

**HEARING RECOMMENCED 9.19am**

COMMISSIONER: Changes in appearances. I think Mr Watson appeared last time.

5 **MR O'NEILL:** Yes, there is one - that's right. If it pleases the commission, O'NEILL J., appearing for the Tasmanian Chamber of Commerce and Industry Limited and if I could just take this opportunity to apologise to the commission and to Mr Pyrke, but I had ten o'clock in my schedule so one can only go by what's in the schedule, but if you put the incorrect time in, these things happen and  
10 I apologise.

COMMISSIONER: Thank you. On the last occasion I think the TCCI were going to look to see whether or not there could be agreement reached and I guess we'll hear from you firstly, Mr Pyrke, as to what stage we're up to.

15 **MR PYRKE:** Yes, thanks, commissioner. The short answer is yes, that there is some agreement but we'll go into the details shortly.

Commissioner, this is an application under Principle 16 of the award review process of the current Wage Fixing Principles of this commission. That being the case, I've had regard for the principles and  
20 also the industrial commission's memo of 5 February 1998 in drawing up the draft which is before you.

In particular, we've addressed the following requirements of the award review process. Firstly, consistent award formatting, and in doing so we've followed the format that was resolved between the commission  
25 and the various parties - it must have been in late 1997. We believe that we've removed any discriminatory provisions that were in the award. We believe that we've removed obsolete provisions and amended inaccurate award provisions.

30 An example of an obsolete provision, in our view, was the reference that the old award had to a - I think it was an unqualified engineer. Yes, there was a definition of a non graduate engineer and that was deemed to be redundant because that was a hangover from the way that engineers were trained thirty or forty years ago and by agreement with the TCCI that's been deleted.

35 We've also updated Clause 6 - Parties and Persons Bound and in so doing we follow what I understand to be the preferred format of the industrial commission that now refers to, I believe, award interest - yes, just award interest and within the actual clause itself I believe we've followed the required format that's been prescribed by the  
40 commission.

In terms of rewriting the award in plain English, I believe that it's in plain English and I think you've seen various drafts of it and you've

made no comment in that regard so I'm concluding that we've managed to achieve that end, but obviously, if you've got a view that we need to take into account, you'll let us know in due course.

5 There are facilitative provisions in the award and I guess the most obvious example there is in carer's leave; that's when the carer's leave test case standard was put into the award, there were a range of facilitative matters also put in at the same time. In terms of enterprise flexibility, this award has long had an enterprise flexibility clause in it. That covers off the particular points in Principle 16 - Award Review  
10 Process.

But moving on now to the commission's memo of 5 February 1998, there's a range of more specific items in there. The first of these which I have addressed already goes to the scope clause and the requirement there is that the scope clause should stand alone a be able to be read  
15 without reference to the definitions and we've addressed that by moving into the scope clause the definition of professional engineering duties and professional scientific duties. They came out of what was previously the general definitions clause.

I believe now that the definitions clause contains only general  
20 definitions, and in particular, I refer to the definitions of professional engineer and professional scientist.

In the commission's memorandum there was also a requirement that classification descriptors become the standard term for what was previously things such as classification standards and descriptions and  
25 I believe we followed that in drawing up the new award.

We've included all award categories of employment in Part 2 - Employment Relationship and Associated Matters. Now that in this particular draft is a change from what was the old award because basically the old award was silent on those matters and I'll go in more  
30 detail into those particular changes in due course. But at this stage I'm just going through the changes and how they line up with the commission's memorandum.

The memorandum also made a prescription in relation to supersession and I believe we've followed the commission's standard requirements  
35 on that.

Another requirement of the memorandum was to refer to bereavement leave and not compassionate leave, and again we've complied there.

That's about it of the specific requirements included in that memorandum of the Industrial Relations Commission of 5 February  
40 1998.

So they're the matters which I understand to be the specific requirements of the award review exercise. Having said that we've gone

beyond the specific requirements of that exercise, I believe, by agreement with the TCCI and I'll just take you now to the particular changes that we're talking about there.

5 Firstly, in Part 2 - Employment Relationship and Related Matters, we've inserted a number of employment categories and to make those work properly we've also inserted a number of definitions.

10 Now the purpose in doing that is to basically avoid the scope for disputation. Clearly, if you have an award which doesn't have part-time or casual or fixed term, the question arises as to what someone ought to get paid if they're engaged in that manner and basically to head off the possibility of disputation arising around that omission - that previous omission inserted a range of categories there and definitions.

15 To me they make sense and I understand they make sense to the TCCI. You've had the document for, I believe, a week so can I ask if you have any questions on that?

COMMISSIONER: No. Look, from what I can see it looks fine, particularly the casual definition, that seems very clear.

20 MR PYRKE: Thank you, yes. And to terms of the actual prescriptions under the heading Employment Categories, basically we've followed, I guess, other standards of the commission in terms of the loading for casual employment which is 20 per cent and basically I think there's no departures from what may seem to be the normal way of doing things.

25 Moving to the next bunch of substantive changes. They are Part 5 - Hours of Work and Overtime. Basically I had the view that there was a problem with the previous award prescription in that it didn't prescribe a particular number of hours in the award. What it said was, well, engineers and scientists should take their hours from the award or  
30 instrument which applies to the majority of employment categories in a particular workplace, that to me had the inherent limitation that it didn't cover off the situation where engineers or scientists happened to be the majority in a workplace. So basically it seemed to me that there was a need to insert into this award the number of hours we were  
35 talking about and similar comments prevail in terms of overtime. Again, there was a reference to what happened to the majority number of employees in that workplace.

40 That's a view that I put to the TCCI and they subsequently consulted with their members and I understand that they've got their consent on that, but I guess Mr O'Neill will speak to them in due course

And the third major change - or a substantive change to the award was the insertion into Part 7 - Consultation and Dispute Resolution, Clause 2 - Disputes and Grievance Procedure. And again, I understand that to

that to be a requirement of the commission.

5 So, commissioner, those are the substantive changes that have been made to the award over and above the award review process. As I say, I understand it's been done by consent. I believe that the changes that are in this application are consistent with the Wage Fixing Principles and that being the case I think they're also consistent with the public interest.

10 On the basis of this submission, I think it's open to you to vary the award in the manner sought and if you agree, we ask you to do so on the first period commencing on or after today's date. If the commission pleases.

COMMISSIONER: Thank you. Mr O'Neill?

15 MR O'NEILL: Yes, thank you, commissioner. Yes, this is a consent matter and there has been discussion between the TCCI and APESMA in relation to this matter. The TCCI has also consulted its members in respect of the changes as outlined by Mr Pyrke. We say that the draft award before you is in accordance with Principle 16 of the commission's Wage Fixing Principles and complies with the commission's memorandum of 5 February 1998.

20 As to the inclusions in the award, namely the hours of work and the overtime provision, as I indicated we have consulted our members and there has been no adverse comment in regard to that and therefore we say that the award should be made and varied and on or after today's date being the effective date of the operation of that award. If it pleases.

COMMISSIONER: Thank you. Well, I can indicate that I will be varying the award in the manner with the operative date on the first full pay period on or after today's date.

30 Just before we finish, if I could ask you to remain after the hearing to talk to Ms Broomhall about some minor sort of matters to do with the final document. So the matter is adjourned and the decision will issue in due course.

**HEARING ADJOURNED 9.31am**