

**TASMANIAN INDUSTRIAL COMMISSION**  
Industrial Relations Act 1984

T No. 6173 of 1996

**IN THE MATTER OF** an application by the  
Tasmanian Trades and Labor Council  
pursuant to section 23 of the Industrial  
Relations Act 1984 for the making of the  
Group Training Schemes Award

COMMISSIONER WATLING

HOBART, 31 May 1996

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: I'll take appearances, please.

**MR R. WARWICK:** If the commission pleases, I appear on behalf of the Tasmanian Trades and Labor Council. My name is WARWICK, R.

COMMISSIONER WATLING: Good. Thank you.

5 **MR J. GLISSON:** If the commission pleases, JOHN GLISSON, appearing for the Australian Workers' Union, Tasmania Branch.

**MR T. EDWARDS:** If it please the commission, EDWARDS, T.J., and appearing with me, **J. KELLEHER, R. STAFFORD, MISS N. GAYEWSKI, R. JONES** and **MS J. THOMAS**, for the Tasmanian Chamber of Commerce and Industry.

10 COMMISSIONER WATLING: Good. Thank you. Right. I take it that there's been pre hearing discussions on this matter. Mr Warwick?

MR GLISSON: Sir, on that subject, I have not been involved in any discussions on this matter at all up until now. It is of some concern that I come here this morning, where an award is being created that clearly will affect - or will affect, if it's created,  
15 members of my organisation engaged with group training schemes and yet we've had no input to this exercise at all. To the best of my knowledge, our organisation has not been invited to any of the meetings on this award creation -

COMMISSIONER WATLING: Well the application is made by the Labor Council. Are you affiliate to the Labor Council?

20 MR GLISSON: No, sir.

COMMISSIONER WATLING: That's probably part of your problem.

MR GLISSON: Well, I don't believe that I should have to be affiliated to Labor Council in order to be informed about the creation of relevant awards.

COMMISSIONER WATLING: Well, all I can say to you is that the application has  
25 been made -

MR GLISSON: Yes, sir.

COMMISSIONER WATLING: You're entitled to intervene in the matter. I haven't heard any objections yet as to whether or not you will be allowed to intervene. I will be asking that question in a minute, but may be we should establish the ground rules  
30 before we start and see whether there's any objections to the intervention. You're not here by right at this moment, because you're not the applicant and you're not a respondent to the new award and I've hardly established yet that you're even involved in any dispute.

Right. In relation to the interventions, by all parties, I'll take submissions?

35 **MR WARWICK:** Mr Commissioner, we do not object to Mr Glisson's intervention but we make that comment without prejudice to our capacity to respond to some of the issues he's already flagged with the commission.

COMMISSIONER WATLING: Right. Mr Edwards?

40 **MR EDWARDS:** Commissioner, we have no objection to the intervention by the AWU. Mr Glisson has already stated that he has members that may be covered by the

proposed award. As a consequence, we believe he has a right to be heard. If it please the commission.

COMMISSIONER WATLING: So, there's no objections. Leave is granted, Mr Glisson. You're in.

5 MR GLISSON: Thank you, sir.

COMMISSIONER WATLING: So, now we'll start the race again. May be we might go off the record. We won't clutter up the record with this.

#### **OFF RECORD**

10 COMMISSIONER WATLING: Right. Well, we'll see who wants to start the submissions off? Mr Warwick?

MR WARWICK: Thank you, Mr Commissioner. At the outset, I would seek leave to amend the application and I have a document in respect of that.

COMMISSIONER WATLING: Thank you. Is there any objection to the application being amended?

15 MR EDWARDS: No, we would in fact support it, commissioner.

COMMISSIONER WATLING: Right. Leave granted to amend the application. I notice the second line has the words, employment of apprentices and/or trainees in it.

MR WARWICK: We would also seek leave to adjust that to read, engaged in the employment of apprentices and/or trainees.

20 COMMISSIONER WATLING: Right. No problems? No objections?

MR EDWARDS: Agreed, commissioner.

COMMISSIONER WATLING: Agreed. Leave is granted.

MR WARWICK: Thank you, Mr Commissioner. I'd also seek to table a further document which sets out the grounds upon which I intend to support this claim.

25 COMMISSIONER WATLING: Mark this TLLC.1.

MR WARWICK: Mr Commissioner, I think that it's relatively well understood what group training companies are, but just by way of a short thumbnail sketch, group training companies have originated - or have developed over the last decade. Their original purpose was really to resolve problems in relation to circumstances where apprentices, in particular, were not able to continue with their employment because of unforeseen circumstances, such as the insolvency of their employer, their employer's death and really whatever circumstance may have arisen, which put an end to an employment contract and which meant that apprentices in fact wouldn't have been able to finish their training without the assistance of a group training company. The organisations have grown somewhat over the decade and they've taken on a broader role; in particular they've taken on employment of trainees and in some instances they've also become involved in labour market programs under schemes such as working nation and that sort of thing. However, we're not intending to deal with those class of persons through this application. It is intended that the award will be restricted to apprentices and trainees who are employed in accordance with a registered training agreement under the Vocational Education and Training Act 1994.

