

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T Nos 5188, 5189 and 5190 of
1994

IN THE MATTER OF applications by the
Australian Liquor, Hospitality and
Miscellaneous Workers Union - Tasmanian
Branch to vary the Licensed Clubs Award,
the Hotels, Resorts, Hospitality and Motels
Award and the Restaurant Keepers Award

re classification rates and supplementary
payments

COMMISSIONER IMLACH

HOBART, 26 October 1994
continued from 13/10/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: No change in appearances? No. Well what's to do?

5 MS HUDSON: Well, Mr Commissioner, at our last hearing you sent us away to try and reach some sort of agreement on the minimum rates case. Unfortunately we haven't been able to do that. So our position this morning is that we are prepared to put forward arguments to support our case and the TCCI obviously has some counter argument to what we're putting up. So our position would be that you hear those arguments this morning in relation to our application.

COMMISSIONER IMLACH: Do you think the other side has a different view?

MS HUDSON: Yes.

10 COMMISSIONER IMLACH: Thanks very much. Thanks, Ms Hudson. Mr Gates, what have you got to say?

MR GATES: Thank you, Mr Commissioner. Our view, Mr Commissioner, is that we're prepared to look at the federal decision. However we maintain that there are some differences and that decision should be modified to suit some of the differences in the state and certainly make it more applicable throughout the hospitality industry.

15 We've put up certain proposals for that at this initial stage. However at the end of the day as we've been unable to reach any form of agreement as to the matters, then we'd seek that the commission arbitrate on those and to clarify the arguments which we'll be putting up to modify the federal decision. We've developed an activity and a hearing schedule which will involve, amongst other things, site inspections.

COMMISSIONER IMLACH: We'll give this an exhibit number just for the record. G.1.

MR GATES: I'll just briefly take you through it, Mr Commissioner.

COMMISSIONER IMLACH: Yes, Mr Gates.

25 MR GATES: As you can see, the first - or the heading is for activity and hearing schedule for the three matters before you at this point in time re the establishment of classification rates, supplementary payments relative to other minimum rates awards. On the 26th October, which is today's date, we see that as being a report back arising from the last hearing. From the 4th November to the 4th December I would seek that TCCI conduct a survey of our members in the industry to ascertain the basis of our submissions and to give us some information on the industry.

30 Arising from that, Mr Commissioner, we would seek that by the 11th December both the TCCI and the ALHMWU would develop a summary of arguments for arbitration and the areas for investigation at site inspections. And those would then be served upon the parties. This would allow, in my opinion, Mr Commissioner, the various parties to ascertain what arguments are going to be put on the day, where the exact areas of disagreement are so that we may shorten the time it will take for arbitration and certainly assist the commission, and the parties as well.

35 On the 19th December once we know exactly what we're looking for we can then develop a visitation schedule. Now I came up with a figure of 15 businesses and that is roughly based on there being three awards and five businesses under each of the awards. Now that may need to be increased because I'd see it covering the various regions within the state and also various size establishments, and possibly a trip to King Island or Flinders Island.

40 The 20th to the 22nd of December then we'd come up with some agreed times and agreed employers so that we can visit. Then I would have envisaged from the 5th

January to the 27th January we conduct the site inspections throughout those establishments. Now those would be spread over a period of time, reasonably short period of time so as to allow the parties to remember exactly what they saw, but spread apart enough so it allows other work to occur in the sort of intervening periods.

5 From the 10th to the 11th January I'd see that the ALHMWU put formal submissions on their arguments. Then there be a period of about 6 days for which TCCI has the opportunity to develop a case based on the submissions, and we would then put our formal submissions on the 17th and 18th January. On the 22nd January we'd see that the union be given the opportunity to respond to submissions we've put, and such
10 other dates as may be required.

The comment from the ALHMWU at this point in time is that time frame may be too tight so it may need to be reassessed. But that's certainly what we'd be looking for.

COMMISSIONER IMLACH: That's it, is it, Mr Gates, for the moment?

MR GATES: Yes, thank you, Mr Commissioner.

15 COMMISSIONER IMLACH: Right. We will just go off the record for a minute, please, Gaye.

OFF THE RECORD

COMMISSIONER IMLACH: All right, Ms Hudson, we'll hear your submissions.

20 MS HUDSON: Yes, Mr Commissioner. Perhaps we could hand up at this stage our amended draft orders for you to have a look at before we start.

Okay, if the commission pleases -

COMMISSIONER IMLACH: Just a minute. This is the first exhibit from your side, is it?

MS HUDSON: Yes.

25 COMMISSIONER IMLACH: Exhibit H.1. All right.

MS HUDSON: If the commission pleases, the case before you today relates to structural efficiency matters and the appropriate minimum rates and associated relativities for the three state hospitality awards as determined for the federal parent award, the Hotels, Resorts and Hospitality Industry Award.

30 As the commission is aware, Commissioner Merriman in his decision of 10 June 1994 established new relativities for the federal award in question.

Consequently, amendments were made to classification levels and definitions.

A direct nexus between the federal award and the three state hospitality awards is the major justification for the application before you.

35 This justification was highlighted and argued for vehemently by the TCCI when putting forward its case for the reduction of penalty rates, but now it seems that the nexus is nothing but myth and they have collected their bat and ball and gone home, so to speak.

40 According to the representative from the TCCI, Mr Gates, he has basically been instructed to delay the decision and/or gain as much as can be gained, so it will be no

surprise to us today to hear the TCCI representatives stand up and argue with extensive submissions, site inspections, etc., in light of the fact that they want to delay the process.

5 It is in this context that we have been trying to come up with a constructive solution to this issue. However, it has been made quite clear that we either hand over benefits to the employer or they will simply delay the process through the commission.


It is not unusual then that the TCCI during negotiations have put forward a proposal that contains amendments unrelated and even contrary to the federal decision.

10 And, at this stage, Mr Commissioner, I would like to hand up another exhibit which is a document from the TCCI faxed to the union late in the afternoon the night before the last hearing of the 13th of October in the form set out in the exhibit.

COMMISSIONER IMLACH: Exhibit H.2.

15 MS HUDSON: And as we only received this as I mentioned the night before the last hearing there was hardly time to decipher it let alone consider it, especially when all of a sudden additional issues had been added to the agenda.

These proposed amendments I guess can be summarised as follows:

Firstly, an introduction of hours for progression, 494 into the new introductory level decision. 

20 COMMISSIONER IMLACH: Just a minute, Ms Hudson. Where do I find that? Are you taking me through the exhibit or are you just -

MS HUDSON: I guess I am summarising the exhibit at this stage.

COMMISSIONER IMLACH: Right. Well, go on.

25 MS HUDSON: Introduction of hours into new introductory level definition that already allows an additional 3 months to be served at this level, by agreement of the parties.

The insertion of hours instead of months has implications for the many casual and part-time workers that make up the industry.

30 It gives the employer the power to keep these workers at this level through manipulation of hours worked. This is despite the worker being competent to undertake Grade 1 duties.

It is not unreasonable to expect a worker who is only working minimum hours to pick up the duties of Grade 1 in 3 months. It is only a level for industry familiarisation not for wage relief for employers - or is it?

35 This proposed amendment was sold to us under the banner of competency based training and the fact that significant state awards named by the TCCI had taken this path.

Well, surprise, surprise, these named exhibits - named awards - the Child Care and the Welfare and Voluntary Agencies - have not had these hours clauses in them.

40 Up to level 3 in the Child Care and Childrens Services Award progression is by 1 year's service and 15 hours of in-house training.

We have some copies of those particular awards, Mr Commissioner, that we can hand up now as our third exhibit.

5 COMMISSIONER IMLACH: Yes. Ms Hudson, I am a bit lost in trying to follow you, so it might be advisable if you refer to some documentation and drag me through it slowly.

