TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T Nos 5188, 5189 and 5190 of 1994

IN THE MATTER OF applications by the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch to vary the Licensed Clubs Award, the Hotels, Resorts, Hospitality and Motels Award and the Restaurant Keepers Award

re classification rates and supplementary payments

COMMISSIONER IMLACH

HOBART, 22 February 1995
continued from 7/2/95

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: Any changes in appearances?

MR GATES: Only **MR MINTY JOHNSON**.

COMMISSIONER IMLACH: Thanks, Mr Gates.

MR MATTHEWSON: Helen Hudson is absent today.

COMMISSIONER IMLACH: Thanks, Mr Matthewson. I would like to finish at 4.00 o'clock - is there any problem with that? Mr Gates?

MR GATES: I shouldn't have thought so, commissioner. If not, I will put the rest of my submissions on the Tuesday.

COMMISSIONER IMLACH: Right. Good. Sorry about that, but that will be punishment for being late, Mr Gates. How's that?

MR GATES: I wear that very humbly, sir.

COMMISSIONER IMLACH: Not to worry.

MR GATES: If I could clarify a point first? The 'T' numbers. I thought it was 4037/8/and 9 of '994, or is that relating to the penalty rates case?

COMMISSIONER IMLACH: I think it must be the penalty rates because 5188, 5189 and 5190 are the ones that I have got.

MR GATES: Right.

COMMISSIONER IMLACH: What about you, Mr Matthewson?

MR MATTHEWSON: I'm just checking.

COMMISSIONER IMLACH: I haven't got that other one with me, so I can't -

MR MATTHEWSON: Yes, 3738/9 are the penalty rates 'T' numbers.

MR GATES: Right.

MR JOHNSON: My apologies for being late.

COMMISSIONER IMLACH: That's all right, Mr Johnson. You have only just got in after one other.

MR JOHNSON: Oh, right.

MR GATES: Do you wish me to put my submissions?

COMMISSIONER IMLACH: Proceed, Mr Gates, thanks.

MR GATES: The submissions should only take us 2 hours. They may take a bit longer, and I would certainly see us running on to the Tuesday session anyway, but I will go through that in some more detail.

If we look firstly at the history of the matter which was quite well summed up by Mr Matthewson on the last occasion.

Basically, the ALHMWU is - well, the ALHMWU draft order - is based on a decision of Commissioner Merriman of the Australian Industrial Relations Commission which was handed down on 10 June 1994.

The decision had an effective date - or an operative date - for the first full pay period to commence on or after 4 July 1994.

The effect of that decision - and it is useful by way of summary at this point - was to assign new relativities to classification levels in the Hotels, Resorts and Hospitality Industry Award 1992. Those are on top of previous minimum rates adjustments which form part of the structural efficiency exercise.

I will try, where possible, to make a reference to the minimum rates adjustment to say the new minimum rates adjustment so we don't get confused.

Basically, the decision of Commissioner Merriman set in place a new relativities for the award and the relativities are now in the federal arena. The introductory level at 78%, level 1 at 82%, level 2 at 88%, level 3 at 92.4%, level 4 at 100%, level 5 at 110% and level 6 at 115%.

In line with the order of Commissioner Merriman the parties then went away and did .... consent orders, and it is those consent orders which the ALHMWU is bringing before the Tasmanian Commission.

The union is seeking to apply that decision to the three state hospitality awards, namely as I will refer to as the Hotel, Motel Keepers for briefness, the Restaurant Keepers and the Licensed Clubs Award.

The basis of the application is two-fold: (a) that there is a nexus and that that nexus is the direct and (b) based on comment on transcript of Mr Nick Sherry in proceedings before this commission T.2839 and 2840.

Those proceedings in those T numbers concerned the Licensed Clubs Award and the Restaurant Keepers Award, and it was to do with their restructuring.

Those two particular applications came before the Deputy President of the commission late in 1991. His comment - Mr Nick Sherry's comment - in that case was to the effect that the wage relativities in the Licensed Clubs and the Restaurant Keepers Awards may change as the federal relativities are without prejudice- or were without prejudice.

So the effect of that, and we would submit that there is no direct nexus with the Restaurant Keepers nor the Licensed Clubs Award but there does exist a nexus between the federal Hospitality Award and the State Hotel, Motel Keepers Award.

Based on a comment of Mr Sherry in March 1991 the TCCI has no objection to changing the relativities in the three hospitality awards.

Now that's either on the basis of a direct nexus or it is on the basis of Nick Sherry's comments.

And we are realists. We accept that it will probably come in at some stage, anyway, so we give our consent to the changing of relativities.

The problem that we have with it, commissioner, is in the content of the definitions and their applicability in the State of Tasmania, particularly in the areas that our awards cover which is somewhat different and can be different in that of the federal award and of the phasing in of the new minimum rates adjustments.

The effect of the decision - and it is useful to analyse what the monetary terms mean to employers and employees in the industry - which hasn't really been brought out to date except briefly several months ago - is that the introductory level would progress from 312.40 - I believe it is 312.40, it may be 20 - to 333.40; level 1 would progress from 333.40 through 350.10; level 2 would progress from 350.10 through to 375.20; level 3 would go from 372.60 through to 393.50; level would go from 393.50 to 425.00; level 5 would stay the same at 425.00; level 6 would progress from 446.10 to 466.90, and level 7 would go from 466.90 through to 487.80.

What's apparent from that, commissioner, is that there are substantial increases which will be imposed upon employers, and at a later stage of proceedings, either today or on the 28th we will be putting submissions as to the phasing in of those.

In effect, the main operating classification in the award is level 2 and employers face a wage increase of some $25.10 which is not inconsequential.

Early on in the piece, commissioner, we put in place - which we are working to, or certainly I am working to - an activity and hearing schedule, and that was Exhibit G.1.

That set in place a procedure for us, being the ALHMWU, TCCI and the commission itself, to analyse some of the concerns that we have with the federal definitions, and certainly their applicability in the State of Tasmania.

In that process the parties, being all three, went out and analysed several workplaces. We sat down and we talked to people, and we asked them pertinent questions.

Now I accept that that shan't be used as evidence before the commission, but it gives the commission some idea as to what actually is involved in the industry and what goes on.

From the site inspections the ALHMWU put forward formal submissions to the commission and it is now the province of TCCI to put our submissions.

It's appropriate to say that this - or the hearings before the commission at the behest of TCCI - is not some figment of our imagination, it is not something that we have come up with late in the piece, it is something which we have had concerns about since virtually the inception of it.

And we're pursuing that through and we have modified what we have been seeking as we have been going through, and that reflects some of the realities which the parties have encountered.

We certainly don't agree now, after studying the industry, having done a questionnaire or a survey, and speaking to our members we are certainly not satisfied that the current format as in the draft orders put before you from the union accurately reflect, or should reflect, what occurs in Tasmania.

Through the structure of submissions today we, or certainly I, have tried to give an approach which will give the maximum benefit to my colleagues at the ALHMWU.

What it allows is for the majority of evidence to come out by way of formal submissions without calling for witnesses and for my colleagues to determine what it is we are after, what submissions we are putting, and the basic content of the orders for which we are seeking.

