



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. **9714 of 2001**

IN THE MATTER OF an application by
The Australian Workers' Union,
Tasmania Branch to vary the Civil
Construction and Maintenance Award

Re: varying the award to give effect to
the Safety Net Adjustment provided for
in the 2000 and 2001 State Wage Case
Decisions

COMMISSIONER IMLACH

HOBART, 13 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 9.33am

COMMISSIONER: I'll take appearances.

MR R. FLANAGAN: If it pleases the commission, FLANAGAN R., for the AWU.

5 **MR T.J. EDWARDS:** If it please the commission, EDWARDS T.J. for the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Thanks, Mr Edwards. Yes, Mr Flanagan?

MR FLANAGAN: Thank you, commissioner. Firstly, commissioner, we'd seek that the transcript in respect to this matter be marked for
10 the eyes of the commission only. Is that agreeable to the commission?

COMMISSIONER: Yes, what's the other side say?

MR EDWARDS: We consent to that, commissioner.

COMMISSIONER: Good. That being the case there's no worries at all.

MR FLANAGAN: Thank you, commissioner. Commissioner, whilst
15 this is technically an application to vary the award, it's our view that that's not necessarily appropriate under this heading. It's our view in fact that by three decisions of the full bench over the last three years the award was varied but in fact the paperwork to reflect those variations have never been formally released by the commission and
20 I'd like to explain how that has occurred.

I'd seek to tender a copy of the commission's decision in T7702 of 1998 and T7845 of 1998.

COMMISSIONER: **EXHIBIT F.1** which is T7702 and **EXHIBIT F.2** which is T7845.

25 MR FLANAGAN: Thank you, commissioner. Commissioner, if I can take you to F.1, in particular to the page which is numbered page 2 at the bottom, you'll see under the heading Clause 8 - Wage Rates, that the award was varied to incorporate the safety net adjustment which was due pursuant to the 1998 State Wage Case and that wage case
30 was broken into two components. There was an adjustment which applied from 1 July from recollection and then a subsequent adjustment to apply later on - it's 14 July, I beg your pardon. So the award was varied by this matter to reflect the first adjustment under the 1998 State Wage Case.

35 COMMISSIONER: How much was that, do you know, Mr Flanagan?

MR FLANAGAN: My recollection is that it was ten and four.

COMMISSIONER: Ten first and four after.

MR FLANAGAN: Four after, yes.

COMMISSIONER: So for F.1 it would be \$10.

40 MR FLANAGAN: That's right.

COMMISSIONER: Yes?

MR FLANAGAN: And then if you go to F.2, again if you go to the page numbered 2 at the bottom which is in fact the third page, you'll see again under the heading Clause 8 - Wage Rates, under the heading, Safety Net Adjustment, the award was in fact varied to pick up that second component of the 1998 State Wage Case and that the order came into effect from 14 October that year. That then takes us, commissioner, to the 1999 State Wage Case and I'd seek to tender an extract of that.

50 COMMISSIONER: **EXHIBIT F.3.**

MR FLANAGAN: Now the first page simply identifies the fact that it's an extract of the 1999 State Wage Case. If I can take you to the second page in F.3 which is numbered at the top, page 34, and to the second paragraph, it states:

55 *Accordingly we have decided to implement the safety net adjustment increases by means of a common operative date; that is to say, on and from the beginning of the first full pay period to commence on or after 1 August 1999. This operative date, however, will only be available in circumstances where:*

- 60
- *existing wage rates in awards have been varied to include the arbitrated safety net adjustment arising out of the July 1998 State Wage Case; and*
 - *a period of at least 12 months has elapsed since the wage rates in the award were increased to reflect the first instalment of the safety net adjustment arising out of the July 1998 State Wage Case.*
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And you will see in paragraph (1) above that, there's discussion about the first operative date. It says:

70 *In the circumstances, having regard to the view we take of the economic arguments, we see no reason to depart from the 14 July*

and it's the operative date is effectively what they were saying.

Then you'll see in page 3 of F.3 there is an extract of Principle 8 of those Wage Fixing Principles, and again they reiterate what was to occur, but it appears that at this point in time there was an

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administrative error and no orders were issued by the commission to give effect to that full bench decision.

80 So if I can then take the commission to a fortnight after that event and this perhaps is why that administrative oversight occurred, I'd seek to tender a copy of both a schedule and transcript of proceedings in matter number T8239 of 1999 and that was an application, commissioner, to vary the Roadmakers Award to give effect to the fourth minimum rate adjustment.

85 COMMISSIONER: Yes, we'll mark the transcript **EXHIBIT F.4** and the extract from the order **EXHIBIT F.5**.

MR FLANAGAN: And if I can take you to F.4, commissioner, in particular to page 1 of the transcript to line 26, the second-last paragraph, the union had tendered an amended schedule which is F.5 in these proceedings which had been marked as AWU.1 and we said:

90 *In making the amendment, the union has had regard to Principle 8 of the State Wage Case of 1999 which indicates that there was general variation effective from 1 August 1999 of \$12 for a number of awards of the commission, and I'll take the commission to that particular principle and its relevance in the course of the proceedings.*
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In addition to expressing the safety net adjustment as \$60 [and we continue on].

