

COMMISSIONER WATLING: I'll take appearances, please.

**MR K. O'BRIEN:** If the commission pleases, I appear with **MR DAVID O'BYRNE** on behalf of the Australia Liquor, Hospitality and Miscellaneous Workers' Union, Tasmanian Branch.

5 COMMISSIONER WATLING: Good. Thank you.

**MR T. EDWARDS:** If the commission pleases, EDWARDS T.J., and appearing with me **MS J. THOMAS** for the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER WATLING: Thank you.

10 **MR P NOONAN:** If the commission pleases, I seek leave to intervene on behalf of the Shop Distributive and Allied Employees' Association, Tasmanian Branch, NOONAN P.

COMMISSIONER WATLING: And the reason for your intervention is?

MR NOONAN: The reason for my intervention is it is a making of a new award, namely the Baking Industry Award. The old award had sales classifications in that award.

15 COMMISSIONER WATLING: Removalists classifications, I think.

MR NOONAN: And as I see in the proposed new award under 'Definitions':

20 *'Baking industry' for the purposes of this award shall mean an industry of the making, baking, distributing and/or selling by retail and/or wholesale of bread, bread rolls and other yeast raised products, crumpets, cakes, biscuits, pie, pastries, sausage rolls, savour rolls, etc.*

That is the reason for my intervention, Mr Commissioner, for seeking leave to intervene.

COMMISSIONER WATLING: Yes. Any opposition to the intervention?

25 MR O'BRIEN: I have no opposition at this stage to the involvement of the Shop Distributive and Allied Employees' Association, Mr Commissioner. The question of ultimately deciding interest in any award that might be made is another matter.

COMMISSIONER WATLING: Yes.

MR EDWARDS: No objection, commissioner.

30 COMMISSIONER WATLING: Good. Right, leave is granted, Mr Noonan. Now, who is going to lead off? Mr O'Brien?

35 MR O'BRIEN: Mr Commissioner, this application has been the subject of discussions between my organisation and the TCCI over a period of some months, albeit that it has only recently been made - that is, the concept behind it has been the subject of discussion - and arising from proceedings relating to Application T.5954 of 1995 it was agreed, as you are aware, that we would make this application as part of the process which might ultimately address some of the matters which have otherwise been raised in the application I have just referred to.

As a part of that process it is agreed, as I understand it, that an award known as the Baking Industry Award and with the proposed scope, clause and definition should be

made. Obviously, pending determination of interest and other matters it would be appropriate that an award be made as to title and scope, and that the terms and conditions of the Bakers Award would apply to those employers bound to the proposed Baking Industry Award pending the finalisation of this application.

5 COMMISSIONER WATLING: Right, and I take it that this is part of the restructuring process for the Bakers Award?

10 MR O'BRIEN: It is, Mr Commissioner. The only other matters obviously that have to be determined relate to the other application as to just what the scope of Wholesale Plant Bakeries Award might be at the end of the processing of that application, and because this award -

COMMISSIONER WATLING: But that is another issue, though, isn't it?

MR O'BRIEN: Yes. I just put that now so that it is a clear position that we take in relation to the two applications.

15 COMMISSIONER WATLING: Mr Noonan, have you got any opposition to the making of this new award?

MR NOONAN: No, Mr Commissioner.

COMMISSIONER WATLING: Right.

20 MR EDWARDS: Commissioner, I think Mr O'Brien has quite adequately encapsulated the background to the making of this application and that it is part of T.5954 which was an application by the ALHMWU to vary the Wholesale Bakeries Award.

25 There was discussions and eventually agreement in principle to the making of an application to create a whole new award for the balance of the baking industry which we have tentatively titled or styled the Baking Industry Award. The intention of the award is to cover all employers in the baking industry save, and except those covered by the Wholesale Plant Bakery Industry Award.

As Mr O'Brien has remarked in his last comment to the commission there is, I believe, a need to re-examine to some extent the scope clause in the Wholesale Plant Bakeries Award once we have established what the scope of this award will be.

30 It occurs to the TCCI in preparing for these proceedings this afternoon that there could be some areas of duplication or overlap which need to be resolved. Most notably, I guess, the making of products in the wholesale plant bakeries area that are not either yeast raised or bread or bread rolls, and they are issues that I think need to be resolved by further negotiations between the parties, and we certainly commit ourselves to that process.

40 This application for a baking industry award has the support of the TCCI. It is our submission that it is a direct continuation of the structural efficiency process under the Bakers Award which has revolved predominantly around breaking that award into its constituent parts so that the industry can be dealt with more expeditiously and efficiently instead of trying to deal with an industry as broad as the old Bakers Award tried to cover.

45 It is also, in our submission, very much in the public interest that this award be made in this form as clearly the Bakers Award has fallen into a state of some disrepair and that is predominantly because the parties have been unable to come to grips with dealing with an industry as broad as that award covered.

There are a couple of issues that arise in respect of the proposed scope clause which only really occurred to us in part of our preparation to coming before the commission this afternoon, and that is the question of other awards that could theoretically in any event cover the type of work we seek to cover by the Baking Industry Award.

5 Without wishing to be in any way prescriptive it would seem on the surface, anyway, that the Wholesale Plant Bakeries Industry Award obviously is one, and we have excluded that in the scope clause itself, or proposed scope clause.

There is then the question of the Restaurant Keepers Award which does cover to some extent pastry cooking.