On that basis, then if we proceeded on the 28th early in the morning we can call witnesses in without about 20-minute intervals, I should have hoped, which will minimise any disruption to them, and it will not greatly prejudice Mr Matthewson to

put his closing submissions later on in that day, as he's been given the opportunity to consider our lines of argument.

Those witnesses should simply be confirming evidence which will be put before the commission today.As we've said, the union draft order is basically - and I emphasise basically - a straight flow-on of the federal consent order both as to relativities and to definitions. Draft orders were submitted before the commission as exhibit H.1A, B and C. It is useful to note that the orders have been modified to some degree to reflect previous consent arrangements for classifications within Tasmania and that those have been maintained in the federal order, so it becomes apparent that it is not a direct flow-on - there is some modification to them.

The TCCI draft order - or should I say variations to the order of the ALHMWU - I'll put forward in a moment. Basically we accept the relativities but that there be an amendment to definitions, and the basis for that would be to provide - or to reflect previous consent matters which have occurred in Tasmania to provide - or to provide and create greater relevance to the industry and to accurately reflect what happens in the industry.

If I could hand up an exhibit booklet which contains all of the exhibits which I'll be putting before the commission today.

COMMISSIONER IMLACH: Thanks, Mr Gates. Are you able to tell me what number that should be?

MR GATES: No, I'm not, sir, I'm afraid my file is in somewhat a state of disrepair.

COMMISSIONER IMLACH: It looks to me like it might be G.2. I've got a G.1 here - oh no I haven't, I've got a G.2 as well.

MR GATES: I think it would be somewhere in the vicinity of G.4 or G.5.

COMMISSIONER IMLACH: Is that what you think it should be. Well I've got a G.2 but I haven't got any more than that. What do you say, Mr Matthewson?

MR MATTHEWSON: What was that, commissioner?

COMMISSIONER IMLACH: What do you say? You're not - haven't been following?

MR MATTHEWSON: No, I was reading the little attractive booklet I was just given.

MR GATES: If we called it -

COMMISSIONER IMLACH: G.3, Mr Gates.

MR GATES: G.3 - thank you.

COMMISSIONER IMLACH: Proceed.

MR GATES: If we took you to the first page of it which is over from the cover page you'll see a document which is titled 'TCCI Proposal re: New Minimum Rates Adjustment'.

Now these - I'll take you through it. The amendments in here are based on the Restaurant Keepers' Draft Order which, as I understand, is H.1.C. What it simply seeks to do is to delete certain categories and to insert certain categories. So if you had H.C.1 alongside, this is in effect an amending order at the end of the day.

Did you want me to ....

COMMISSIONER IMLACH: I've got it.

MR GATES: You've got a copy - right. What it's essentially doing - and I'll briefly take you through it. In `Introductory Level' there appears in the third line `three months' and that's twice appearing. And what that says is that in essence a worker who remains in the industry - sorry - remains in introductory level for a maximum of 3 months and then it goes on to say: An additional 3 months may be served by agreement between employee, employer and the union.

What we'd seek to do, commissioner, is to delete the reference to 3 months an insert in its place a reference to 494 hours twice appearing. I'll go through and detail the effect and the justification of those at a later stage, but I'll run through the order so we understand them.

If we then look down to `Food and Beverage Service Grade 1' then basically what we're doing is inserting as a precursor shall mean an employee who has completed at 494 hours instead of the 3 months, and removed the reference to 'at a level higher than that prescribed for the introductory level' because in my mind there would be no difference between the duties of someone who is doing an introductory level and the duties they may do at, say, level 1. So it's my belief that that would be a superficial sentence attached to the end of it.

The next one in (b) is - goes to the bottom where it says: 'shall not (except a Takeaway Service Attendant in a takeaway establishment) include service to customers' and instead insert a proviso in there. And that proviso says:

> *That provided that an employee without previous experience in the relevant duties at Food and Beverage Grade 2 shall remain in this Grade for a maximum of 60 hours actual service to achieve the competency levels of Food and Beverage Service Grade 2.*

It then goes on to say, in the next paragraph:

> *Provided further that an employee with at least one year's experience performing the relevant duties in Grade 2 and who has not been employed performing such duties in the immediately preceding two years or an employee with the appropriate level of training without previous industry experience performing the relevant duties in Grade 2 shall remain on this level for a maximum of 30 hours.*

COMMISSIONER IMLACH: Just excuse me, Mr Gates, is that immediately proceeding or preceding? It's the third line down that last paragraph you just read out? In the immediately proceeding - I'd say preceding - wouldn't it?

MR GATES: Oh, yes. Yes, that's right.

COMMISSIONER IMLACH: Now there's - is there only one 'e' in there? Pre -

MR GATES: Yes, that's correct.

COMMISSIONER IMLACH: Right. Sorry to interrupt - keep going.

MR GATES: That's fine. There is - yes - there appears to be a mistake in the draft order, and if I may just take the liberty of the commission to correct that - it is

intended to keep a Takeaway Service Attendant in a takeaway establishment at Level 1, so if we took out the first 'Delete' in (b) and so it would read immediately: shall not (except - and if we go to the second line where it goes 'service to customers,' and insert' - if we just had 'insert' immediately following on the next line.

COMMISSIONER IMLACH: So are you saying leave out - no, I don't follow that - go back and start again please, Mr Gates.

MR GATES: Okay. Well if we took it in its present format without changing anything, the effect of it would be to take out 'Takeaway Service Attendant'. That's never the effect of it - it was never the intended effect of it. So what I seek to do is to retain 'Takeaway Service Attendant' in that level and insert another paragraph at the end of it which would be the 'Provided that' and 'Provided further'. So what I'd seek - if we just deleted - deleted the first 'Delete' appearing in (b) -

COMMISSIONER IMLACH: Yes.

MR GATES: - then that retains Takeaway Service Attendant, and then in the second line where it says 'and insert' about halfway along, a new paragraph which would go immediately under that.

COMMISSIONER IMLACH: Yes, you'll have to produce another copy for me.

MR GATES: Yes, that's fine.

COMMISSIONER IMLACH: When you're ready.

MR GATES: Yes, I'll undertake to do that. Yes, unfortunately that was an oversight. The effect of that, if I just looked at it very briefly, would be that somebody who is doing customer service can remain at level 1 and do the duties of a level 1, and that someone who would ordinarily be classified as Grade 2 can stay at level 1 for a training period, and that would be for a maximum of 60 or 30 hours. And that is the effect at the end of the day of that variation. But we'll look at that in more detail.

The next section which is Food and Beverage Grade 2, there is just a section to be inserted at (a) which would be - give effect to the variations in Food and Beverage Grade 1, and so that would be, if we inserted 'at a level of complexity greater than Grade 1' and inserted 'and as applicable has completed the required service at Food and Beverage Service Grade 1'. So that would be a facility mechanism in Grade 2. And the amendment of itself is of no value if - if (b) of Food and Beverage Grade 1 is not inserted.

The next area which is at (b) is in effect to delete 'Attending a Snack Bar or Counter' and the rationale for that would be that Takeaway Service Attendant is already in a Level 1 by consent and it would create confusion in the market place.

The third is the Food and Beverage Service Grade 3, and what that in effect seeks to do is to delete all after 'duties include any of the following:' and insert in a very much simpler structure through there. But we'll look at that in more detail later.

