

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 5228 of 1994

IN THE MATTER OF an application by the
Construction, Forestry, Mining and Energy
Union to vary the Furnishing Trades Award

re restructuring of award

COMMISSIONER IMLACH

HOBART, 16 November 1994

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: I'll take appearances.

5 **MR J.W. GILL:** If the commission pleases, **GILL, JACK WILLIAM**, and I appear on behalf of the Construction, Forestry, Mining and Energy Union, Tasmanian Branch. Appearing with me is **MR RICHARD LOWE**, who is our federal industrial officer who is going to present the submissions, and there is a letter that has been lodged with your associate that gives Richard the authority to appear in this matter.

COMMISSIONER IMLACH: Thanks, Mr Gill, I have that authority, yes.

MRS H.J. DOWD: If the commission pleases, I appear on behalf of the Australian Municipal, Administrative, Clerical and Services Union, **DOWD, H.J.**

10 COMMISSIONER IMLACH: Thanks, Mrs Dowd.

MR T.J. EDWARDS: If it please the commission, **EDWARDS, T.J.**, I appear for the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER IMLACH: Thanks, Mr Edwards. Right, who's kicking off? Mr Lowe?

15 MR LOWE: At the start, commissioner, the union would seek leave of the commission to amend its application as previously lodged.

COMMISSIONER IMLACH: Yes.

MR LOWE: I can at this stage provide the commission with copies of the amended application.

20 COMMISSIONER IMLACH: Right. We'll call it document L.1. Now, does Mr Edwards know all about this, does he, Mr Lowe?

MR LOWE: Yes. There is no objection from the parties to the amended form of the application. There are some immediate changes that I will draw your attention to in a minute, if I may.

25 COMMISSIONER IMLACH: Right. When you've done that, I will call on Mr Edwards to confirm with him.

30 MR LOWE: Thank you. The changes to the original application in the main relate to the setting of wage rates for apprentices, adult apprentices and junior workers in the furnishing trades section of the award. The new provision being sought in the amended application reflects the terms of a recent decision of the full bench of the Australian Industrial Relations Commission in a test case to determine wage rates for apprentices and junior workers in the furnishing industry. Those changes are located at pages 26 to 28 of the application, Mr Commissioner.

COMMISSIONER IMLACH: Right.

35 MR LOWE: Mr Commissioner, during the adjournment that you so kindly allowed us before this hearing commenced, the parties brought to my attention the number of changes that would be required to the application and if I could draw those to your attention now, if I may. If I could first of all draw your attention to page 8, at the end of the first paragraph there is a heading, Driver 87.4%, followed by Production Employee, Level 4 92.4%. It has been agreed that any final draft order, that that placement should be altered so that it actually goes in before the Clerical Assistant Grade 1 at 90% on page 7.

40 COMMISSIONER IMLACH: Just a minute, Mr Lowe. So the whole of page 8 -

MR LOWE: No, just the section that relates to Driver.

COMMISSIONER IMLACH: Driver only?

MR LOWE: Driver only.

COMMISSIONER IMLACH: If I put a ring around that.

5 MR LOWE: Yes. You would find that that would move to fit in before Clerical
Assistant Grade 1 at 90%. It is just so there is an even flow of percentages through
from 78% through to the end. If I could refer the commission to page 11 where there is
a similar situation with a driver, at the top of the page, of 92.4% and the ensuing
10 paragraph. That would be changed in final draft orders and its placement to go before
Clerical Officer Grade 2 on page 9.

COMMISSIONER IMLACH: Right.

MR LOWE: If I could draw the attention of the commission to page 29. This page has
the percentages and wage rates for Junior Employee Clerks and unfortunately in
15 drawing up the application, I did some people a very grave disservice. I actually gave
them a decrease in wages and I would like to change the application in the following
way; the under 17 years wage rate. There is actually a change downwards in that. The
percentage should be 45% and the wage rate should be \$172.60.

COMMISSIONER IMLACH: \$172.60?

MR LOWE: Yes.

20 COMMISSIONER IMLACH: What about the one before?

MR LOWE: That's under 17.

COMMISSIONER IMLACH: Yes. \$185.50.

MRS DOWD: That's an incorrect wage rate, Mr Commissioner.

COMMISSIONER IMLACH: That's going to be fixed, is it?

25 MR LOWE: Yes. The wage rate for 18 to 19, the percentage should change from 65 to
70 and the wage rate should be \$268.50. The rate for 20 to 21 years of age, the
percentage should be 90 and the wage rate should be \$345.20.

COMMISSIONER IMLACH: Just a minute, Mr Lowe. I'm looking at page 29, Junior
Employee Clerks, starting at the top, under 17 years of age 50%, I've got.

30 MR LOWE: Yes. It should be 45 and the \$185.50 is changed to \$172.60.

COMMISSIONER IMLACH: The next one is unchanged?

MR LOWE: Unchanged. The 18 to 19 years of age, I am advised changes from 65% to
70% and the rate changes from \$241.20 to \$268.50.

COMMISSIONER IMLACH: Right. Then the 90% and \$345.20.

35 MR LOWE: The 19 to 20 stays the same. The 20 to 21 goes to 90 and \$345.20. I'm
also advised and maybe the Clerical Workers representative can advise this, but I have
missed out a 16 year old rate.

MRS DOWD: Yes.

MR LOWE: You can hear from her now or in due course, when I complete this if you like. I'm easy.

5 COMMISSIONER IMLACH: We may as well do it now, I think, Mr Lowe. Yes, Mrs Dowd?

10 MRS DOWD: Mr Commissioner, in the existing Furnishing Trades Award, there is a rate for under 16 years of age at 40%, then it goes to 16 to 17 years of age at 45%. With my perusal of the draft order, or the application, I missed that one. Mr Edwards has just brought it to my attention and I believe that that under 16 years of age should remain in the award even though it is not utilised and the 40% should be included but I haven't got a wage rate for the 40% to actually be included in the application. If the commission pleases.

COMMISSIONER IMLACH: Is that it then? Mr Edwards is going to give us a quick-smart amount.

15 MR EDWARDS: Just on a quick calculation and subject to correction from anyone who wants to do the calculation, I get in the first table, under 16 at 40% being \$138.10 and in the second table under 16 at 40% being \$145.50. They were done quite quickly so they might be subject to correction.

COMMISSIONER IMLACH: Yes. Thanks, Mr Edwards. Now, Mr Lowe?

20 MR LOWE: Thank you, Commissioner. Continuing down that page, in the second section, under 17 years of age changes from 50% to 45% and the wage rate changes from \$195.50 to \$181.90.

COMMISSIONER IMLACH: Yes.

25 MR LOWE: 17 to 18 years of age remains the same, 18 to 19 years of age, the 65 changes to 70% and \$254.70 changes to \$283.00. 19 to 20 remains the same and 20 to 21 moves from 85 to 90 and \$333.00 becomes \$363.90. That the changes on page 29. I would ask the commission at this stage to just refer to page 31.

COMMISSIONER IMLACH: Yes.

30 MR LOWE: Towards the bottom of that page at paragraph marked clause (k) which in the main deals with wages we had a section for Glass (Other than safety glass) and that goes through to page 38 at the top of the page, ending at paragraph (h). In final draft order that will become clause 7(a).

COMMISSIONER IMLACH: A separate clause altogether?

MR LOWE: Yes, 7(a).

35 COMMISSIONER IMLACH: When you say, in a final draft, what does that mean?

MR LOWE: The draft order. Maybe I am using federal award terminology.

COMMISSIONER IMLACH: Cross out (k) and put 7(a)?

MR LOWE: Yes.

40 COMMISSIONER IMLACH: In the latest draft that now becomes 7(a) and from now on it will be 7(a).

MR LOWE: Right. Continuing on from there where we have subclause (i) -

COMMISSIONER IMLACH: That's subclause (l).

MR LOWE: Yes. Going through to page 41 in subclause (iv) will become clause 8(a).

COMMISSIONER IMLACH: What about the bracket there. It remains (l) does it?

5 MR LOWE: No, there will be some subsequent changes to the paragraphs.

COMMISSIONER IMLACH: So, can I say it will be 8(a), is that right?

