

COMMISSIONER: I'll take appearances, please.

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

5 COMMISSIONER: Thank you.

MS L. FITZGERALD: If it please the commission, FITZGERALD LYNNE, appearing on behalf of the Tasmanian Trades and Labor Council.

COMMISSIONER: Good. Thank you.

10 **MR P. BAKER:** Sir, I appear on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, P. BAKER.

COMMISSIONER: Thank you.

15 **MR G. COOPER:** If the commission pleases, I appear on behalf of the Australian Workers Union, Tasmanian Branch, COOPER G.

COMMISSIONER: Right.

MR T. PIERCE: If it please the commission, PIERCE T., intervening on behalf of the Minister for Industrial Relations.

COMMISSIONER: Good.

20 **MR C. BROWN:** If the commission pleases, C. BROWN, appearing for the Health Services Union of Australia, Tasmania No. 1 Branch. As we're not a party to this award, we seek leave to appear.

COMMISSIONER: Thank you. I take it that the others are too but I'm waiting to hear from them.

25 **MR I. PATERSON:** If the commission pleases, IAN PATERSON, appearing for the Australian Municipal Administrative, Clerical and Services Union. I'm in the same position as Mr Brown. Our union is not a party to the award, so I seek leave to appear in this matter.

COMMISSIONER: Right.

30 **MR BAKER:** Thank you for bringing that to my attention, commissioner. I shall change my right of appearance to that of an intervener and would seek by leave of the commission, the right of intervention.

35 COMMISSIONER: Thank you. No one else? Mr Edwards, have you any -

MR EDWARDS: No objection to the interventions, commissioner. I think they are sensible interventions, given the way this award is constructed and the nature of the appendix to the award which sets out those awards to which this award would have application and that the organisations that have sought leave to intervene are parties bound to those awards and have therefore previously demonstrated to the commission that they have an interest in awards to which this award relates.

On that basis, we would agree to the intervention.

COMMISSIONER: Good. Thank you. Leave is granted. Mr Edwards?

MR EDWARDS: Thank you, commissioner. Commissioner, a little bit of tidying up, if I might. I'm sure it hasn't escaped the commission's attention that there are a couple of minor errors in the application that was forwarded to the commission. I'd like to take the opportunity now to address those by seeking leave to amend the application.

Firstly, on the first page of the attachment to the application proper, I have sought to insert into Clause 3 - Arrangements at variation number 1, a new Clause 9 - Part-time Traineeships. That should read 10 - Part-time Traineeships.

Also at variation number 3, the heading to the new clause is shown as 9 - Part-time Traineeships. That should read, 10 - Part-time Traineeships.

At subclause (f) of the new proposed clause, now numbered 10, on the second line, the word 'on' should read 'one'.

I seek leave of the commission to make those amendments to the application.

COMMISSIONER: Good. Any opposition to the amendment? No opposition. Leave is granted, Mr Edwards.

MR EDWARDS: Thank you, commissioner. Could I, as the next item of business, tender to the commission a proposed draft order which would give effect to the application if it's granted and it does contain those amendments that I've just taken the commission to.

COMMISSIONER: Thank you. There's just another, one, in the note 1 too, isn't there - the last line will be replaced by 8?

MR EDWARDS: Correct, commissioner. Thank you, for that. I had omitted that one. I'd seek leave to amend the application in that regard as well as seek leave to amend my draft order.

COMMISSIONER: That's okay.

MR EDWARDS: It's a typographical error. It's very difficult to get good typists these days, particularly when you're your own typist.

COMMISSIONER: Is the clerical union present here.

MS FITZGERALD: May be you need to acquire some skills.

5 MR EDWARDS: I hastily add, particularly when you are your own typist.

MR PIERCE: We'll see the appropriate phrasing from the transcript.

MR EDWARDS: Thank you.

COMMISSIONER: I can see you have a lot of cooperation here.

10 MR EDWARDS: Commissioner, I have had some preliminary discussions with some of the organisations present and I wrote to the TTLC prior to lodging the application by letter dated 8 August, to which I attached a copy of the proposed application and sought to have discussions with the Labor Council over the matters contained
15 therein, given the very large number of awards which are contained in the appendix to this award which give it its coverage, I thought it best to talk to the peak council who, at that stage, other than the AWU, was the only other party to the award.

