

COMMISSIONER: I'll take appearances, please.

MR T.J. EDWARDS: If it please the commission, I appear for the Tasmanian Chamber of Commerce and Industry. Appearing with me is **MR R. BROWN**. My name is EDWARDS T., in all matters, sir.

5 COMMISSIONER: In all matters. Right.

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

COMMISSIONER: Good. Appearing in both matters?

MS FITZGERALD: Yes, in both matters.

10 **MR I. WAKEFIELD:** If the commission pleases, a change of appearance for the Australian Workers Union, WAKEFIELD I.

COMMISSIONER: Good. Thank you.

MR P. NOONAN: If the commission pleases, I seek leave to intervene on both matters, NOONAN P., on behalf of the Shop Distributors and
15 Allied Employees Association, Tasmanian Branch.

COMMISSIONER: Thanks, Mr Noonan.

MR I. PATERSON: If the commission pleases, IAN PATERSON. I seek leave to intervene on behalf of the Australian Municipal Administrative, Clerical and Services Union, in both matters.

20 COMMISSIONER: Thank you.

MR C. BROWN: If the commission pleases, C. BROWN, seeking leave to intervene - Health Services Union of Australia, Tasmania No. 1 Branch.

25 COMMISSIONER: No objection to the interventions? No objection, so leave is granted. Is it the wish of the parties that we deal with these applications together?

MR EDWARDS: That would be my submission, commissioner.

COMMISSIONER: Right. Is that in agreement with the TTLC?

MS FITZGERALD: Yes, that's supported.

30 COMMISSIONER: No objections, so we'll deal with them together. Mr Edwards?

MR EDWARDS: Thank you, commissioner. A couple of procedural and tidying up matters, first if I might, and I think I will commence by seeking leave to amend the TCCI application and in fact seek leave to

amend the draft order as well that I tendered on the last day of proceedings, by incorporating provisions for school-based traineeships.

5 Commissioner, in that regard if I could refer you to the exhibit I tendered on the last day of proceedings which I've recorded as exhibit TCCI.2 but I might note for the record that I've made both of my exhibits TCCI.2, so I'm confused as to which one it is but it's the National Training Wage Award 1994 of the Australian Commission, Print 2738.

COMMISSIONER: Yes, that's right.

10 MR EDWARDS: If I could take the commission to page 3 of that document, to item (vii) at the bottom of the page where it talks about school-based traineeships and then has a table showing the relative wage rates and it's those provisions, sir, that I would seek to now include in the TCCI application and also therefore to have it
15 incorporated in the appropriate place in exhibit TCCI.1, which is the draft order that I tendered on the last day of proceedings. If I could seek leave to do that, commissioner.

COMMISSIONER: Any objection? No objection. Leave is granted.

20 MR EDWARDS: Thank you, commissioner. Commissioner, immediately prior to the commencement of proceedings this morning, I did pass to your associate a proposed exhibit, being the transcript of proceedings before Commissioner Laing of the Australian Industrial Relations Commission.

COMMISSIONER: **EXHIBIT TCCI.3.**

25 MR EDWARDS: Thank you, commissioner. Exhibit TCCI.3 is the transcript in proceedings matters C32910 of 1997 and C33459 of 1997 before the Australian Industrial Relations Commission, which sought a number of things. And by way of explanation, if I could take the commission to the submission of Mr Richardson for the applicant, the
30 National Union of Workers in that matter, at the bottom of page 2 of the transcript, at the commencement of about line 33, where Mr Richardson said:

35 Sir, the two matters before you are to vary the National Training Wage Interim Award 1994, the first of those, namely, C32910 of 1997 seeks to vary the award in respect of the application of the \$10 arbitrated safety net adjustment available under the April 1997 decision. And at the top of page 3: and the second matter, C33459 of 1997 seeks to vary the award in respect of a number of new provisions dealing with part-time traineeships.

