMAS: As you've given me another bite at the cherry, so to speak -

PRESIDENT: Well, I am giving you another bite of the cherry because it strikes me that really you're relying basically on the public interest.

MS THOMAS: Yes. Mr Baker is claiming that what we're seeking to do is retrospectively apply principles which are not yet approved by the commission. That is incorrect, to the extent that what I am seeking, by consent, is that the parties before you today put in place what was the intent of the parties in those discussions.

Now, if the intent or the understanding of that intent is not agreed between the parties and it appears that some of the wording in the new principles may not be as clear as we would have liked - but all we're doing is appealing that that intent be reflected in the operative date and I don't think it was ever my intention to run an economic incapacity argument. It was just to point out that an increase of some \$38.00 in the worst case scenario would present some difficulties for some employers. If it pleases the commission.

PRESIDENT: Yes, all right. If I've got that correctly, you're really asking for an agreement from the other side to stagger the arbitrated safety net adjustment, rather than relying on any principles in place and I think that's probably -

MS THOMAS: Yes. That would be correct.

PRESIDENT: Yes. Because, clearly, at the moment we're operating under the 1996 principles and the 1997 principles have yet to be formally issued or approved.

I'm not certain how the commission as currently constituted can see into the future.

5 MS THOMAS: No. It would be difficult for you to know exactly what was the intent of the parties.

PRESIDENT: Yes. All right. We might just go off the record for a brief while.

OFF THE RECORD

10 PRESIDENT: Yes. Well, thank you for that discussion. I propose to separate this application into two orders. I'll deal with the amendment to your application and the fourth minimum rates adjustment initially, Mr Baker, and I can inform the parties that those variations to the award, in my view, conform with the principles and do not offend the public interest and the operative date is satisfactory, by consent, being the first full pay period on or after today's date and I will reserve my position in relation to the application of the third safety net adjustment. I'll deal with that as quickly as I possibly can.

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I thank you very much.

HEARING CONCLUDED