Did I say G.3? If I didn't - H.3 - if I didn't, I am saying it now.

MS HUDSON: Well, if we could refer back to the first exhibit, Mr Commissioner.

COMMISSIONER IMLACH: H.1.

10 MS HUDSON: Yes. Attached to the handwritten first couple of pages is a typed document in relation to definitions.

COMMISSIONER IMLACH: I have only got a typed document for H.1.

MR GATES: H.2.

MS HUDSON: I am sorry, H.2.

COMMISSIONER IMLACH: Yes.

15 MS HUDSON: Right. And when I was referring to the introduction of hours progression as you can see from that document Mr Gates has proposed changes at that introductory level.

20 Currently the introductory level in the federal award refers to 3 months at that particular level with a possible extension of a further 3 months by agreement between employer and employee, and the union where such an employee is a union member.

Mr Gates has in fact changed that 3 months to the 494 hours.

25 And, as I mentioned, this would particularly disadvantage casual and part-time workers who would take, you know, if they were working a small number of hours a week, would take them far beyond the 3 month introductory time frame. It could in fact be extended to 6 months or 12 months, depending on how many hours they were working per week.

COMMISSIONER IMLACH: Now I follow that.

30 MS HUDSON: Right. And as I just mentioned, when discussions were held with Mr Gates about the reasons for this change he did mention to us that there were other state awards, namely the Child Care and Voluntary Agencies Awards, that did have such hours progressions in them. But as you can see from the exhibit that we just handed up, Mr Commissioner, that is not so.

In fact, up to level 3 in the Child Care and Childrens Services Award progression is by 1 year's service and 15 hours of in-house training. There is no introductory level.

35 In addition to this, there have been no such developments federally, which is confusing, especially when the development of training and competencies in this industry is a national issue.

As can be seen, the sales pitch on this amendment is fairly misguided and ill-advised.

The next proposed change relates to some of the duties, named duties, in the Grade 1 classification in relation to food and beverage in particular.

The insertion of customer service duties into Grade 1 food and beverage and hours progression, 1976, from Grade 1 to Grade 2.

5 That's at the bottom of the first page of definitions, Mr Commissioner. The second paragraph from the bottom.

COMMISSIONER IMLACH: This is in H.2 still?

MS HUDSON: Yes. It refers to Hospitality Service Grade 2.

COMMISSIONER IMLACH: Yes, I see it - Hospitality Service Grade 2.

10 MS HUDSON: Hospitality Service Grade 2 shall mean:

An employee who has the appropriate level of training, undertaken functions at a level of complexity greater than Grade 1 and who has completed 1976 hours service at Grade 1.

This once again departs from the federal decision.

15 The addition of customer service duties is simply there to ensure that no increases will be received by Grade 2's, i.e. bar attendants, who can be moved to the new Grade 1, which is referred to on page 3 of this particular document, with the award introductory level down the side, the rates, and then the proposed structure. That's in the handwritten section at the front of the document.

20 So, basically, the current Grade 2's could be in fact moved down to a Grade 1.

This of course would cause disruption in the workplace with bar attendants and kitchen hands suddenly being on the same rate and in the same grade; and, more importantly, this addition to duties changes the relativities of Grade 1.

However, there was no such movement in the TCCI proposal to address this.

25 I guess the main issue there, Mr Commissioner, is that currently Grade 1 - the types of job titles that exist under Grade 1 - include such jobs as kitchen hands and what are called 'bar usefults' in the industry.

30 Basically a bar useful is someone who is involved with cleaning up glasses, emptying ashtrays, wiping down tables, and does not include service to customers. That is seen as a higher level duty, and has been put in at Grade 2.

And currently in the award there is a provision in the Grade 2 definitions to cover the fact that employees may start off doing some on-the-job training and be under supervision.

35 So that if people are actually learning how to pull beers or serve alcoholic drinks there is a provision once they start serving customers they are deemed to be Grade 2, but there is a provision in that current definition to allow them to be still under supervision or training.

So they may be receiving on-the-job training in, you know, how to pull a beer correctly, how to use the various bar ingredients, mixed drinks, and so on.

But it is definitely focussed upon service to customers, and level 1's are not.

The next basic change that has been proposed by Mr Gates in his submission relates to Hospitality Service Grade 3, which is the second-last page from the end of the document.

5 COMMISSIONER IMLACH: I have got a - shall I rip that out?

MS HUDSON: Yes.

COMMISSIONER IMLACH: My second-last page is 'TCCI Industrial Service, duties include any of the following'.

10 MS HUDSON: Yes, that's correct. And halfway down the page, Mr Commissioner, there is a definition there for Hospitality Service Grade 3.

COMMISSIONER IMLACH: Right.

MS HUDSON: Basically this definition that has been put up is an amended version of the level 3 definition in the federal decision. So that really only the higher duties are left.

15 This definition, whilst large, is a combination of two old grades and was drafted by the AHA and the unions to the requirements of Commissioner Merriman.

Commissioner Merriman also put an interpretation forward on the arrangements to clarify its use, and we would put this up as our next exhibit, which is part of the transcript of the federal case.

20 COMMISSIONER IMLACH: H.4.

MS HUDSON: And if we return to the second page, Mr Commissioner, of that document, down towards the bottom of the page starting, 'The Commissioner', and he says that:

25 *During the course of today's proceedings and prior to the conference the Commission was given an opportunity by the parties to understand their difficulties with the application of the joining of Food and Beverage Grade 3 and 4 to one classification.*

30 *I make the following observation: that the Commission is to be advised of any employee who is currently prior to this Order classified as Food and Beverage Attendant Grade 3 who is subsequently because of this Order classified as Food and Beverage Attendant Grade 2, and the Commission will deal with any such notifications.*

And under the federal decision he also refers to:

35 *In turning to the words contained within the consent order A1, subparagraph 3.1 to 6, the Commissioner observes that the requirement which is spelled out as 'and/or' shall mean an employee who is engaged in any of the five classifications, or five identifications, clearly means that the employee in this new level will be required to perform the duties that are spelled out in 1 to 6, a duty and a duty contained in 1 to 5 on the basis that the employee has been*
40 *trained to move from level 2 Food and Beverage Level 2 to Food and Beverage*

level 3, and that that training equips the employee to perform and use the functions which are contained in the new level 3.

And the second paragraph on that page, Mr Commissioner, says:

5 *That having attained that level of experience and the use of that experience and the ability to be called on at any time to use that skill, the employee does qualify clearly for the new level Food and Beverage 3.*

10 *The Commission also observes that people who do not attain in the future a level 3 classification will have the opportunity of having their particular case dealt with by the Commission as to their proper classification either by way of a Board of Reference or by a hearing before the Commission itself.*

The observation the Commission make are clearly on the basis of fulfilling the goodwill demonstrated by the parties in the conciliation process to reach an understanding that will allow this consent order to be confirmed by the Commission.

15 So that is actually referring to the definition in the federal decision of Hospitality Service Grade 3, and there are quite a number of duties listed under Grade 3.

COMMISSIONER IMLACH: Just stop for a minute, please, Ms Hudson, my pen has gone bung. Thank you.

20 MS HUDSON: The other point, the final point in Mr Gates' document is that he did not recognise the new relativity for Grade 2 of 88% - the 375.20, but kept the old rate of 372.60.

That is actually in the handwritten section, the third page in, Mr Commissioner. The rate opposite Grade 2 there is 372.60. In fact, in the federal award it is 375.20.

COMMISSIONER IMLACH: Right.

25 MS HUDSON: These proposed amendments to the federal decision certainly bring into question the TCCI's understanding of the decision as a final adjustment of relativities according to skills, duties, training and responsibilities in comparison with other relevant industries.