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COMMISSIONER WATLING: Just one question: aren't they actually companies?

MR WARWICK: Indeed they are. I'm advised that they - all five of the companies which exist in Tasmania are incorporated.

COMMISSIONER WATLING: So they're incorporated bodies rather than companies?

5 MR WARWICK: Is - I'm sorry, I'm not a wizard on company law; is there a difference, Mr Commissioner?

COMMISSIONER WATLING: Oh, there could well be, yes.

MR EDWARDS: I think they're all - to the best of my knowledge anyway, commissioner, companies.

10 COMMISSIONER WATLING: Are they?

MR EDWARDS: Yes.

COMMISSIONER WATLING: Well I'm just inquiring. I just -

MR EDWARDS: No, just that I think it's appropriate that the record show that; that to my knowledge they are all companies.

15 COMMISSIONER WATLING: So they're limited companies.

MR EDWARDS: They are, commissioner.

COMMISSIONER WATLING: Right. Thanks. Mr Warwick - that's fixed that up.

MR WARWICK: I thank Mr Edwards for that advice. If I might turn to TTL1.1, Mr Commissioner, and indeed to the first ground, the document states that - and I quote:

20 *The industry of group training companies is not the same as the various industries of the host trainers with whom group training companies make contracts. Therefore, the industry of "group training" is not comprehended by the scope clause of any existing award of the Tasmanian Industrial Commission. Thus the employees of group training companies who are employed as*  
25 *apprentices and trainees are now employed on an award free basis.*

I end that quote there. And that's certainly our assessment of the situation. There are some explanatory notes of a technical nature in relation to that ground which simply go to the fact that the classifications for apprentices and trainees in awards generally don't have application to this class of employees because the scope clauses of those  
30 awards do not have application and similarly - similarly the National Training Wage Tasmanian Private Sector Award does not have application because Schedule A - the awards listed in Schedule A of that award do not have application. They don't talk about group training companies in the scope clauses of those awards.

COMMISSIONER WATLING: Now we do have an agreement registered here I think  
35 involving one of these companies - do we not - a registered industrial agreement with the Metal Workers Union and AWU and ETU and a couple of others.

MR WARWICK: I'm unaware of that, Mr Commissioner. I wonder whether Mr Glisson or Mr Hill might not in fact be able to assist us with that.

COMMISSIONER WATLING: Yes.

MR HILL: Yes, that's correct, Mr Commissioner. It's the vocational training agreement which involves - the one that I know of involves the mining industry and identifies the three mines and the North West Group Training as the employer who is the broker in terms of the trainees working under that award. It's awarded a federal grant and required to have an award for the period of time that they're employed on the job which in that - in that scheme. They're employed, I think, on the job 12 - for twelve weeks in - in one year and whilst they're on that job working under that training scheme they're required to have an award to cover them so we've registered a separate agreement.

COMMISSIONER WATLING: So if we made the new award would that employer be covered by this new award? I know the agreement would take precedence.

MR HILL: The agreement would prevail.

COMMISSIONER WATLING: Yes, I agree with that but if the agreement expired would the award prevail.

MR EDWARDS: Yes.

MR HILL: Yes. Yes, sir.

MR EDWARDS: That's the intent.

COMMISSIONER WATLING: Good. Right. Thanks. Mr Warwick?

MR EDWARDS: Just for the record, commissioner, if I might just indicate that we would - we would agree with that synopsis provided by Mr Hill both as to the agreement that was registered and its basis and also that the employer would default to this award in the event that that agreement ceased to apply.

MR WARWICK: So - thank you, Mr Commissioner, in - really in making a concluding statement about Ground No.1. It's difficult for us to provide any evidence to you that supports the ground because there is none. There is no award which has legal application to the persons in question, so we can't table an award in that regard.

Moving on to Ground 2, that ground states that:

*Regardless of the contractual relationships group training companies have with host trainers, the apprentices and trainees in question are directly employed by their respective group training companies and conversely the group training companies in question directly employ their apprentices and trainees.*

And in regard to that ground I would seek to table some evidence to that effect.

COMMISSIONER WATLING: Good. We'll mark this TTL2.

MR WARWICK: Oh, sorry. No.3.

COMMISSIONER WATLING: Yes. They're the ones I like to read - the ones they take back.

MR WARWICK: In seeking to provide some evidence to Ground 2, we undertook to survey all of the five group training companies in Tasmania on the basis that if the award-making process is about determining the industry of the employer, then we thought that it would be appropriate to ask the employers in question - .... the basic

question of whether or not they are the employers of their apprentices and trainees in question or whether or not the host trainers are the employers.