If we moved on, commissioner, and we turned to analysing the effect of the orders, and this is of fundamental importance because in order to understand where we're coming from, it's essential to understand the practical effect of the ALHMWU's draft orders in the market place and then to assess the effect of our proposed amendments in there. And what we've done - or what I've done is developed on page 2 after the cover page an exhibit which is titled 'Comparison of ALHMWU Variations -v- TCCI Variations.

It's a very simple document and it's certainly not designed to carry every single contingency which may arise. It is designed to give an idea as to the practical effect and there may well be some variations from that in actual practice.

If - well it's designed - I'll take you through how I came up with it originally. In Column A there's the classification levels which exist pre or post amendments. It's really - it's - well, if we looked at it post amendments it's more applicable. Column B then looks at employees with no industry experience, so that would be someone if he comes into the industry, who has never worked there before, and for example may have left school. Column C looks at an employee with experience at level 1 or another level and how they would go to go into level 2. Column D shows an employee who possesses experience but has been out of the industry for more than 2 years - so wouldn't have worked in the industry. Column E on the other hand looks at an employee who possesses experience in the last 2 years. Now, for example, that would take into account someone who left the job at Hadley's and went across to somewhere like Ciscos, and it is only - what I have done, and if we look at Column B as the first one - and it is useful to look at the Restaurant Keepers classification while we are doing it for the proposed draft order from the union.

On my analysis of the union's draft order if we new employee came into the industry, had no previous experience, then they would go straight to the introductory level, and safely put them on that, and if they were going to progress to, say, a barman or a waiter, then they would jump level 1 and they would go straight to level 2, which is the appropriate level for someone performing those duties.

In the TCCI proposal there is no change in the effect of that in that an employee with no experience would go to the introductory level for a period of time there, miss level 1 and then go straight to level 2.

So if we look at it on that there is no change.

If we look at Column C we start to pick some variation up.

Now if we look at the ALHMWU example of their draft order, then a person who has previous industry experience would, as I suggest, be precluded from making - or being put into the introductory level - whether he was at a new job or whether he was promoted in the establishment that he is presently at.

And that is because in the definition it says:

> *'Introductory level' shall mean a worker who enters the industry and is unable to meet the comments and requirements of Grade 1.*

So, for example, you could have - let me see, a kitchen hand - who at the end of the day we are going to a job, say, as a barman.

Now you can't put him in the introductory level because you are precluded by virtue of the definition.

You can't put him in at level 1 because he is performing level 2 duties.

There is no training component in there or anything .... how you would give him a lesser rate of pay, so you have to put him in at level 2.

Now you are putting that person in beside someone who may have been there for 10, 15, 20 years and the employer is then incurring disproportionate costs in training that person because he has no skills.

Now he wouldn't know how to pour a beer. Well, chances are he wouldn't know how to pour a beer because he has never done it before, and so he has to learn and start at level 2. Now that creates a disparity.

Conversely, if we looked at the TCCI proposal in Column C we would say in our variations, no you can't put them in at the introductory level, and that's as it stands, but you can put them in at level 1, and that's covered by virtue of our variation.

So, well just referring briefly back to our variation, it would be:

> *PROVIDED THAT an employee without previous experience in the relevant duties at Food and Beverage Grade 2.*

And that's what he would be caught by. He wouldn't have that experience in the duties of it - that is, the pouring beer, the service on tables, the greeting of customers, and so forth, and what would happen to that person is they would then stay at level 1 for a period of 60 hours which is, as we will demonstrate later, is what the industry believes would take to train someone to a reasonable standard of competence, and then from there they would progress through to level 2, and they will then be as competent - well, theoretically as confident - as other level 2 employees.

It's also pertinent to say at this point that they needn't stay at level 1 for the full 60 hours. They can simply stay there for, say, 10 hours or 2 hours, just depending on when the person is deemed to be competent.

If we then look at Column D which is:

> *An employee who possess experience in the industry .... over 2 years old.*

Now that provision would cover a person or employee who, for example, has been out of the industry for 10 years or 20 years, ... when he was a child.

If you go by the ALHMWU draft order, level 1 will again prevent you from putting that person through an introductory level.

Now, let's just give an example: he may have been out of the industry 15 years, and 15 years ago they might not have had kegs, they might just have had the old oak barrels which were filled with stout and were free falling, and customers change, the techniques in the industry change, and their skills aren't necessarily up to date.

Now that provision in the ALHMWU would say that you can't go to the introductory, you can't go to Grade 1, but he must in fact go to level 2, and so you have got the same disparity as existed in Column C.

Now you have got a person there who is not necessarily competent, does not necessarily know how to do that job, but by virtue of the award definition they have - or the employer has no discretion, they have to put them in at level 2.

Conversely again, if you look at the TCCI proposal, then we're also bound by the introductory level on our variations and that they wouldn't go there. But they would instead go to level 1 and they would spend a reduced amount of time there which, from memory, is 30 hours. And then from there they would progress to level 2.

What that comparison shows, in effect, is that it acknowledges that these people have a form of skill, it may not necessarily be current but they can do the basics of the job. But that they're not competent. So what it says is that: Let's just hold them back for 30 hours at a level 1 rate of pay which, bear in mind, is the current rate of pay, pre

variation, for a period of only 30 hours. Now your average employer would .... that in a week. Again that will be substantiated by both witness evidence and by further submissions this afternoon.

If we looked at column E, column E applies to an employee who possesses experience in the industry and performing the relevant duties in the last 2 years. And in that case, they would both automatically go to level 2. And so it protects current workers. I mean, the variations which we're putting up are not some variation which is designed to rip employees off the industry. What it says is that the employer should be able to give, in effect, a training wage of some description. That there be a recognition of the level of expenditure which is being incurred by the employer in having to train these people. Again, we'll go through that in more detail later.

It's further clear from that very simple comparison, and reading that in conjunction with the draft orders, that being in effect of 30 and 60 hours, that the proposed changes put up are of absolute minimal impact in the industry. And they serve only to improve the competency structure in the award. And they'll serve to assist career progression from one level to the next. Because if you've got someone at level 1 and they say: Gee, I'd really like to be a barman, the employer may baulk and say to himself: Why should I train this person up to go to level 2 when it's going to cost me `X' number of dollars in close supervision, in putting him in quiet periods, doubling up of shifts and so forth, why do that when I can get someone else who's from another establishment. I'll just slip him across into there, he's immediately productive, I don't have to incur any expense, and we'll be right.

So in my submission, a structure such as the one proposed by ourselves would, in fact, assist the industry.

COMMISSIONER IMLACH: Before you go on, Mr Gates, I can't quite follow the exhibit. What does the `X' stand for?

MR GATES: Oh, the `X' just marks where it is across. So, for example, if we looked at B, then the `X' - column B - employees with no industry experience, then the `X' would signify that they go into that level and that because there's no `X' in level 1, they skip that level and then because there's an `X' in level 2, it means they go to that level. So t he `X' just signifies where they go to.

COMMISSIONER IMLACH: Right. So that if you get someone without any experience, they go into the introductory level, they do the hours that you're claiming, is that right?

MR GATES: Yes.