10 Now I haven't had a close look at the scope clause of that award but we may need to have a look at excluding from the coverage of this award persons currently covered by the Restaurant Keepers Award, and there is also the question, given the way we have styled the definition of the baking industry of excluding people covered by the Retail Trades Award.

15 They are the two that occur to us, and then there is the temporary preclusion of the Bakers Award which would continue to apply whilst this award is in the throes of being made.

20 We have applied our minds as broadly as we can to that task and they seem to us, anyway, to be the only awards that could to any extent be impacted upon by the making of this award.

It may be appropriate just to explore that theory just a little bit further perhaps in a conference because I haven't had an opportunity to raise those subjects with Mr O'Brien prior to us going on the record; but maybe it would be better to be safe rather than sorry and to exclude employers covered by those awards from the coverage of 25 this award at least while we further explore the finality of the scope clauses of this and the Wholesale Plant Bakeries Industry Award.

I am open to suggestions on that, but it would appear to us to be something that needs to be thought through fairly carefully. There is obviously inherent dangers in of having scope clauses that overlap between awards and we are certainly trying to avoid 30 that.

So, if it please the commission, we would support the application as it is made with just those suggested additions, if that's the way things resolve themselves in a brief conference, which I would ask for now.

COMMISSIONER WATLING: Right. We will go off the record, thanks.

35 **OFF THE RECORD**

COMMISSIONER WATLING: Let the record show that we have had some private discussions about the precise wording in relation to the definition of the baking industry and I understand the parties wish to make an amendment to -an agreed amendment - to the application. Mr O'Brien?

40 MR O'BRIEN: Mr Commissioner, I propose that in the definitions clause the definition of the baking industry be as described in the document which we have drafted and circulated during the adjournment.

COMMISSIONER WATLING: We'll mark this A.1. So as that described in Exhibit A.1.

MR EDWARDS: 'A' for Carol.

MR O'BRIEN: Yes. We thank the drafts person.

In relation to one of the matters that we discussed I think it is fair to say that we haven't used the term 'doughnuts', but we understand that they are contemplated in clause (a) of the definition, and I make that comment for the purposes of the record.

So I am not sure if you seek the amendment of our application in these terms or simply be satisfied that we ask that an interim order in these terms be made?

COMMISSIONER WATLING: Yes. Well if you want to be on the safe side I think you seek leave to amend your application.

10 MR O'BRIEN: Right. In that case, I seek leave to amend our application by replacing the definition of 'baking industry' with that contained in the Exhibit A.1.

COMMISSIONER WATLING: Right. Any objection to that amendment?

MR EDWARDS: No, but I reserve my right to make comments about it, commissioner, in a moment.

15 COMMISSIONER WATLING: Right. Any objection, Mr Noonan?

MR NOONAN: No, Mr Commissioner.

COMMISSIONER WATLING: No. Right. Mr Edwards, you were on your feet at the time we were discussing this matter.

MR EDWARDS: Yes. Thank you, commissioner.

20 I did indicate on the record that TCCI supported the application in its original form. I will now, I guess, amend that by some extent by saying that the variations contained in the document now titled A.1 substantially go to the overcoming of the difficulties I was foreshadowing immediately prior to the adjournment and, as a consequence, I now indicate that I am satisfied that A.1, or the application as now amended, satisfactorily resolves those issues.

25 In respect to the issue raised specifically by Mr O'Brien on the question of doughnuts. The discussion between us was that doughnuts are produced in a stand-alone facility designed for that purpose. We'd certainly be caught by 3(a) of Exhibit A.1. I don't think there is any doubt about that.

30 What we did say, however, and will set about trying to achieve through other means, is that where doughnuts are made as part of the total operation of an integral retail store that those should remain covered by the Retail Trades Award and it will be our intention to ensure that is properly clarified by an amendment to the scope clause of the Retail Trades Award to make that absolutely and abundantly clear. That's where 35 they are covered currently and for example, I know that doughnuts are made on the premises of some Coles stores, for example, Fosseys and they're currently done within the auspices of the Retail Trades Award and we would intend that that would remain as is, notwithstanding that Fosseys may not be there much longer as a store, but there other examples but I use that one now because it's not going to be there in the longer term.

40 So with those clarifying comments, I accept that doughnuts are covered by the scope clause of this award in the way that I've just described. If it please the commission.

I might add, whilst on my feet, that whilst it hasn't been suggested as yet I don't think by Mr O'Brien, I would have thought an operative date of today would be quite satisfactory, certainly from our point of view. If it please the commission.

COMMISSIONER WATLING: Thank you. Any further submissions?

5 MR O'BRIEN: I'm disappointed that Mr Edwards is not happy with the retrospective date but we will concur with his submission on this occasion.

MR EDWARDS: I'd be delighted.

10 COMMISSIONER WATLING: Righto. Well I can indicate to the parties that I will hand down a written decision in favour of the amended application. It will be up to the parties now - or up to any organisation that feels that they have an interest in the award to make application for an interest.

15 There - after that time has expired - and I'm talking about the time in relation to appeal of this first round - then the matter will be relisted for hearing - for continuation of hearing. However, I would strongly suggest to the parties that at the same time the commission should be dealing with an application to rescind the Bakers Award so there can be a simultaneous operative date in relation to the rescission of the Bakers Award and the operative of any wage rates and conditions in the new award.

20 That being the case - nothing further to determine the matter is adjourned. Thank you.

**HEARING ADJOURNED**