The survey is three pages long, Mr Commissioner, and there is a response from five group training companies as I say. I think I need only take you through the first one.  
5 The first question on the second page asks whether or not the company regards itself as the employer of the apprentices and trainees in question and that, in this instance, that question was answered in the positive. The second question asks whether or not the legal document which establishes the limited company allows the company itself to employ apprentices and trainees and that of course is answered in the positive.  
10 The third question asks whether or not workers' compensation is paid; that is answered in the positive.

Over the page, the fourth question:

*Do you directly provide regular pay packets (or the modern equivalent) to -*

- these person, and that is answered in the positive. The fifth question goes to PAYE  
15 Group Certificates; that's answered in the positive, and in relation to question six, that asks whether or not the company signs a registered training agreement in relation to each of these persons, and that is answered in the positive.

I won't take you through the rest of the document, Mr Commissioner, because all of them are answered in the same fashion and the only comment really is made in a  
20 couple of places that the appropriate term for these organisations is Group Training Companies and not Group Training Schemes which matter has been accommodated by the amended application.

And we would submit, Mr Commissioner, that Exhibit TTLC.2 clearly establishes that the employers to whom the application relates are the employees of the persons that  
25 award is intended to cover in respect of employees.

We would have, under normal circumstances, asked the question in relation to payroll tax as well, but in this case we're really unable to do that because of an exemption which applies generally in the State of Tasmania now in relation to payroll tax and  
30 apprentices and trainees, not just of group training schemes, but universally, and that was something of a victory that we had with the Tasmanian Chamber of Commerce and Industry prior to the last Tasmanian Budget.

If I could move to the third ground, Mr Commissioner, and I - that ground states: that group training companies are a significant employer of apprentices and trainees in  
35 Tasmania. At present 12 per cent of all such persons are employed by group training companies. The figure is expected to grow substantially over the short to medium term, and if I could tender a document which provided evidence in relation to that ground.

COMMISSIONER WATLING: TTLC.3.

MR WARWICK: Thank you. Mr Commissioner, this is a letter to - the first two pages  
40 of this document - a letter to the State Department of Vocational Education and Training requesting some information about the matters under consideration and I have included our request because of a comment that is made on page 2 - in fact the third last paragraph - after we have specified that the information that we are requesting from the department, the comment is made that:

*It would be the intention of the TTLC to submit your response to this letter to the Tasmanian Industrial Commission as the most authoritative evidence available on this subject.*

5 And I've included that letter just to indicate to the commission that we did make it clear to the department that the information that we were seeking, once provided, would in fact be tabled to this statutory tribunal.

And perhaps before going to the document, I should express my thanks to the department and in particular to Gaye Oakes of the department for providing the information.

10 Page 3 of the document is the opening correspondence and it refers to three attachments and I propose to go straight to those - Attachment A sets out the total numbers of apprentices and trainees employed by group training companies in a couple of dozen industry areas or occupation areas perhaps I should say, and you will notice that there is a total of 737, at the bottom right hand corner of the page, and the  
15 reference is: Computerised Information Training System - that is the department's standing system of record keeping.

The next page and the two that follow itemise the five group training companies and specifying the apprentices and trainees in a range of occupations and it totals four  
20 each group training company, and then starting with the north-west group training company the Tasmanian group training, the building group apprenticeship scheme, hospitality services and northern group training, and there are grand totals on the third page of Attachment 'B'.

You will note, Mr Commissioner, that the figures of 506 and 176 amount to, in fact, 682 which is a different figure from the original total of 737, and that arises because  
25 they are two different sources of information. The difference is between Attachment 'A' and Attachment 'B' and the different sources in both cases.

Attachment 'B' comes from - and at the bottom of page of Attachment 'B' you can see the data was supplied by individual group training companies and received between 26 April and 29 April.

30 So where the information on Attachment 'A' was a snapshot, if you like, that was taken on 30 April, Attachment 'B' results from information that was arrived at as a result of a request that was made much earlier, and if you turn to Attachment 'C', Mr Commissioner, you'll see that under the heading of 'Past Trends' the numbers have  
35 grown steadily from March this year from 604 - from March '95, I am sorry - then January '96:658, and April '96: 737, and that figure of 682 which is the number that results from adding apprentices and trainees in Attachment 'B' would in fact dovetail fairly sweetly in between 658 and 737, which is the time that the request was made of the group training companies in relation to their numbers.

In relation to future trends the document says that:

40 *The strong growth in group training apprentices/trainees are reflected in the steady increase in group training share of apprentices/trainee market. As at 31 December 1995 group training companies employed 14% - 19243 of all apprentices/trainees in Australia. Tasmania's market share was 17.7%, equal second highest behind the Northern Territory.*

45 In fact, the figure in my ground is wrong, and I would ask the commission to note in fact that instead of 12% I should have had 17.7% in there, and my apologies.

COMMISSIONER WATLING: The actual increase was 12%.

MR WARWICK: That's right.