COMMISSIONER IMLACH: Then they go to level 2.

MR GATES: Yes.

COMMISSIONER IMLACH: And that's what you're saying. That's what the union says as well, is it?

MR GATES: Yes.

COMMISSIONER IMLACH: Right.

MR GATES: My variations don't affect it. They won't affect that, except that there may be this hours instead of a time based progression of months.

COMMISSIONER IMLACH: Yes. But then if we go to the next column - employee with experience at level 1 or other level, he's had experience. You say he should go to level 1 and then to level 2. Is that right?

MR GATES: In the TCCI proposal, yes.

COMMISSIONER IMLACH: Yes. How long at level 1?

MR GATES: For a period of - it's in the previous -

COMMISSIONER IMLACH: Is that the 60 hour one?

MR GATES: Yes.

COMMISSIONER IMLACH: Sixty hours, right.

MR GATES: Sixty hours.

COMMISSIONER IMLACH: That's 60 working hours.

MR GATES: Yes.

COMMISSIONER IMLACH: And then the union says that person should go to level 2 immediately.

MR GATES: Yes.

COMMISSIONER IMLACH: Right.

MR GATES: Well that's the effect of their order as it stands today.

COMMISSIONER IMLACH: Yes. But it's different from the one you're proposing, isn't it?

MR GATES: Yes, absolutely.

COMMISSIONER IMLACH: In column C. Then in column D - employee experience but over two years old, meaning it was 2 years since he's been at work. Is that right?

MR GATES: Yes, not 2 years of age.

COMMISSIONER IMLACH: Yes. It's really the same as the one before.

MR GATES: Yes.

COMMISSIONER IMLACH: Right.

MR GATES: Yes, that's right.

COMMISSIONER IMLACH: And then employee with experience in last two years, goes to level 2 directly. Right.

MR GATES: There will be some - as I said, it is a simplistic model. But there may be some variation from it. For example, an employee with experience in the last 2 years, if we adopted 494 hours in at level 1, then it could be said that somebody transferring who's only done 10 hours shouldn't necessarily go straight to level 2, because they haven't completed the requisite number of hours at level 1 - sorry, at introductory level.

COMMISSIONER IMLACH: Right.

MR GATES: That's what it's getting at there.

COMMISSIONER IMLACH: Sorry about that. Proceed.

MR GATES: If we look at the nexus, and there's certainly some confusion over it. And I'll just talk about it in a short context. What we would see is that the draft orders in whatever form at the end of the day, would - sorry, we seek that the draft orders as amended, in light of the TCCI proposals, would apply across all three state awards, which would go to providing a level of consistency within the state arena.

In the alternative, then we would seek that the Restaurant Keepers and the Licensed Clubs be consistent amongst themselves and that the Hotel and Motel Keepers be isolated. Now the rationale for that alternative is, as we previously said, there exists no direct nexus between the federal award and the Restaurant Keepers and the Licensed Clubs Awards. Rather in those two particular awards the variations to relativities would come about through the decision of - or through a comment in transcript of Mr Nick Sherry. We accept that there is a direct nexus only, but only with the state Hotel and Motel Keepers Award, and that's with the federal award.

And if, at the end of the day, the commission moves a decision on nexus, then it shouldn't necessarily vary the Restaurant Keepers and the Licensed Clubs as well on that base. Our primary position - and I'll emphasise it quite strongly - is that the TCCI variations be reflected in the federal decision and that those amend the draft orders from the union, and which would then flow across each three. But I certainly do not support the federal award applying in its current format to all three state awards.

Do you want me to go through that again, commissioner?

COMMISSIONER IMLACH: No, I've got it, thanks.

MR GATES: Right. We would suggest that it is in the power of the commission to effect changes to that federal award - sorry, that federal consent order on the basis of, amongst other things, section 20 of the Industrial Relations Act 1984. In that, section 20 of the Industrial Relations Act provides that:

> *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.*

And the other section which is relevant is (d), which is:

> *shall have regard to the public interest.*

We'd also submit that - and it's not necessarily related to the Industrial Relations Act, that the commission itself should not immediately follow a federal decision. That the commission should assess whether that is relevant and practical in the Tasmanian setting.

We submit that at the end of the proceedings we'll have established the case which justifies such proposals as the TCCI has put, and that it is in equity and good conscience to award such variations in the form stated.

If we turn briefly to the draft orders presented from the ALHMWU, there are a number of difficulties we have with them, which may be overcome by modifying them in the

form suggested by the TCCI. In summary - and it's a very useful .... to bear in mind to look through the whole of the case - we would submit that they contradict previous consent arrangements in the award, they appear contradictory and ambiguous, they insert matters which did not form part of the federal consent order which, as I understand, is primarily keno, but, as I understand, that is to be removed. That they do not apply equitably across various classes of employees, and in classes of employees I'm talking - referring to full-time, part-time and casual employees. That they do not recognise the pay levels according to competence. And lastly, that they force employees to incur expenses to train people without a corresponding recognition of the value of a particular class of employees' work.

The variations proposed by ourselves look at addressing those problems in some form so they should apply equitably across the industry, they should apply equitably across one class of employee to another, they should redress some of the anomalies that employers are being forced to incur by way of costs to train people. And they redress some of those inconsistencies for competence and pay.

If we could proceed on to some of the specific areas, which have been raised in our variations, and the primary arguments, it's very useful to bear that summary in mind because it's an overall guiding force.

If we turn firstly to the first document in the exhibit booklet, which was a TCCI proposal re minimum rates adjustment, and we go to introductory level, at (a), it says:

Delete "three months" twice appearing, and insert "494 hours".

In the federal decision, which is the consent order, which is the one my colleague is seeking to produce, that says: Introductory level shall mean a worker who enters the industry and is unable to meet the competency requirements of grade 1, will remain in this level for a maximum of 3 months, provided that an additional 3 months may be served at this level by mutual agreement between the employer and employee.

And the union, where such an employee is a union member, further if any disagreement arises from this provision it shall be determined in accordance with the disputes settling clause of the award. Our change, in essence, is delete 3 months, insert 494 hours. The other effect of our variation, which is in Food and Beverage Service Grade 1, looks at somebody who is not new to the industry. And it looks at overcoming some of the shortcomings encompassed in that.

The effect of the federal decision is twofold. The first is that a worker must be new to the industry. It applies to someone who enters the industry. If you've been in the industry before, you can't use it. And that's a shortcoming. The second is that an employee who is new to the industry will stay at that level for 3 months or for 6 months, where agreement is reached. The first one we'll look is somebody who is new to the industry. The problem there is something I alluded to before, is what happens when you've got a person engaged at level 1 and you wish to progress him to level 2? Under this proposed structure the union is submitting, then you've got to put them at level 2 if they're performing any service to customers. There's no training period at level 1, you can't put them back to introductory level. The only thing you can do is pay them, pay them at level 2 rates, and they're not competent. Prima facie they're not competent.

Similar problems exist for persons who have been out of the industry for a while, but have had previous experience. You can't put them in introductory level. And previous - or further problems arise for someone who hasn't performed, say, the specific duties at level 2, for example, let's pluck one out. They may have been engaged in receiving, storing and distributing goods, and that was their job. So they're already in at level 2, but they don't possess any experience in, say, pouring a beer or waiting on a table.