30 These relativities apply in industries in Tasmania including the hospitality industries covered federally.

It is worth mentioning to the commission that we have compromised in the case of the Licensed Clubs Award as contained in the draft orders that have been presented to the commission today.

35 We have put in a delayed implementation schedule that will see the 12 months, three phase implementation of wage increases to commence from 1 January '95, not 4 November '94.

This is taking into consideration any different circumstances experienced by licensed clubs - perhaps due to their prescription system - and also allow them to adjust their budgets for 1995.

It seems that this compromise is acceptable to the licensed clubs, and we have had discussions with representatives of that association in relation to that implementation.

5 Considering the commonality of classification definitions between the federal award and the Tasmanian awards and the relevance of the federal decision as the appropriate basis for establishing the minimum relativities and the minimum rates in the state awards, the TCCI's case is certainly based on logic, especially when you also add the nexus argument.

10 The employers may have confined their argument to specific matters where the Federal Hotels Award classification definitions do not provide for some skills provided under the state awards.

However, this has been catered for in the draft orders that have been put to the commission and put many times to the employers before today.

15 For example, cooking duties that are currently not mentioned in the federal award have been taken up in Food and Beverage or Hospitality Service Grade 3 for the Restaurant Keepers Award and the Licensed Clubs Award.

At no stage does mean a reopening of relativities established federally.

As I explained in the hearing last week on penalty rates and shift loadings the state awards do not mirror entirely the federal award as there are some slight differences in relation to conditions of employment.

20 The previous mentioned examples include in the Restaurant Keepers Award there is no allowance for broken periods of work and only part-time employees in licensed establishments receive the 10% loading; and, secondly, in the Licensed Clubs Award there is no provision for the payment of annual leave loading and part-time employees only receive a loading of 7.5% as opposed to 10% in other awards.

25 However, it cannot be argued that the classifications, definitions and rates of pay in the three state hospitality awards do not mirror closely those that exist in the federal award.

30 In fact, as part of the previous structural efficiency matters the classification structures in each award were amended to incorporate changes in the federal award that allowed better career paths and enhanced training arrangements flowing from a national agenda.

Therefore, decisions made in the past based on the structural efficiency principle and the minimum rates principle with regard to the three state hospitality awards have reflected movements in the federal award.

35 For example, in the April 1991 decision, T.2839, which is our next exhibit -

COMMISSIONER IMLACH: H.5.

MS HUDSON: Right, this was a decision relating to the federal Restaurant Keepers Award and in this decision some of the sections marked include on the first page where Deputy resident Robinson stated:

40 *The package of proposals have the support of employers and were brought to the Commission only after the completion of long and extensive negotiations.*

And, further:

The more fundamental of those matters were made the subject of extensive exhibits and are in all essential aspects the same as have been accepted by the Australian Industrial Relations Commission and are now contained in the Hotels, Resorts and Hospitality Industry Award 1988.

5 To further enshrine the employers' belief in the nexus the TCCI argued only last week of its existence as a justification for penalty reductions; and, in fact, Stuart Clues who was the former TCCI advocate, argued in the commission on 23 May 1994, and our next exhibit will include part of that transcript.

COMMISSIONER IMLACH: H.6.

10 MS HUDSON: Right. At the bottom paragraph of page 2 there, Mr Commissioner, Mr Clues states:

15 *Essentially, the primary justification for the variation is that there has always been argued that the state hospitality industry awards have a direct nexus with the federal Hotels Award. The union have relied on this nexus for nearly every award variation that I have been associated with.*

20 *By way of example, it is as a result of this nexus that the three awards of this jurisdiction have a very common career path, the wage relativities are identical, and all of those you will find have a direct nexus with the federal Hotels Award, and this nexus has been recognised by the commission in the past in its decisions and in its justification for variations that have been sought by the union.*

And over the page, at the top of page 3:

25 *Given the federal award has now been varied to reduce penalty rates that consider, and was considered by the Australian Industrial Relations Commission to have a punitive effect on weekend trading, we see no reason why the nexus between the awards should not be followed through on this occasion.*

In fact, at this point in time persons operating under the state system are currently at a competitive disadvantage to those who operate under the federal system.

30 So I think that particular part of that transcript, Mr Commissioner, illustrates the fact that the nexus between the state awards and the federal award has been recognised in the past by the TCCI as recently as May this year.

The recent changes introduced into the federal award regarding the minimum rates were basically the final step in the restructuring of that award. An exercise that began in 1988.

35 The union argued successfully that the structural efficiency process in the award had not been completed and that the minimum rate adjustments had only established interim rates and relativities pending the finalisation of a proper case under the structural efficiency principle.

40 The main claim was that the federal award had never had its rates of pay determined in relation to other awards in other industries.

The employers had struck relativities which they believed were appropriate to the industry, but the proper determining of these rates in relation to the Metal Industry Award and other relevant awards had not been done by the commission.

5 In fact, Commissioner Merriman in his decision supports this argument, Mr Commissioner, and we will hand up our next exhibit -

COMMISSIONER IMLACH: H.7.

MS HUDSON: - which is a copy of Commissioner Merriman's decision earlier this year on the federal award.

10 In the last paragraph on page 1 of that decision, Mr Commissioner, Commissioner Merriman stated that:

15 *On any examination of the award as it currently stands the wage relativities are inconsistent with the minimum rate awards which as a result of the application of the August 1989 National Wage Case Decision, Print H.9100, the Metal Industry Award 1984, Part 1, the Transport Workers Award 1983 and the Timber Industry Award 1990, to name a few, have relativities for similar tasks in excess of this award particularly at the lower levels.*

20 *For that reason alone, the Commission is prepared to dismiss the submission by the Association that the Union claim should be rejected on the basis that the structural efficiency principle has been exhausted and that the claim is only available on the basis of the work-value principle.*

The Commission accepts the ACTU and Union argument that relativities established were done so on an interim basis following the broadbanding exercise and the classification evaluation process.

At the -

25 COMMISSIONER IMLACH: Just before you go any further - I don't like to interrupt, Ms Hudson, but I want to get this clear in my own mind. If we take the Restaurant Keepers Award as it stands right now, does that have minimum rates adjustments in it?

MS HUDSON: From previous decisions, yes, Mr Commissioner.

30 COMMISSIONER IMLACH: So this is really a - as I see it, it's an unusual occurrence where minimum rates have been inserted and proceeded and then because they weren't tied to the metal industry, for example, there's been a review done and this is the result. Is that the case?

35 MS HUDSON: Yes, Mr Commissioner, and I've got extracts from the state case where Mr Nick Sherry actually acknowledges that. So that's in fact our next exhibit.

COMMISSIONER IMLACH: Yes, all right, thank you. I just want to get that clear.

MS HUDSON: In fact at the hearing held in the state commission in March '91 on structural efficiency matters, Mr Nick Sherry pointed out on page 28 of the transcript, which has been previously submitted but I think we've got further copies today of that.

40 COMMISSIONER IMLACH: H.8.

MS HUDSON: This is an extract from an exhibit that was previously submitted by Mr Gates. And page 28 of that exhibit Mr Sherry actually says - the third paragraph down on that page, Mr Commissioner, Mr Sherry states that: In respect to the wage relativities that were incorporated in the federal award they were without prejudice.
5 There may be some variation.

So it was stated I think from that fairly clearly in 1981 that there was still scope within the federal decision in relation to minimum rates that there would be some changes. There may be some variations to those rates. And Mr Sherry was obviously advising the commission of possible adjustments to those federal wage rates in the
10 future.

In mentioning these structural efficiency hearings in 1990 and 1991 on the three state hospitality awards, it's worth pointing out to the TCCI and employers that it was they who benefited from the amendment to conditions of employment to allow for a more flexible work force. It's probably not useful to revisit those amendments other than to
15 say that they reflected changes in the federal award as referred to in exhibit 5. The TCCI and employers agreed with these changes and have benefited from them since.