MR LOWE: Yes.

10 COMMISSIONER IMLACH: Well, I will just replace the (l) with a small (a). I go back to 7(a) if I remember rightly and that looks like it is okay. So, I'm up to page 38, 8(a) and then the small (a), (b) et cetera.

MR LOWE: (m) would become (b).

COMMISSIONER IMLACH: Yes. We won't worry about that, Mr Lowe. Over the page - (o) becomes (d).

MR LOWE: (p) becomes (e).

15 COMMISSIONER IMLACH: (q) becomes (f) and that's it?

MR LOWE: That's right.

COMMISSIONER IMLACH: Proceed.

MR LOWE: On page 43, towards the bottom of that page, there is a paragraph which commences, 'Polisher'. At the right-hand side of that page there should be a T1.

20 COMMISSIONER IMLACH: I don't follow that, Mr Lowe.

MR LOWE: It relates to tradesperson level 1 and that is part of the translation document from the old classification structure to the new broadbanded structure. So it is just a reference point.

COMMISSIONER IMLACH: Yes.

25 MR LOWE: On page 44, beside Upholster, also there should be a T1. Down the page further to Machinist- B Grade - and that's got an asterisk beside it; there should be a figure 3.

COMMISSIONER IMLACH: Right.

MR LOWE: And the last change, commissioner, is on -

30 COMMISSIONER IMLACH: Just before you go to that page 44, Mr -

MR LOWE: Yes.

COMMISSIONER IMLACH: - if you go up to bedding - right -

MR LOWE: Mm.

COMMISSIONER IMLACH: - the T.1 is dropped there isn't it?

MR LOWE: Yes, but it's probably just needs to be moved up a little.

COMMISSIONER IMLACH: Yes, same as the 4, same as the 3 - right - yes - keep going.

5 MR LOWE: I can refer you now to page 54.

COMMISSIONER IMLACH: Yes?

10 MR LOWE: Page 54, as it relates to clerks - the item No.2, there was three reference points there - 2nd Year Adult, 3rd Year Adult and 4th Year Adult Service - that 4th Year Adult Service comes out and across from the Clerical Officer Grade 3 comes out as well. That's deleted completely.

COMMISSIONER IMLACH: Right.

MR LOWE: We've picked up another typographical error, commissioner, on page 47.

COMMISSIONER IMLACH: Forty seven.

15 MR LOWE: Where the Machinist A Grade just has a figure - should have T.1 and it's only got 'T'.

COMMISSIONER IMLACH: Machinist A Grade - it's 'T' and it should have T.1.

MR LOWE: Thank you. Mr Commissioner, that's the total of the changes that have to be made the application.

COMMISSIONER IMLACH: Right, thanks, Mr Lowe.

20 MR LOWE: Do you wish to get that verified by the employers at this stage? Thank you.

COMMISSIONER IMLACH: Yes, I think we'd better do that. Do you agree - well first of all, Mrs Dowd, are you agreeable to all that?

25 MRS DOWD: Mr Commissioner, there's only one variation to what Mr Lowe has actually said, and they were the figures that were actually supplied by Mr Edwards. We have now conferred and the figures supplied by Mr Edwards are incorrect, so on page 29 -

COMMISSIONER IMLACH: Yes.

30 MRS DOWD: - under the junior employee clerks the Under 16 Years of Age at 40% in the first table should be \$153.40.

COMMISSIONER IMLACH: One fifty-three forty - yes.

MRS DOWD: And in the second table for the Under 16 Years of Age at 40% it should be 161.70.

COMMISSIONER IMLACH: One sixty-one seventy.

35 MRS DOWD: And I believe Mr Edwards will actually verify those.

COMMISSIONER IMLACH: Now, Mr Edwards.

MR EDWARDS: You don't lose any marks for trying do you, commissioner?

COMMISSIONER IMLACH: I don't know.

MR EDWARDS: I apologise to the parties for accidentally misleading them, but I want it noted that I did round them lower instead of higher.

5 Commissioner, we've no objection to the amendment to the application that has been made both by exhibit L.1 and subsequent variations which Mr Lowe has taken us through.

COMMISSIONER IMLACH: Thanks, Mr Edwards. Proceed, Mr Lowe.

MR LOWE: Thank you.

10 COMMISSIONER IMLACH: I'll confirm that those amendments are endorsed. Yes - proceed.

MR LOWE: Mr Commissioner, the union in its application is seeking to vary the award to finalise the minimum rate adjustment process that was commenced in this commission around about November of 1991 before Commissioner Watling.

15 The union is to - is seeking to replace the current award classification structure which is a task based structure with a broadbanded skill based structure for all occupational groups covered by the award.

The union will show that the classification and wage structures as they relate to furnishing trades employees are the same as those that apply in the federal
20 Furnishing Trades Award and linked to the rate in the Metal Industry Award. In respect of clerical employees and those employees who carry out vehicle driving duties, the classifications are the same as those that apply in the Tasmanian Metals and Engineering Industry Award for those occupational groups.

I will show that the method and calculation of wage rates sought for apprentices, adult
25 apprentices and junior workers employed in the furnishing industry are identical to those which applied in the federal Furnishing Trades Award as determined by a full bench of the Australian Industrial Relations Commission on the 19th October 1994.

I will show that the classifications and wage rates that apply in the glass section of the
30 award are identical to those that apply in the federal Tasmanian Glass Merchants and Glazing Contractors Award 1976 and I will establish that these provisions will remain in the award while the parties negotiate a new state Merchants - Glass Merchants and Glazing Contractors Award, commissioner.

I will establish that the application is by consent with the exception of one matter and
35 that is the phasing-in of the minimum rate adjustment where there is a minor difference between the union and the employers.

I will show that in the view of the unions the application meets the requirements of the
Tasmanian Industrial Relations Act 1984 as it applies in respect of the wage fixing principles in section 32, public interest test in section 36 and the equity and good conscience test in section 20.

40 I will show that the application meets the tests provided for in the commission's principles specifically as they relate to structural efficiency and minimum rate adjustment.

I will show that in the view of the unions, that the commission has the authority to grant the application sought. And I will seek an operative date for the award to commence from or after the first full period on or after today's date, commissioner.

5 The union in its application is seeking to continue the upgrading of the award by finalising the minimum rate adjustment process in two steps. The first step became operative from the 23rd January 1992 - 2 years and 10 months ago. Under normal circumstances the process would have been completed by the 23rd July 1993 - some 16 months ago. Delays in finalising this matter have been long, and for the members that we represent unfortunate, with those employees covered by the award not having had an increase in wages with the exception of the \$8 safety net increase for almost 3 years.

It is our view that should the commission agree to grant the application in the manner sought, the financial burden on employers should not be an onerous one.

15 Linked to our application on wage rates is the classification structures they relate to. In seeking to introduce a new broadbanded skill based structure, we are proposing to move away from the old outdated task based structure and to abolish the separate award divisional structures that currently provides for wage rates and classifications. They will be combined into an integrated industry structure covering the occupational groupings covered by the award in its current form.

20 There's one exception to this being the glass section which I will deal with later in my submission.

Commissioner, it has long been the desire of the Construction, Forestry, Mining & Energy Union and the division of that union that deals specifically with the furnishing industry and also for furnishing industry employers to have national outcomes in both industrial matters and training matters within the furnishing industry.

25 This application reinforces that desire as the proposed classification structures mirror those contained in the federal Furnishing Trades Award 1981 as varied on the 11th February 1994 and published on 9 March 1994 in Print No. L1777. We'd at this stage present - I'd like to present the commission with a copy - copies of that award.

30 COMMISSIONER IMLACH: Exhibit L.2.

MR LOWE: Mr Commissioner, the award that applies federally has just been recently updated to reflect within the classifications agreement that took place between employers within the furnishing industry and the - and the union, and that consultation has been going on for some considerable period of time through a forum known as the National Furnishing Industry Restructuring Committee which started off initially as a federal committee but which has since expanded to become a national committee and which has representation from employers on all states.