Now some of the thugs that you may have seen receiving goods won't necessarily automatically pick such barman or wine waitering or waitressing duties up. So it's therefore necessary to go through some form of training period.

COMMISSIONER IMLACH: Excuse me, what was that word you used, Mr Gates?

MR GATES: Which one?]

COMMISSIONER IMLACH: Well I thought you said `thugs'.

MR JOHNSON: Yes.

MR GATES: It must have been a freudian slip.

COMMISSIONER IMLACH: I hope so. What did you actually mean to use?

MR GATES: Probably thugs.

COMMISSIONER IMLACH: I thought Mr Mathewson would have leapt up and objected. What do you mean, some of the employees? Is that what you mean?

MR GATES: Some of the employees certainly wouldn't have the experience nor the skills.

COMMISSIONER IMLACH: Yes. Perhaps you've got a different idea to what a thug means to what Mr Johnson and I think it means.

MR GATES: A big fellow.

COMMISSIONER IMLACH: Well my understanding is a gangster.

MR JOHNSON: A bouncer.

COMMISSIONER IMLACH: Yes.

MR GATES: Bouncers aren't necessarily thugs.

MR JOHNSON: They've got to be trained thugs.

COMMISSIONER IMLACH: Well unprincipled bouncer. Anyway so shall we delete that reference and call them employees.

MR GATES: Certainly, commissioner.

COMMISSIONER IMLACH: Do you accept that, Mr Mathewson?

MR MATHEWSON: Yes, commissioner.

COMMISSIONER IMLACH: Good.

MR GATES: A humble rebuttal. And the other things which introductory level doesn't cover is someone who has got previous - who comes to the industry with training. Now that would cover a person, for example, from Willson Training Centre or Drysdale, who has never worked in the industry before but thinks it might be a good idea to get some training. They would then practise pouring beers with water and don't necessarily know how to pour a beer in actual life in a pub. Now a person such as that - and that occurs in the industry - you have to train them. Sure and simple. And there's a recognition of his skills in the shorter hours, 30 hours.

Introductory level and level 1 don't assist progression through the levels. And it's not equitable in its practice. And that's apparent because someone doesn't have the skills but yet you're asking them to do those duties and they go straight to level 2. You have to train them, you have to supervise them, you have to double up on your shifts and so forth. So they're just incurring costs.

So what TCCI was seeking to facilitate that would be a provision which picks these people up, which recognises that someone who comes to an employer with, for example, Willson Training Centre - and I'm not picking them out - who has not ever poured a beer but has poured water instead, then they go through a training period -- of 30 hours. And that's to give them the necessary skills. Someone who comes into the industry who hasn't performed the duties of a level 2, and was, for example, working in the cellar with no customer involvement, go to level 1 for a training period, a short training period, so they can get the skills in the relevant duties at level 2. And the same applies for somebody who has been out of the industry for more than 2 years, that they do the same.

The second component and a very contentious component, or the next area, I should say, is that of 3 months versus 494 hours - great opposition to this. Presently someone can do either 3 or 6 months. The TCCI proposal is someone can do 494 hours at introductory level or they can do 988 hours, by agreement. So in effect there's no real change for introductory level, just this concept of hours.

We will submit to you that 3 months is inequitable, absolutely inequitable and it is prima facie inequitable. Let me give you an example. If we had a casual employee who is new to the industry, he may work 4 hours a week or he may only work 4 hours a week and then have 5 weeks off. But we'll take the 4 hours each week for a period of 3 months. Therefore at the end of 3 months if you retain him on for that level of time he or she has completed 48 hours actual service at that level. A full-time employee conversely - and there's a number of full-time employees in the industry - if they worked 38 hours per week, and they stayed on introductory level for 3 months, then by the end of it they are well into the hundreds of hours, in excess of 400 hours actual service before they progress from introductory level.

Now the example gets even more ludicrous when you say: We'll engage a casual employee, we'll give him a job, he's never done anything before, but we only want to work him as and when required. And as and when required happens to be 4 hours in this week, a couple of months go on and then some more. If you took 3 months as a calendar period then he or she may have only achieved, say, 12 hours actual service. Now I will submit very strongly that a person who has done 4 hours service - sorry, a person who has done 48 hours service with an employer is not as competent as someone who has achieved in excess of 400 hours service. A person who has done in excess of 400 hours service is more competent. And that, I submit, is what the introductory level is for.

Then they set it, 3 months as a minimum for getting a full-time employee to a level of competence. If not, did they say: We'll set 3 months because that's for casuals. If that's the case, then your full-time employees are staying on the introductory level for too long. And I would submit that that's not the case. I would submit that the case is that it will set at 3 months for full-time employees and if that's the case, then what we are in effect talking about is hours. And it's a conversion. And that would be to 494 hours.

So if we said a full-time employee to achieve a level of competence works there for 3 months in introductory level, which equates to, say, 494 hours. Therefore a casual employee or a part-time employee who achieves anything less than that, cannot be competent, by definition. Now that's what we're seeking to redress and that's the fundamental principle. These people are not competent, and that to be competent they have to achieve a certain number of hours. The only benchmark we've got for someone

in introductory level to be competent is a simple multiplication of 3 months by weekly hours. And that gives us the guide.

The concept of hours in introductory level and in awards is something relatively new. It is something which has also received a growing trend towards. And perhaps that reflects the changing nature of society, and that is that there are more casual and part-time employees. And that what was maybe traditional applicable to full-time employees is no longer relevant because the hours are so varying, and they don't have the competence.

And I'll give you some examples of awards in the State of Tasmania, through the Tasmanian Industrial Relations Commission, which have an hours concept in them. If you go to the exhibit booklet and you go to the third page, that is a photostat of the Retail Trades Award, which is a copy of the commission page, and it came from No. 3 of 1994 - as a reference. Now at Retail Employee Grade 1, they say this is an adult entry point for sales with less than 6 months relevant experience. And then they say such employees shall be advanced to a higher graded position after 6 months service. It then defines in a roundabout way what 6 months service is and says: This shall mean 830 hours actual service.

COMMISSIONER IMLACH: Not too roundabout, I don't think, Mr Gates.

MR GATES: Well I could say 6 months service shall mean - but yes, I agree - it's quite clear and in essence that says and that's the only point I wish to draw the commission's attention to, is that 6 months equates to 830 hours. And this award - the Retail Trades Award - is in an industry where there are a lot of casual employees and a lot of part time employees. I would suggest that the retail service sector is not materially different in the way they structure their work from the hospitality industry and this point recognises that disparity in working hours - absolutely clear. Six months means 830 hours. Bingo.

If we then turn to the next page which has in handwritten notes at the top right hand corner - Farming and Fruitgrowing Award - this again is an extract of a commission copy and it is No.3 of 1994, the relevant section is about halfway down the page which is Process Attendant - Level 1. And they then say at about halfway through that paragraph: A Process Attendant - Level 1 shall progress to Process Attendant- Level 2 at the completion of 380 actual service with one or more employer(s) within an industry.

Now again that is a recognition that you attract competence not by a calendar period but by a period of actual hours of service which is what we're simply trying to do. And they obviously said, well we believe 380 hours equates to a competent employee in that particular area and then that's what we're seeking.