Having received those flexibilities, employers now wish to reap the benefit of a reduction in penalty rates whilst continuing to accept savings and the fact that they have not been paying the appropriate wage rates based on accepted relativities for a
20 number of years. In the August 1989 national wage case decision the commission stated that: To achieve a proper and lasting reform of the awards it is essential that the structural efficiency exercise and the proper fixing of minimum award rates is treated as a package.

In summary, we would like to point out the following to the commission. Firstly, the TCCI relied upon the following when arguing the penalty rates case. Firstly, the
25 decision in the Federal Hotels Award, secondly, the nexus of the Tasmanian awards with the federal award and, thirdly, the acceptance in advance by Nick Sherry on the 1st March 1991 on transcript of whatever occurred in the federal award penalty rates case only as he recognised the nexus.

On the other hand we are relying on the decision in the federal award, the nexus, the commonality of classification definitions between the federal award and the Tasmanian awards and Mr Sherry's acceptance of the interim basis for the relativities established
30 federally and their obvious relevance to the Tasmanian awards. It seems to us that various principles to flow from the arguments can be put forward as threshold issues. Firstly, that both parties accept that there is a nexus, secondly, that both parties accept the relevance of the minimum rates decision in the federal award as the
35 appropriate basis for establishing minimum rates and relativities in the state awards and, thirdly, that any argument should be confined to specific matters involving adaptation of the classifications, not a reopening of relativities.

As the TCCI has indicated to us that it is wasting time, and if they do not accept the principles, we would ask the commission to determine that they are the grounds upon
40 which the case should be run. We ask this as the TCCI's relied upon the nexus and the federal decision in the penalty rates case. They can't have one without the other.

These principles, we would also argue, establish a clear basis for the speedy conduct of the case. We would also submit to the commission that the penalty rates and
45 minimum rates issues be determined at the same time as this will overcome the time wasting incentive of the TCCI.

My associate, Mr Darren Mathewson will detail the changes that are outlined in the draft orders that he has prepared and will summarise the main points raised in the
50 federal case, and accepted by the commission. Before that happens it's important to

say in conclusion that the union is willing to agree to a phasing in period of 12 months as per the federal decision and in order to honour our request of the TCCI to delay their application for penalty rates by 4 months. We will accept an operative date of the 4th November '94 which is 4 months after the increases were granted in the federal award. In addition to this, as previously mentioned, we would agree to a delayed implementation for the Licensed Clubs Award.

It's been very hard, Mr Commissioner, to negotiate with an industrial party that's quite happy for this issue to go to arbitration over an extended period. Any proposal that doesn't meet with what employers want is basically ignored. That is if we don't accept a delayed implementation or allowing relativities to be changed and people to fall in their graves, then that's okay because they will just get their delay through the commission and the extensive submissions et cetera.

The federal case ran for 2 years and it's thoroughness is evident in submissions, the transcript and the decision by Commissioner Merriman.

The taxpayers' money could in fact be better spent than revisiting old arguments. And as you know from what Mr Gates presented to you earlier, it was this morning that we were presented with hearing and site inspections scheduled by the TCCI that will delay the whole process until January next year.

Finally, it's not appropriate, moral or even useful to Tasmania to allow workers under the three state hospitality awards to receive wage rates that are not based on the appropriate relativities as determined by the federal commission. Such a strategy would not only be detrimental to the finalisation of the restructuring of the awards and skill formation, but will create a low wage industry that would lose skilled workers and be unable to put in place world class standards of service. All this at a time when this industry is at the forefront of Tasmania's recovery.

Thank you, Mr Commissioner. As I mentioned, Mr Mathewson has some changes - will go through some of the more detailed changes as outlined in the draft orders presented to you previously. Thank you Mr Commissioner.

COMMISSIONER IMLACH: Thank you.

MR GATES: Mr Commissioner, can I just be excused for a couple of minutes, please?

COMMISSIONER IMLACH: Would you want an adjournment, do we?

MR GATES: I just need to go to the toilet, Mr Commissioner. I'll only be a couple of minutes.

COMMISSIONER IMLACH: All right. We'll go off the record, thanks.

OFF THE RECORD

COMMISSIONER IMLACH: Now we just have a slight misunderstanding with the exhibits here. So I'll go over them and correct them now. It's all to do with H.1. The draft order for the Hotels, Resorts, Hospitality and Motels Award will be H.1A, the draft order for the Licensed Clubs Award will be H.1B, and the draft order for the Restaurant Keepers Award will be H.1C. Now are we all clear about that? Any objections? That ought to help you when you proceed, Mr -

MR MATHEWSON: If the commission pleases, we will now outline the changes contained in the draft orders that make up our application. In relation to this we will summarise the points raised in the federal case in relation to these changes.

To begin, it is worth mentioning that the amendments as contained in the draft orders for the three state hospitality awards merely reflect the contents of the consent order issued by Commissioner Merriman on the 22nd July 1994, which has previously been circulated to all parties involved. This is except for the delay in implementation for the
5 Licensed Clubs Association.

Firstly, we will deal with definitions. New definitions for classifications have been inserted into each draft order, that is H.1A, H.1B, H.1C. As I name each definition I will explain the reason for its insertion as per the federal decision and highlight where it may not mirror word for word the federal award definitions, but has been adapted to
10 the state awards. And I will actually highlight where - if a change has been made, which state award it's been changed in.

Firstly, introductory level, that has been inserted in all three awards. This new definition reflects that inserted into the federal award. Commissioner Merriman on page 2 of his decision, which was exhibit 7, states: Turning to the specific levels I propose that the introductory level should be applied in the same terms as that adopted by the commission in the Timber Industry Award. And he states further that: This introductory level should provide a proper training and familiarisation period to enable entry into the career path. And the other thing worth mentioning about that introductory level is it allows an additional 3 months to be served at that level by mutual agreement between the employer, the employee and/or the union.
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The next definition to be dealt with is the new definition under the consent order federally for food and beverage attendants at Grade 3 or Level 3. This was inserted into all three awards but in a different form for hotels and restaurant keepers and licensed clubs. The difference is that in hotels it mirrored exactly what was put forward in the consent order federally. In the case of licensed clubs and restaurant keepers the two duties from the old definition related to cooking were actually - are kept in that Grade 3 definition.
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COMMISSIONER IMLACH: Just for practice, Mr Mathewson, if I look - I see what you're saying in H.1A. What about H.1B?

30 MR MATHEWSON: H.1B, if you look at the definition for Hospitality Service Grade 3, which is on page 3 -

COMMISSIONER IMLACH: At page 3, yes.

MR MATHEWSON: Well starts on page 2 and goes over to page 3.

35 COMMISSIONER IMLACH: Just before you go any further, it's a different name in the hotels as in the hospitality and food and beverage.

MR MATHEWSON: That's right.

COMMISSIONER IMLACH: Right.

MR MATHEWSON: It's food and beverage attendant for the hotels, food and beverage service for restaurant keepers and hospitality service for licensed clubs.

40 COMMISSIONER IMLACH: Right. And we're at page 3 of -

MR MATHEWSON: If you look at page 3, halfway down the page you will see two duties that are as follows: Non cooking kitchen duties of a specialised nature and cooking duties including baking, pastry cooking or butchery. Those two duties weren't in the federal definition, however they are duties in the restaurant keepers and licensed clubs, current definition that reflect the wider range of duties undertaken in
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licensed clubs and restaurant keepers, mainly because there is no kitchen stream in these two awards, basically because you're dealing with an integration of the two areas.