40 I cease quoting at that point. That transcript, sir, goes in quite some considerable detail to the reasoning of the parties behind the incorporation of part-time traineeship provisions into the federal

5 National Training Wage Award. The submission of Mr Palace for the ACTU was the primary submission before the commission in that respect and Mr Palace goes to considerable pains to outline the reasoning behind, particularly, the ACTU's support for the incorporation of part-time traineeship provisions into that award.

It additionally outlines the mechanisms put in place by the Australian Government in terms of the creation of part-time traineeships and school-based traineeships.

10 Unless the commission specifically requires me to do so, it wouldn't be my intention to wade laboriously through that transcript. What I would do is indicate that in our view the submissions of Mr Palace are quite fulsome. They detail in a very comprehensive way, the reasons behind the changes to the training wage arrangements and we would adopt, as appropriate, those remarks by Mr Palace and indicate that
15 Mr Palace's remarks were in turn supported by other persons in attendance at those proceedings and probably from my own point of view, the most remarkable of those was that by Mr Hamilton for the Australian Chamber of Commerce and Industry and a variety of other employer organisations.

20 There was some minor objections put forward by the Victorian and Tasmanian Automobile Chambers of Commerce and the Motor Trades Association of New South Wales but that goes to a fairly limited issue relating to the extent to which the National Training Wage Award may impact on traditional apprenticeships for which the VACC, TACC and
25 MTA(NSW) were given leave reserved to make application because they might be advised some time in the future if those were to be real issues. So they were the only objections raised by any organisation in the proceedings before Commissioner Laing.

30 The reason, in shorthand terms, that the application was made federally and the reason we seek to flow it at a state level, is that the Australian Government has now created the concept of part-time traineeships. They have done it both at the school level and generally and it is important that there be some underpinning industrial relations arrangement in place to ensure that those arrangements are
35 proceeded with on a basis that no one will be disadvantaged and that is it is not open to exploitation.

You will note in the transcript of the proceedings before Commissioner Laing that the ACTU were at great pains to explain that a significant part of the reasoning that they had supported the incorporation of the
40 part-time provisions into the federal award was because they felt employers could exploit trainees by the use of AWAs or other forms of agreement that weren't necessarily regulated by the Australian Commission and could have led to a situation where there was some disadvantage to the young people concerned and it was those
45 protections they were seeking to put in place.

I don't necessarily subscribe entirely to the views that were being put forward by Mr Palace in that regard and nor does my organisation but nevertheless, we do ascribe to the view that trainees ought to have in place a proper regime of industrial relations protection and it is that
5 that this application by the TCCI seeks to put in place.

Commissioner, I know you're aware from your previous involvement in the creation of the National Training Wage Award by way of a variety of applications made back in June 1995 and most particularly, those that were made by the TCCI which were those finally proceeded with in
10 matters T5535, 36, 37 and 38 of 1995, that the origins of this award is that it is, so far as is possible under our legislation, a mirror image of the federal National Training Wage Interim Award, as it was then called and it is the intention of the TCCI application to maintain, so far as is reasonably possible, that mirror imagining of the federal award.

15 It is important, in our view, that rates struck for trainees ought to be common no matter where the trainee is engaged. It is certainly the case in this state that a large number of trainees are engaged under federal award provisions and a large number are also engaged under state award provisions and there should be no reason why those two
20 rates should be disparate between the two groups, nor indeed why people under state awards should be denied access to traineeships simply because we don't have part-time provisions properly ensconced within our Training Wage Award.

They are, in effect, the submissions, commissioner, that we would
25 make in support of our application. We believe that nexus is a strong nexus and one that ought to be maintained. There are good public interest reasons for doing so.

We also say in that regard, that the public interest will be served by the successful prosecution of this application because it will enable a
30 significant number of young people to enter traineeships at a fairly early date, which I think is very much to the good in the situation of the unemployment numbers that were released yesterday.