If we then go to the next page which is in about the top centre, there's a handwritten note saying the Nursing Homes Award. This again is an extract from the commission copy which is No.1 of 1992 which is a consolidated version of the award. If we then go down to near the bottom of the page at Adult Entry Level it says: Adult Entry Level shall mean the entry point for adult employees (21 years and over) with less than 1976 hours (or two calendar years whichever comes first) clerical experience.

And at 1a which is at the next one, it says: An employee at this level shall be a Level 1b Administrative employee with less than 1976 hours experience at this level.

So again that is reinforcing the concept that competency is based on hours and in this particular instance they've attached a precursor to the end of it which gives an extended period of calendar time for which someone is to achieve that, and otherwise they're deemed to go up.But the principle remains the same and that's echoed through

the next page which is at the bottom of page 5, the next page which is in page 7 of that award and the next page which is page 8.

It's interesting to note that if we looked at page 7 of that and we go three quarters of the way down to extend the carer system, you have Level 1 which is the next line and it says: the Trainee Extended Care Assistant - and then defines it and it says: means an employee who in their first 494 hours of employment in this position and is undertaking induction training.

Again, that goes to reinforcing these concept of hours. This award in the nursing homes - my experience has been that they have a diversity of classes of employees, either casual, part time or full time. It is probably not as much alignable to our current industry - hospitality industry - but is neither - neither the less comparable for the concept that it enshrines.

If we went again to page 9 of that -just flip through -which starts off at Level 4 at the top of the page, if you went down halfway through you'll see a title Services Employee and then Level 1 then it defines: An employee at this level shall be a new employee undergoing training for the first 1976 hours (or two calendar years whichever comes first) of employment.

And then it says: Work performed shall be under direct supervision and of a routine nature. We're not claiming for 1976 hours although I'm certain my members will be delighted at receiving that. But we're realists and we submit that 494 hours is appropriate. There is one last example of another award of the Tasmanian Industrial Commission, and that is on the next page, and you will see a handwritten note on the top of that which says:

Medical and Diagnostic Services (Private Sector) Award -

It is an extract of a commission copy, that being No. 3 of 1994, which is a consolidated version.

I'll take you to the top of the page where it says:

`Administrative Employee'.

Then it says:

Grade 1 -

And it says:

An employee at this level shall mean an employee who is undertaking up to 494 hours induction training -

And then it goes on to say what that covers. Again this enshrines a concept that is hours and not a period of months or years. And again the medical and diagnostic services industry is an industry which has a range of classes of employees, from casual to full-time. And we submit that that is an equitable way will approach the situation because it does not discriminate against one person against another, whereas it could be said that the present provision in the award is indirectly discriminatory. And it's indirectly discriminatory because it imposes a condition which, for example, the majority of women or persons with an ethnic background can't comply with, or it is more onerous on them. That is, they do not receive the same number of hours or they do not get to full-time status, and so you discriminate one against the other.

If we then turn to the survey. Now that is on the next page of the document. And it is titled `Survey o f Food & Beverage Attendants & Liquor Staff'. To give you some background to this, this was survey which I undertook to distribute to our members in the industry. There were a total of 54 surveys issued. The response rate for those surveys was 22 per cent, which is quite good for doing surveys.

Those that responded covered a range of establishments, and those establishments which responded covered fast food takeaway, they covered restaurants, they covered cafeterias, inside and outside catering, coffee shops and tea lounges, and licensed clubs. We will submit that that is fairly reflective or transposable across the complete industry. The number of employees which are engaged by those respondents, which handed in this survey, is 851. The types of employees which they engage, 11 per cent at full-time, 2 per cent at part-time, and 87 per cent at casual.

Now I'd suggest that casual figure is blown out a little because of the - if you see just down the Food and Beverage Grade 1s, and there's 706 of them, that will distort the figures a little. And I'd suggest the true figure is somewhat less than 87 per cent, perhaps hovering around 70 per cent and there'd be a consequential increase in full-time and somewhat less of an increase in part-time.

The employees were engaged in a range of classifications under the present award, they range from level 1 through to level 6 Food and Beverage, and for the liquor staff they were primarily engaged in level 2 Food and Beverage and some at level 3 and level 4.

If we then turn to the next page, which is page 2 of the survey, there's starting a response to a question - and it's lacks of me, I didn't produce a copy of the questionnaire for the commission.

COMMISSIONER IMLACH: Perhaps we can look forward to one, Mr Gates.

MR GATES: Yes.

MR JOHNSON: I've got a query with it, Mr Chairman. May I ask?

COMMISSIONER IMLACH: You may, Mr Johnson.

MR JOHNSON: Surveys issued, he says 54. Response rate 22 per cent. In round figures that would be something like 10 respondents.

MR GATES: Yes.

MR JOHNSON: And yet you say that the .... of employees were 851. That would mean average of 85 employees in each of those 10 establishments.

COMMISSIONER IMLACH: Might have struck one big one, I think, Mr Johnson.

MR JOHNSON: There must be one great, great big one.

MR GATES: There is a big one.

MR JOHNSON: I'm sorry, sir, but we're not mentioning about hotels, are we?

COMMISSIONER IMLACH: No well, I'll give you an opportunity to make these points later, Mr Johnson.

MR GATES: Question 16 in the survey -

COMMISSIONER IMLACH: How big - could I just - how many pages is it?

MR GATES: Five altogether.

COMMISSIONER IMLACH: No, we won't worry. No, we'll wait.

MR GATES: You can have this copy there, if you wish. It's not in chronological -

COMMISSIONER IMLACH: You will supply us all with a copy, Mr Gates?

MR GATES: Yes.

COMMISSIONER IMLACH: Thank you. Are you - do you want us to stop and have this copied Mr Matthewson or proceed - what would you like?

MR MATTHEWSON: I think we can proceed, Mr Commissioner.

COMMISSIONER IMLACH: Sure?

MR MATTHEWSON: You're only going to go through each of these questions aren't you?

MR GATES: Yes, the questions are stated there in the underlining which is the applicable question.

COMMISSIONER IMLACH: I see, right. Oh, I see, it's already there. Yes.

MR GATES: I thought it a bit strange when I read that 16; I thought there was more to the question than that - but no, it's not.

MR MATTHEWSON: But you're only going to go through these actual questions in the exhibit?

MR GATES: Yes.

COMMISSIONER IMLACH: Alright.

MR GATES: Question 16 said, when asked the question to the respondents: When you train your staff how do you train them? And this applied to people who were new to the industry, people who had worked in the industry previously and people who had received some form of training and when they ticked that they needed to train them this is how they responded: 18% of those respondents said: We train our staff when they require it in after hours training; 82% said close and direct supervision. Now Level 2 of the award in its definition from memory is not close and direct supervision. Close and direct supervision is, I suggest, correctly placed at either introductory level or Level 1. So it's arguable that they close and direct supervision employees outside Level 2 and should correctly be somewhere else.

That is also incurring cost to the employer. The - 64% of the respondents said that when we need to train staff we double up. Now the reference to doubling up of staff is quite simple; it simply means that they put two staff members on or out of every three - sorry - that where they could have done with two previously they'll then put three on and they'll share the workload. Therefore employers are also occurring additional expenditure with that and 9% of respondents said that it's like this - do that training - that - and all that simply is is this is how you pour a beer, you do it, like this, do that. So that's what they do.

