

PRESIDENT: Yes, can I have appearances please.

MR P. BAKER: Sir, I appear on behalf of the applicant organisation, P. BAKER, and in putting the appearance, may I offer my apologies to the commission for my non arrival at the appointed hour.

5 PRESIDENT: Yes. You've apologised to everybody else as well, Mr Baker?

MR BAKER: I've previously done that.

PRESIDENT: Very good. Just before you - we take other appearances, I guess it should be noted for the record that your organisation isn't listed in the rather inaptly named parties and persons bound clause of the award; we must do something to correct that.

10 MR BAKER: There will be an application made to the commission today that will remedy that defect.

PRESIDENT: Yes.

15 MR BAKER: But as this issue arose out of an interpretation matter, I'm hopeful that the goodwill of the parties will see that the matter can in fact be resolved.

PRESIDENT: Yes. Very good. Thanks, Mr Baker.

MR G. COOPER: If the commission pleases, I appear on behalf of the Australian Workers' Union, Tasmania Branch; COOPER, G.

PRESIDENT: Yes, Mr Cooper.

20 **MR W.J. FITZGERALD:** If it pleases, I appear on behalf of the Tasmanian Chamber of Commerce and Industry; FITZGERALD, W.J.

PRESIDENT: Thank you, Mr Fitzgerald. Well I think it was agreed with the applicant, and indeed I think with the employer representative that this matter would be on for mention on this occasion.

25 Mr Baker, can you tell me what's transpired since the application?

MR BAKER: I have circulated a proposed draft, for the want of a better term, of how I perceive the clause to be written which would give effect to the discussions that we had during the previous matter before the commission. I have not had the opportunity of discussing it in depth with the parties. Mr Fitzgerald wrote me a letter earlier this week, and I've had a brief discussion with Mr Cooper.

30 I don't know what Mr Fitzgerald's views are on the issue although he did indicate in the letter to me that some mention of the word 'arbitration' appeared, so I'm not sure whether he's actually opposing the fixing up of the clause, so as to speak, or indeed, he is opposing my interpretation of the clause. But I've had a brief discussion with Mr Cooper and I'm confident that we in fact can arrive at a mutual position insofar as a proposal for the wording of the clause is concerned.

PRESIDENT: Yes, all right. Mr Cooper.

40 MR COOPER: Yes, Mr President, in terms of that report-back, I'd confirm in terms of the discussions that we've had that that was accurate - that we have had some brief discussions. The clause, as provided in the application does in fact try - attempt to identify and address a problem in terms of rest period after overtime, but

in doing that the way it's been drafted it creates a number of others, and I've spoken to Mr Baker about that. It's nothing that I don't think we can - we can resolve - we can fix - so I think it's pretty straightforward - it's only a drafting matter that we need to address our minds to.

5 In terms of the award itself, this application, as I said, it does to seek to intend - to address - an anomaly that arose as a result of a previous matter, and in that regard we have some sympathy for the applicant in terms of trying to fix that problem up and we also advise the commission that this award is one of our principal awards and in that respect we are currently, as part of the review process, redrafting the
10 award in a more modern format for presentation to all the parties.

We have corresponded earlier this year - in April - May - this year to in fact effect that review with industry, and that process has been fairly protracted but at least the industry is aware of what we're on about.

PRESIDENT: Mm.

15 MR COOPER: So this very - could very well be consistent with that process as well.

PRESIDENT: Right. All right. Yes, but just before Mr Fitzgerald speaks, are you suggesting that this application should be deferred or are you saying that it should be possible to reach some conclusion on this application which will be in keeping with what you had intended in terms of the general review?

20 MR COOPER: Well all we would say, Mr President, is that there was a problem, it has been identified, and that problem needs fixing and I think the attempt by the metal workers to address that problem is in the right direction. I don't think it's fair to have an ambiguity that can be used in an award - I think you do need to tidy that up. In that respect we support the application, but the draft order that's been
25 tendered to address that problem has created a couple of others that need to be fixed.