40 The wording in our application as it relates to the Furnishing Trades Award mirrors exhibit L.2. The latest changes to the award have been the inclusion of furnishing industry tradespersons level 2 and tradespersons level 3. And they are 105% and 115% of the tradespersons rate.

The wage rates which are at the front of exhibit L.2 are those that currently apply federally and they are the rates which are reflected in the application before you today.

45 The rate furnishing tradesperson level 1 of 425.20 has its linkages to the Metal Industry Award tradesperson and the percentages for the production employee levels and post trade levels based on that set of wage rates, commissioner.

The Tasmanian award, commissioner, differs from its counterparts in the furnishing industry throughout Australia and the difference is that this award is probably truer industry award as it covers clerical workers and those employed as drivers and carters.

- 5 The integration of the clerical employees and drivers classifications and their percentage relativities is as contained in the Tasmanian Metals & Engineering Industry Award and I would like to provide the commission with copies - copies of that award.

COMMISSIONER IMLACH: We'll call that L.3.

- 10 MR LOWE: L.3 shows if we look on to the second page of the exhibit the Clerk - Adult Entry level. It then has of course the various engineering sections. We move through to the fourth page of the exhibit, we will see Clerical Assistant Grade 1, et cetera. And without going right through the whole document, commissioner, the wording in this award and the wording in our application are identical.

COMMISSIONER IMLACH: Right.

- 15 MR LOWE: Commissioner, I wish to now address our application as it relates to the glass section of the award. The wording and the wage rates mirror those provided for in the Tasmanian Glass Merchants and Glazing Contractors Award 1976. And at this stage it's appropriate, I think, if I provide the commission with two exhibits, one being a copy of the draft order relating to that award, and the second one being extracts
20 from the transcript of the proceedings which I believe are relevant.

COMMISSIONER IMLACH: Right, well the - which one comes first, Mr Lowe?

MR LOWE: The draft order would come first, commissioner.

COMMISSIONER IMLACH: Right, well we'll call that L.4 - it's got L.3 on top - we'll make it L.4.

- 25 MR LOWE: Yes - it was L.3 in those proceedings.

COMMISSIONER IMLACH: And then the other one we'll call L.5.

- 30 MR LOWE: If I can deal first of all with exhibit L.4. The commission will see that on pages 1, 2, and 3 initially, and going onto page 4, there is classifications headed 'Glass Stream', at Glass Stream - General, and the definitions and then level employee one on page No.2.

- 35 On page numbered 4, there is a heading 'Shop Fitting Stream' and throughout this particular exhibit that is moved into various classifications levels through from 1 to 6. That's because that particular award covers the trade of shop fitting as well as the work undertaken by glass merchants and glazing contractors. But that - in our application the only sections that have been taken out are those that apply in the glass stream and the provisions are identical. L.3 also contains the wage rates and they are shown from page 19 through to page 24.

COMMISSIONER IMLACH: Of L.3?

MR LOWE: Yes, of L.3 - of L.4 - I'm sorry.

- 40 COMMISSIONER IMLACH: Right - page 19 -

MR LOWE: My apology.

COMMISSIONER IMLACH: No, that's alright. Page 19 -

MR LOWE: Nineteen.

COMMISSIONER IMLACH: Yes- right.

5 MR LOWE: To and including page 24 which deals with rates paid for adult apprentices. So there's the wage rates for adults which contain the base rate, supplementary payment and excess payments, then the rates of pay for apprentices and junior workers.

10 At this stage it's important that I advise the commission that the reason why we present it as an exhibit - the draft order - is that - is because although this award was to come into effect on the 8th July of this year when the minimum rate adjustment was finalised, the commission has still to order - to -

MR EDWARDS: It came out today.

MR LOWE: It's come out today has it? So at the time of preparing these submissions anyway, we didn't have a copy of the award.

15 If I can refer the commission now to exhibit L.5.

COMMISSIONER IMLACH: Yes.

20 MR LOWE: And the commission will see that from the front page of that exhibit that it is the transcript relating to case No.31185 - The Glass Merchants and Glazing Contractors Award of Tasmania. I want to refer the commission initially to page numbered 9 at the bottom and the second paragraph and I'd like to quote from that paragraph as I believe it has some relevance to our application today because of similar circumstances, and I would quote: Mr Commissioner, the unions in seeking to finalise the minimum rate adjustment process for this award are seeking to do so in two steps. The first step was operative from the 12th November 1991, a period of 2 years and 7 months ago. Under normal circumstances this process would have been completed by 12 May 1993. As a result of unfortunate delays, employers in our view have had the benefit of not having to pay out increases that would have applied for some considerable period of time now. So in our view, to finalise the matter in one further step should not be a financial burden for them that is onerous, and we have taken steps to ensure that the economic impact is shielded to some degree which I will deal with later. I'll end the quote there.

30 I'd then refer the commission to page numbered 30, which is the final page of the exhibit, and refer the commission to paragraph 2, and I would quote: However, one reminds oneself - and this is the commissioner speaking - that this is a consent order and whatever description one - an appellant may apply to it, it does in my view in a proper way deal with the final resolution acceleration of a number of steps in the minimum rate adjustment process and it does so in a way which I think is quote proper and designed to have the economic effect on employers which is not unsubstantial to be accommodated in a way which is set out in exhibit 6. I would end the quote there, commissioner.

45 The point that we're making that in respect of our application for the wage rates in this particular award to be finalised in one further step for the minimum rate adjustment process is not an unusual situation in the furnishing industry and that - that it has occurred in the Glass Merchants and Glazing Contractors Award, part of which is reflected in total in our application in this award today. And I will deal with a - that matter later, commissioner, in respect of the decisions that have enabled those things to happen.

I apologise for the delay. I seem to have lost a section of my notes. The section that I have just related to, the glass section, of course will be eventually taken out of the award when we have completed the work on negotiating a new state award for the glass industry and that is recorded in the decision of Commissioner Watling on 23
5 January 1992, which I would like to present - there were two decisions made relating to the first step in the MRA and I wish to provide the commission with copies of both of those decisions.

COMMISSIONER IMLACH: We will mark the one dated 4 December 1991 as L.6 and the one dated 23 January 1992 as L.7. Proceed, Mr Lowe.

10 MR LOWE: Thank you. If we can look at L.7 first, the commission will see that Commissioner Watling, in his decision, stated that the process for the restructuring of this award was, first of all the broadbanding of approximately 59 classifications into seven grades. The commencement of the first minimum rates adjustment at the
15 beginning of 1992, the finalisation of the structure for clerks, carters and drivers, the establishment of a new award for glass merchants and the removal of Division B - Glass from the Furnishing Trades Award. The broadbanding exercise is completed and before the commission today, as those matters in item 3, finalisation of the structure for clerks, carters and drivers has been dealt with. We are in the process of dealing
20 still with the new glass award and when that is complete the removal from that section from this award will be undertaken.

L.6, which is the document dated 4 December, the final page of that shows a chart which is headed TCI.3 and that shows the steps that were agreed at that time for the finalisation of the minimum rate adjustment. That was agreed to be in three steps,
25 commissioner. Those three steps mirrored what actually occurred in the minimum rate adjustment in the federal award where the minimum rate adjustment there was finalised in three steps. Of course, the minimum rate adjustment process, as it applied federally, didn't have the delays that have occurred in this particular award. Had those delays not occurred and they'd continued as was probably envisaged, the second and third steps would have commenced from 23 July 1992 and 23 January 1993
30 respectively.

The employer's advocate during negotiations, advised us that the position of employers was still to have three steps but to reduce the time period between the second and third steps to 3 months instead of 6. This offer was rejected by the unions as we believe that the employers who were employing staff under the terms of this award
35 have benefited greatly from the enormous expansion of the normal phasing-in period. Instead of being 18 months for the entire process up until now, it has been 34 months and if it was to continue as suggested by Mr Edwards in those negotiations, it would be a total of 37 months.

Without looking to deal with who is at fault for these delays, the real issue of concern
40 to us is that the people who have been adversely affected are employees employed under the terms and conditions of this award, low paid workers, who can ill-afford any further delays, in our view.