I am advised, quite authoritatively, that there are a number of employers that are simply awaiting the outcome of these proceedings
35 to put part-time trainee people into positions. I am advised that from a number of sources, both from some group training companies, also a number of direct employers of labour who are members of the TCCI and I've also been advised independently by the SDAEA that a situation of that nature does exist in the retail industry, where people
40 are ready to start but are awaiting for the industrial relations underpinning to enable them to proceed.

In that regard, sir, we would make the submission that the public interest would be served by the successful prosecution of this application.

In terms of the Wage Fixing Principles of the commission, it is my view that this application can proceed quite comfortably under Principle 2 - Structural Efficiency. In that regard, in the commission's most recent State Wage Case decision of July 1997, in the appendix to that decision, the bench set out the new principles relating to structural efficiency and at about the sixth line, the bench says:

The structural efficiency principle provides a framework through which it is intended that the parties to an award should cooperate positively in continuing review of that award with a view to implementing measures to improve the efficiency of industry and enterprises and to provide employees with access to more varied, fulfilling and better paid jobs.

In this instance the variation would provide access to jobs rather than vary jobs.

At page (ii) of that attachment to the principles, at the third dot point, one of the principles is ensuring that working patterns and arrangements enhance flexibility and efficiency of industry and enterprises and we believe the introduction of part-time traineeships will do that.

At the eighth dot point, the principle records, examining both award and non-award matters to test whether work classifications and basic work patterns and arrangements are appropriately examined to include specific consideration of 1) the contract of employment including the employment of casual, part-time, temporary, fixed term and seasonal employees.

That examination can proceed more effectively with the provisions in place through the award for the engagement of part-time trainees, sir, and in that regard we would argue that the principles of wage fixation are met by this application.

I think, sir, that would be the submission we would make on this point. We would obviously reserve our right to make further submissions in respect of the applications by the Tasmanian Trades and Labor Council. All I would simply do is just indicate, sir, that we have had discussions with the Labor Council on their applications and certainly it is our intention that they would proceed by consent. If it please the commission.

COMMISSIONER: Good.

MR EDWARDS: Operative date, sir, subject to the other matter that is before the commission and given the joinder of the matters, we would be putting a submission that this matter should be operative from the beginning of the first pay period to commence on or after today's date and we will in fact be making a submission that there

should be a common operative date for all variations to the award arising from these proceedings. If it please the commission.

COMMISSIONER: In relation to your draft order, will you be presenting a new draft order or do you want me to incorporate -

5 MR EDWARDS: I think it probably would be wise, sir, if I did do a revised draft order. In fact, what I was going to suggest towards the end of these proceedings, if the parties might perhaps be directed to confer and we'll produce a consolidated draft order which would pick up all of the variations from my application and from Ms Fitzgerald's
10 application.

COMMISSIONER: Right. I can see Mr Baker is trying to raise his hand and jump in here, is he?

MR P. BAKER: No. Perhaps if I may enter an appearance?

COMMISSIONER: Are you seeking leave to intervene?

15 MR BAKER: Leave to intervene, yes.

COMMISSIONER: No objection? Granted, Mr Baker. Ms Fitzgerald?

MS FITZGERALD: Thank you. Firstly, we support the application by the TCCI to incorporate the part-time traineeships into the National Training Wage (Tasmanian Private Sector) Award and, secondly, by
20 incorporating part-time traineeships seeking to expand the meaning of part-time traineeships to incorporate within its scope the concept of school-based traineeships and to apply appropriate safeguards to both these traineeship models.

25 As Mr Edwards has indicated, the ACTU in its submission in support of an application made by the National Union of Workers to vary the National Training Wage Award concluded that provisions for part-time traineeships should be provided for in the National Training Wage Award.

30 At present, without the variations sought in the application before the commission, there is no appropriate award based regulation of part-time traineeships.