Forty five percent of respondents said that we bring our staff in who need training and we train them in quiet periods or quiet days and that would mean that they might bring them in 2 hours before they're actually required and they'll go through and they'll train them or they'll bring them in on quiet days. But it is a very rare case and I personally can't think of one where an employer would get a new employee - either someone who is new to the industry or somebody who has received previous training or hasn't worked in the industry for a couple of years - I don't know of any of them who would put that employee on in the busiest day straight away. Chances are that they'll wait for the quietest day and then they'll bring them in or they will up their staff or there will be someone there who is closely supervising them and that is all - and every single one of those is basically costing the employer - either he is doing it or somebody else is doing it or they're engaging new staff.

Then they were asked - if we go down to response to question 11. It says - the question was: Do you find these trained staff have required additional in-house training when they start? Now the relevant ones to go to first is no response - and that was 25% of total respondents. Now there's no reason why they didn't respond but a reasonable inference may be - and I'll certainly put it - that they've never engaged trained staff before and it was simply not applicable. But what is relevant is those respondents which did respond to that particular question, and when they did they were given a scale and the scale was: Do you find these trained staff have required additional in-house training when they start? Always, often, seldom, never. And they were asked to tick the box. Fifty percent of those total respondents said yes they do - they always require additional training and the training is covered in question 16 and how they did it and they may do one more of those. Twenty five percent of the total respondents said we often do and then no-one said we never do and no-one said we seldom do.

If we then progress to question 12, the question which was put to them was: If these trained staff require additional in-house training, how much training would you provide? They were given a scale and the scale was: 30, 100, 200, 300, 400. Thirty three percent of those respondents didn't answer it which is roughly comparable with the 25% above. Forty two percent of those total respondents said we give them 30 hours; 25% said we give them 100 hours, and that is, 100 hours before - and draw the inference - that they are competent and therefore don't require training. That is, if one may draw the inference 100 hours of close and direct supervision or 100 hours of doubling up or any combination thereof. What is pertinent in that in which we've drawn reasonable inference from is the average number of hours and those came at approximately 33.75 hours.

Now it may be reasonable that that is average across the industry, and that's certainly .... to draw out.

If we then turn to question 14. Question 14 stated: Do you find staff who have worked previously in the industry require further in-house training? Fifty percent of respondents said absolutely always - or always as its stated; 33% said often; 17% said seldom and no-one said never.

If they - if you turn to the next page, if they said, well yes we do, we then ask them a supplementary question, and we said: Okay, how much training would you expend on staff who have previously worked in the industry, and from there they weren't given any tick and ...., they were asked to specify what it was. The average number of hours was 31. The highest number of hours was 60 and the lowest number of hours was 10.

They were then asked another question and it said: For staff who are new to the industry, how much training would you expend on these staff? Now you could expect reasonably for that to be higher than current staff or trained staff - and it is - which bears credibility to the survey and the results of the questions. The average number of hours which was - which came forth from that survey was 49. The highest number of

hours which was recorded was 100 and the lowest number of hours was 20. And that in essence was the survey. And we'd suggest that that bears some support to our variations to the draft order that my colleague has presented. Those hours will additionally be asked of witnesses who I'll seek to call on the 28th February, preferably straight away in the morning to minimise any effect on them and we'll go through some of those questions and we'll get their responses and we'll see how they answer the questions and then it's not just a survey conducted by TCI which we're - questions which we may question the credibility of, but it will be open to examination and re-examination and cross-examination. So those we'll go through on the day. But I'll submit at this preliminary stage that those are fairly indicative of what we're seeking.

One other point which I have, which is in the draft order - or variations to the draft order, is that contained in Food and Beverage Service Grade 2 and Food and Beverage Service Grade 3. If the award is left as it presently is, and that would be as my colleagues have submitted it, then it will lead to confusion out in the industry. I'm certain employers will beat a path to my door saying: Can you explain this to me, I don't understand.

If we looked at Food and Beverage Grade 2 first, in (b), in the union's draft order there is `attending a snack bar or counter'. If you also look at level 1 of that draft order, there is something there which should say `shall not (except a takeaway service attendant in a takeaway establishment) include service to customers'. That takeaway service was inserted in by consent back in 1991. If attending a snack bar or counter is inserted in at level 2, it will create confusion. And the question arises: What is the difference?

I make it quite clear and unequivocal that I do not support taking out takeaway service attendant, and nor should the union, nor should the commission. And the basis for that is that that is a consent insertion into the award. The union, in 1991, said: Fine, we'll leave that in. The employers want it, we're happy, we'll leave it in. And so it's in. And it's staying. The federal order conversely - and I don't know if there is a difference between the two, but I'm saying that may lead to confusion - has attending a snack bar or counter in at level 2. Now I simply submit that that be taken out because it's confusing. There's is a consent order, there is no duty upon this commission to observe a consent position from another jurisdiction. It is not binding on us, I suggest. Whereas, there is ample evidence, many cases, many comments from commissioners which say that once something is inserted by consent, hell and damn fire-and-brimstone before it comes out. Good and cogent reasons. And I'll suggest that there isn't. That is there for a particular reason. And the reference to a snack bar or counter is simply - maybe doubling up, but I'll submit that it is confusing, very confusing.

If we then progress to Food and Beverage Service Grade 3, if you looked at the - if you look at my colleague's draft order at level 3, which is, I understand, would be on page 3 of their draft order, it has this amazing tirade of provisions and it starts off by saying: Duties including any of the following. And it then goes through a whole series of them. And then it says: And shall mean an employee who is engaged in any of the following. The decision of Commissioner Merriman and how that is to be applied, is confusing in my mind. And I think it will be confusing in the minds of employers. As I understand it, what he is saying - and I stand to be corrected by Darren, if I'm wrong at any stage - is that if you perform the first - any of the first duties, then you're in at that level but you'll also need to perform any of the five ancillary duties, which is full control of a cellar or liquor store, and so forth.

Well I put the question: What happens if someone doesn't perform any of those five? What happens to them? I don't know. My suggestion - and it is a suggestion - is that we do away with that convoluted structure and we simply put the highest in. I mean, assisting in a cellar or bottle shop, well - and I would reasonably say that that - if you're working under such things as routine supervision, it's something .... in level 2

where they already have provision for assisting in a cellar. I mean, what will govern it is their level of supervision - is one of the indicative criteria whether you're up to a lower or higher level. Now is it routine, is it limited, is it general or is it direct? You know, if they're not being supervised, then it certainly isn't direct.

Essentially the variations put through by me go to eliminating what I perceive to be some of the doubling up. And if we want people to go to this higher level, put the higher duties in. The other thing which I've talked about previously is - there's keno terminal inserted in there. We don't consent to that and we've already discussed that one - I don't think - sorry. No, it is keno. Yes, keno .... Now I don't believe we'll have a problem with that at the end of the day.

The other doubling up which I haven't raised in my draft order, but I'll raise for the commission's attention, is that of doubling up between levels in the draft order. And by way of example, if we looked at Hospitality Service Grade 2 -

COMMISSIONER IMLACH: Does that mean guest service?