100 Now the relevance there, commissioner, is that we had assumed in the application which was before you as a minimum rates adjustment that the \$12 had in fact been applied and if you have a look at F.5, you'll see that headed there - or identified there under the heading, Safety Net Adjustment, there's a figure of \$60. And in fact that general order had not been made but it had been incorporated on the assumption of the parties that the \$12 had been applied in accordance with the 1999 State Wage Case.
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And it appears that there may have been some confusion at that point in time. So that may explain why there's a difficulty there.

The next matter that arose was the commission's decision - the 2000 State Wage Case and again I'd seek to tender an extract of that.

110 COMMISSIONER: **EXHIBIT F.6**.

MR FLANAGAN: Now, commissioner, again the front page of F.6 simply identifies F.6 as an extract of the year 2000 State Wage Case. If I can take you to the second page, it's an extract of the actual decision on page 11. The commission again at point 1 identifies the safety net adjustment amount of \$15 per week and in point 2 identified again the criteria that the existing - I beg your pardon, for the award to be
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further varied to reflect this decision the award had to have been previously varied in accordance with the July 1999 State Wage Case and that 12 months had have elapsed.

120 Now, commissioner, if the orders had have been issued, to give effect to the previous decision that we referred to by the full bench in the 1998 State Wage Case, then it would have been clear that in fact this award had satisfied those two criteria. But, in the absence of the order to reflect the previous State Wage Case it appears that it was taken
125 that the award did not satisfy the criteria and again no orders were issued by the commission to reflect the State Wage Case decision.

So in our view the award which is before you was not only entitled in accordance with the 1998 State Wage Case decision to the then \$12, but it was now entitled on 1 August 2000 to the \$15 to reflect the
130 decision in T9062 of 2000.

And that takes us to the final exhibit that I need to tender in these proceedings, and that is, this year's 2001 State Wage Case. Given that it's substantially smaller than some of the previous decisions, I've copied the entire document rather than simply an extract.

135 COMMISSIONER: **EXHIBIT F.7.**

MR FLANAGAN: You'll see, commissioner, in F.7 the commission again identified - and this is in paragraph 2 on page 1 of F.7 - in paragraph 2 the commission again identified at point 1 the amount of the safety net adjustment and at point 2 again identified the criteria
140 which applied, and again reiterated the previous criteria, that being that the award had been varied to reflect the previous State Wage Case and further, that 12 months had elapsed and in our submission whilst the previous State Wage Case had in fact done that, the actual orders to the commission again were not issued and therefore again in the
145 circumstances of this year's State Wage Case orders have not been issued.

So in conclusion then, commissioner, what we're really seeking to do with this matter is not to use it as such as the vehicle for variation of the award but simply to draw to the attention of the commission that
150 there has been an administrative oversight and that we would and do seek from the commission that orders be issued to give effect to the full bench decision of this year in relation to the safety net adjustment; the full bench decision of last year to give effect to that decision, and the full bench decision of the year before to give effect to that.

155 Now if it is of any assistance to the commission, the union is happy to draft and provide to the commission variations which would identify the movement which should have occurred by way of order to reflect those decisions and we'd certainly be happy to have discussions with the TCCI so that the documents which are provided are provided on an
160 agreed basis. If it pleases the commission.

COMMISSIONER: Yes, thanks, Mr Flanagan. Mr Edwards?

165 MR EDWARDS: Yes, I wonder, commissioner, if I might ask if we could go off the record for a moment just to explore a couple of issues that arise from Mr Flanagan's submissions that I don't particularly wish to make part of the formal proceedings but which I would like to explore with the commission. If it please.

COMMISSIONER: Yes, thanks, Mr Edwards. We'll go off the record.

OFF RECORD 9.47am

ON RECORD 9.50am

170 MR EDWARDS: Thank you, commissioner, and thank you for that opportunity. The TCCI's perspective is that we acknowledge the submissions made by the AWU in this matter and particularly the way in which Mr Flanagan has traced the various State Wage Case increases that have occurred during the last four years and we don't
175 take any issue with the submission he's made. If it please the commission.

COMMISSIONER: Yes. Thanks, Mr Edwards. Nothing else, Mr Flanagan?

MR FLANAGAN: Nothing further, thank you, commissioner.

180 COMMISSIONER: Thank you, gentlemen. The commission is indebted to the parties particularly the AWU for the elucidation of the history of this matter and as a result an order or orders will be issued upon receipt from the union having had consultation further with the chamber.

185 Thank you, the matter is closed.

HEARING CONCLUDED 9.51am