I, at the same time, wrote to the Australian Workers' Union on 8
20 August also, containing a copy of both my correspondence to the TTLC and our application to vary. I did that because the AWU are the other union party to the award.

Having done that, we sought discussions. We've had some preliminary discussions with Ms Fitzgerald of the Labor Council and I think it's not
25 unfair for me to say that I believe we have consent from the Labor Council to this application.

However, we have received correspondence from the AWU which indicates their intention to oppose the TCCI application and seeking further discussions. I have had some preliminary discussions, albeit
30 by phone, with Mr Cooper, which have been somewhat interrupted by me taking annual leave and Mr Cooper being absent on sick leave and just generally being unable to catch up with one another.

We had a preliminary discussion again this morning and as a result of that discussion I have agreed with a request from Mr Cooper that we
35 would proceed into a conference this morning with an intention to try and iron out whatever differences there are between us in respect of this application.

I put that proposition to the intervener from the government and also to the Labor Council who have agreed to proceed into that conference.

I think it's also fair to say, commissioner, at that conference we have agreed to discuss a range of other matters that relate to this award including the \$8 safety net adjustment, the \$10 safety net adjustment, rates relevant to school-based traineeships, also exit rates and the skill level descriptors that are in the award, all of which are matters that have transpired over a period of some months in the federal award area which we haven't translated into this award, which I think we all agree, we need to do something about so we'll use that conference in that broader way and try and resolve all of those matters and work out a program to come forward with those other things even though they're not formally before the commission today. I think it gives us that opportunity to discuss those things.

Commissioner, just by way of preliminary background comments before I do request that we go into that adjournment, I'd like to table another exhibit which is Print P2738 of the Australian Industrial Relations Commission which is an amendment made to the National Training Wage Award 1994.

COMMISSIONER: We'll mark the draft order, **EXHIBIT TCCI.1**. This will be **TCCI.2**.

MR EDWARDS: TCCI.2, commissioner, as I've indicated, is an amendment to the National Training Wage Award 1994 issued by Commissioner Laing in Perth on 8 July 1997. It does do a variety of things but for the purposes of this application, it does incorporate part-time traineeship provisions into the federal award. I don't take the commission to it in detail at this point. I put it forward as being the foundation for the application so that it's before the commission and the parties as we do proceed into the conference that I've foreshadowed.

COMMISSIONER: That contains the new rates too, doesn't it?

MR EDWARDS: It does, commissioner, but they were half a step in front of us, or two steps in front of us in that regard and we will try and deal with that issue whilst we are in conference.

All I have done by way of my application, commissioner, is to incorporate provisions out of what is now TCCI.2, that incorporate part-time traineeship provisions into the national award and I haven't sought to go broader than that.

I can also indicate, commissioner, at this time that the application federally was one that was proceeded with by consent and in fact the actual variations were negotiated between the Australian Chamber of Commerce and Industry, the ACTU and the federal government and were taken to Commissioner Laing by consent.

Having made those brief preliminary comments, commissioner, I would now ask that we do go into the conference that I foreshadowed so that

we might try and overcome any difficulties that do exist in proceeding with the application today.

5 I'm hopeful that a matter of this nature will be able to proceed by consent before the commission, however, I don't prejudge the outcome of those conferences in that regard.

COMMISSIONER: Did you have any submission to make in relation to the resumption of this hearing?

10 MR EDWARDS: I would, in the first instance, ask perhaps that the parties be adjourned into a conference of, say, about half an hour so that we might reconvene at about 11.15, at which time we can either report to the commission if that is appropriate or in the alternative, proceed. I'm not indicating that I want an adjournment to another day at this stage. I think a conference within the confines of the commission, whilst we are here, and I'm hopeful we will resolve any differences during that period of time. If not, then we may well choose to proceed by way of arbitration if that is necessary.

15 COMMISSIONER: Right. No objection to the conference? You are all nodding in agreement. We'll adjourn. You might report progress at 11.15. Thank you, very much. The matter is adjourned.

20 **INTO CONFERENCE**

HEARING RESUMED

COMMISSIONER: Mr Edwards?