There is also the economic impact on employers in the furnishing industry who are in fact not covered by this award but who are covered by the terms of the federal award
45 and they are the significant number of employers, the largest number of employers within the industry in this state. They have been paying the higher rates of pay since the 23 June 1992. So, to grant the union's application as sought would, from an employer's point of view, put all the employers in the furnishing industry in Tasmania as well as employees, on an even keel.

I wish to now refer the commission to its review of wage fixing principles. The document that was issued by the commission on 24 December 1993, and I wish to, at this stage, refer to the minimum rates adjustment principle, if I may.

5 *Minimum rates adjustment for minimum rate awards in accordance with the October 1989 and August 1991 State Wage Case decisions shall continue to be allowable and shall be in accordance with the following:*

10 *the appropriate adjustments in any award will be applied in no less than four instalments which will become payable at six monthly intervals provided in appropriate cases longer or shorter phasing-in arrangements may be approved or awarded and/or parties may agree that part of a supplementary payment should be based on service;*

It's the view of the union that that clearly says there can be less than four steps and that if agreement can't be reached between the parties, then the commission has the authority to arbitrate on those particular issues.

15 I wish to now, if I may, refer to the provisions of Industrial Relations Act.

COMMISSIONER IMLACH: Just as an aside - a slight bit of humour there, Mr Lowe. I couldn't help saying that arbitration's becoming a rather old-fashioned word now, isn't it?

20 MR LOWE: Yes, I guess that it is. We've of course attempted to resolve this matter without having to resort to that but I think that pointing out that there is the ability for the parties to - if they can't reach consent on those matters, to be able to have the matter arbitrated. We tried, even as late as this morning, to see if there was any possibility of changing the employer's mind on this particular matter and I have to report that we weren't able to do so, sir.

25 If I can refer the commission, first of all, to section 36(2), paragraphs (a), (b) and (c), it says:

In deciding whether a proposed award or a proposed industrial agreement would be consistent with the public interest, the Commission shall -

30 *(a) consider the economic position of any industry likely to be affected by the proposed award or proposed agreement;*

(b) consider the economy of Tasmania and the likely effect of the proposed award or proposed agreement on the economy of Tasmania with particular reference to the level of employment; and

35 *(c) take into account any other matter considered by the Commission to be relevant to the public interest.*

40 It is our view that the application to have the minimum rate adjustment accelerated is in the public interest. That it is in the interest of, first of all, the people that we represent to be able to enjoy the provision of wage increases that they should have been enjoying for some time, that it puts employers in the industry who would be covered by both the federal and the state award on an even footing economically as far as wage rates are concerned and that in doing so, should the commission see fit to grant the application as sought by the unions, the economic benefit that the employers

employing under the terms of this award have enjoyed because they haven't had to make the payments, is also an issue which should be taken into account by the commission.

5 If I can refer the commission also to section 20 and this deals with equity and good conscience and I will quote from paragraph (a):

In the exercise of its jurisdiction under this Act, the Commission -

(a) shall act according to equity, good conscience, and the merits of the case without regard to technicalities or legal forms;

10 We've drawn that particular provision to the commission's attention because it's our view that equity and good conscience, the needs of the employees in the furnishing industry, both those who carry out the production work and those who do the work in the office, or carry out the driving duties, need to be treated fairly in this particular case.

15 Mr Commissioner, if I could turn my attention now away from the wage rate issue, to the method of calculations for apprentices and junior workers under the furnishing trades section of the award. The current award has wage rates expressed as a percentage of the base rate of a tradesperson level 1 in respect of apprentices, both junior and adult, plus an appropriate portion of the \$8 safety net increase. For un-
20 apprenticed junior workers, their wage is expressed as a percentage of the base rate of production employee level 3 plus the appropriate portion of the \$8 safety net increase.

The recent decision of the Full Bench of the Australian Industrial Relations Commission changed that method of calculating wage rates of apprentices in the federal award from the base rate of the appropriate adult worker, to the total ordinary weekly rate and our amended application, as previously advised, reflects that decision.
25 I wish to provide the commission with exhibits relating to this particular matter and a copy of the draft order.

COMMISSIONER IMLACH: The decision will be L.8. The order will be L.9.

30 MR LOWE: If I can refer the commission to Exhibit L.8 for a start, an I wish to refer the commission initially to pages 7 and 8 of that decision and I would like to take the opportunity of reading from a substantial part of the decision that relates specifically to the change for wage rates - the method for calculating wage rates for juniors and apprentices. I will quote from the first paragraph on page 7:

35 *We have concluded that the Furnishing Trades Award should be varied, consistent with the consent position of the parties, to apply the current junior and apprentice percentages to the total minimum award rate, inclusive of supplementary payments. We have reached this conclusion for several reasons.*

40 *First, within a skill based classification structure, the prescribed junior/adult apprentice percentages should be applied to the adult rate which reflects the skill, responsibility and conditions under which work is performed. That rate is the total minimum rate of pay, inclusive of supplementary payments.*

Second, application of the junior/apprentice rates to the total minimum rate and thus to the supplementary payments component properly reflects the current nature of supplementary payments. In 1978 and in March 1987 "second tier" principles, supplementary payments reflected the level of overawards applicable

5 to employees covered by an award, with the level of actual payments being a
prime consideration. The current nature of supplementary payments is different.
In the context of the August 1989 National Wage Case decision (Print H9100)
and the process of award restructuring commenced by it, supplementary
10 payments have been part of the minimum rate adjustment process within award
restructuring. In that context supplementary payments were no longer fixed
primarily by reference to overaward payments, but as part of the process in
establishing consistent minimum rates, directed in particular to facilitating
absorption. They form part of the skill based classification rates determined by
15 that process.

Third, it is inequitable to deny junior employees and apprentices access to
supplementary payments in their current form.

15 Fourth, the CFMEU application will prescribe wages for junior and apprentice
employees under the Furnishing Trades Award consistent with Federal Awards
in the industry and is consistent with junior/apprenticeship provisions in a
majority of Federal Awards.

20 Fifth, we are satisfied that the cost impact which needs to be considered both in
general terms and specifically having regard to the impact on youth employment
in the industry, does not provide grounds for refusing the application of the
percentage rates to the total adult rate which is otherwise justified. We are
satisfied that the cost impact can be addressed through the proposed phasing of
the resultant wage increases (which is agreed between the award parties) and by
25 absorption of the wage increases out of existing overaward payments. We note
that the cost impact of the application of supplementary payments to adult
workers in awards generally and to junior employees and apprentices in other
awards as part of the minimum rate adjustment process was dealt with through
phasing and absorption. In our view the same approach should be applied in
relation to access to supplementary payments by junior employees and
30 apprentices in the Furnishing Trades Award.

Subject to a modification which will be dealt with shortly, the phasing proposed
by the award parties is appropriate in the circumstances of this award, including
the delayed determination of the current application.

35 However, for the reasons that follow, we will not finally approve (and include
within the order arising out of this decision) all three staged increases proposed
in relation to un-apprenticed junior workers. For the same reasons, we will
slightly modify the phasing proposed in relation to junior rates at ages 19-20
and 20-21. Instead we will approve and include in an order the three phased
increases in relation to apprentices (junior and adult) and the first two phased
increases in relation to un-apprenticed junior workers, subject to reducing the
40 second phased increase proposed in respect to 19-20 and 20-21 year old un-
apprenticed juniors by \$5.55 and \$7.40 respectively and including these
amounts as a third phased increase for those age groups.

5 *The third phased increase for un-apprenticed junior workers, as modified by this decision, is approved in principle but its final approval and incorporation into the award will be subject to further application and hearing in March 1996, at which time the effect of any developments arising out of the longer terms review of youth/training wages commenced by the working party process can be considered.*

10 Mr Commissioner, I believe that dealing with that in some depth was necessary because the revisions and the amended application on pages 26 to 28 reflect that decision and reflect, not totally, the provisions of the draft order which is Exhibit L.9. I draw the commission's attention to that.

 The commission compares in exhibit L.1, first of all at page 26 -

 COMMISSIONER IMLACH: You're looking at L.1?