5 As per Commissioner Merriman's decision, this new definition is a result of the amalgamation of the old definitions for Grade 3 and Grade 4 in the federal award. The result of this would be that in all of the three awards the tradespersons level would exist at Grade 4 instead of currently existing at Grade 5. It is worth noting that this definition was agreed between the union and the AHA and my colleague previously
10 gave the reason that Commissioner Merriman accepted that definition and also interpreted it.

15 In addition to these amendments we have also included in the licensed clubs draft orders, which is H.1B, and if you look over to page 3 of that again, halfway down the page you will see a definition that talks about attending TAB terminals and mechanical lifting devices, we have actually added in there Keno terminal duties, after discussions with the licensed clubs and the TCCI. However, that may need refinement, depending on training needs and whatever else at a later date. But it is merely there as more an advisement that Keno will go into licensed clubs towards the end of the year, and they will need to be incorporated somehow into that definition.

20 Okay, if we go on to Food and Beverage Attendants Grades 4 and 5, there were new definitions put forward in the federal consent order for Grades 4 and 5.

This applies to the Hotels Award, or Exhibit H.1A only, merely because, as I have mentioned before, Restaurant Keepers and Licensed Clubs have incorporated the kitchen stream here, and their definitions are fairly specific, or more or less specific to those two awards.

25 COMMISSIONER IMLACH: A question, Mr Matthewson, did you say Grades 4 and 5?

MR MATTHEWSON: Yes. If you look at Grades 4 and 5 in H.1A they are - or Food and Beverage Supervisors, sorry, rather than Grade 5 - they are actually new definitions as per the federal consent order.

30 COMMISSIONER IMLACH: Right. So the Food and Beverage Supervisor replaces Grade 5?

MR MATTHEWSON: Yes.

COMMISSIONER IMLACH: Or is Grade 5, shall we say. Right.

35 MR MATTHEWSON: And, as I said, the Restaurant Keepers and Licensed Clubs we did not pick up these new definitions due to the fact that they actually incorporate the cooking stream and at those various levels they deal with the combi chef, the demi chef and the chef de parte.

However, they are also similar to the new definitions, anyway.

40 As a result of this and the amalgamation of Grade 3 and 4 into a new Grade 3, the definitions above all move down a grade; i.e. the current Grade 5 Tradesperson to Grade 4, Grade 6 to Grade 5, Grade 7 to Grade 6.

This results in a five grade structure in the Hotels Award and a six grade structure in the other two awards.

Going on to the new definition put forward in the consent order for Clerical Grade 3 this was inserted into all three draft orders.

This definition mirrors what was put forward in the consent order, and Commissioner Merriman put forward in his decision that he was satisfied that this was the tradesperson's level as per the expanded definition inserted.

5 You will notice, for example, in the hotels draft order on page 6 and 7 that it is quite an expanded definition on what was previously, well, what is currently in all awards.

Going on to a new definition for Store Person Grade 3, and this applies to Exhibit H.1A only, as there is no corresponding definition in the Restaurant Keepers and Licensed Clubs

10 This definition was inserted into the state Hotels Award, and this definition reflects exactly what was in the federal consent order.

Commissioner Merriman once again accepted that this is the tradespersons level and outlined that the definition should include the duties and indicative tasks as provided for in the Clerical Grade 3, the new definition I just went through. But also include the duties detailed in Grade 4 of the former Victorian Storeman and Packers Award.

15 This completes the changes to the classification definitions.

Secondly, we will deal with the changes to the wage rates clauses in the draft orders for each award.

20 The passing over of the new wage rates into the wage structures of each award was a reasonably simple exercise due to the similarity of the classification structures in the state awards to the federal award.

25 In the draft orders the parties will find three columns for the base rate, and if we use, for example in this case Exhibit H.1A, and we turn to what is page 12 you will see under the headings, 'Base Rate Supplementary Payment' and the 'Weekly Wage Rate' that three columns have been inserted headed with the relevant dates for a three phase implementation.

That is for Hotels and Restaurant Keepers there is 4.11.94, 4.5.95 and 4.11.95, and for the Licensed Clubs the dates would be 1.1.95, 1.7.95 and 1.1.96.

Where the wage rate has not been adjusted up, that therefore there has been no wage increase, the same rates are reflected across the page in each column.

30 I will deal with each area or occupational stream covered by the state awards one at a time, detailing wage movements, and I will only detail the final wage rate to give you an idea, relevance to each award, and implications on the current structure.

35 Much of the wage movement was around the tradespersons rate of 424.20, reflective of the relativities put forward by Commissioner Merriman that in Exhibit 7 on page 2, halfway down, there is a list of the levels and the various relativities that apply to those levels. That is -

COMMISSIONER IMLACH: Just a minute, Mr Matthewson.

MR MATTHEWSON: Yes?

COMMISSIONER IMLACH: Exhibit 7 -

40 MR MATTHEWSON: Yes - page 2.

COMMISSIONER IMLACH: Oh, right.

MR MATTHEWSON: Yes. The introductory level at 78%, 1 at 82%, level 2 at 88% and so on down there.

COMMISSIONER IMLACH: So that is what it is all based on?

MR MATTHEWSON: Yes.

5 COMMISSIONER IMLACH: Just as an aside, there is one of those that Mr Gates has got a problem with. Is that right?

MR MATTHEWSON: Yes.

MR GATES: Sorry, what do I have a problem with? Which one?

COMMISSIONER IMLACH: The percentages related to the Metals, or whatever.

10 MR MATTHEWSON: Firstly, I will deal with the introductory level in each award.

That has basically moved up to the next wage level, i.e. the current Grade 1 Food and Beverage.

COMMISSIONER IMLACH: It's in a strange position, isn't it? Where is it? H.1A I am looking at.

15 MR MATTHEWSON: You are looking at H.1A?

COMMISSIONER IMLACH: Yes.

MR MATTHEWSON: Okay, if you look - it's towards the back.

COMMISSIONER IMLACH: Page what?

MR MATTHEWSON: Page 15.

20 COMMISSIONER IMLACH: Introductory level, yes.

MR MATTHEWSON: So that has moved from 312.50 I think was the previous rate, to 333.40 which was the previous Food and Beverage 1 wage rate.

25 COMMISSIONER IMLACH: I repeat, it seems to me to be in a very strange position. It wouldn't hurt for the parties to get together and do something about it, it seems to me. Right?

MR MATTHEWSON: Secondly, the food and beverage service stream, and in the case of the Licensed Clubs - the hospitality service stream - the Grade 1 and 2 in all awards have moved up to the next wage level.

30 For example, the Grade 1 has moved to the current Grade 2 wage rate of 350.10 and the Grade 2 has moved not to the 372.60 which was the next wage rate but to the actual new rate aligned with the federal relativities which is 375.20.

The Grade 3 and 4 in all awards are joined to form a new Grade 3 at 393.30, which gives current Grade 3 a wage increase, but the current Grade 4 would stay at the same rate.

35 COMMISSIONER IMLACH: You said 393.30, I've got 393.50.

MR MATTHEWSON: Have you? Yes, 393.50 is actually correct, sorry, commissioner.

COMMISSIONER IMLACH: I'm sorry to interrupt on a small matter, but anyway, proceed.

5 MR MATTHEWSON: Due to the - I was mentioning about the Grade 4s being on the same rate. You will notice that due to the phasing in arrangements the current Grade 4s would actually go down in wages due to the fact that they would only go on the first adjustment rate.

10 Therefore, in the orders - and if you look at Exhibit H.1A, for example - and you look at page 12 in that, we have inserted a savings provision for Grade 3 Food and Beverages and Hospitality Service in the case of the Licensed Clubs, but allows current Food and Beverage Grade 4 as at 3 November 1994 to start on the final rate of 393.50.

