

HEARING RECOMMENCED 10.59am

COMMISSIONER: I'll take appearances in this matter, please.

MR I. PATERSON: If the commission pleases, IAN PATERSON, appearing for the Australian Municipal Administrative, Clerical and Services Union.

COMMISSIONER: Thank you.

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

COMMISSIONER: Thank you.

MR P. RICHARDSON: If the commission pleases, RICHARDSON P., appearing for the National Union of Workers, along with STRICKLAND D.

COMMISSIONER: The Tasmanian Branch, I take it?

MR RICHARDSON: I beg your pardon, sir.

COMMISSIONER: Thank you.

MR P. NOONAN: If the commission pleases, I appear on behalf of the Shop, Distributive and Allied Employees Association, Tasmanian Branch, NOONAN P.

COMMISSIONER: Thank you.

MR A. FLOOD: ANDREW FLOOD, from the Tasmanian Chamber of Commerce and Industry and I also appear on behalf of the Hop Producers' Association of Tasmania.

COMMISSIONER: Good. Right. Whom shall I return to for report in relation to this matter?

MR FLOOD: Commissioner, everyone seems to be looking at me, so I'll kick off and see how far we can get with it. I had intended today to provide yourself and the union parties with a draft order. I believe that virtually everything in that draft order has been agreed upon, however, Mr Richardson contacted me by telephone yesterday and has advised me that there is some disagreement now on relativities, particularly for people involved in wool classing and also for storeman, I think it was, at the lower levels.

Commissioner, as that telephone conversation was only yesterday, I've not had any time to respond to that.

COMMISSIONER: When did your document go out?

MR FLOOD: I intended to provide that today, commissioner. It's essentially the same as what's already been provided to the parties and it was provided, I think, on 22 October.

5 COMMISSIONER: So there's been no documents sent out to any of the parties at this stage?

MR FLOOD: No. Only the one that was sent out on 22 October. There was a draft then.

COMMISSIONER: The document you're talking about distributing today, the difference is what?

10 MR FLOOD: The differences, commissioner, are, firstly, in relation to the parental leave provisions. In our previous discussions Mr Paterson believed that the TTLC and the TCCI had actually agreed on a clause, a replacement clause to go into all awards. The advice that I received from our advocate who was looking after that matter, was that the
15 final agreement hasn't been reached as yet. Given that -

COMMISSIONER: I have to say, it's totally different to the commission's view.

MR FLOOD: I thought that might have been the case.

20 COMMISSIONER: And there's been a letter, even in my possession from the president, that informs me that the parties have reached agreement and asked me to note when doing award review matters -

MR FLOOD: So you will insert that clause of your own volition, commissioner or with the consent of the parties?

25 COMMISSIONER: The drafting committee, as far as I'm concerned, have agreed.

MR FLOOD: Yes, all right.

COMMISSIONER: And that's the president's view and he chaired it and he forwarded correspondence to me to that effect.

30 MR FLOOD: Well, of course, that leaves me, with somewhat of a problem because my people have told me otherwise.

MR PATERSON: If I may, very briefly on that matter, I believe it was you yourself, commissioner, who raised at the last hearing that this matter had been -

COMMISSIONER: I did because I had it in the back of my mind.

35 MR PATERSON: - finalised. I did contact the Trades and Labor Council and had faxed to me copies of correspondence from Ms Fitzgerald to the president, the president's letter back to Ms Fitzgerald

and I believe there was also attached with that - I don't think I have the copy, the TTLIC correspondence to the Chamber of Commerce and Industry and I have provided to Mr Flood - I believe I provided by e-mail the copy of that new standard clause.

5 MR FLOOD: Sir, what I had done in the draft that I intended to provide today, was to reinsert, if you like, the old provisions which, given your comments, probably wasn't correct. I've also sought to update the wage rates, given that there's been a \$12 safety net adjustment since the draft was first issued and from memory,
10 commissioner, that was about it.

They weren't particularly substantial changes but as I said, Mr Richardson has now contacted me and said that they don't agree with some of the relativities and they do relate, as I've said, to wool classers. It's not a huge area of employment in Tasmania and I think that's
15 probably a matter that we can resolve fairly quickly.

COMMISSIONER: Yes, right, especially seeing that we've got a Shearing and Woolclassing Award.