 MR LOWE: That's correct - and I'm comparing the table for apprentices on L.1, page 26, to the table at the bottom of the page of L.9 - on page 4 of L.9.

15 COMMISSIONER IMLACH: Page 4 -

 MR LOWE: - of L.9.

 COMMISSIONER IMLACH: Right.

20 MR LOWE: The commission will see that on the second table on page 26 of L.1 that the total increase amount and the increases in the first step are not identical and the reason for that is that in the Tasmanian Furnishing Trades Award, apprentices and junior employees have already had access to a proportion of the \$8 safety net increase. Apprentices and junior workers employed under the terms of the federal award did not have access to that \$8 safety net increase. So the difference between the wage rates that currently apply in the Tasmanian award have been reduced by the amount payable so that means that the total increase has been decreased by that amount and also the first step increase. The second and third increases and the final rates are identical. The same applies to the provisions on page 27 for adult apprentices and on page 28 for junior employees.

30 I wish to draw the provision - the commission's - attention to page 6 of exhibit L.9 and the chart that deals with the 18 to 19 year old, and the commission will see that on this particular chart on L.9 the increases are 17.35 at the first step and \$5.80 at the second step. On exhibit L.1 the increases are 11.60 and 11.60. The reason for the difference is that when the draft order was first prepared there was an error made. That error actually was in an exhibit which was put to the full bench that hadn't been picked by the union, hadn't been picked up by the employers, the ACTU or the commission at that time, where as there was a total increase of \$34.70, the table provided for three increase, two of 17.35 and one of 11.55. Now those figures were in our favour but they didn't add up. But unfortunately in the preparation of the draft order and before it was going through the process of being finalised by the commission. The employers organisation in Victoria advised all its members that the increases were \$17.35 and people were paying that particular level of increase.

45 It was agreed between the parties and the commission that in fact that 17.35 would continue to be paid but the second increase would be reduced by the difference between \$11.60 and \$17.35. So subsequently in exhibit L.9 there is a that violent variation from 17 35 to 5.80. And that's just to explain the reason for that, commissioner.

If I can now, commissioner, deal with the principles of the commission in greater depth as they relate to the union's application and I want to deal with both the structural efficiency principle and also the minimum rate adjustment principle again.

5 I wish to quote initially in respect to the trust - Structural Efficiency Principle from the preamble and dot points 1 to 5 inclusive, and quote:

10 *Consistent with the September 1988 (T.1524 and T.1525) and October 1989, (T.2146) and August 1991 (T.3069) and February 1992 (T.3584 of 1991) State Wage Case decisions, the Structural Efficiency Principle provides a framework through which it is intended that the parties to an award co-operate positively in a fundamental review of that award, with a view to implementing measures to improve the efficiency of industry and provide employees with access to more varied fulfilling and better paid jobs. The measures should include but not be limited to:*

- 15 • *establishing skill-related career paths which provide an incentive for workers to continue to participate in skill formation;*
- *eliminating impediments to multi-skilling and broadening the range of tasks which a worker may be required to perform;*
- *creating appropriate relativities between different categories of workers within the award and at enterprise level;*
- 20 • *ensuring that working patterns and arrangements enhance flexibility and efficiency of industry;*
- *including properly fixed minimum rates for classifications in awards related appropriately to one another with any amounts in excess of those properly fixed minimum rates being expressed as supplementary payments.*

25 Commissioner, it is the view of the union that its application meets the tests in all aspects of the Structural Efficiency Principle that I have referred to.

30 If I can refer now to the minimum rate adjustment Principle, and I wish to quote paragraphs, (b), (c), (d) and (f): The second and subsequent instalments will not be automatic and an application to vary the relevant award will be necessary. Supplementary payments may be prescribed in the wages clauses of awards. The award must contain a definition making it clear that a supplementary payment represents, in effect, a payment in lieu of equivalent over award payments. Acceptance of absorption of these adjustments to the extent of equivalent over-award payments as a prerequisite to their being applied in any award.

35 Again it's the view of the union that in its application that our application meets those tests that I've referred to. And I state on record for the commission now that the unions in this application are prepared to accept the absorption of over-award payments as required, commissioner.

40 If we could now deal, commissioner, with the position of the parties as I understand it to be. There has been extensive consultation and negotiation between the parties, that is, first of all, between unions party to this award and between the unions, being the CFMEU and the ASU (Clerical Division), employers represented as being TCCI. And I advised earlier, the unions application as consented to by the parties with the one

5 exception, and that is, the finalisation of the minimum rate adjustment. Again, I reiterate that the employers have offered to reduce the time gap between steps 2 and 3 to 3 months as opposed to 6. As previously stated, it's our view that the minimum rate adjustment should be finalised today and that the employers have had the economic benefit of not having had to pay the increase prior to this as a result of the delays that have occurred.

10 In our application, and in that part that is consented to, Mr Commissioner, there are a number of changes to the award that I've not referred to and those changes are consequential to the overall application and are found on pages 1 and 2 of exhibit L.1. And they deal with the issues simply such as, deleting headings of conditions of employees in Division 1A; persons employed in the manufacture and/or repair of furniture and division A2 Glass other than Safety Glass and to be simply replaced with Conditions for Furnishing Trade Employees.

15 The deletion of the heading: Conditions for Employees in Division B - Clerks - to be replaced for Conditions of Employees in Division C - replaced for Divisions - Conditions for Clerical Workers.

Similarly for carters and drivers, the deletion of the heading Conditions of Employees in Division C - Carters and Drivers to be replaced with Conditions for Drivers.

20 There is two definitions from the clause 7 - Definitions/Classifications which are changed, and that is:

By deleting:

a) One of the paragraphs entitled "Training Agreement".

And secondly:

b) The paragraph entitled "Clerk".

25 *By deleting, the paragraph entitled "Casual Employee" and replacing it with the following:*

"Casual Employee" means any person employed as a clerk who is employed on a casual basis and includes any person who is employed for a period not exceeding five days at any one time.

30 That reflects in the definitions where they bring everything together in one clause the provisions that are different for furnishing trade employees and drivers as far as casual work is concerned.

Mr Commissioner, should the commission see fit to grant the application sought, we would seek an operative date from today's date.

35 The final matter that I need to draw to the commission's attention, that should the commission see fit to grant the application as sought, is that we have sought to have the minimum rate adjustment dealt with in two steps, and I have got two exhibits to present - to prevent to the - present to the commission.

COMMISSIONER IMLACH: Which one goes first, Mr Lowe?

40 MR LOWE: The decision of Commissioner Harrison, commissioner.

COMMISSIONER IMLACH: We'll call that L.10 and the other one L.11.

MR LOWE: If we can deal with L.10, commissioner, which is Print L4005 in a case heard by Commissioner Harrison in respect of the application by the Media, Entertainment and Arts Alliance to vary the Actors (Theatrical) Award 1992 for the minimum rates adjustment.

I wish to - and it was provided - the commission with a copy of the decision in full - I just wish to refer the commission to page 15.

In the case before the commission there was disagreement over the granting of the minimum rate adjustment. The union sought to have the adjustment done in three steps - the employers wanted it done in four, and the commissioner made this decision. And I would quote from the bottom paragraph on page 15:

I note the submissions of MEAA regarding a shortened phase in period and concur that the process of increasing minimum rates in this award has taken considerable time. Increases in minimum rates arising from this decision range from approximately \$23 to \$108 and absorption will relieve part of the cost impact. In all the circumstances of this case, the increases shall be phased in over three equal instalments at six monthly intervals with the first payment to begin on or after the first pay period commencing 1 August 1994.

That decision is dated the 25th July 1994, and the point that I wish to make from that is that in this particular case there wasn't agreement between the parties, and the commissioner arbitrated for a shorter phasing-in period.

The difference between this particular application and ours is that the process had not commenced. In ours the process commenced in 1991 becoming operative from January 1992.

If I can refer the commission now to L.11, and again this is a decision of Commissioner Gay in respect of the Glass Merchants and Glazing Contractors Award - Tasmania 1976 award - and the case that was before him on 8th of July of this year, and just simply I have referred to this in the transcript in an earlier exhibit, but the bottom paragraph on the front page of that exhibit again reflects that the commissioner considered the acceleration of the minimum rate adjustment process to be done in a proper manner.