So that basically means that if, for example, the decision was implemented on the 4th anyone classified in the current structure on the third of Food and Beverage 4 would not lose any pay.

15 This would result in a new tradespersons grade in all awards of Grade 4. Therefore, current Grade 5s would move to the new Grade 4 with no actual wage increase.

This move the Food and Beverage Supervisor in the Hotels Award down to Grade 5 level with a wage increase in line with the federal relativities.

Therefore, the structure in this award which is Exhibit H.1A, reduces to five grades.

20 In the case of the Licensed Clubs and the Restaurant Keepers the current Grade 6 and 7 would move down a grade, like the current Grade 5, to Grades 5 and 6 respectively, with wage increases in line with the federal award relativities.

The structures in these two awards would be reduced to six grades. The Grades 5 and 6 in these awards incorporate the post trade cook levels that is contained in the kitchen stream of the Hotels Award.

25 Now the third area, the kitchen, which applies to H.1A or the Hotels Award only.

The rates in this area move up one level in line with the relativities in the federal award, except at the tradesperson's level which is Cook Grade 3 where there is no movement.

30 Obviously the aligned rate of 375.20 instead of 372.60 applies to Kitchen Attendant Grade 2 and Cook Grade 1.

Guest service: guest service applies to all awards as previously - and it applies as previously mentioned in kitchen - that is that there is movement up one grade in all classifications and an alignment in Grade 2 to the new rate of 375.20.

35 Obviously that - if I can just check something - yes, in the Licensed Clubs and Restaurant Keepers Award there is no actual Guest Service Grade 4, so in Hotels the Grade 4 guest service person which is actually the tradesperson's level, doesn't change anyway.

The fifth area, which is storepersons, this applies to Hotels only.

40 There is a definition in the other two awards for guest service section included under the Guest Service section.

The rates have moved up one level under storepersons for the Hotels. Grade 1 has aligned with the new 375.20 rate and Grade 3 is now defined as a trade level receiving the appropriate rate of 425.20.

5 This grade reflects the trade level as determined in the federal decision and proven by the union through an examination of skills, duties, responsibilities and training, in comparison to other industries and award.

The sixth area of doorperson security applies to Exhibit H.1A, or the Hotels Award only.

10 In this area the classifications have moved up one level in wage rates with Grade 1 aligning with the new rate of 375.20.

For Greenkeepers in all awards there was no movement or effect other than to align Greenkeeper 1 with a new rate of 375.20 rather than the current rate of 372.60, I think it is.

15 Leisure Attendants: basically only applies to Exhibit H.1A of the Hotels Award and mirrors what actually happened for storepersons.

That is that each grade moved up one level.

The ninth area which is Front Office and Clerical.

20 The clerical grades in the Licensed Clubs and Restaurant Keepers Award experienced no wage adjustment, and there is no Front Office classification specified, but they are included in the clerical grades.

In the Hotels Award the front office grades adjust to the next level with Grade 1 aligning to the new rate of 375.20, and the trade level rate not moving, which is at Grade 3.

25 The clerical grades adjust to mirror the front office rates, resulting in the trade rate at Grade 3 and Grades 1 and 2 adjusting two levels in their wage rates.

In the Miscellaneous classifications the forklift drivers' rate did not move. This actual classification applies to Exhibit 1A only, Hotels.

Under all awards persons not otherwise provided for move up to the next level from 333.40 to 350.10.

30 The eleventh area of apprentices and juniors, there are no movement as the tradesperson's rate was obviously unaffected.

The only amendment has been that the percentages based column under those has had Grade 5 in it. We have just amended that to the new tradesperson's level of Grade 4.

35 The twelfth and final area is trainees.

The rates increased for Hospitality Trainees as the grade they are based on, which is usually the Food and Beverage Grade 2, or Hospitality Service Grade 2. Using the formula they would have moved, therefore in all awards the trainees in this area would have received an increase.

40 The Clerical Trainees for the Licensed Clubs and Restaurant Keepers Award did not move as the wage rates for the classifications did not move either.

I hope this clearly outlines the amendments contained in our application which reflected a determination with regard to the federal award.

5 A long and extensive case was argued in front of the Australian Industrial Relations Commission on this matter with Commissioner Merriman making the decision and the parties agreeing on the detailed implementation into the federal award.

The case involved detailed examination of the classification structure and definitions, examination of training and competency standards, comparison of relativities across industries, numerable inspections across four states, including Tasmania, investigation of the impact on internal and external relativities, and more.

10 Therefore, it would be futile and ridiculous to revisit these issues, but to say that the final decision was one which was made with all the facts at hand.

Employers have received the benefits of the previous restructuring and hope to receive more in the penalty rates case.

15 We only seek to finalise this restructuring by implementing the final and appropriate relativities in accordance with the SEP and the MRA, - the structural efficiency principle and the minimum rates adjustment.

Through the nexus previously discussed by my colleague and proven by the TCCI.

20 With the previous flexibilities granted the absorption of over-awards at higher levels, the possible reduction of penalty rates, potential industry growth, the current low level of wages, the fact that not all grades received increases, and the potential for phasing in increases, it would be absurd to suggest that the flow on of this decision would adversely affect cost productivity and efficiency.

It is also critical that these three state hospitality awards remain relevant to what has become the safety net of minimum rate awards.

25 If it please the commission.

COMMISSIONER IMLACH: Thanks, Mr Matthewson.

Well, is that it, then, for that side?

MS HUDSON: Yes, Mr Commissioner.

30 MR JOHNSTONE: Mr Commissioner, I might interrupt. I think on page 12 of H.1B submissions down where Greenkeepers Supervision, the last column, I think there is a typographical error there. I think the figure ought to be 466.70, not 466.90.

COMMISSIONER IMLACH: I will leave that with you, Mr Matthewson, and you will let us know.

MR MATTHEWSON: Yes, you can leave that with me, yes.

35 COMMISSIONER IMLACH: Now, Mr Gates.

MR JOHNSTONE: I might interrupt for a moment, Mr Commissioner. Mr and I have an important meeting at 2.00 o'clock with the Gaming Commission. I am just wondering if Mr Gates could give us some indication of how long he is likely to be?

COMMISSIONER IMLACH: Yes. Good. Thanks.

MR GATES: Well, as I assume, maybe incorrectly, that it was that we were reporting back. I advise the commission that my submission shall not be very long, possibly 20 minutes.

5 COMMISSIONER IMLACH: Right. Proceed, Mr Gates. I take it that we all understand what you position is, Mr Gates, so you don't need to go into it in extreme detail, but we do want to hear your general reaction and proposals as a result of what we have just heard.

10 It feels strange to be on the back foot today, Mr Commissioner. It's very unusual for the TCI to say: If you don't accept what we want then we'll take you to arbitration. It's usually on the other side. I'm surprised by some of the comments of my colleagues. I would have thought such comments were above them.

15 It has become apparent that the classification levels between the three awards are not the same as the federal decision. And they were never the same when they were introduced. And from going through them today you can see there are bits and pieces missing from some of them, there are new sections inserted in others. We may suggest that some of the duties are not even performed in some of the awards in accordance with draft orders that have been presented to us today. This demonstrates, Mr Commissioner, that a site inspection is certainly required, in my opinion, so then we can accurately see what goes on through the various industries or subgroups in the industry.

20 I'd like to take the commission through some of the comments raised in the submissions by my colleagues. One is to competency based training. It is in the introductory level in any of them. And it says: The introductory level shall mean a worker who enters the industry and is unable to meet the competency requirements of Grade 1. Now it's already been acceded by the union that the introductory level is simply an induction type level, an orientation.