35 We've heard from Mr Edwards that the federal government quite clearly intends to extend apprenticeship and traineeships into new industries and to areas of the workforce and the appropriate extension of traineeships is supported, subject to effective safeguards against exploitation and demonstration by effective regulation that legitimate training is provided and fundamental to this support for such arrangement is a recognition that training is not an appropriate mechanism by which employers can implement low systems of wages.

5 The National Training Wage is supported as a means of legitimately implementing that for purposes of training. I think, additionally, it is relevant to say that in some areas equity of access to these traineeship opportunities will only come through part-time work, given the high level of part-time employment in some industry sectors.

Certainly, the TCCI's application to vary the award in this way is supported.

10 Additionally, you have before you an application from the Trades and Labor Council to flow on to the state award the third \$8 safety net adjustment and the \$10 arbitrated safety net adjustment that was provided for by the full bench decision on 4 July and additionally, as an outcome of our discussions before you last time to vary Clause 5 - Supersession and Savings by the inclusion of additional paragraph which clearly indicates that this award does not apply to the
15 apprenticeship system.

This application to flow on both the third \$8 and the arbitrated \$10 safety net adjustment clearly is consistent with the Wage Fixing Principles and so does not offend the Wage Fixing Principles. I would argue that it quite clearly meets the public interest test and urge the
20 commission to make a decision which reflects the application before you - both the application of the TCCI and ourselves.

COMMISSIONER: Thank you. Any of your colleagues? Mr Wakefield?

MR WAKEFIELD: If the commission pleases, the Australian Workers' Union supports the submissions made by the TCCI and the TTLC.

25 COMMISSIONER: Good. Thank you.

MR NOONAN: Mr Commissioner, we support both submissions made by the TTLC and the TCCI.

COMMISSIONER: Good. Thanks, Mr Noonan.

30 MR BAKER: Just for the record, I think I should add, with the comments in relation to public interest, I think it should be pointed out to the commission that at this very present time, the Automotive, Engineering and Manufacturing Industry Training Board is in consultation with both industry and the senior secondary colleges in Launceston for a pilot program to commence next year for part-time
35 traineeships in a transitional school of work program.

It is important, so far as the public interest is concerned, that the application be proceeded with today and the commission approve the scheme as outlined by my colleagues and by Mr Edwards.

40 COMMISSIONER: Good. Thank you. No further submissions? Mr Edwards, you've got the floor?

MR EDWARDS: Yes, I have. Thank you, commissioner. I know this isn't before the commission but I have been provided with a proposed draft order by Mr Baker during the course of Ms Fitzgerald's submission and just so the record might show, in that draft order in a number of places it is found the dollar figure, \$188. It's fairly clear when one reads exhibit TCCI.3, that that is in fact an error that was dealt with at a national level through the submissions of Mr Palace who in fact advised the commission that it was an error and needed to be written down to \$187.

I just want to put that on the record so that as we finalise our draft orders, it's been clearly put on the record and it can be part of provisions we put before you, sir, by way of our consolidated draft order.

In terms of the application by the Trades and Labor Council that has now been outlined by Ms Fitzgerald, I indicate for the record that we consent to that application with operative effect beginning the first pay period to commence on or after today's date.

We believe, in accordance with the Wage Fixing Principles, that there is reason to bracket together the third \$8 safety net application and the \$10 arbitrated safety net applications. There is scope within the principles to do that, by consent of the parties and in this instance, there is clear consent to that course and we would ask the commission to approve that application with effect from today's date, as I've indicated. If it please the commission.

COMMISSIONER: Well, I can indicate to the parties that I will be varying the award in the manner sought via the two applications before me. I'll hand down a written decision in due course. It will be operative from the first full pay period to commence on or after today and I request the parties to present a joint draft order to the commission in relation to the variations. I'm not too sure when I can get the decision out but you can take it that it will operative from the first full pay period on or after today.

The matters are now finalised and now closed. Thank you.

HEARING CONCLUDED