The final dot point under 'Future Trend' says:

5 *Currently group training companies have 20,000 apprentices and trainees in Australia and are aiming for 33,000 by the end of '97 and 40,000 by the end of the turn of the century.*

So if those projections are correct, Mr Commissioner, that would mean in practical terms that by the turn of the century we could expect to have something in excess of 1400 employees employed under the award that we propose making.

10 So, in conclusion to all of that, Mr Commissioner, we would say that not only is there an industry of group training companies and a group training industry, but it is also populated by a significant number of employers and employees.

If I could turn to Ground No. 4, Mr Commissioner, and perhaps Ground No. 5, these are based less on fact these grounds; they are, in fact, I guess our view of the world.

15 Ground 4 says that:

*Apprentices and trainees are amongst the most vulnerable members of the labour force, often lacking knowledge of both their rights and obligations. An award of the sort proposed would assist these persons in better understanding these matters.*

20 And 5 says that:

*An award of the sort proposed would assist group training companies in being clear and certain about the employment status of their apprentices and trainees they employ and the rights and obligations they have in relation to them.*

25 Mr Commissioner, I don't intend to address those grounds at length. From our point of view they are relatively self-evident.

In relation to Ground No. 6, that grounds says that:

30 *It is a requirement of the terms of a training agreement established and registered under the Vocational Education and Training Act 1994 that the relevant industrial award under which the trainee or apprentice is to be employed must be specified in the agreement. This term of the said agreements cannot be met in circumstances where the apprentices and trainees are employed on an award-free basis.*

And if I might table a document in relation to that.

COMMISSIONER WATLING: TTLC.4.

35 MR WARWICK: Mr Commissioner, this document is an extract from the Vocational Education and Training Act 1994 and I would seek leave to quickly take you through some of the salient points that appear in that act.

In the second page of the exhibit, which is page 3 of the act, there are some definitions and the first is in relation to a trainee which means:

*'Trainee' means a person undergoing -*

5 (a) *a training course under a training agreement or vocational placement agreement; or*

(b) *an apprenticeship.*

*'Training Agreement' means an agreement or a contract between an employer and a trainee in force under Division 1 of Part 6.*

10 *'Training Agreements Committee' means the Tasmanian Training Agreements Committee continued under section 14.*

The following page goes to Part 3 which is the section which establishes the training agreements committee.

15 On the following page at the bottom of the page there appear the 'Functions and powers of Training Agreements Committee' and the relevant subclause is in this case (b) where the training agreements committee has the function of administering vocational placements and training agreements.

If you turn that page and the next, Mr Commissioner, because that is simply the end of that section, the next page of the exhibit is Part 6 and under section 33:

20 *The Minister, by order and on the recommendation of the Training Authority, may declare that a vocation is a vocation in respect of which a training agreement must be made before an employer may provide a training course for a person.*

Section 35 goes to training agreements and what they must contain, and the relevant subclause for the purposes of this consideration is (e) which says that:

25 *any other matter the Training Agreements Committee determines.*

And it must be contained in a training agreement.

The next page goes to approval of training agreement and transfers and then the next page which is page 20 there is a section going to the question of compliance with a training agreement and that says that:

30 *The parties to a training agreement must comply with the terms of the agreement.*

- and there is, in fact, penalty associated with that provision.

35 The remainder of the exhibit is provided purely for information, Mr Commissioner. If I may, I'd seek to press on and tender two exhibits which are related to that first or that most recent exhibit.

COMMISSIONER WATLING: Right. The document which contains TASTA in the far left hand corner will be TTL5, and the other one - the Tasmanian coat of arms, an agreement, will be TTL6, and you can deal with them in any order, Mr Warwick.

MR WARWICK: Sorry, I missed that, Mr Commissioner. Which of those -

COMMISSIONER WATLING: The TASTA one will be TTL.C.5.

MR WARWICK: Right.

5 COMMISSIONER WATLING: And the coat of arms and the - with agreement in the left hand side here - will be TTL.C.6.

MR WARWICK: Thank you, Mr Commissioner. These documents, Mr Commissioner, are both training agreements and both arise from the provisions of the act which I've just referred to. TTL.C.5 is the contract that's been used until very recently and has just gone out of use, and TTL.C.6 is a new contract.

10 In relation to TTL.C.5, I wonder if I could you refer you to page 3 and about two thirds of the way down the page the question is asked of the employer: is this trainee employed under a State or Federal award and please specify award.

15 Now clearly it's an expectation of the training agreements committee that that question needs to be answered. And I think it would perhaps be a bit - a bit strong to say that it's a statutory but it is certainly a requirement that arises out of the statutory power of the training agreements committee.

20 My understanding is that group training companies generally refer to an award that they will observe which is relevant to the occupation of the apprentice or trainee but of course of our view of things is that that response is not technically correct, notwithstanding the fact that the employees are doing the right thing. The response is not technically correct and that's the purpose in fact in proceeding with the application.

