

DEPUTY PRESIDENT JOHNSON: I'll take the appearances please for the HSUA.

**MR C. BROWN:** If the commission pleases, C. BROWN appearing for the Health Services Union of Australia, Tasmania No.1 Branch.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Brown. For ASU?

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

DEPUTY PRESIDENT JOHNSON: Thank you, Mrs Dowd. For the respondent employer?

10   **MR W.J. FITZGERALD:** Thank you, Mr Deputy President. I appear on behalf of the Tasmanian Chamber of Commerce and Industry - FITZGERALD, W.J.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Fitzgerald. I see that you're more aware of your civic duties today than I am.

MR FITZGERALD: Absolutely. Yes, I was a bit disappointed with my colleagues at the other end of the table but we'll forgive them this time.

15   DEPUTY PRESIDENT JOHNSON: If it gives you some comfort, Mr Fitzgerald, I will tell you and Mr Brown that it doesn't get you any advantage. Mr Brown?

MR BROWN: Thank you, Mr Deputy President. The application before you seeks to vary the Disability Service Providers Award by amending clause 8 - wage rates - to include the third arbitrated safety net adjustment of \$8 per week.

20   The State Wage Case decision in matter T.5214 of the 20th December 1994, and as varied by the full bench in its decision of the 24th July 1996 in matters T.6284 and

T.6305 of 1996, laid down the principles for obtaining the safety net adjustments. The principle that I'll be relying on is principle 7.3.2 - the third arbitrated safety net adjustment at award level which states that on application a third \$8 per week

25   arbitrated safety net adjustment will be available at the award level from no earlier than the 20th June 1996 subject to the following tests - and I'd like to briefly go through each of those tests.

7.3.2.1 states: that the award has been varied to reflect the first and second \$8 per week safety net adjustments. And if I could tender an exhibit.

30   DEPUTY PRESIDENT JOHNSON: I'll mark that exhibit HSUA.1.

MR BROWN: The document I've tendered is Order No.3 of 1995 awarding the second \$8 safety net adjustment to the Welfare and Voluntary Agencies Award. Mr President, shortly after this order was issued, the Welfare and Voluntary Agencies was renamed to become the Disability Service Providers Award which is the same award that we're dealing with this morning.

The exhibit that I've just tendered shows that the award has been varied to access the second arbitrated safety net adjustment and as it was a requirement that the first safety net adjustment had been accessed in order to gain the second safety net adjustment, this exhibit satisfies Principle 7.3.2.1.

40   7.3.2.2 states that at least 12 months has elapsed between the second and the third safety net increases. This exhibit, HSUA.1, also serves to satisfy this principle in that it shows that the operational date for the second safety net adjustment was the first full pay period on or after the 20th June 1995, and that at least 12 months has

elapsed since the second safety net increases and the operational date that the HSUA has requested for the third adjustment that's been at least 12 months.

Principle 7.3.2.3 states that consistent with the decision of the Tasmanian Industrial Commission in matters T.6284 and T.6305 of 1996, the parties commit to review the award in the context of 1) consistent work formatting, 2) the removal of discriminatory provisions, 3) the removal of obsolete or amendment of inaccurate award provisions, 4) update clause 6, parties and persons bound, 5) rewriting of the award in plain English, 6) the appropriate use of facilitative provisions, and 7) the inclusion of an appropriate enterprise flexibility clause.

10 The HSUA gives such a commitment to work with the TCCI to review the Disability Service Providers Award in a manner consistent with the commission decision in those matters.

Principle 7.3.2.4 states that access to any further arbitrated safety net adjustments, however described, shall be contingent upon the commission being satisfied that the parties have actively pursued the review set out in 7.3.2.3 and may have established a time line to finalise the review or seek conciliation and/or arbitration to settle any outstanding matters. The HSUA acknowledges the contingency contained in this clause.

20 7.3.2.5. states that the amount of the arbitrated safety net adjustment is to be reduced to the extent of any wage increases resulting from agreements reached at the enterprise level since the 1st November 1991, insofar as that the increase has not previously been used to offset an arbitrated safety net adjustment.

Principle 7.3.2.5 is satisfied, Mr Deputy President, in that employees covered by this award have not received any increases at an enterprise level through agreement or otherwise.

25 We acknowledge that should any agreement be reached which results in wage increases through enterprise bargaining then the employers consistent with this principle will be entitled to absorb the \$8 safety net increase against any such increases.

30 The HSUA believes that the tests laid down in the State Wage Fixing Principles have been satisfied and that the commission should therefore grant the third arbitrated safety net adjustment to this award.

With regards to the operative date, the HSUA at the time of application sought an operative date of the first full pay period on or after the 20th June 1996. This was the date on which the third \$8 for this particular award was available to be accessed at the award level.

The HSUA lodged this application on the 20th June 1996 and at the same time we lodged four other applications to vary awards for the safety net adjustment.

