

DEPUTY PRESIDENT JOHNSON: I'll take the appearances please, Ms Moncrieff.

MS D. MONCRIEFF: If the commission please, DIANE MONCRIEFF for the CFMEU.

DEPUTY PRESIDENT JOHNSON: Thank you, Ms Moncrieff. Mr Brown.

5 **MR R. BROWN:** If the commission please, BROWN, R., for the TCCI.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Brown. Mr Atkins.

MR C. ATKINS: If the commission please, CHRISTOPHER ATKINS representing the Master Builders Association.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Atkins. Ms Moncrieff.

10 MS MONCRIEFF: Thank you, deputy president. Sir, this application is made by the Construction, Forestry, Mining and Energy Union, Tasmanian branch, to vary the Building and Construction Industry Award and the Building Trades Award to increase all expense related allowances contained in the awards and to take into account movements in Consumer Price Index over the 1 July 1996 to 30th June
15 1997.

Sir, I have been just advised prior to the commencement of the hearing by your associate that the award has been consolidated in the past week or so and that the application does not in some instances reflect the renumbered clauses in the award, so I shall be varying those on my feet as I go and I'd at this point thank your
20 assistant for that advice and assistance.

I'm sorry, sir, did I mention the grounds? I just lost myself there for a second.

DEPUTY PRESIDENT JOHNSON: No, you didn't.

MS MONCRIEFF: No, fine, sorry.

DEPUTY PRESIDENT JOHNSON: I think if you would prefer to, subject to any
25 objection that might come from Mr Brown and Mr Atkins, I don't see that you need to slavishly go through every one of these. I think if you indicate the principle that's been followed and it copies the practice of previous years, if you indicate the nature of the allowances and their variation and their compliance which I understand will be your submission with the Wage Fixing Principles, it may not be necessary to go
30 into any further detail other than to mention the clauses that need changing because of renumbering. And I think Mrs Gillie had a list of those.

MS MONCRIEFF: Sir, I had intended to speak relatively briefly to these and not to go through item by item, but in fact to speak about the first two or three. I understand it's Mr Benson's - well I don't fully understand the reason why it's done
35 in the way it is but I shall be handing up a correspondence between Mr Benson and the TCCI which speaks to the negative outcomes and I would putting on transcript a reply to that. I feel that Mr Benson wanted to have in transcript why he has done the orders in the manner that he has -

DEPUTY PRESIDENT JOHNSON: Yes.

40 MS MONCRIEFF: - and what they may reflect. So I'm speaking to that relatively briefly.

DEPUTY PRESIDENT JOHNSON: All right. I was just trying to make it easier for you. Mrs Gillie -

MS MONCRIEFF: Yes, thank you. I had lost my place and it really is a dog's dinner that I'm looking at but -

5 DEPUTY PRESIDENT JOHNSON: Yes.

MS MONCRIEFF: - I'll press on and try to - yes, thank you, I'll try to make it as brief as I can and not go to too much detail.

The grounds upon which this application is made are as follows:

- 10 1. To compensate employees for the rise and the cost of living over the previous 12 months.
2. To maintain the nexus with our federal award, that being the National Building and Construction Industry Award 1990, and
3. Such other grounds as the commission deems fit.

15 Sir, this application is made in accordance with Principle 10.1, the allowance principle which reads, and I quote:

Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant changes in the level of such expenses.

20 It conforms with section 36 of the Industrial Relations Act of 1984 in that it passes a public interest test, in my submission.

I shall speak briefly to the table of related allowances and the calculation schedule that was attached to the application.

25 At Item 1, it refers to clause 8 of the award at subclause (c) - the tool allowance. The adjustment sought relies on the Consumer Price Index at capital cities weighted average which comes in at a percentage change for the period June 1996 to June 1997 of 0.03 per cent. A copy of the Australian Bureau of Statistics Table 2B is attached to the union's application at the second last page showing the percentage changes quarter by quarter.