25 COMMISSIONER WATLING: So - I know I might be jumping ahead but to get a complete picture well what - if this application was successful and you go along the road of completely teasing out this new award apart from title and scope, what's your intention in relation to wage rates and conditions of employment? Have you got some master plan? I know I'm not listening to it at this stage but I'm more than interested in how it's going to end up because I'll probably have to consider that in making it. There may be a need - I was trying to think it through myself - there may be a need to have  
30 some provision which binds the employer to the award of the industry they send the people into; making individual classifications to suit these employers.

35 MR WARWICK: Well we certainly had discussions with the Chamber of Commerce and Industry about that question. We've not formed a definite view at this stage, I suppose essentially because we didn't really want that issue to get in the way of reaching this point -

COMMISSIONER WATLING: Yes.

MR WARWICK: - which is the making of the title and scope.

COMMISSIONER WATLING: I can well imagine. You can see it's a very interesting one for me.

40 MR WARWICK: Indeed. But I think generally speaking our view would be that we would prefer the award to be as simple as possible, not only in terms of its usage by the employers in the industry but also in relation to the ongoing administration of the award in relation to adjustments to salaries and that's a - that is a particular consideration from our point of view because it potentially could be a very difficult  
45 award to administer if in fact it contains rates from 60 or 70 other awards.

COMMISSIONER WATLING: Yes, well you are going to let me have to options aren't you. You have the option of just shorthanding it and so that if you go into a place like Pasminco then you observe the Pasminco Award. The other option could only be that it contains its own wage rates and conditions of employment.

5 MR WARWICK: Yes. Well as I say, we haven't formed a definite view on that. We are certainly more than willing to negotiate with the TCCI and our intentions certainly would be to reach consent on that matter.

I might also add that it would be our expectation that considerable conciliation may be required through the good offices of the commission.

10 COMMISSIONER WATLING: You're not suggesting that I'm buying a fight by making this new award am I?

MR WARWICK: Far from it, Mr Commissioner. Far from it. I don't think so. We seem to be able to reach a fair degree of consent on a number of these issues relating to training and I have no reason to expect that that would be otherwise in this case. I suppose -

COMMISSIONER WATLING: Well we didn't start off all that well.

MR WARWICK: No, no that's true. Well I guess I'm giving you something of a hint in relation to the two -

COMMISSIONER WATLING: No, well I know I'm not dealing with that matter till later on, but nevertheless it's - it's interesting to have something in the back of mind because I am required to make this new award if your application is successful and therefore I'd like to get some feel for what might happen to it later on down the line. I had a few awards in recent times - a few new awards and some have stalled after I've made them.

25 MR WARWICK: Yes.

COMMISSIONER WATLING: Mr Edwards knows about a few of them.

MR WARWICK: Well -

COMMISSIONER WATLING: The building unions know about a few, too.

MR WARWICK: Well I guess in relation to the general question, the other consideration that needs bearing in mind, I think, is that the award affects just about - the award if it were to be made would affect just about everybody so it will require a very high level of consultation on our part and we're going to have to get the agreement of unions generally.

COMMISSIONER WATLING: Well see, there'd be a huge potential for employee organisations to seek an interest in - in the new award.

MR WARWICK: Yes.

COMMISSIONER WATLING: There'd be quite a number I would think -

MR WARWICK: I would think so, in fact, Mr Commissioner, and I imagine that will happen fairly quickly as well.

40 COMMISSIONER WATLING: - which will -

MR WARWICK: Turning back to -

COMMISSIONER WATLING: - which will raise an interesting question in itself if you look at the section of the act and the test that's got to be satisfied.

MR WARWICK: Yes - 63(10)(c), Mr Commissioner.

5 COMMISSIONER WATLING: Mm. You've got have constitutional coverage. You've got to have members in the industry for which the award is made, not for which industry they may or may not end up in.

MR WARWICK: Indeed.

10 COMMISSIONER WATLING: And you might find that there's only the TTLC and the TCCI that have an interest in it. Anyway, that's another thing. I like to foreshadow these potential problems.

15 MR WARWICK: Thank you, Mr Commissioner. In relation to TTLC.6, the second - third - page of the exhibit, you'll see that the question again occurs in relation to the relevant award or industrial agreement. The only real difference that's worth noting is that this is perhaps even a little tighter than the previous requirement.

Mr Commissioner, in relation to Ground 7, we believe this is again somewhat self-evident. That ground says that:

20 *It is an inherent feature of the Industrial Relations Act 1984 that the making of industrial awards is a positive function of the Tasmanian Industrial Commission, particularly when consideration is had to the requirement made of the Commission to take measures designed to prevent and settle industrial disputes -*

And we submit that the application is, on this basis, in the public interest. As I say, I believe that's self-evident and I don't intend to say much more about that.

25 In relation to Ground 8, that says that the current wage fixing principles - that in relation to the current wage fixing principles of the TIC, we ask the commission rely generally on Principle 13 for this award, and extension to an existing award. In particular we submit that the proposed award will comply with Principle 13.2, which states among other things that in the making of a first award the other main  
30 considerations shall be that the award meets the needs of the particular industry or enterprise by ensuring that employees' interests are also properly taken into account.