25 You will note, Mr Commissioner, there is no provision in Level 1 for a person who pours drinks, as an example, or serves alcohol or food to tables because there's no customer service save except for a take-away attendant. How then, Mr Commissioner, does somebody new who enters the industry with no skills in serving of alcohol, serving of food or beverages to tables, do they go straight to Level 2? It would appear that by my colleague's submissions that they would. Doesn't it then appear inconsistent that you could have somebody at that same level who has been there for 15 years? You've got a person who is totally incompetent, has none of the skills, requires all the training working beside someone who has been there for 15 years, is a full time employee and done it for almost every day. I have some trouble with that.

30 And that is why, in my suggestion, Mr Commissioner, that we should look at some form of training provision in the Level 1, and I'm sure if we do site inspections and we conduct the survey of the industry then it will become apparent exactly what the industry does and how these people go from - well if the employer wants someone to serve at a table, then he has no choice but to put them on Level 2. Now that person, you know, is incompetent, so to speak, they're not bringing money in, they're under close supervision and, in my mind, Mr Commissioner, that would appear to be inconsistent with a competency based career structure which the union would suggest is the case here. *(he means!)*

35 I'd see a general ~~transgression~~^{pro}gression from introductory to give, say, a new employee opportunity to become familiar with the workplace, his colleagues and as such he'd be at Level 1. Then he may well progress through - sorry, he'd be at the introductory level. He then may progress through Level 1 and get some close training as to how to do such things as to pour alcohol, to serve customers, to greet customers, of which they would be Level 2 duties but he'd be under direct and close supervision. And that

comes back to some way concepts alluded to by my colleagues that there be an hours based progression, a concept which they're opposed to.

It would appear that my previous examples of hours in the Child Care Award was incorrect, and I apologise for that. I was merely saying to them that that was an award which I believed there to be an hours based progression in. However if I go back and do some research I can certainly come up with some awards which have hours based progression in them. From memory, the Nursing Homes Award has got hours based progression, but again I stand to be corrected.

The comment came through that an hours based progression would disadvantage a casual and a part time employee against full time employees because they may spend longer at that particular level. But isn't that, Mr Commissioner, inconsistent with a competency based classification structure. To give you an example, we have a casual employee - and we'll take the 3 months scenario which is being presented. We've got a casual employee who works one night a week of 3 hours. Over a 3 month period he would then work 48 - 36 hours. If we had a full time employee who is effectively working 38 hours a week, they are working - sorry, 108 hours. You can see the disparity between the two.


Now I'm at loggerheads to say how that person is as competent as a full time employee, and therefore that would justify a increase in levels - I have some difficulty with that, I'm afraid. But again, Mr Commissioner, I'm sure when we do site inspections through the industry and we conduct the survey, that that will become apparent. That how can somebody who only has 36 hours as compared to someone who has 108 hours to be at the same level of competence. Again time will bear that out, in my opinion, Mr Commissioner.

My colleague seemed to allude to the fact that all Grade 2's would move to Level 1 based on my hours concept. I'd suggest, Mr Commissioner, that is not correct. I'd also like to raise the concept of service to customers. Level 1 presently has serviced the customers, provided the employee is a take-away service attendant. The union put forward in their submissions that service to customers is a higher level duty and wouldn't, I submit, be at Level 2, which is the picture they tried to paint. And they didn't allude to the fact they've been customer service already at Level 1. I have difficulty in somebody not being able to serve customers as part of training or even just serving customers behind a bar, for example, even if they're just serving chips or what have you, at Level 1. Why should only someone serve customers in a restaurant or a licensed club, not being a take-away establishment, at Level 2. If they're saying it's a higher level skills, well why shouldn't service to customers be removed from Level 1 totally and all inserted into Level 2. Again I'm sure, through site inspections, that will be confirmed.

As to Level 3 in H.1A, B and C, we don't need to refer to them; I'll just refer to them generally. In Level 3 the federal decision has put in both higher and lower level duties which, in my opinion, would appear to be inconsistent because they both talk about the same thing. In the orders which I submitted to the union and my other colleagues, I'd have removed the lower levels, and that was on the assumption that if you can perform the higher level duties you can automatically perform the lower level duties. And as such we should remove such inconsistency. There is also some provisions there such as delivery, from memory, I think it is called - engaged in delivery duties. That's at Level 2 and at Level 3. The only reference which would seem to differentiate them is undertake them at - what does it say - at a level of greater complexity than Level 2. I would have thought delivery duties are delivery duties and what is more complex than one? One versus the other is to justify an increase in levels. Obviously I would have submitted that if you're at Level 3 and had delivery duties at Level 2, you can automatically do those delivery duties because they're at a level lower than which you are already placed. Again I stand to be corrected.

5 It's also worthy to note, Mr Commissioner, that the union are doing the fiddling with the federal decision themselves, and it is not just I. For example, they would seek to insert keno operators into Level 3. Now, yes, I agree that has been part of discussions between the parties, but we are at this particular point not satisfied as to the particular skill levels of those persons. There is no work value case in progress. I mean, we have said that, yes, we believe Level 3 would be appropriate for them because TAB is there, but at the end of the day that matter will finally be resolved should it be taken to arbitration. And then the proper duties be assessed.

10 The problem we have, Mr Commissioner, is that we don't even have any keno operators in the licensed clubs, hotels and restaurants at this point in time. So we're making an assumption about a position that's not there and we don't know what skills and competence they possess and what level they should sit at. So it can be seen, Mr Commissioner, that my colleagues are willing to fiddle with the decision because, I suggest, it's not perfect and I believe that we, as the Tasmanian parties, can make that award more relevant and applicable in the state of Tasmania and possibly correct - or should I say, add more relevance to the decision flowing from the federal arena.



20 It was put up as exhibit 5, H.5, from my colleagues, which was a copy of transcript, from memory, and it referred to a classification structure. From memory, Mr Commissioner, the parties chose to adopt the federal example. However they then varied those to differ from the exact federal prescription. For example, in the clerks and some of the other areas. It is not a direct translation federal to state.

25 Also in H.9, exhibit H.9, there was a reference to the federal decision which may change. From memory, Mr Commissioner, it's been some time since I touched that actual transcript. Mr Sherry's reference is not to the state award and he does not refer to it elsewhere in the transcript. He simply makes it as a comment, from memory, but I stand to be corrected on that. I believe that was just one stone which was unsupported elsewhere.

30 As to the nexus, Mr Commissioner, and a hot little number, ^{it is!} the federal award has a nexus with the state Hotels Award and that is well established. Those awards are very similar, very similar. However, there is no direct nexus to the Licensed Clubs or the Restaurant Keepers Award and that is quite clear. I know that my colleagues would seek to muddy the water by Mr Clues' comments in one of the exhibits - and I can't put my finger on it at this point. I would suggest, Mr Commissioner, that that statement from colleagues is inconsistent with some other statements and facts in other decisions and transcript and certainly, it is not a clear issue. An argument could be put either way, Mr Commissioner.

40 They seek to rely upon the taking of the penalty rates decision as making the nexus. The basis for that, Mr Commissioner, and I'm sure transcript will bear me out here, is that we said it was to be copped sight unseen. We didn't say there was a direct nexus, but again transcript from those will bear me out.

45 Mr Commissioner, we have some concern as to the implementation should any of this come through and we are certainly not agreed at this point or the TCCI is not agreed at this point. There are substantial wage increases involved, Mr Commissioner, across the industry and they certainly won't be equated by the reductions in penalty rates as my colleagues would seek to allude us to. For example, Mr Commissioner, for level 2 - and level 2 has the majority of the people in the industry employed on it, there is a wage increase of \$25 per week or thereabouts. Obviously, Mr Commissioner, that is a substantial wage increase.

50 What we would be seeking and the - my colleagues have already submitted our position on H.2 which was for - obviously for adjustments spread over a period of two years and I'm now forced to say, well that is our position.

TCCI.
4 mths
delay
sought.