30 In the union's application, the old rate is listed in column one, then the appropriate calculation is listed in column two, followed by the new rate which we seek to have inserted into the award; that is in column three. And so through all the variations sought.

35 Where the calculations involve a negative amount - I'm sorry - a negative outcome or an amount that is insufficient to move the amount upward, the variations sought reflects the amounts currently within the award.

Item 2 refers to clause 13 - Compensation for clothes and tools - at subclause (a). Again the calculations are done in the same method and the union would seek to delete the old rates and insert in lieu thereof the new rates.

40 Item 3 addresses clause 16 - Fares and travelling - at subclause (b), and this relies on the transportation weighted average of - for eight capital cities. These - this variation relies on the Australian Bureau of Statistics Consumer Price Index Table 6E which is attached at the last page of the union's application.

Item 4 seeks to vary clause 16 - Fares and travelling - at subclause (c). This again relies on the transportation weighted average of eight capital cities and is set out in the three column system.

5 Item 5 goes to clause 16 - Fares and travelling - subclause (f), travelling outside radial areas and deals similarly with subclause (f) of clause 16 of the - sorry - it deals similarly with the matter and they are varied by 0.1 per cent.

Clause 6 goes to clause 16 - Fares and travelling - subclause - I'm not sure whether that's one or capital 'T'. 'T' - thank you - and seeks to vary the amounts similarly. The rate of variation is 0.1 per cent.

10 Clause 7 goes to clause 24 - Living Away from Home - Distant Work. I'm sorry, sir, this is where I've - I'll have to go back. I do apologise. I'm speaking to the old form that Mr Benson gave me. If I could go back to item 3 where I would seek to amend the application to reflect the changes that I have referred to in the award. The submission is as I have already put; the variation is that in the application it refers
15 to clause 13 and clause 50. I would seek to have that amended to clause 49.

Similarly, with item 4, where it refers to clause 16 - or previously it referred to clause 16, I would amend both of those clauses to read clause 15 and clause 50. Again, I'm sorry, I'm dealing off two different papers. That would be that the application to the commission be amended at item 4 to reflect clause 51, but I would
20 point out that my previous submissions referred to clause 16 which was incorrect.

Item 5, similarly, I referred on transcript to clause 15 - clause 16, it is indeed 50. I would seek to amend the application to reflect clause 50, that is, clause 50 and not clause 51.

25 Item 6 - again by my submissions, I mentioned clause 16; I should have said clause 15 as per the application and I would seek to amend the application from clause 51 to 50.

MR BROWN: Excuse me, commissioner, just going through this, I think it appears you are mixing up the two awards.

30 DEPUTY PRESIDENT JOHNSON: No, I think Ms Moncrieff found that out for herself and she's -

MS MONCRIEFF: Yes.

DEPUTY PRESIDENT JOHNSON: - talking about the Building Trades Award at the moment.

MR BROWN: Right, so we went back to - have gone back to Building Trades.

35 MS MONCRIEFF: Well, I have one that reflects both of the awards. I have one that reflects one of the awards.

DEPUTY PRESIDENT JOHNSON: The one you were just recently talking to -

MS MONCRIEFF: Is the building - I started on the Building and Construction Industry Award -

40 MR BROWN: Yes.

MS MONCRIEFF: - and was speaking to that. Then I had an application which I believe reflects both of them.

MR BROWN: No.

MS MONCRIEFF: It doesn't?

MR ATKINS: No. It's the Building and Construction Industry Award and Building Trades Award. The Building Trades Award refers to double clauses.

5 MR BROWN: Yes.

MR ATKINS: That's where we're going.

DEPUTY PRESIDENT JOHNSON: There's nothing wrong with these applications is there, Mr Brown?

MS MONCRIEFF: The calculations are correct.

10 MR BROWN: In terms of the calculations?

DEPUTY PRESIDENT JOHNSON: Yes.

MR BROWN: The calculations are fine, commissioner, yes.