We are certainly entering into the process of making this award on that basis and also in relation to the provisions of Principle 13 generally, and we therefore submit that the  
35 application does not offend the Wage Fixing Principles of the Tasmanian Industrial Commission.

40 That is all the evidence that I'd seek to put before you, Commissioner, at this time and in conclusion I'd indicate to the commission that we'd seek a date of operation of today's hearing. In that regard we would say that the making of a title and scope and a definition in the terms sought will not have an impact on the industry of group training in the interim phase while the award is in place until it is fully established and there will be no disruption to the employers in the industry or to employment in the industry generally. If the commission pleases.

COMMISSIONER WATLING: Thanks, Mr Warwick. Mr Glisson, have you any submission.

MR GLISSON: Just to say that I support the application made by the Trades and Labor Council and look forward to being involved in the discussions on the .... as and when those discussions take place. I'd like to be kept informed and invited to attend those proceedings. Thank you.

5 COMMISSIONER WATLING: Good. Thank you. Mr Edwards.

MR EDWARDS: Thank you, commissioner. Commissioner, I think as a result of the thoroughness with which Mr Warwick has addressed his application, I can be relatively brief in response and intend to do just that.

10 Perhaps if I could start from the point of correcting one matter that I did advise the commission of earlier, and I received subsequent advice that in fact the Tasmanian Hospitality Group Apprenticeship Scheme is not a company.

COMMISSIONER WATLING: No, I was going to raise that with you.

MR EDWARDS: Rather, that is the only one, as I am advised, that is an incorporated association.

15 COMMISSIONER WATLING: Right.

MR EDWARDS: If I could just amend my earlier advice. I didn't mean to mislead the commission.

COMMISSIONER WATLING: No, I can see that.

20 MR EDWARDS: Commissioner, whilst Mr Warwick was taking us through TTLC.1, I took the opportunity of just noting down the right hand side -

COMMISSIONER WATLING: So given -

MR EDWARDS: Sorry.

COMMISSIONER WATLING: - just given that comment, is it right then to talk in the scope about group training companies?

25 MR EDWARDS: It certainly perhaps causes a difficulty. I'm not quite sure how we could accommodate it.

COMMISSIONER WATLING: Because if they're - if they're not companies then they're - they could be excluded.

30 MR EDWARDS: Yes, certainly in the - in the scope clause and in the definition we talk about the industry of group training companies. I'm not quite sure how we would overcome the difficulty.

COMMISSIONER WATLING: Unless we put group companies and -

MR EDWARDS: Or associations.

35 COMMISSIONER WATLING: - and - and/or incorporated associations. It would mean then that non-incorporated associations would not be included.

MR EDWARDS: I think that would be an appropriate amendment -

COMMISSIONER WATLING: I think that might be.

MR EDWARDS: - commissioner, and -

COMMISSIONER WATLING: Yes.

MR EDWARDS: - perhaps Mr Warwick should be -

MR WARWICK: I think it's just 'or associations', isn't it?

5 COMMISSIONER WATLING: Yes. Yes. Or incorporated associations.

MR WARWICK: That's agreed, Mr Commissioner.

COMMISSIONER WATLING: Right. Well the application will - application will be amended to include those words as well.

MR EDWARDS: The amended amended application will be amended.

10 COMMISSIONER WATLING: That's it. Very good.

MR EDWARDS: Thank you, commissioner. Yes, commissioner, as I was saying whilst Mr Warwick was making his submission, I went through his grounds in support document and put a notation down the right hand side of it - of those passages with which we agreed and any with which we did not agree. There's only probably two that  
15 we had any concerns with subject to the amendment that Mr Warwick's now made of course to his point three. The first one we have a concern with is we don't necessarily accept that apprentices and trainees are amongst the most vulnerable members of the labour force; in fact they have some protections over and above those afforded to ordinary employees, if I can use that term, but I don't make any point of that, just  
20 simply say that we don't accept that statement in the way in which it is made.

And the only other one with which we had any concern is whether or not the first awards and extensions of existing awards principle would have any application to the proceedings so far as they go today because nothing is being done that affects the wages and conditions of anyone and as a consequence perhaps no principle is relevant  
25 to this point in time, rather, it is the provisions of the act that would be required to be satisfied.

COMMISSIONER WATLING: I think I agree with you.

MR EDWARDS: But I again don't make any point of that, just simply observe it.

COMMISSIONER WATLING: It may well come into play when you continue to make  
30 the award.

MR EDWARDS: It will most definitely come into play as we continue to make the award, and your comments of a little earlier to Mr Warwick haven't fallen on deaf ears at this end of the table either, commissioner, and it's a matter that has received some considerable debate already within the companies that are covered by the award as to  
35 how we might handle the question of wage rates in particular. I think everyone is fairly well familiar with the way the industry has dealt with this issue in the past. Whether that can be dealt with on an award basis is a matter of some conjecture. It's always been a matter debated quite heatedly before this commission, whether it is appropriate to pick up references to other arrangements through an award - and that  
40 will be a matter which no doubt we will have many discussions, both as the parties privately, and perhaps even as Mr Warwick suggests in private, and perhaps public proceedings before the commission.