Also, on the 20th June a copy was provided to the TCCI with a request that they advise whether the matter was to be a consent matter or a contested matter.

40 On the 5th July, I received a letter from Mr Fitzgerald indicating that TCCI consented to the application subject to the terms of the TCCI application in matter T.6284 of 1996. However, shortly before the matter was listed to be heard on the 10th July, Mr Fitzgerald advised that the matter was no longer a consent matter as some employers

in the industry were concerned about the upcoming federal budget and the possible impact on their budgets.

The hearing on the 10th July and the final hearing which took place on the 15th July and the decision that was then handed down on the 24th July awarded - or granted 5 the \$8 safety net adjustment to the applications that the HSUA had lodged at the same time as the DSP application with an operational date being the first full pay period on or after the 24th July 1996.

In the hearing before the full bench, the TCCI opposed the safety net adjustment for 10 this particular award on the grounds of possible economic difficulty for disability service providers. In those hearings I requested that the matter - if the matter was to be deferred to a commissioner sitting alone, then the operational date should be the same as for the other awards that the full bench granted, that is, the date of the decision of the full bench.

In its decision, the full bench did refer the matter to a commissioner sitting alone but 15 made no comment in its decision on an operational date.

The HSUA now seeks an operational date of the 24th July 1996, that is, the date of 20 the decision of the full bench on the following grounds: 1) that the TCCI stated the reason for the matter deferred has not eventuated, that is, that there are no applications at this time by disability service providers to oppose the increase due to economic inability. And as I understand it, Mr Fitzgerald now consents to the application with an operational date of the 24th July.

Secondly, that the other HSUA applications lodged at the same as the DSP application were give an operational date of the 24th July and that it would be inequitable, given the circumstances, for workers under this award to now be treated differently.

25 And thirdly, that the delay in hearing the application was not to do with any delays caused by the union or its members. As earlier indicated, the HSUA had lodged its application on the 20th June and provided a copy of the application to the TCCI at that time. The TCCI had obviously been aware for at least 12 months, if not longer, 30 that the third \$8 was available to awards which met the tests laid down on the wage fixing principles.

We therefore submit that the commission should grant the application with an operational date of the first full pay period on or after the 24th July 1996. If the commission pleases.

DEPUTY PRESIDENT JOHNSON: Mr Brown, thank you. Just for my education and 35 perhaps completeness of the record, I take it from the research that Mrs Gillie has done for me that there is nothing further to be done in this award concerning the minimum rates adjustment.

MR BROWN: Not concerning the minimum rates adjustment. There are through the restructuring process, as I understand it, there is need to come back and address 40 some more of the conditions within that award. And also, in the decision of the Deputy President Robinson when he handed down the decision on the wage rates and the clauses there was a couple of matters that he gave leave on that we could come back and address at a later stage, and it certainly is the intention of the HSUA to do that.

DEPUTY PRESIDENT JOHNSON: But so far as concerns the MRA ....

45 MR BROWN: No, the MRA process is - is completed.

DEPUTY PRESIDENT JOHNSON: Yes. Thank you, Mr Brown. Mrs Dowd.

MRS DOWD: Thank you, Mr Deputy President. The Australian Services Union supports the submission put forward by Mr Brown and we also support the operative date for the 24th July 1996. If the commission pleases.

DEPUTY PRESIDENT JOHNSON: Perhaps out of an abundance of caution I should simply ask you, Mrs Dowd, if ASU commits itself to the processes outlined in what is -

MRS DOWD: Yes, Mr Deputy President, we do commit ourselves in relation to the principle 7.3.2.3.

DEPUTY PRESIDENT JOHNSON: Thank you, Mrs Dowd. Mrs - I beg your pardon - Mr Fitzgerald.

MR FITZGERALD: Sorry, Mr Deputy President - yes, firstly we'd acknowledge the - on behalf of both applicant unions the undertaking which is required in respect to principle 7.3.2.3, and I feel it's unnecessary for me to reiterate the submissions made very comprehensively by Mr Brown in respect to the tests required to - in accessing the third safety net adjustment, but it's our submission that in fact the applications do meet the tests as required and also the public interest provisions as required by section 36. The draft orders have been previously forwarded by both applicant unions and have - in good time - and have been - have been verified and checked and we confirm that they are correct.

In terms of the previous position on this award, it was indicated during full bench proceedings in respect to the matter on the 24th July 1996, the State Wage Case matter, that we would be seeking to argue incapacity to pay in respect to this award, and it was coming out of real concerns - faced - financial concerns that were faced by those members in the industry.

The members in the industry have met since that date and even those concerns are very real and still exist. In fact there are some very severe current cash flow problems in respect to some members and possible long term budgetary concerns. The overwhelming consensus in the industry was that given that there was an expectation by staff of the third safety net adjustment to apply sometime after the 21st June, it would be unfair to deny that increase to staff who, in this industry, are particularly hard working and dedicated given the nature of the industry.