It was by consent. It was in the furnishing industry as affected the glass section of the industry in Tasmania.

The sections of the award and the wage rates contained in that award are provided for in our application as it relates to the glass section of the industry, and in that case Mr Edwards, representing the employers, consented to the application and on this occasion he doesn't.

But it does show, commissioner, that it is not completely unusual for a minimum rate adjustment to be completed in two steps as opposed to the four.

To summarise, Mr Commissioner, the unions in its amended application has sought to insert into the award an integrated skill-based classification structure covering the furnishing trades, clerical, workers, drivers and glass employees.

The classifications and relativities provide for national outcomes in respect of furnishing trades and glass employees for state standards that apply in awards of this commission for clerical employees and drivers.

5 The integrated structure is similar to that which applies in the Metals and Engineering State Award and the wage rates have a relative position with the metals award, the trade rate.

The classifications and wage rates for the glass section is temporary. It will remain in the award only until such time as a new glass merchants and glazing contractors award is negotiated and becomes an award of this commission.

10 The union has sought to finalise the minimum rate adjustment process by reducing the agreed number of steps from three to two.

This remedy has been sought because of the long delays in finalising the process.

15 I have established in the view of the union that the commission has the authority to grant the application as sought, and that in our view the application meets the test provided for and the principles of the commission as recorded in the decision of the Tasmanian 1993 State Wage Case.

Further that those principles enable the commission to arbitrate on a matter of reducing the minimum rate adjustment steps, the number of steps in the process.

I have established that there was precedent for such to occur.

20 I have shown that in the federal jurisdiction the parties have agreed to a similar process.

I have shown that the union's application complies with the provisions of the Industrial Relations Act 1984 as it relates to the public interest and equity and good conscience sections.

25 I have shown that the application is in the main by consent, with the exception of that one issue, and I have sought an operative date as from today's date.

If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mr Lowe. Mrs Dowd?

30 MRS DOWD: Mr Commissioner, all I have to say is that I support the application and the submissions put forward by the CFMEU by Mr Lowe.

If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mrs Dowd. Was ably done, was it not?

MRS DOWD: It most certainly was, Mr Commissioner.

COMMISSIONER IMLACH: Thank you. Mr Edwards?

35 MR EDWARDS: Commissioner, I wonder if I just might have a 2-minute comfort stop?

COMMISSIONER IMLACH: Yes. We will adjourn and when you are all ready let me know and I will come back.

MR EDWARDS: Thank you.

SHORT ADJOURNMENT

COMMISSIONER IMLACH: Yes, Mr Edwards.

MR EDWARDS: Thank you for that short break, commissioner.

5 Commissioner, Mr Lowe commenced his submission by outlining some eight areas that he intended to take the commission to, and in so doing outlined the nature of the application itself in a number of substantive respects.

Firstly, Mr Lowe advised that the application was to finalise the minimum rate adjustment process in this award, and that certainly is true.

10 To that extent it intends to finalise an agreement reached between the parties in 1991. However, the agreement itself and the application itself doesn't quite mirror that agreement, and that's an area that Mr Lowe took the commission to at a later point.

The second thing Mr Lowe indicated was that the intent of the application was to replace the existing task-based classification structure or structures in the award and
15 replace them with a skill-based classification system.

The third issue covered by the application as outlined by Mr Lowe was to bring this award into line with the federal Furnishing Trades Award insofar as production classifications are concerned, and in respect of both clerks and driving classifications the application was to bring the award into line with outcomes that were negotiated
20 between the parties to the Metal and Engineering Award of this commission. *

The fifth issue that Mr Lowe outlined was that he intended to take the commission to a full bench decision dated 19th October in the federal Furnishing Trades Award in respect of junior and apprentice classifications - that's both apprentices in the normal sense and adult apprentices

25 The sixth matter that Mr Lowe referred to was to take the commission to the outcomes in the Glass Merchants and Glazing Contractors Award Tasmania 1976 insofar as the classification structures and wage rates are concerned, and Mr Lowe indicated that he would take the commission to a number of sections in the Industrial Relations Act and the wage fixing principles in support of his case, and that the one issue where there
30 was no consent was the area of the phasing in of the minimum rate adjustment process.

That outline given by Mr Lowe at the commencement of his submissions is entirely accurate, and that is that there is agreement between the parties to move the award, essentially in terms outlined in Exhibit L.1, as amended.

35 However, the wages rates shown in Exhibit L.1 reflect the claim by the union to have the wage rates in the award moved from their current level to their end point positions with effectively immediate effect, and it is that particular point which is not agreed and, as a consequence, the pay rates contained in the draft order which is before you by way of the amended application is not agreed to by the TCCI.

40 So far as the application takes the commission to the new the classification structures and the definitions that surround them, we agree with the processes that have found their way finally into Exhibit L.1, and we have participated fully in those.

We believe that it is appropriate for this award to reflect in similar terms the provisions of the federal Furnishing Trades Award for production classifications.

We think the appropriate datum point for clerical and driver classifications is the only properly integrated classification structure in this commission, being that in the Metal and Engineering Industry Award, and to that extent we agree with the definitions and the structure therein included in Exhibit L.1.

- 5 We agree to the flowing on of the result of the full bench test case decision in the Furnishing Trades Award for apprentices and junior workers.

We believe the Glass Merchants and Glazing Contractors Tasmania Award should continue to be the reference point for classifications and pay rates for the glass classifications in this award, so long as they remain in this award.

- 10 We do acknowledge the point raised by Mr Lowe that there is agreement in principle to remove the glass classifications from this award and put them in a stand alone glass merchants and glazing contractors award - however it may be termed.

But, commissioner, we do not agree that the pay rates should be phased in with immediate effect.

- 15 Mr Lowe indicated that the minimum rate adjustment process in this award commenced with a hearing before Commissioner Watling in about November, 1991, which is an inordinate delay by any test - I think it was described by Mr Lowe as being about 2 years and 10 months since the first the minimum rate adjustment was put into the award.

- 20 He described the delays as long and unfortunate. What he didn't do at any point during his submission was to advise the commission what has caused the delays.

At no point has Mr Lowe said the delays have been caused because the employers have been tardy in responding to claims by the union to incorporate the second or third the minimum rate adjustment process into the award.

- 25 At no point did Mr Lowe take the commission to any fault of the commission in not processing the minimum rate adjustment process.

Because the facts are neither of those two parties are in any way guilty of causing the delay in respect of the flowing on of the minimum rate adjustment process in this award.

- 30 The delay lays squarely with the union - the applicant in these proceedings - for not making the applications that are required by the wage fixing principles.

- 35 Mr Lowe took the commission to the wage fixing principles and quoted from that, going to the minimum rate adjustment process, by saying second and subsequent instalments of these adjustments will not be automatic, and an application to vary the relevant award will be necessary.

No proof has been put before this commission of applications made by the CFMEU, or its predecessor the Federated Furnishing Society to incorporate the second or third minimum rate adjustment process into this award.

- 40 The reality is that the minimum rate adjustment process in this award has its genesis in an agreement between the parties to the award, which was reached in 1991 and was brought before Commissioner Watling in proceedings of 25 November 1991.

In reviewing the transcript of that matter the following summary of what the matters were before Commissioner Watling is found on page 2, and it is myself speaking:

Commissioner, the exercise we wish to put before the commission today is essentially an exercise in broadbanding of existing classifications, and in doing that we will place before the commission a chart which will show the future intention of the parties on the commencement of the minimum rate adjustment process.

It will be put before you a scenario which will take us through to the end of that process by way of what the pay rates will be in the award.

That was put before Commissioner Watling by way of a chart and it has found its way into these proceedings by way of Exhibit L.6.

Exhibit L.6 is the Reasons for Decision by Commissioner Watling dated 4 December 1991 in respect of the matter that was before him. It was Wage Rates - State Wage Case November 1989 - Minimum Rates Adjustment - Broadbanding Classifications Division A.