COMMISSIONER WATLING: .... set yourself a timetable to complete this award because I'm a bit gun shy on some of these things.

MR EDWARDS: I haven't, commissioner, because I, too, am gun shy on these things.

COMMISSIONER WATLING: Because I've been bitten so many times.

5 MR EDWARDS: Yes - I don't know that you've been bitten any more times than I have, commissioner. I seem to think that I've been involved in most of those issues with the only exception being the building industry matter to which you referred when it was my erstwhile colleague, Mr Brotherson, that in fact participated in those proceedings rather than myself, and that just perhaps shows the date at which those  
10 matters were progressed before the commission.

I haven't given any thought to a timetable, commissioner, and quite deliberately so. This will be a fairly difficult task for the parties in trying to overcome those very issues that have been the subject of some preliminary discussion today. I would not imagine, if I were to be quite frank, that we would be back before the commission in a hurry  
15 with an agreed award.

I think there are a substantive number of issues that will need to be debated. There is a fair amount of information we will have to collate before we can even commence that task, I suspect. So, if I were to make a suggestion, it would be that it may be some reasonably lengthy period of time before we are back. In that, I'm talking in terms of  
20 three months rather than three years.

COMMISSIONER WATLING: Right. So, that'd be quicker than all the others that I have done in recent times.

MR EDWARDS: Yes, indeed, commissioner. Even if it's only to come back and say that we can't agree.

25 Commissioner, from the point of view of the group training companies whom I represent in these proceedings, we would make the overarching submission that the application is one that we believe is in the public interest. We make the ready concession on the record, that the group training companies and the one incorporated association to which I've already referred, are the true and correct employers of labour  
30 that will be covered by this award and Mr Warwick has demonstrated that by virtue of exhibit TTL2, which my members have participated in the survey conducted by the TTL2 to demonstrate that point.

I might also add, that Mr Warwick had originally sought to lead some sworn evidence from someone within the state service, but I advised Mr Warwick that that would be  
35 unnecessary inasmuch as we would be conceding that we are the employers of the labour and as a consequence that would probably unnecessarily drag out the proceedings.

So, we do concede that point, which is the one that is made quite appropriately at point 1 and point 2. We also quite readily concede that until this point in time, apprentices and trainees employed by those group training companies have been  
40 award-free. I don't think there can be any real doubt about that. There is no scope clause of any award of the Tasmanian Industrial Commission that describes in any way the industry of these employers.

The only possible exceptions that I might put forward would be those craft-based  
45 awards, to use the vernacular.

COMMISSIONER WATLING: And the ones covered by the registered agreement.

MR EDWARDS: Yes, if I can come back to agreements in a moment.

5 The craft-based awards, such as the Clerical and Administrative (Private Sector) Employees Award, the Transport Workers' General Award, the Miscellaneous Workers' Award, I think are the ones that spring readily to mind which are craft-based awards would perhaps apply to the circumstances where trainees or apprentices were picked up for that industry or that craft.

10 So, perhaps with that in mind, commissioner - and this is only a matter that's occurred to me during the course of the proceedings, that may be the standard overriding provision that goes in with these preliminary stages of the making of a new award could perhaps be incorporated into this matter and that is, this doesn't affect any existing award coverage. There are some standard verbiage that the commission uses in that regard, which I don't have at my disposal today.

COMMISSIONER WATLING: Yes, but we normally list the award.

15 MR EDWARDS: In which case I would request that the awards listed would be the 'craft-based awards' and I think there are only the three, following some recent interpretative matters before the commission. Just to recap those, I think they are the Clerical and Administrative (Private Sector) Employees Award, the Transport Workers' General Award and the Miscellaneous Workers' Award.

20 From the point of view of the companies that I represent, it would be our intention that those awards will eventually be overridden by the specific making of a scope clause in this industry.

COMMISSIONER WATLING: What about the Building Trades Award? I'm not talking about the Building Industry Award that I established that nothing's been done about.

25 MR EDWARDS: I think, in accordance with the terms of section 33 of the act, that probably wouldn't validly be deemed to be an occupationally based award, notwithstanding the way in which the scope clause is couched in that award which might give people the impression that it is an occupationally based award. The absence of a declaration that it is, would mean obviously that it is not.

30 COMMISSIONER WATLING: Well, it gets back to the commission taking over awards of the previous industrial board system.

35 MR EDWARDS: Which were, I think, commissioner - I think you and I have discussed this before and prima facie anyway, agreed that the previous industrial board system did not have the capacity to make craft or occupationally based awards and as a consequence, it would have to be deemed to be an industry based award at law. Now, how that then would be applied is a matter of some conjecture. I suspect it may be unapplicable in a lot of instances.