Right. Why do we leave it to the last moment to do these things, when it's been around for so long? Mr Richardson?

20 MR RICHARDSON: Well, perhaps I might respond to that, commissioner. Commissioner, I only became aware of this application about two weeks ago and only had the first opportunity to examine a draft dated November of last year the other day.

The union was initially under the impression, that has often been the
25 case, with the application of both the structural efficiency principles and the minimum rates adjustments principles, that proposals for both relativities and proposals for classifications are the subject of either some process of trial as occurred in many awards of this commission in 1991 and 1992 or the subject of some interim
30 agreement but then subject to modification.

COMMISSIONER: I'll be interested to know which awards of this commission had trial.

MR RICHARDSON: Yes, commissioner, the Wholesale Trades Award, the Plastic and Fibreglass Award, which was before the commission as
35 presently constituted.

COMMISSIONER: Consent?

MR RICHARDSON: Those matters were consent, that is correct.

COMMISSIONER: That is right.

MR RICHARDSON: Although the Wholesale Trades wasn't consent. In fact the Wholesale Trades was the subject of arbitration proceedings before the president, both as to the construct of a classification structure and whether or not that structure ought be integrated in the sense that it ought provide for one structure for all the occupations and classifications covered by that award.

COMMISSIONER: Yes. So it was the principle arbitrated, wasn't it?

MR RICHARDSON: That is correct, yes.

COMMISSIONER: Yes, the same as I arbitrated the same principle in the metal industry?

MR RICHARDSON: Yes.

COMMISSIONER: Now, that's two awards. You've got about 198 to go.

MR RICHARDSON: Yes, commissioner, I probably do, however, I would feel safe in saying that in respect of the majority of awards to which this union is respondent, that is the process that was followed in 1991 and 1992. In fact, it was the very same process that this union put to the TCI, as they then were, in December 1991 when it forwarded a proposal on the implementation of the structural efficiency principle to this award and also a proposal for the implementation of the minimum rate adjustment process, a proposal that I note was never formally responded to by the employer organisations.

Sir, the TCCI's proposal, as it relates to the wool stores classifications, results in minimum rates, or would if granted by the commission, results in minimum rates that are less than those that have been set in awards generally and specifically proposes a relativity for the classification of wool classer which is generally within wool stores acknowledged as a trades level equivalent that is less than the one hundred per cent relativity.

The second issue that the union takes with the proposal is that if it were successful in either convincing the employers or convincing the commission that the relativities for the wool store are skewed and incorrect, then it follows from that that some of the proposed definitions within the classification structure are improperly allocated to respective relativities.

Further to that, we make the observation that the classification structure contains no real relevance to that work that is performed in wool stores, that is performed in grain stores and that is performed in skin and hide stores. Again, we refer back to the union's proposal of December 1991, which we say more properly encompassed the duties

and the indicative tasks and the competencies, that employees engaged in that sector of the industry, all perform.

5 I think if I heard Mr Flood correctly, the differences between us are not substantial and perhaps can be resolved in the form of a conference between the parties. If the commission pleases.

COMMISSIONER: Thank you. Any other comments?

MR FLOOD: No, I have no comments, commissioner.

COMMISSIONER: What's the proposal?

10 MR FLOOD: Well, from here, commissioner, in relation to the wool classers and as I said, this was sprung on us at the last moment, despite Mr Richardson's comments that his union provided a draft to us in December 1991 and we didn't respond. I'm unaware of the circumstances of that but it was certainly in the NUW's hands to further that matter if that's what they wished to have done.

15 It has been sprung on us, commissioner. I envisaged, as I said, that this doesn't involve, from our side of it, a large number of employers or a large number of employees and I, from my limited knowledge of the industry, think that we may be able to come to some agreement with the NUW. However, I am unable to give any indication as to that until
20 I've had a talk to my members about it.

COMMISSIONER: No other submissions?

MR NOONAN: Yes, Mr Commissioner. I would endorse the NWU's position in relation to a conference at some stage. I'm a bit of a late arrival in this involvement with the Produce Award and I would just
25 like to raise a couple of points with Mr Flood, that I believe there shouldn't be any real problem with our position. If the commission pleases.

COMMISSIONER: Right. So, this matter is adjourned indefinitely, is it?