5 The increases in the Hotels and Restaurant Keepers Awards should, if the commission finds our submissions and our position to not be successful, then it should be a delayed for at least another 4 months, Mr Commissioner, and that would equate to the request from the union for the TCCI delay the hearing of our penalty rates decision earlier in this year, Mr Commissioner. They are roughly the same time frame quid pro quo so to speak.

10 Finally, Mr Commissioner, what we are seeking is that the Tasmanian Industrial Relations Commission should not accept verbatim a federal decision. There is certainly evidence to suggest that the commission has not followed federal decisions in the past and is not bound by precedent, for example, we have our own State Wage Case. Certainly we take into mind what our federal counterparts have done and we look at those when we make a decision throughout the state. Unless there is a direct nexus - and we'd suggest that there certainly is in some cases, that a verbatim copy should not flow.

15 It would be our position that the commission should undertake inspections across the industry to satisfy itself and to hear submissions going to the variance in the state from the federal decision. Should the commission not find in favour of these points and award the federal decision, we submit that this would be usurping of justice. As to the implementation, then we would seek it before adjustments 6 months apart with the delaying 4 months.

20 Finally, Mr Commissioner, should the increases be awarded, then we would submit that there be an offsetting in accordance with the structural efficiency as the increases which were awarded to the union and the union would seem to allude that the employer was the one who gained totally from it all and the employees were the victims of the unscrupulous employers yet again, we would submit, Mr Commissioner, has been totally absorbed and that the - the employers don't have any fat at all, and that this will be just another impost them and at the end of the day it will lead to a lowering of customer service in the industry and may well possible lead to some closing down of - for example, licensed clubs and various establishments. That's all I have for you today, Mr Commissioner, thanking you.

COMMISSIONER IMLACH: Yes. Now as I understand it, you're seeking, Mr Gates, an adjournment to go and inspect some sites for you to demonstrate to me and the other parties the proposals put forward by the union ought to be changed.

MR GATES: Yes, Mr Commissioner, that's correct.

35 COMMISSIONER IMLACH: Right.

MR GATES: In accordance with G.1 I believe it was.

COMMISSIONER IMLACH: G.1.

MR GATES: Yes. Certainly I will attempt to work to that time frame.

40 COMMISSIONER IMLACH: Yes. Just a couple of questions, Mr Gates. In Ms Hudson's submissions, she referred to three important areas, if I remember correctly - if I've got it recorded here correctly; the nexus, the federal MRA introduction - that's the second introduction I presume - the second review or the review - adjustment - and the specific items that have been adapted in this jurisdiction in the three awards, and as I understood her submission - you might disagree with me - what Ms Hudson said was that in principle, at least, those three items ought to be accepted.

MR GATES: Which three items - sorry, I've got the first one, Mr Commissioner, I was a bit confused about the second.

5 COMMISSIONER IMLACH: Yes. Well we'll take them one by one. There is a nexus which I presume she was saying, all things being equal ought to be accepted and if we go then - just to take that point up in detail - if we go to H.2 which you referred to and which I am well aware of, - not H.2 I'm afraid - the one that's got the percentages in it, which one was that? The alignment with the -

MR GATES: Oh, the federal - oh, yes, it's H.7.

COMMISSIONER IMLACH: H7 - I think you referred to that. In any case, page 2 of H.7 we've got the federally decided percentages and levels and as I understand it, you've got a problem with level 2, 88 per cent.

10 MR GATES: Yes, I seem to recall from memory, Mr Commissioner, that was 87.4.

15 COMMISSIONER IMLACH: Yes. Whatever it is, I'm just making the point, coming back here, that Ms Hudson said that these three items ought to be accepted in principle, one is that there is a nexus - and here we've got a federal decision that introduces certain percentages for the latest minimum rates adjustment change, shall we say. Now what I am putting to you is do you accept that, that apart from that one point that you are objecting to for whatever reasons - we'll hear about that in due course - the - in relation to level 2, do you accept that?

MR GATES: The relativities which the have established?

COMMISSIONER IMLACH: Yes.

20 MR GATES: No.

COMMISSIONER IMLACH: Full stop.

25 MR GATES: Well, no, I - the trades personnel that's fine; but the reason I say no, Mr Commissioner, is that - well there's two reasons: (a) I'd like to do some research on the whole of the relativities there and satisfy myself that those aren't out of kilter with Tasmanian awards. I'm not sure how much I've have even at the end of the day though, and the second reason, Mr Commissioner, is levels 5 and 6 aren't set in concrete even at this point in time.

COMMISSIONER IMLACH: You mean federally.

MR GATES: Yes.

30 COMMISSIONER IMLACH: All right. Well - so that really - that's your reaction to the first two points. And the - as I understood it and I might be wrong here, there are adaptations in the state awards that the union is submitting are pretty obvious, they are necessary and they have made them, and as I understood it, Ms Hudson's saying that it's pretty straightforward and that you ought to accept those.

35 MR GATES: Yes. As I understand it, Mr Commissioner, the modifications to the various draft orders is simply the - I'll go back a step. The federal award is broken up in a series of different streams. The state Hotels Award similarly is broken up into several streams so it's reasonably easy to transcribe it across. With the other two awards, because they don't have so many departments in - with particular employees, 40 there has to be some condensing of all the levels, so by necessity there is going to be a condensation of the various levels into one particular level, say, if you had two even possibly three levels under the federal, you then come back to one in the state. In some cases it's two in the federal and you come back to one in the state.

Further, there is some difference between the duties performed in, say, the federal decision as compared to the Licensed Clubs and the Restaurants and they bring that point out quite clearly, but we'd submit that there are other differences, Mr Commissioner, that is not just satisfactory to modify the federal decision in some form of tokenism so give it a bit better meaning so to speak and to change - put some additional words in front of it. It doesn't change it at all in essence.

COMMISSIONER IMLACH: Yes.

MR GATES: So - and certainly we'd suggest there would be other things inserted into them and at this preliminary point we've given you an outline as to those. I mean, we don't intend to run the full argument which was run federally and we are saying that, yes, there is a federal decision, yes, it's been based on - it was used as the basis for the state awards, we're prepared to look at it and modify it so it's got better applicability throughout the state, and its seems to disagreement, it's in minor terms.

COMMISSIONER IMLACH: Well that's what I was trying to get clear on. I think your answers, while they may ~~allow~~ of that eventual interpretation, haven't given me much consolation, but what you have just said, ~~X~~ does give me some hope.

MR GATES: But there is a separate document which I could give you a copy of, Mr Commissioner, which is essentially my - the classification structure developed by the TCCI which just outlines the difference between the two.

COMMISSIONER IMLACH: What, it highlights the differences?

MR GATES: Yes, well it just hasn't say, where - I mean, for example, in the introductory level the federal decision's got 3 months; we then put in 94 hours so we put in bold - where we put in a new clause like service to customers and take away establishments, obviously that varies so we put it in bold and so on.

COMMISSIONER IMLACH: Yes.

MR GATES: So if that would assist the commission

COMMISSIONER IMLACH: Perhaps if you circulate that, Mr Gates, later if you haven't got enough now.

MR GATES: Yes.

COMMISSIONER IMLACH: And we'll formalise it at the next hearing.

MR GATES: That's fine.

COMMISSIONER IMLACH: Now, I don't know whether we got any where with that general discussion except - we'll go off the record for a minute, please, Gaye.

OFF THE RECORD

COMMISSIONER IMLACH: Thank you very much for all that. We will meet - resume on Wednesday the 9th of November at 2.15 for the purpose of hopefully hearing the itinerary for inspections, the places, and the dates that they will take place.

And I request the parties to take all steps possible in the meantime to reach that conclusion. Nothing else? Thank you. This matter is adjourned.

HEARING ADJOURNED