25 MR EDWARDS: Thank you, commissioner, and thank you for your forbearance. The adjournment took considerably longer than we had originally anticipated. We thank the commission for allowing us to take the extra time. Regrettably, I can't inform the commission that the application will now proceed by consent. There remains some objections from the Australian Workers' Union and no doubt we will make them clear as we proceed.

30 Just so the commission might be aware of the range of issues we dealt with in that conference and where we're leaving them as at this minute, we have talked generally about both the \$8 and \$10 safety net adjustments and it is agreed that the Labor Council will prepare a draft order which will reflect the in-principle position that we have discussed which, on a without prejudice basis, is that both the \$8 and 35 the \$10 would flow into the award from a common operative date which we believe is available under the Wage Fixing Principles and that application would be made to the commission at the earliest possible opportunity.

40 We also have discussed the question of the exit rate that applies to a trainee upon their completion of a traineeship. It is possible and has in

5 fact occurred in some instances where employees could receive a lower rate of pay having completed their traineeship by way of moving out of this award back into the relevant industry award and being placed on the age based junior scales which don't coincide precisely with the rates in this award.

10 We have agreed that that should be dealt with on an award by award basis and that it is the intention of the parties to deal with that as we deal with the award review process. It seemed to us to be the easiest way of dealing with it and we have discussed various ways in which that might be redressed and I won't place those on the record at this time.

15 We have also talked about the need to incorporate into the award, the skill based traineeship rates which have been incorporated into the federal award. The commission may well be aware that under the modern Australian Apprenticeship Scheme it is possible for people still at school to be engaged on a traineeship and paid a particular rate of pay which would be specified and again the parties have agreed in-principle that that concept go into this award and we are hoping to perhaps deal with that at the same time we deal with the \$8 and the \$10 applications for the safety net adjustment.

20 In respect to the skill level descriptors, we have agreed on various ways in which we can obtain a range of additional information that we feel we need in order to complete our discussions on those skill level descriptors and there is a commitment by the parties to pursue that at the earliest available opportunity.

25 As I understand it, Ms Fitzgerald from the TTLIC, has undertaken to obtain a range of additional material which will be circulated to everyone else that's here so that we can progress that as a matter of some urgency. We understand it has been outstanding for some considerable time and we all agree that there is a need to deal with it.

30 The only other issue that I will talk about that falls from the conference would be that, in exhibit TCCI.2, which is the print from the federal commission's variation to the federal National Training Wage Award, there was incorporated at variation number 3, a new subclause (iv)(c) which reads:

This award does not apply to the apprenticeship system or any other training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997 or in an award that binds the employer.

40 The parties have agreed that I would seek leave of the commission to amend my application, which is exhibit TCCI.1, to incorporate that provision into the Tasmanian award and I'll deal with that in greater detail at a later time. What it does, it is intended to make it completely clear that this award does not provide coverage of apprenticeships but

does provide coverage of traineeships and that's essentially the change.

5 The date that we would seek to have incorporated into the relevant provision in this award would be the operative date of the variation made to this award as a result of this application, assuming it is successful.

I'd seek leave of the commission to further amend exhibit TCCI.1 in that way.

10 COMMISSIONER: Any objection? No objection. TCCI.1 is amended to include that provision, essentially arising out of point 3 in the federal commission's decision. Thank you.

15 MR EDWARDS: Thank you, Mr Commissioner. I think that summarises fairly clearly that range of issues that we did progress in the conference and I think I can say to the commission without fear of any contradiction, that there is a willingness to progress all of those issues at a relatively early time and with a degree of urgency, which I think they probably deserve.

20 I've also briefly discussed in the conference the question of the occupationally based awards and the effect this application may have on them. It has been agreed, I think, between us that the variation made to this award will in turn immediately impact in those award areas because they will pick up a natural reference back to this award and as a consequence, there will be no need for a separate application to be made but I would indicate that we believe that it would be proper for those awards to be kept in mind as we progress this application, even though there is no immediate application here to vary them. They would be varied as a result of any variation made to this award.

30 Other than that, commissioner, the other issues that we did discuss, unfortunately, were unable to convince the AWU to support the application and therefore it would appear that we are proceeding on the basis that the matter will need to be determined by the commission, at least so far as the AWU is concerned.