DEPUTY PRESIDENT JOHNSON: Yes.

15 MR BROWN: We've done a rigorous test on those and checked the ABS rates and have no problem with the actual amounts of increases that are - and the new rates.

DEPUTY PRESIDENT JOHNSON: Is there any objection to an application that I'll put in Ms Moncrieff's mouth to amend the application in T.No.7241 of 1977, that is, the Building Trades Award to, where necessary, delete clause 50 and substitute clause 49; and delete clause 51 and substitute clause 50; delete clause 54 and substitute clause 53; and delete clause 55 and substitute clause 54. Is there any
20 objection to that amendment?

MS MONCRIEFF: I'd welcome it, sir.

MR BROWN: No objection on behalf of the TCCI.

MR ATKINS: And no objection from the Master Builders Association.

25 DEPUTY PRESIDENT JOHNSON: In those circumstances the application to amend the application will be granted.

MS MONCRIEFF: Sir, I shan't labour on through all the clauses, as I indicated. I would however turn to clause 11 of - and this is of the Building and Construction Industry Award application. We - it reflects - it is not in the form of the other
30 calculations and it has been simply - I'm sorry - it has the old rate calculation new rate, but in the calculation column it has that it was negative, therefore no movement. We would seek in that example to have the existing rates within the award reflect the lack of movement.

35 Sir, with respect to that particular item, I would seek at this stage to hand up a copy of a letter from the TCCI, to Mr Benson of our union.

DEPUTY PRESIDENT JOHNSON: I'll mark that as exhibit M.1.

MS MONCRIEFF: I shall read it into transcript, sir, before putting the union's position. It reads:

Dear Sir,

re: Expense Related Allowance Claims.

5 Thank you for the advance copy of the draft orders from the CFMEU in respect to their application to vary the Building Trades Award and the Building and Construction Industry Award in accordance with the movements and various components of the Consumer Price Index.

10 The TCCI have conducted a rigorous test of the formula and figures you have advanced and we advise that we believe the draft orders prepared are correct and we will be consenting to the applications when they are before the commission on the 2nd October 1997.

15 There arises however the issue of those movements in the CPI that have been of a negative nature and the effect of this - the effect this negative figure should have in any future calculation of movements in the allowances because of adjustments in the Consumer Price Index. In this regard it is the position of the TCCI that any further adjustment should be done on the basis of utilising the Consumer Price Index movement from the date the award has last moved, ie, June of 1996. That way the negative movement in the CPI can be taken into account in any future claim for an adjustment.

20 The issue relating to the way in which the negative CPI figures will be used is not one that need hold up the proceedings of today - of the 2nd October. In all likelihood the TCCI will simply flag the issue and allow it to be debated at the next time expenses related allowances are before the commission.

If you have any queries in respect to the above, please do not hesitate to contact the undersigned.

25 I'm sure Mr Brown will have comments in that direction.

30 But in referring to this letter, I would refer in particular to the part which reads 'any further adjustments should be done on the basis of utilising the Consumer Price Index movement from the date the was last moved, ie, June of 1996. That way the negative movement in the CPI can be taken into account in any future claims for an adjustment.

35 Deputy president, it would appear that the TCCI is referring to the camping allowance where the percentage change this year was minus two per cent. Again, I would say it would appear that what they are saying is that if the change next year is, say, plus two per cent, then there should be no increase to the allowance next year.

We are not aware of any decision by a tribunal to offset one year's CPI increase with the previous year's decrease once an award has been varied. The normal practice of the commission is to award no increase where there has been negative movements since the last award variation.

40 Sir, the union's position would be that if the TCCI want to argue for negative offsets next year and the union, we will flag, that we will argue at that time that the current quantum of camping allowance, which is \$16.70 per day, is demonstrably inadequate and that the whole basis of calculating this allowance should be reviewed.