So that was the overwhelming instruction I had from the membership but it doesn't alleviate some of the concerns - financial concerns in respect to some members. And the impact even in an \$8 increase in some services is quite severe; just for example, in a typical accommodation service it adds approximately with oncosts about \$500 a week which translates to a yearly figure of about \$16,800 with oncosts for accommodation service - I'm sorry, that was accommodation service. For a day service the annual cost without oncosts is about \$17,500, with oncosts is about 21,500. So they are quite substantial increases and there are some real concerns about government funding and funding this sector.

We would be formally requesting, Mr Deputy President, given those concerns, that even though there is acknowledgment in terms of the operative date sought by the applicant unions, being the first pay period occurring on or after the 24th July 1996, we would consent to that on the basis that there is acknowledgment by the unions of - their recognition of the financial concerns which do face some services in this sector, and that may potentially cause a delayment in that payment and it's likely that that delay could extend to the 30th September, 1996, and it's my request, Mr Deputy President, that the operative date in fact be ratified by this commission, however there be an indication or recognition by the unions that those - those payments may in fact be delayed till that date because of the concerns coming out of the industry - because the financial concerns in respect to the industry.

In respect to - it's a matter which is not affecting this award, however it is the first award which I believe has come up for ratification of the third safety net adjustment since the full bench decision and I'd just like to clarify for the purposes of the record TCCI's position in respect to the matter of allowances which is not the subject of this application, but I think it's important that we set it straight this morning.

As previously indicated, and you'll recall, Mr Deputy President that there was agreement between the Trades and Labor Council and TCCI in respect to allowances and following the State Wage Case, TCCI in fact wrote to the TTLC on the 17th July, 1996 and there was an agreement in respect to the adjustment to allowances based on the percentages which \$8 bears to the trades rate at that particular time. So in respect to the first safety net adjustment there was an agreement for an adjustment of 1.92% which is \$8 as it bears to \$417.20. The second safety net adjustment was 1.88% which is \$8 as it bears to 425.20, and the third was 1.85 which is \$8 as it bears to 432.20. Now we did indicate at that time that they would be applied separately with an increase no greater than 5.65. The TCCI has reassessed its position in respect to that agreement and I'd would seek to clarify that in fact those adjustments which I just previously indicated are still agreed but they will be applied cumulatively which means that the total adjustment factor will in fact now go 5.75%.

So what we're simply saying is that those percentage increases will apply to each of the three separate safety net adjustments but with a cumulative effect which will mean that the total adjustment fact in respect to allowances will not now exceed 5.75, not 5.65 as we'd previously indicated by correspondence. So I think it was important that that matter be put on record in respect to this matter as the first one since the full bench decision.

So for all those reasons we would - we would seek that there be - this matter be approved by the commission with operative effect from the 24th July, but again, I think for the purposes of this application we do request and require recognition that payment may be delayed because of those financial concerns which I've indicated to the commission and we'd seek to reserve leave to - for any individual applicant within that time frame to bring matters to the commission, and if necessary, argue in accordance with the incapacity to pay principle. If it pleases.

DEPUTY PRESIDENT JOHNSON: Mr Brown.

MR BROWN: Mr Deputy President, the HSUA acknowledges the difficulty that some employers are and may be having with regards to funding and it certainly is not our intention to cause any unnecessary difficulties for those organisations, therefore we would be willing to entertain requests from employers on an enterprise-by-enterprise level to have the payment deferred up until the end of September this year.

We would prefer to be - to have that request put to us in writing just so that we can be aware of which enterprises are experiencing those difficulties and so that we can inform our members that there may be some delays in them actually receiving the \$8. I just stress that it's simply a deferment of payment, it's not setting the payment aside, and I acknowledge that if any employer is having extreme economic difficulties, the way is open for them under Principle 15 of the Wage Fixing Principles to make application for economic incapacity. If the commission pleases.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Brown. Mrs Dowd.

MRS DOWD: I have no further submissions to put, Mr Deputy President, other than to support what Mr Brown has just said.

DEPUTY PRESIDENT JOHNSON: Mr Fitzgerald, do those undertakings meet the request that you make on behalf of the employers?

MR FITZGERALD: They do, yes thank you, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: Perhaps out of an abundance of caution, Mr Fitzgerald, although TCCI at the State Wage Case level gave the commitment to the award review, I think it might be as well if you were to repeat in the case of individual awards.

5 MR FITZGERALD: We're happy to commit to a new process, in fact - indeed it's an instruction of our members that we pursue that expeditiously. So I can give that commitment in respect to this award.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Fitzgerald. I'm satisfied on the basis that the parties' submissions and the materials put before me that the application in this matter satisfies all of the tests required for granting of the Third Arbitrated Safety Net Adjustment. I formally order that the award be varied according to the draft order that has been submitted with the application. The date of the order will - the order as to affect will take effect from the first pay period to commence on or 10 after the 24th July, 1996.

15 That concludes the hearing of matter T.No.6264 of 1996.

**HEARING CONCLUDED**