COMMISSIONER: Right. There's no room for manoeuvring at all?

35 MR EDWARDS: The only manoeuvring that would be possible, commissioner, as I would see it from where I stand, would be if the commission could perhaps chair a conference of the parties but given the entrenched view of the AWU on the issues that it's raised, I wouldn't hold any great hope of success of that type of conference but Mr Cooper may care to comment on that. Obviously, he's in a far better position to than I am and I'd be quite happy if Mr Cooper could speak to that point now, if that would assist.

40 COMMISSIONER: Mr Cooper, have you any view?

MR COOPER: Mr Commissioner, in terms of the position, we say that the issue of a further conference with yourself may be beneficial. Our view is one that could be termed as entrenched, but is based on the position we have adopted, that is fundamental and that is, that we
5 don't think the part-time provision as presented to the commission provides sufficient protection to the trainee who would undertake a part-time trainee and it's based on our perception that they could in fact do all the training during the year and receive a lesser rate during the course of that. We've been told the outcome would be beneficial to
10 them if they pick up work but we still have a fundamental problem with the way that the traineeship could proceed and we don't feel that the unions, particularly the AWU, would have a sufficient role to play in monitoring that issue.

It is something that we need to get advice on. We've been told different
15 views this morning as part of the conference and they haven't been sufficient to change our mind, that the trainee, if they were adopted under a part-time traineeship would be provided with sufficient protection in the way that that draft order that's been presented to you is framed. One of the issues fundamental of course is, there's no
20 minimum engagement and as has been said, in terms of that, it's explained in the footnote but it doesn't spell that out. There are some problems with that as well.

We do have an entrenched view, commissioner, and we would be happy to share that with you in a conference. At the end of the day, I
25 don't know, without more information, whether we are in a position to move from it today.

COMMISSIONER: So is it a problem with the proposed award amendment or is it a problem with the system itself?

MR COOPER: That's a good question. The system itself is part of the
30 problem but it is borne out in the application to vary. So, I'd say it's partly both but our fundamental problem is with the draft order as presented. We say, it doesn't provide sufficient protection to the trainee.

COMMISSIONER: So, are you saying that you need some more
35 information?

MR COOPER: I would say, commissioner, the conference was very useful. We did discuss issues that were of concern to us and there were different views put as to how that can be dealt with. Obviously,
40 on the basis of that information, if that was checked and there were sufficient safeguards there, then we may be in a position to consent but that does need to be checked, yes.

COMMISSIONER: What do you say to that, Mr Edwards?

MR EDWARDS: I suppose my response would be by way of a question, as to how long Mr Cooper thinks he might require. If it can be dealt with fairly expeditiously, I wouldn't object to that course. Obviously, I think it's in everyone's best interest that this matter can be dealt with by consent. Certainly, that's my perception but I am mindful that there are actually young people lined up ready to enter into these traineeships the minute this is approved and they are being denied that opportunity currently because they're waiting for this application to finalise the process.

Now, if Mr Cooper asks for a short period of time in which to obtain that information, I wouldn't object but I would be conscious of that concern that I've expressed.

COMMISSIONER: I'm just thinking - we might have the other applications before us at that time as well.

MR EDWARDS: Probably, bar the skilled level descriptor matter.

COMMISSIONER: Yes.

MR EDWARDS: Then, yes, I would suspect that's probably quite possible. I'm looking at Ms Fitzgerald and she's nodding that that seems to be possible.

COMMISSIONER: And if we've got agreement, then we might be able to hit all the things at one time.

MR EDWARDS: I'd have no objection to that. As I say, providing it can be done reasonably expeditiously. That's my only concern, that there are actually people waiting.

COMMISSIONER: We might just go off the record for a moment.

OFF RECORD

ON RECORD

COMMISSIONER: Let the record show, we've had some discussions about how to proceed in relation to the current application and the foreshadowed application to be made by the Trades and Labor Council and we are going to adjourn until Friday, 10 October, to enable further discussions to take place and some information to be provided to the AWU and we will reconvene at 11.30 on 10 October.

The matter is now adjourned. Thank you.

HEARING ADJOURNED