30 MR PATERSON: If the commission pleases, subject to what the other parties may submit to you, I think it would be to our considerable advantage to receive the documentation that Mr Flood has prepared, to adjourn for a short period of time to identify what those differences are, to identify whether they are ones that require substantial
35 amendment or whether they are amendments that can be handled discretely without an impact on the majority or the substantive provisions of the proposed draft.

40 If that is the case, I would be thinking that we should be in a position to report back to you within maybe twelve, or something like that, as to what is agreed and what is not agreed and if the matters, as I

understand, the SDA'S issues from discussions with Mr Noonan and the NUW's issues from their submissions today, they ought to be matters that should be able to be progressed fairly expeditiously without upsetting the whole cart.

5 My union's position on this, whilst I see some deficiencies in the proposal compared to other models of restructuring, I am satisfied that the Chamber of Commerce and Industry proposal does in fact mirror a model adopted by this commission, being the Automotive Trades Award and given that this award has languished for so long, I'm more
10 than happy to accept the deficiencies that might come with accepting that model over other models so I'm very keen to see us progress this matter, to receive the TCCI's draft, to identify what in fact are the problems that the other unions have, which may be problems when identified that I also will support. I think, for the most part, they will
15 be problems that are of no interest to my union and then to be able to report back to you today on what the progress might be from there. If the commission pleases.

COMMISSIONER: Thank you. Mr Flanagan?

MR FLANAGAN: Mr Commissioner, we'd support and endorse the
20 proposition that there be a conference. We have a preference for that conference to take place this morning. This application actually has a direct impact on the Butter and Cheese matter. A part of the discussions that were held between this union, the Australian Services Union, the National Union of Workers and the TCCI was that we would
25 have regard to the Produce Award as the model for the structure for the classifications under Butter and Cheese, so we would be anxious for the process identified by Mr Paterson to move forward this morning with that report back. If it pleases the commission.

COMMISSIONER: The matter stands adjourned until twelve o'clock.

30 **HEARING ADJOURNED 11.43am**

HEARING RESUMED 12.02pm

COMMISSIONER: Who shall I turn to? Mr Flood?

MR FLOOD: Yes, I'll report, thank you, commissioner. During the
35 course of the conference that we've just had, Mr Noonan of the SDA has raised a couple of matters that he would like to see included in the proposed restructured award. One of those is - the existing award provides for superannuation contributions to be paid on a monthly basis and the proposed award hasn't got that in there.

I have advised Mr Noonan that subject to myself considering the whole
40 of the existing Produce Award rather than just the provisions that Mr Noonan was looking at, I can't see a great problem with that and I think that that will be agreed. I'll give Mr Noonan and the other parties

a response to that when I respond to the rest of the matters which I'll address in a minute.

5 The other thing Mr Noonan would like to see in the proposed restructured award was at wage level 6 a definition for an automotive parts interpreter, which is, Mr Noonan tells me, a trade equivalent position and we haven't allowed for that in the proposed new award and again, commissioner, I can't see a problem with that from my side of things.

10 In relation to the matters that the NUW wished to raise, they were, as we have already indicated to you, mainly relating to wool classer classifications and also in relation to the whole classification structure, doesn't really appear to allow for wool stores and grain stores and Mr Richardson has suggested that we import some of the indicative tasks that were suggested by the NUW in their document
15 that they provided to the TCCI back in 1991 and again, commissioner, I can't see that - whilst I haven't given our agreement to that at this stage, I can't see that that's going to be a particular problem.

20 There are a couple of other things that we need to address with the existing - the draft that I have provided to the union parties and perhaps I might provide a copy to yourself. There are some changes to be made to that, commissioner, as well in relation to the trainee -

COMMISSIONER: **EXHIBIT TCCI.1.**

25 MR FLOOD: In relation to the trainee provisions, commissioner, and the ASU have provided us with a proposal for new provisions but we aren't agreed on those so we'll agree to retain the existing trainee provisions from the award.

We will also, as we have already discussed, need to change the parental leave provisions as well. So, where we go from here, commissioner, I envisage -

30 COMMISSIONER: Did you have a look at the scope of the award? Are you going to review the scope?

MR FLOOD: Well, we did look at it but it was not -

35 COMMISSIONER: For example, I had a dispute not very long ago and there was some huge debate about what is artificial manure. This is the time to have a look at some of those things as well, I think.

