

HEARING RECOMMENCED 10.30am

COMMISSIONER: I'll take appearances.

MR I. PATERSON: If the commission please, IAN PATERSON, appearing for the Australian Municipal Administrative, Clerical and Services Union.

COMMISSIONER: Thanks, Mr Paterson.

MR G.GOSS: If it please the commission, GEORGE GOSS, from the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Tasmanian Branch.

COMMISSIONER: Thank you, Mr Goss.

MR D. DILGER: If the commission please, DILGER D, for the Tasmanian Chamber of Commerce and Industry Limited.

COMMISSIONER: Thanks, Mr Dilger. Yes, Mr Paterson?

MR PATERSON: If the commission please, I'd like to make some preliminary submissions to you and then proceed to some substantive submissions around this application. I can advise that we have consent in this matter to vary the award, however, the final draft of the orders that I propose to put up today do contain some changes compared to previous drafts provided to people.

Having made these preliminary submissions, I'd like to suggest that we either go into conference - or probably the best course of action will be to go into conference with you in attendance, perhaps, so that we can work through those changes to ensure that they do give effect to what the parties have agreed to.

Before doing that, there was a matter that you, commissioner, raised at a previous hearing, and I'd just like to put on the record, this was the issue as to whether we shouldn't be looking more widely at the award in terms of the classifications and minimum rates. I'll just find the reference for you.

The structural efficiency principle was implemented in part in this award in matter T2606 of 1990, a decision of the then deputy president handed down on 24 October 1990. That, in effect, for all purposes other than the clerical and administrative classifications implemented the structural efficiency principle. Therefore, the matters that we have today, in effect, complete what was started then.

I wasn't sure that I had in fact done it - I believe I did lodge another application with this matter.

COMMISSIONER: Yes, T8718.

MR PATERSON: I'd seek leave at this time to withdraw that application and in the alternative, to make an amendment, with the agreement of the parties and yourself, to vary the original application. I think this achieves the same end in probably a simpler fashion.
5 Should that course of action be acceptable to all the parties, the amendment would state in the statement of particulars, the union makes application to vary the award to give effect to, 1) Principle 2 - Structural Efficiency of the 1999 Wage Case decision; 2) Principle 5 - Minimum Rates Adjustment of the 1999 State Wage Case decision and
10 Principle 16 - Award Review Process of the 1998 and 1999 State Wage Cases decisions. The award is varied in accordance with the draft order as provided subject to amendment by consent or arbitration.

I'd like to put that variation forward.

COMMISSIONER: Yes, thanks, Mr Paterson. Mr Goss and Mr Dilger, I put that to you, subject to the amendments we propose to make to the draft, I think you can follow what's going on here. What's your position, Mr Goss? Do you agree to that amendment requested?
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MR GOSS: Yes, I do, commissioner.

COMMISSIONER: Thanks, Mr Goss. Mr Dilger?

MR DILGER: Yes, commissioner.
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COMMISSIONER: Thank you. Well, I'll grant that application to amend and also grant the withdrawal of T8718. I'll do a note on that. There'll be a decision. It'll be on the record here. Thanks, Mr Paterson?

MR PATERSON: If the commission pleases, I'd now like to proceed to clarify our position in respect of this matter and put forward the draft order that I have prepared in this matter.
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COMMISSIONER: Now do you want to do those amendments now, Mr Paterson, or later?

MR PATERSON: I think it would be best to proceed to deal with the procedural matters first then the documents are in front of us.
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COMMISSIONER: All right.

MR PATERSON: And then any amendments to the documents can be noted on the record and/or replacement pages provided as appropriate. This is the draft order.

COMMISSIONER: We shall mark this one **EXHIBIT P.1**. We haven't got any others have we, Mr Paterson? No, we haven't got any other exhibits?
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MR PATERSON: I don't believe so. I'd also put forward at this time the total of changes or variations to the award. This is the table of

changes or variations to the award that identifies the consequent changes in the reformatting of the award.

COMMISSIONER: Thank you. I'll mark that **EXHIBIT P.2.**

5 MR PATERSON: And further, not as substantive a matter in terms of these proceedings but to assist the parties, I'd also like to put forward a summary of variations against the previously provided draft which was the last document provided to the parties and provided to the commission to assist in this process. This identifies some of the changes, as I say, of P.1 against previously provided documents.