PRESIDENT: Yes, yes, I understand that.

MR COOPER: That's all I was saying, Mr President.

30 PRESIDENT: No, my only concern was whether or not you saw this being done at the time the full review is done or whether this could be done as a preliminary to the full review but at the same time be compatible with the review.

MR COOPER: Yes. No, I could see it could be done as a preliminary if it's going to continue to create problems -

PRESIDENT: Yes.

35 MR COOPER: - in the industry. I think that's appropriate. The only thing is, I understood it was on for mention so I wasn't sure how far you were going to go today.

PRESIDENT: No, that's right. That's right, it is for mention. We won't be going more - much further than just establishing the way in which we'll proceed with it.

40 MR COOPER: Very good, thank you, Mr President.

PRESIDENT: Yes. Thank you. Mr Fitzgerald.

MR FITZGERALD: Thanks, Mr President, I'll just be very brief in my comments as we're aware, it is only for mention, but I think I should put on record the position of the employers, not only in respect to this application but in respect to the award generally.

5 I agree with Mr Cooper that there has been an approach by the union, and in fact by the AWU, that is, in terms of a review of the award generally, and we have in fact gone to members indicating that that's the intent of the union. Certainly it's our members' intention also to raise a number of matters the award, so we're not going through, if you like, an award modernisation or rationalisation process and
10 even though that process has been somewhat protracted, as I agree with Mr Cooper, there is certainly, I think, intention on behalf of the TCCI on behalf of members and the AWU to proceed with that process.

I think it's important that the - that the position of the union - unions - in respect to this matter be as one, and that be established as one - as quickly as possible. It's
15 my view, and I'm not certain at this stage until we get specific instructions on this matter once the position of the unions is resolved that it's one of the matters which should be considered not in isolation from all of the other matters which will be considered as part of the review. So I think my -

PRESIDENT: What do you say - what do you say to the comments by both Mr
20 Baker and Mr Cooper that what the application is really seeking to do is to remove some ambiguity from the - from the clause -

MR FITZGERALD: I understand that.

PRESIDENT: - so that there won't be the problems we had with that dispute which led to a rather frustrating interpretation.

25 MR FITZGERALD: It was a rather frustrating interpretation - I agree with you there. The only point I'd make in respect to that, that that involved one member only. I haven't as yet gone to the membership at large in respect to this and it would be, I think, pre-emptory of me to put a view to the commission on what members' views might be, and I think I'll have to in fact get instructions from the membership
30 at large.

PRESIDENT: Yes. I think, you know, having identified the fact that there is an ambiguity there, it is incumbent upon the parties, and indeed the commission, to clarify it. It would be my view that - and I would have ruled this way - that we should seek to correct that first, rather than wait for a general review of the award.

35 MR FITZGERALD: That's fine.

MR COOPER: I agree with that.

MR FITZGERALD: It certainly will be put in, once we receive the position from the unions, we'll be putting it to members and I hear what you say in respect to resolving this matter and we're happy to go through that process, but I think we
40 can't ignore that there is in train -

PRESIDENT: No.

MR FITZGERALD: - a process between the AWU and ourselves.

PRESIDENT: And I accept that and we must do everything we can to make sure it's compatible with what comes out of the review.

MR FITZGERALD: Absolutely, yes.

PRESIDENT: All right, well that being the case, it really, I guess, requires me to, I think, formally direct you into conference over the next period and we can resolve to meet again at an appropriate time to hear how far the parties have got.

- 5 Now we might go off the record for the purpose of determining when that might be.

OFF THE RECORD

PRESIDENT: Well thank you for that. We've fixed the 29th November - Friday - at 9:30 for a report back. Hopefully there will be a consent document to be handed up. We'll adjourn until then.

- 10 **HEARING ADJOURNED**