The Reasons for Decision say:

This application was made by the Federated Furnishing Trades Society of Australasia, Tasmanian Branch, for the purpose of incorporating the minimum rate adjustments in the Furnishing Trades Award in accordance with the wage fixing principles.

At the commencement of the hearing, Mr Edwards for the Tasmanian Confederation of Industries outlined the program for processing the minimum rate adjustments for this award. This position was endorsed by Mr Orange for the FATS.

And Mr Lowe has virtually read the remainder of the decision. I won't take the commission to it.

What I'll do is take the commission to the attachment of the decision which was identified in proceedings as Exhibit TCI.3 which shows the agreed program between the parties for the phasing of wage rates from their pre-existing position to that that they would be at the end of the program.

And I highlight, sir, that this is an agreed program between the parties. It is not one that I sought to put before the commission unilaterally for arbitration at that time, nor indeed is it one that the Furnishing Trades Society - as they were at that stage - sought to put before the commission for arbitration.

It was a position agreed between the parties that hasn't been brought into reality because of the inactivity of the applicant in those proceedings who is indeed the applicant in these proceedings.

And what is sought by Mr Lowe today is for the commission to arbitrarily impose the reticence of the union onto employers, and we think that is a preposterous proposition and not one that the commission ought to entertain.

In the proceedings before Commissioner Watling there was extensive discussions between the parties as to what exactly had been agreed.

I outlined at page 11, for example, that I would see this particular application being fulfilled when we came back to the commission towards the end of January next year

to put the first minimum rate adjustment into the award, and that is another part of the timetable that I am yet to explain.

5 Mr Lowe has by way of his exhibits this morning shown that in fact that was carried into fact by an application before Commissioner Watling in T.3433 of 1991 and Reasons for Further Decision of Commissioner Watling dated 23 January 1992, where the first minimum rate adjustment was put into the award by consent.

10 And I emphasise it was by consent because I consented to it on behalf of employers at that stage in the full knowledge that it was part of the total package program that had been agreed between the parties to bring about a final percentage relativity setting for furnishing trade classifications under this particular award.

Now I don't know whether I have been duped or whether I am just easily led, perhaps I am, but it shows to me that at this stage that agreement hasn't been honoured from the other side.

15 Certainly our part of it has been. We have brought before the commission the broadbanding adjustments which we did in November 1991; we have brought before the commission our consent to the first minimum rate adjustment in January of 1992; and we have done our part.

We would have come forward to the commission with consent in July 1992 and, indeed, in January 1993, had the applications been made. They were not.

20 At page 17 before Commissioner Watling on the 25th of November 1991, at the very bottom of the page, I said: I'd briefly like to return to Exhibit TCI.3 which is the flow chart, commissioner, and just indicate that the parties have conferred on the question of minimum rates adjustments. We have put together a schedule of minimum rate adjustments. You will note that there are only three MRAs rather than four which is
25 now allowable under the principles and that is consistent with the direction we've taken on this award federally. Whilst it increases the amount of minimum rate adjustment on each bite, I think it is important, given the state of this award, particularly the classification structure, that we move as quickly as we possibly can to the new structure. For that reason we have agreed to go to three minimum rate
30 adjustments.

Now, the commission, as currently constituted, would be aware, that in the Tasmanian context, it is unusual to have less than four minimum rate adjustments. I wouldn't say it's impossible - in fact there are examples of it happening, but it is unusual, particularly a consent matter.

35 The position of the union was put by Mr Orange in those proceedings at page 18 of the transcript where he said: If the commission pleases, this document has been a document that has been produced by both parties in agreeance, and the principle of bringing forward the minimum rate adjustments to the award.

40 Now very clearly we have the consent of the organisation which now seeks the commission to arbitrate for a position substantially in advance of that that was agreed at that time and we don't think the commission ought to do that. The facts are there has been no application made by the applicant organisation until now to put in place those agreed minimum rate adjustment processes, and I don't think it is appropriate for the inactivity of the union to be visited on employers, either by consent or
45 otherwise. The fact that the union hasn't been able to bring applications forward or has chosen not to, for whatever reason, is not the fault of employers and should not be visited upon them.

The increases sought by this application, commissioner, are of significant magnitude. They range from approximately \$35.00 at level 6 in the furnishing trades structure, \$32.00 at level 5, \$30.00 at level 4, \$21.00 at level 3, and \$11.00 at level 2 and zero at level 1. In the clerk structure, the increases range from \$64.60 through - down to the smallest increase being \$28.00. In respect of transport drivers, the increase is nowhere near as big.

They are significant imposts to put on the employer in the one hit move and we believe that the phasing in that was originally agreed between the parties should now be put back on foot. In any event, it is not appropriate for one party to unilaterally seek to vary an agreed position.

Mr Lowe has outlined on the transcript the position I put as the negotiating position during the course of the negotiations that have taken place in respect of this particular matter and I will put it on the record so that it is formally before the commission, that we have gone beyond the original, somewhat generous agreement of only having three minimum rate adjustments as we had in 1991 which were to be spaced 6 months apart, and we put a proposition that we would, as a genuine effort to try and resolve this entire question by agreement that we would agree to abbreviating the distance between the second and third adjustments to 3 months rather than the 6 months that was part of the original agreement. And as Mr Lowe has indicated in his submissions, that genuine effort to try and bring about an agreement was rejected by the CFMEU.

Commissioner, essentially we are prepared to continue to honour the agreement we reached in 1991 and we don't consent to an application which seeks to really breach that agreement reached between the parties. Mr Lowe put before you two decisions of the Australian Industrial Relations Commission, first exhibit being L.10 which I note was a case that involved total disagreement between the parties on all points and one that involved, in the commission's words, a long history. It says that the parties attempted to reach agreement on how the award should be restructured, but little progress was made and the matter should be arbitrated by the commission. That's clearly a different situation that you are faced with today, commissioner, where in this instance clearly the employers have been reasonable; we have been able to reach agreements on everything bar this point where we had original agreement which is now withdrawn.

And we don't believe, in - that that decision really is a comparable position wherein in that case there had been no agreement of any description between the parties, either to the process by way of time frames, or alternatively, even as to what the classification structure and relativity settings ought to be. If you, in fact, go through that decision you will find that what was arbitrated was the total minimum rate adjustment process including the establishment of percentage relativities for the various classifications.

In respect of exhibit L.11, which is the matter of the Glass Merchants and Glazing Contractors (Tasmania) Award and a decision by Commissioner Gay, I certainly acknowledge that in that matter I gave my consent on behalf of that industry to abbreviating the minimum rate adjustment process from three steps to two and that's recorded in the decision of Commission Gay. He does say, at the bottom of the first page:

However, one reminds oneself that this a consent order -

- which is different to the matter you have before you today, commissioner. There is no arbitration involved in that matter and its been long held by this tribunal and many others that consent matters don't carry significant weight when used in support of a claim for an arbitrated outcome and we tend to dismiss it on that basis.

Commissioner, the position of the employers in this matter really does revolve around the existence of an agreement in 1991 which is no longer there.

I'd like to tender an exhibit

COMMISSIONER IMLACH: Exhibit E.1.

5 MR EDWARDS: Commissioner, Exhibit E.1 is by way of an employer suggested
variation to Exhibit L.1 so far as what the pay rates ought to be at this point in time to
carry forward the agreement reached between the parties in 1991. Really, it takes the
existing pay rate, the end point pay rate and calculates the differential between the
10 two. I put that forward as being a suggested variation to exhibit L.1 for furnishing
classifications and I've prepared the same documentation in respect of both clerical
and transport classifications which I too will table.

COMMISSIONER IMLACH: Clerical - E2, and Transport E.3.

15 MR EDWARDS: Thank you, sir. Exactly the same exercise has taken place with
these two as exhibit E.1, commissioner, and they too are by way of suggested variation
to the pay rates shown. What I've done in respect of clerks is taken the existing award
classification as it's shown in the award now - that being a 3-year structure for clerks
along with some in-charge-of classifications and an accountant classification. I've
indicated under the percentage relativity where those classifications are going and
that's already dealt with by exhibit L.1 by the translation schedule in any event and I
20 have calculated how ... MRA process would impact on those classifications and shown
what the final pay rate is, keeping the \$8 minimum - oh - arbitrated safety net
adjustment separate.