10 COMMISSIONER: We'll mark it **EXHIBIT P.3.** Thanks, Mr Paterson?

MR PATERSON: I would also at this time like to put forward two documents that go to the substantive matter of the - if I have got both. I'm not so sure that I've got copies of both - it doesn't appear that I have got copies of the - I'll just put up this one document which is the
15 schedule of the minimum rates adjustments.

COMMISSIONER: Good. **EXHIBIT P.4.**

MR PATERSON: And I believe that should suffice in terms of the documentation provided to the commission at this point in time.

In terms of P.4, this application gives effect to the first MRA for the
20 clerical and administrative classifications. The parties would propose that the second, third and fourth MRA be six months apart from this first application. I believe we have agreement subject to confirmation from Mr Dilger that the first MRA apply from the first full pay period commencing on or after today's date subject to the matter proceeding
25 to finalisation by consent.

Subsequent applications of course would need to be made for the second, third and fourth MRA, however, this document is the documentation of the agreement of the parties in respect of this matter.

30 If the commission pleases, I believe it may be appropriate now to proceed into a discussion of the content of the award in conference which would allow us to work through the changes that I have made to this latest version which is the application here today. If the commission pleases.

35 COMMISSIONER: Thanks, Mr Paterson.

We'll go off the record, thank you.

OFF RECORD 10.40am

HEARING RESUMED 11.20am

COMMISSIONER: Yes, Mr Paterson?

MR PATERSON: If the commission pleases, I believe that in our conference just now, we have identified that P.1 is a consent draft order to vary the Aerated Waters Award with, I believe, three provisos; the TCCI have sought in effect to reserve leave on the definition of a permanent employee and the provision in the award that goes to trainees. I would ask that in that matter a fairly tight time frame may be two or three days be allowed for a response on those matters; that if the matters are agreed that the order proceed as consent and if the matters are not agreed then I would ask that the matter be brought back on for an urgent conference to try and address the differences.

I don't believe they should substantially hold matters up. A permanent employee - I believe that definition there - being engaged on a regular and continuous basis - is essentially a standard that the parties often work to.

The provisions that relate to trainees, the matters of the definitions either come from the existing award or the National Training Wage Award and have been amended to reflect the status of traineeships at this point in time and the trainees substantive provision for trainees is in fact the trainee clause from the existing award - I'll provide a reference for that - at clause 32.

The third proviso is errors and omissions excepted. I have endeavoured to ensure that the clause references and the typing mistakes and spelling mistakes - or typing and spelling in the document in the clause references are correct. It may be appropriate, I'd suggest, to move through very quickly through the document and note the amendments that we have made to the document that is before us as P.1.

COMMISSIONER: Just for the record, Mr Paterson, there's also the title and scope matter which is left to the parties.

MR PATERSON: The title and scope matter - I'm happy to see that set for variation. The issue of the scope is that this award covers virtually all bottled drinks, non-alcoholic bottled drinks, but does not cover in its scope non-aerated waters such as bottled spring water. Clearly, to have non-aerated bottled drinks included would probably need a change to the - well, would need a change to the title.

My union is happy to see the scope varied in that way, but again, that's a matter that the TCCI will need to advise the union parties on.

COMMISSIONER: Yes, and I think with that, the title and the scope, the parties ought to agree on that or not, and if they do agree give me something in writing that's agreed so I know exactly what to put in.

MR PATERSON: And if it's not agreed then we'd be arguing that the draft order should proceed.

COMMISSIONER: As is?

MR PATERSON: As is.

5 COMMISSIONER: Yes.

MR PATERSON: So just quickly to go to a couple of matters that we amended this document to. At page 9, Part III - Wage Rates, the (a) and (b) descriptors in clause 1, paragraph (a), we've amended the application - the draft order by consent to put the (a) and (b) after the word 'establishment' without brackets and also to import into this clause the definition of establishment which is contained on page 15, to leave it at page 15 but to also put it to page 9.

COMMISSIONER: Yes. And that - just to interrupt, I'm sorry, Mr Paterson - that establishment (a), establishment (b) that changed to apply wherever else appearing. You'll notice it down there with the percentages and so on - juniors.

MR PATERSON: Yes. Yes, wherever else appearing.

COMMISSIONER: Right.

MR PATERSON: Although I believe it is only in the wages clause and the definitions clause that it would appear.

COMMISSIONER: Yes.

MR PATERSON: There was an error - maybe a couple of errors - either typographical, formatting or spelling which I will look to check and advise the commission on. For instance, I note just now that at the bottom of page 21 there's a feral semi-colon crept into that line. Because I have copied these effectively from the Clerical and Admin Award there may be a few mistakes like that that have crept into these definitions probably from formatting.