COMMISSIONER WATLING: So you're asking that I not include that?

40 MR EDWARDS: I am, commissioner. I don't think it would be appropriate. For me to include it, would be for me to give some prima facie acceptance perhaps that it is an occupationally based award and I have no intention of doing that.

COMMISSIONER WATLING: All right. I just thought it should be raised in the hearing.

MR EDWARDS: I've got no problem with it being raised, commissioner.

COMMISSIONER WATLING: People can respond then.

MR EDWARDS: Exactly. I think you got the response you were looking for, sir.

Commissioner, Mr Warwick has properly taken you to the provisions of the Vocational, Education and Training Act and in my view has also properly taken you to the streams of training or agreement. What Mr Warwick perhaps didn't do, which I will do, in addition - if I could take the commission to exhibit TTLC.5 to the second-last page thereof, under the heading towards the bottom of the page, it says:

*Both parties agree that:*

(a) *the conditions of employment, including remuneration, shall be as prescribed from time to time by the appropriate industrial award, order, industrial agreement or the provisions of the Vocational Education and Training Act 1994.*

Which probably takes it a step further than Mr Warwick's submission did. I put that forward only as additional material in support and likewise, the fifth last page of exhibit TTLC.6 has exactly the same words under the bold heading: Both parties agree that: And I won't read it again.

In respect to exhibit TTLC.3, which Mr Warwick uses to make the evidence that this is an industry which has a substantial population of employees within it and therefore that it is necessary for an award to be made, we readily concede that point.

Exhibit TTLC.3 quite appropriately shows that there are a significant number of employees currently employed and there are projections included within the document that that number of persons is intended to be expanded over the coming years. I find the differences in the totals between Attachment A and Attachment B to be intriguing at best. I do not think anything swings on it because both show substantial numbers, but it is a bit hard to think that maybe that on 30th day of April there were a significant number of additional people employed to make up to the numbers shown at Attachment A which was done on 30 April, as opposed to those done in Attachment B, what was done on 29 April.

MR EDWARDS: In any event, as I indicate, commissioner, there is no force to that submission. It simply is a matter of some intrigue.

Commissioner, it would be our submission that the test of the act going to the public interest is met by this application. I don't necessarily concede the point made by the TTLC about the need for award coverage. That's not necessarily something with which I would agree. What I would say is, that in the instances of the group training companies and their apprentices and trainee employees, that we would concede that the public interest would best be served by the creation of an award such as that proposed by this application. For those reasons, we would make the submission that the tests imposed by section 36 of the act are met in the context of this application.

I've already made a brief submission in respect to the wage fixing principles. I don't believe, frankly, commissioner, that they are really in need of being addressed in the context of this application, so I don't take the commission to them.

I would conclude, commissioner, by simply saying that we would consent to the operative date sought by Mr Warwick, that being today's date. There's no need for that to be a first pay period mentioned. It is probably better if it is a finite date because it is a date from which certain things commence to happen. I think there is now a 21 day hiatus whilst people go about the task of determining who will make application to become parties and persons bound to the award.

In closing, sir, I would submit that we agree with the application before the commission, as amended, during the course of today's proceedings and would rest on that point. If it please the commission.

COMMISSIONER WATLING: Any further submissions, Mr Warwick?

5 MR WARWICK: Thank you, Mr Commissioner. Just one point in relation to the comments made by Mr Edwards, towards the end of his submission about - I think he used the words, the need for the award, and I guess the general view of the TCI in relation to that, I'd simply say that we are in the business of making awards. One of the main reasons we exist, and we make no apologies for it -

10 COMMISSIONER WATLING: Well, at least applying for them, I would say, Mr Warwick. I'm not too sure that you make them.

MR WARWICK: Yes. Quite correct, Mr Commissioner. The only point I would seek to make is in relation to the question raised by you about the actual process of getting on with making the award proper. The commission will perhaps be comforted to know  
15 that I'm - the position I hold at the Trades and Labor Council is funded by the commonwealth and it is a requirement of the agreement we have with them that I undertake this activity and also that it is completed by around 31 August this year and that would certainly be our expectation. If it please the commission.

COMMISSIONER WATLING: Well, I can indicate to you that I will hand down a  
20 written decision in due course on this matter, but I am satisfied that an award should be made and I will put my reasons in my decision and it will be operative from today and I will pick up the three craft awards that Mr Edwards has indicated in the proviso.

It will now be open, after I hand down my decision, to organisations to apply for an interest in the award and that will be done under a different section of the act but I  
25 just remind you that the test will be applied in that matter and that will be, that you have got to have members in the industry for which the award is established. You must have constitutional coverage and by gaining an interest in the award, it won't disrupt the orderly conduct of industrial relations in the state of Tasmania.

So, having said that, a written decision and an order will be handed down in due  
30 course. You can be rest assured it will be in favour of the application. Thank you.

**HEARING CONCLUDED**