And I've done exactly the same task in respect of transport classifications, except I've
done a - an arbitrary broadbanding exercise because of the number of classifications
25 being brought together into single classifications. In respect of the first two
classifications they are brought together by a broadbanding adjustment of \$4.90 which
I've incorporated into the first minimum rate adjustment column and in respect to the
second classification, the six grades or classifications shown there for transport drivers
contract into one and the amount shown under the BB column, which is
30 broadbanding, has again been incorporated into the first minimum rate adjustment.

The MDA is the Motor Drivers Assistant where there's no broadbanding necessary and
it shows the effect of an MRA process taking them to \$350.10.

35 And that is the position that we seek to have incorporated into the award,
commissioner, which as I've indicated previously will bring into - bring to finality an
agreement reached between the parties in 1991.

I haven't -

COMMISSIONER IMLACH: Yes, Mr Edwards, just - the - there's no reference to
MRAs in E.1 - what's the significance of that?

40 MR EDWARDS: In exhibit E.1, commissioner, I've done it a slightly different way; I've
taken an existing award position and calculated the midpoint between now and the
end of the process.

COMMISSIONER IMLACH: Just a -

MR EDWARDS: And after that would come the rates which are shown in exhibit L.1.

COMMISSIONER IMLACH: I see.

MR EDWARDS: I did these very much on the hop this morning, commissioner.

COMMISSIONER IMLACH: Yes.

MR EDWARDS: I apologise that they're not as clear as I would have liked them to have been.

5 COMMISSIONER IMLACH: That's alright.

MR EDWARDS: But immediately after E.1 in 3 months' time, in my submission, would come the position shown in exhibit L.1 for production classifications. I did the production ones first and perhaps got a little bit sharper at it as I got to clerks and transport drivers and got them all in together.

10 Commissioner, there are large number of matters raised by Mr Lowe in the course of his submission that I - I guess in some ways should take the commission to. I guess I'm probably a bit foolhardy by doing so. I don't intend to do that. I think I've adequately outlined the one area of disagreement we have with the application by the CFMEU which indeed is supported by the ASU and I presume the TWU although their
15 absence here makes their position somewhat irrelevant I guess.

In that regard, sir, I take the commission, as Mr Lowe did, to the wage fixing principles of the commission and indicate that the prima facie position is that there be four minimum rate adjustments at 6 monthly intervals, and I acknowledge the point made by Mr Lowe that longer or shorter phasing-in arrangements may be approved or
20 awarded. However, the prima position nevertheless is still four instalments at 6-monthly intervals. We have put before the commission in our original agreement three instalments at 6-monthly intervals which in itself in our view was a generous way of dealing with the original claim. We have now altered that position to say that it's three
25 instalments with the second and third being only 3 months apart so we are a long way in advance of the prima facie position established by the minimum rates adjustment principle of the commission and we'd suggest that it should only be in extraordinary circumstances where the commission should intervene arbitrarily to alter what was effectively an agreed position between the parties.

Mr Lowe may care to acquaint the commission of the reasons for the delay and
30 perhaps in that way strengthen any case that he does have. In our view it would be improper for the commission to visit what we consider to be the delays that are the - are caused solely by the union on employers and we believe the commission should arbitrate in favour of our alternative position which is explained in exhibits E.1, E.2 and E.3 and which puts back on foot the agreement reached between the parties save
35 and except for the offer we have made to abbreviate the process even further.

If it please the commission, I don't have any further submissions.

COMMISSIONER IMLACH: Thanks, Mr Edwards.

Anything to add, Mr Lowe?

MR LOWE: Yes, Mr Commissioner, but I wonder if it would be appropriate if we
40 could have a brief two or three minute adjournment just to consider this particular - the exhibits, E.1, E.2 and E.3, as we - just have a brief discussion amongst the union parties before I exercise my right of reply.

COMMISSIONER IMLACH: Yes, we normally finish about now, Mr Lowe. I'm
45 reluctant to come back for a few minutes after lunch. As long as the parties are agreeable we'll keep going now - alright?

MR LOWE: Yes - quite happy with that.

COMMISSIONER IMLACH: So we'll adjourn for a few minutes and I'll be back as soon as you're ready.

MR LOWE: Thank you very much, commissioner.

5 **SHORT ADJOURNMENT**

COMMISSIONER IMLACH: Yes, Mr Lowe?

MR LOWE: Thank you, Mr Commissioner. I'm able to advise the commission that during the adjournment that was granted, that the parties have actually been able to deal with the differences and have a consent position. The consent position is as follows: that the glass section of the award as in the union's application in exhibit L.1 will remain. That the - and so essentially for that section the minimum rate adjustment process will be finalised at this hearing.

That in respect of the employees covered under the furnishing trades re clerks and the drivers, there will be the two steps three months apart and I wish to draw the commission's attention to exhibit E.1, in that in exhibit E.1 the Grade 5(b) section will be deleted.

COMMISSIONER IMLACH: Straight out.

MR LOWE: Yes. And so there will be 100% rate applying to Tradesperson - Level 1 - that being \$409.20.

20 COMMISSIONER IMLACH: That's Grade 5.

MR LOWE: Yes.

COMMISSIONER IMLACH: Right.

MR LOWE: Grade 6 at 105% will be deleted leaving Grade 7 being the only rate that applies at 105%. Now these figures will be transposed to the classification structures as agreed in the union's application and we need to advise that they're subject to checking because we haven't done the work of actually checking the figures to see if they are accurate. That, again subject to checking the rates for the clerks and the drivers, will be transposed into the classification structures and the final minimum rate adjustment process for the furniture section, the clerks and the drivers, will be finalised in 3 months' time from today's date should the commission see fit to grant the application is now sought on a consent basis. If the commission pleases.

COMMISSIONER IMLACH: Yes, thanks, Mr Lowe. As I understand it that means that the second MRA will operate from the date of this hearing, shall we say, and the third from 3 months later.

35 MR LOWE: That's correct.

COMMISSIONER IMLACH: And is that the agreed date - today's hearing?

MR EDWARDS: Beginning of the first pay period to commence on or after today's hearing - yes, commissioner.

40 COMMISSIONER IMLACH: Is it too much to ask - and I'm just testing the water here - that you give me a documentation of all that? Just the amounts - not the -

MR EDWARDS: Mr Lowe has undertaken to provide replacement pages for what is in effect exhibit L.1 reflecting what's now agreed between the parties.

MR LOWE: Yes. Yes, commissioner, I'll do that work - distribute it to the parties. We're checking and consent and then forward that to yourself.

5 COMMISSIONER IMLACH: Thanks, Mr Lowe. So the second MRA - first full pay period on or after the 16th November and the third 3 months thereafter. And as I understand it, we now have complete agreement on the application before us - is that true, Mr Lowe?

MR LOWE: That's correct.

10 COMMISSIONER IMLACH: Mrs Dowd?

MRS DOWD: That's true, Mr Commissioner.

COMMISSIONER IMLACH: Mr Edwards?

15 MR EDWARDS: It is, commissioner. I think I should perhaps just make the observation - it's probably trite but I'll do it anyway - and that is, that the third MRA of course under the Principles must be by application.

COMMISSIONER IMLACH: Yes, I thank you for that, Mr Edwards. I concur with that entirely.

MR EDWARDS: Thank you, sir.

MR LOWE: Application will be made to the commission this afternoon.

20 COMMISSIONER IMLACH: No, it has to be made when it's due. Right? I know it's a technicality, but within a few days or a couple of weeks when it's due, put the application in and as far as I'm concerned it will be granted. But that remains to be seen doesn't it, Mr Edwards?

MR EDWARDS: Of course it does, commissioner.

25 COMMISSIONER IMLACH: Yes, alright. Now we're all clear, settled? Right, I indicate now that the application will be granted as agreed, the second MRA to operate from the first full pay period on or after today's date and the third MRA on application 3 months later.

This matter is closed.

30 **HEARING CONCLUDED**