MR FLOOD: I agree that if there is a problem with the existing scope, it's probably the appropriate time to have a look at it.

COMMISSIONER: Yes.

MR FLOOD: I was going to suggest to you, that from here I will expect that I would be able to respond to the union's to the matters that the NUW and SDA raised today and hopefully, all things being equal, we would be able to come back before you with an agreed document on 9 December, which is at the same time as the previous matter that was before you. However, if we're going to look at an issue such as scope which is fairly important, perhaps the most important provision in the award, it may take some more time.

COMMISSIONER: Well, I just think part of the award review process is to look at a number of things including the scope and even award interests and things like that as well. Have, for example, all those organisations now got an interest in the award? Say, for example, does the CFMEU have an interest in the award?

MR FLOOD: Yes.

COMMISSIONER: I just thought auctioneering and artificial manure - the industry of artificial manure, what is it? I don't know. We had this argument - it was associated with a dispute about a firm that was involved in composting materials and mulching, making up mulching and things like that.

We got into an argument about whether this was artificial manure. I just don't know what is meant by it, that's all, and I think it might be a time to just review that. What does it mean? And fruit agents - I take it we mean with fruit agents, they're the people that are exporting fruit overseas, are they? What are fruit agents, or are they additives to fruit?

MR FLOOD: I've got to say, commissioner, I don't know. It reinforces your comments.

COMMISSIONER: Yes. I think if we're talking about agents involved in exporting of fruit, maybe we need to say that. I don't know what fruit agents are. They could be chemicals for all I know. I just raise those couple of issues that you might have a look at, just to clarify any potential disputes in relation to who the award applies to. It might be the appropriate time. If we're talking about makers and distributors of compost and all that, well, maybe we should say that.

MR FLOOD: We do need to be careful though that we don't get into the scope of other awards of course.

COMMISSIONER: That's exactly right, yes.

MR FLOOD: Including the Plant Nurseries Award.

COMMISSIONER: Yes. And if we don't know what the industry of artificial manure means, then it should be removed, if you don't know what it means. Anyway, I just raise those issues because I think

they're important if we're looking at an industry-based award, what industry are we talking about? I'm not too sure that we have an industry of artificial manure and I can't understand what the industry of fruit agents is. I don't know what industry that is.

5 Keep in mind that the scope of this award probably hasn't been reviewed since the minister first wrote the scope of this award back in the late 60s or something.

MR FLOOD: I guess you'd be right.

10 COMMISSIONER: Under the old Industrial Boards system. Anyway, I just ask that you take it on board.

MR FLOOD: Perhaps, commissioner, to further that, when I provide my response to the union parties on those other matters, I might make some suggestions on that and perhaps if any of the union parties have any comments to make on the scope before then, I'd certainly be
15 happy to receive that.

COMMISSIONER: Well, the proposition before me is that this matter be adjourned and relisted on 9 December.

MR FLOOD: That is correct, commissioner, yes.

COMMISSIONER: Any further submissions?

20 MR PATERSON: If I may make a brief submission, mainly to vary our application to facilitate this proceeding happening in the way we've envisaged. This is similar to the previous matter before you.

COMMISSIONER: **EXHIBIT ASU.1.**

25 MR PATERSON: This just goes to broadening the application to cover the structural efficiency, minimum rates and award review principles of this commission. It broadens the application to cover all the matters the parties seek to do here. If the commission pleases.

COMMISSIONER: Any objection to the application being amended?

MR FLOOD: I have no objection, commissioner.

30 COMMISSIONER: No objections? Leave is granted, Mr Paterson.

Well, there being no further submissions, this matter is adjourned until 9 December. Have the parties any view on the time on that date? The matter I heard earlier this morning will be listed for 11.30.

35 MR FLOOD: Commissioner, I have no objection to any time in the day, although I would appreciate it if it wasn't too early. Thank you.

COMMISSIONER: How about if I list it at 11.30 as it seems to me that the same parties are involved, similar parties, anyway. I will list them both at 11.30 and we'll go from one to the other.

The matter is now adjourned.

5 **HEARING ADJOURNED 12.14pm**