45 The only reason why there was a negative movement in the relative CPI average this year is a minus nine per cent adjustment to the housing group due largely to the

lower home interest rates. Why the housing group CPI is taken into account when calculating camping allowances is a mystery. It is probably some compromise reached many years ago at a national level and certainly is not within the knowledge of myself.

5 On the other hand there was a three per cent increase to the food group CPI which is also taken into account when calculating camping allowance. However, this was offset by the negative movement in housing costs.

10 There is reasonable argument that the cost of food and cooking is the only relevant cost that should be taken into account when calculating camping allowance. On that basis the allowances should have gone up by three per cent this year if we wished to pick and choose how to vary the pattern that has been set through the various tribunals.

15 The TCCI, sir, in my submission, would be well advised not to interfere with national award standards otherwise they may find that the union has a very strong case for substantial increases on all existing allowances based on actual expenses incurred by workers in Tasmania rather than the notional amounts currently prescribed in the national award and flowed onto the state awards.

Finally, in my submission, sir, I would seek an operative date, that date being today. If the commission pleases.

20 DEPUTY PRESIDENT JOHNSON: Oh, well that wasn't a bad effort, Ms Moncrieff, since you started even behind the back marker.

MS MONCRIEFF: Very, very much behind. Thank you, sir.

DEPUTY PRESIDENT JOHNSON: Mr Brown.

25 MR BROWN: Thank you, commissioner. As stated in the correspondence to the CFMEU, in particular Mr Benson, it is the TCCI's position that we do consent to the application as before you as amended, and in regards to the issue regarding negative impacts on the CPI, it is the - the TCCI doesn't wish to hold up proceedings today, as stated, it is merely just a flag that we're looking at the CPI movements in the next 12 - over the next 12 months that we do see that some discussion will need to take
30 place in terms of taking into account the negative movements in this last 12 month period.

35 It is our belief that the actual - these allowances in terms of the - this specific case - sorry - the camping allowance, the actual award for camping allowance will not be varied as there is no change to the rate, therefore we would - our argument may be that the award hasn't been varied in regards to camping allowance, therefore 1 July 1996 would be the effective date of any CPI movements up until the date of the gain review which we would anticipate would be in around 12 months time. If the commission pleases.

40 DEPUTY PRESIDENT JOHNSON: Your submission, Mr Brown, is that the changes sought to the awards comply with the Wage Fixing Principles and are not otherwise contrary to the general public interest provisions of section 36 of the act.

MR BROWN: That's correct, commissioner.

DEPUTY PRESIDENT JOHNSON: Mr Atkins.

45 MR ATKINS: Certainly, commissioner. I would certainly support the application and the comments made by the TCCI in relation to those matters. Apart from the

issues of the negative movement and their treatment, I haven't had any direction from my association as such in relation to that matter, and would reserve the opportunity to discuss that at a further hearing.

5 DEPUTY PRESIDENT JOHNSON: Yes. Thank you. Thank you, Mr Atkins. Having heard the parties, I am satisfied that there is nothing in the applications that contravenes either the Wage Fixing Principles or section 36 of the act, and accordingly I will vary the award in terms of the draft orders; in the case of the Building Trades Award, the amended draft order.

10 I might add that in relation to the foreshadowed discussions about the further movement of allowances that have been affected by a negative movement in the CPI, I obviously make no comment whatsoever about the merit of such matters, but I do put it in the parties' minds that in the new year I would expect to be in a position to proceed with these awards along with others in terms of the requirements of the Wage Fixing Principles regarding the award review process.

15 My first request for advice from the parties in that regard will be why do we have these two awards? And it seems to me that it is well past time that the future of the Building Trades Award was thoroughly examined by the parties. And in the course of that process my expectation is that that will be an opportune time for the parties to discuss the question of negative movement in the CPI allowances.

20 I will make a note of those matters in my decision in connection with this matter. If there is nothing for the record today, I will adjourn these proceedings sine die.

HEARING ADJOURNED SINE DIE