COMMISSIONER: We can't have ferals.

MR PATERSON: I notice also at page 24 in (iii) there are two semi-colons with nothing between them, and as the commission pointed out at page 27 in the last full paragraph, the fourth last line, there is a letter 'a' with a comma after it. I will endeavour to check those clerical and admin classifications given that they are not drawn from the existing award but drawn from another award.

The principle that I will put on the record and seek to rely on should there be any issue arising in the future, is that the clerical and administrative classifications in this award, the definitions commencing at paragraph (b) on page 17 through to the end of that

5 clause are drawn from and rely on the Clerical and Administrative Employees (Private Sector) Award. So to the extent that there is any departure from the specific detail of that award, I'd put on record that it is our - that the principle that we have agreed to in varying this award is that those classifications be imported into this award, and I would seek a confirmation from the Chamber of Commerce and Industry of that matter.

10 MR PATERSON: I'm not sure that there are too many other amendments were made on the run to this. The last amendment that I believe we made to the document as tabled in P.1 is in the appendix to the award, at page 54 in clause 1, P.1, reads: As from (insert date) - the (insert date) will be replaced by the words 'first full pay period commencing on or after 29 November 1999'. And at page 55 the second-last line to be deleted.

15 Subject to any other matters that the other parties wish to raise or anything that the commission wishes to draw to my attention, I would submit that P.1 with the accompanying table of variations to the award, being P.2, constitute a draft order which meets the requirements of the principles that we rely on to vary this award.

20 In terms of the primary substantive matter of our original application, being the inserting of new clerical and administrative classifications and pay rates, and also the reformatting and the consequent minimum rates adjustment to that process, and also the reformatting of the award in accordance with the principles as mentioned, subject to the right of the other parties to advise on those outstanding matters, again the definition of a permanent employee the matters related to the trainee provision and issues related to possible variation to the title and scope, I'd submit to you that the commission should vary the award in this way.

30 COMMISSIONER: Yes. Did you confirm the operative date for the award?

35 MR PATERSON: The operative date, the first full pay period commencing on or after 29 November 1999 and it's my understanding that we have consent to that as well as to the substantive document, leave and except for the matters previously mentioned.

COMMISSIONER: Yes, and I would propose - thanks, Mr Paterson - I propose to include somewhere in the award variation, or added to it, the table of variations somewhere in it - probably at the back. Any objection to that, Mr Paterson?

40 MR PATERSON: I've no issue at all with the table of variations to the award and I expect that the issue is really one of wherever this is added there will be at least three occasions in the next two years when we're before you again with this award to put in the second, third and fourth MRA, and if at that time the variations are in effect redundant

because the award has been in place for a period of time, then they can be deleted.

5 It would certainly be easier to do that than to include in a word format all the variations on the cover sheet of the decision of the commission which is the usual form in which the variations to an award are noted. No problem, commissioner.

COMMISSIONER: Thanks, Mr Paterson. Mr Goss?

10 MR GOSS: If it pleases the commissioner, that the Australian, Liquor, Hospitality and Miscellaneous Workers Union agrees with - or consents to the amendments to the award variation.

COMMISSIONER: Thanks, Mr Goss. Mr Dilger?

15 MR DILGER: Thanks, commissioner. Yes, Mr Paterson has appropriately summed up what went on in conference and therefore save for those four matters: the definition of permanent employees, the definition of trainees, the title and scope and any errors or omissions, we, too, consent to that. Also, just on that matter of the table of variations, there will be no opposition to that being included also in the back of the award. If it please.

20 COMMISSIONER: Thanks, Mr Dilger. I commend the parties in conducting this exhaustive, and exhausting I suspect, review of this award. I think particular note, it seems to me, should be taken of Mr Paterson's good work in this regard. I don't think I'm putting anyone offside by saying that.

MR DILGER: No, he did do a good job, commissioner.

25 COMMISSIONER: Yes, and I appreciate that, Mr Paterson. I indicate now the award will be varied as agreed subject to those three matters that were mentioned. I'll look forward to hearing from the parties in relation to each one of those, or in particular, from you, Mr Dilger. And it may be that the commission does find a small item here or there
30 that needs to be corrected, amended or deleted or whatever, if that is the case I'll certainly be contacting the parties and getting their approval one way or the other or not to make those changes, but as far as I'm concerned, that's encompassed by the expression, errors and omissions excepted.

35 Thank you, gentlemen, this matter is complete.

HEARING CONCLUDED 11.35am