MR GATES: Sorry, it was Food and Beverage.

COMMISSIONER IMLACH: Food and Beverage.

MR GATES: Yes, sorry.

COMMISSIONER IMLACH: You're throwing me around, Mr Gates. Food and Beverage and Hospitality and Guest.

MR GATES: No, I'm working on a different draft order.

COMMISSIONER IMLACH: Yes, right. Food and Beverage Grade 2.

MR GATES: Mm.

COMMISSIONER IMLACH: Right.

MR GATES: Now in where it has: following under duties include any of the following, there will be a reference to receipt of moneys. Does it appear in yours?

COMMISSIONER IMLACH: It does, Mr Gates, yes.

MR GATES: Okay. Then in Food and Beverage Grade 3, if you go to: duties include any of the following, you look under that, it will also say receipt of moneys. Now something which is so simple as to say receipt of moneys, receipt of moneys, is in my mind no different and it simply leads to a fight at the end of the day between the employer and employee when he says: Look, I receive moneys. I should be at level 3 because it says that's one of the duties that I perform. And the employer says: Oh yes, but it's also in level 2, and we think you ....

I just think it's doubling up and I would suggest that there's an assumption when you read an award that if you look at a higher level you can complete the lower level duties. Therefore if you're at level 3, by necessity, you can perform the level 2 duties. But vice versa does not apply.

Another example would be engaged in delivery duties. It's exactly the same, it appears twice, two different levels. I mean, I raise the point: How can delivery duties be different? How can you assess the level of complexity for one at level 2 and then the next at level 3? It is simply, I submit, ambiguous and will lead to problems. And if you apply the general principle that someone at a higher level can perform a lower level

duty, then it only need appear in level 2. And it was probably the case that they couldn't write enough for level 3 so they needed to fill it out a bit more and put it in.

So that is in essence the concerns that we have as to doubling up and various inconsistencies in the award.

The last point I'd like to look at today is that of minimum rates adjustment - well new minimum rates adjustment, we'll call it.

COMMISSIONER IMLACH: I think that's a good way of referring to them.

MR GATES: They still confuse my members. As we've said previously, we don't have a difficulty with relativities. And that by hook or crook they'll come in some way. So we're better off saying: That's fine, we'll take them. The only thing, because there are large increases, they're very substantial, in fact, they are certainly probably not much more than what was originally awarded, then - as in the vicinity of 25 - $20, we would submit that they be phased in over a period of time, and that there would be four instalments each 6 months apart.

Now obviously the more generous the commission is, the happier we'll be, but that would be as a minimum - four instalments, 6 months. And hopefully commencing either a month from date of decision. And that would essentially appease our members.

That concludes my primary submissions for today, before you, commissioner. It's been fairly long and tiring. If we can adjourn proceedings and adjourn my submissions, that is my closing submissions, and my examination of witnesses, to proceedings on the 28th February commencing at 9.45, I think it is - 10.30. I would have been here early. And then we can go through the last points of the submission.

COMMISSIONER IMLACH: Yes, all right, Mr Gates. I'll check that with Mr Mathewson in a minute. It seems reasonable to me. But just a couple of questions, if you don't mind.

MR GATES: Yes.

COMMISSIONER IMLACH: All those hourly provisions that you quoted from other awards of the commission, do you know whether they were arbitrated or agreed?

MR GATES: I certainly know some of them were agreed. But I couldn't -

COMMISSIONER IMLACH: Yes, I suspect they were all agreed. They had that air about them. But perhaps you might, next time we get together, let me know.

MR GATES: Yes. The other point which may give relevance to the hours concept is that changing of annual leave and sick leave to hours instead of a period of time.

COMMISSIONER IMLACH: Is that one off the cuff, Mr Gates?

MR GATES: Oh, it was just an example which came into my head at the time.

COMMISSIONER IMLACH: What, that's been done elsewhere as well. Is that what you're saying?

MR GATES: Yes, there used to be - we can go off the record, if you wish.

COMMISSIONER IMLACH: No, that's part of your submission.

MR GATES: But where they had, say, 28 days or 4 weeks, then there's been the conversion back to hours, 176 hours, from memory, and the same with sick leave.

COMMISSIONER IMLACH: Yes well -

MR GATES: And that has increased the applicability to casual and part-time employees.

COMMISSIONER IMLACH: That's up to you to put to me one way or the other. You're just adding it as a -

MR GATES: I will certainly add it to the submissions.

COMMISSIONER IMLACH: Right. We'll leave you to check that. Now I don't know that this will make much difference, but I'm a bit suspicious of the number of casuals reported in the exhibit. But I wouldn't know and I suppose it's hard to find out. I don't know what I've done with the exhibit - here it is.

MR GATES: I've got the actual surveys.

COMMISSIONER IMLACH: I'll just see what .... It may be that it's only an irrelevant point. Eighty seven per cent casual.

MR GATES: Yes.

COMMISSIONER IMLACH: I'm just saying that I know the practise in these industries, or I've got an idea, and I wouldn't mind betting, without knowing any facts, that that figure is probably a lot less in reality. If you look at the definition it - I expected the definition in this award - I'm looking at the Restaurant Keepers - to be pretty vague and flexible, but it's not really.

MR GATES: What was the definition?

COMMISSIONER IMLACH: Casual employee means any person that's specially engaged to work on irregular basis as or when required by mutual consent between the employer and the employee, but does not include any person employed on a part-time or full-time -

Now again, I just say, I find it hard to believe that 87 per cent work irregularly.

MR GATES: That's why - I mean, those are the facts which we extracted from the surveys which were reported to us. I clarified that somewhat by saying that the figure may be distorted and by saying - well by suggesting that the true figure may lie somewhere around the 70 per cent mark in the industry.

COMMISSIONER IMLACH: Yes, well in any case I don't know that it's going to affect -

MR GATES: It's certainly a substantial percentage.

COMMISSIONER IMLACH: Yes, and that last point you made about the new minimum rate adjustments, and you sought four instalments 6 months apart, minimum of 1 month after the date of decision. What did the federal order say? In what form was that?

MR GATES: There was a month's leeway from the decision, from memory. The operative date was the 3rd January - 13th.

MR MATHEWSON: 13th August, was it?

COMMISSIONER IMLACH: Anyway 1 month's leeway.

MR GATES: And -

COMMISSIONER IMLACH: How many steps?

MR GATES: Three or four.

MR MATHEWSON: Three over 12 months.

COMMISSIONER IMLACH: Three over 12 months. Right. That's all I wanted to know.

MR GATES: Although that decision was handed down, so -

COMMISSIONER IMLACH: Yes. The keno reference, where's that?

MR GATES: That was in a Licensed Clubs copy.

COMMISSIONER IMLACH: Oh, in the Licensed Clubs, right, yes.

MR JOHNSON: Page 3, sir, of the union's submission.

COMMISSIONER IMLACH: Yes.

MR MATHEWSON: We agreed in previous submissions to take that out.

MR GATES: Yes.

COMMISSIONER IMLACH: So that's not - we just forget about that, do we?

MR MATHEWSON: Just forget about that.

MR GATES: Yes.

COMMISSIONER IMLACH: Right. What about - and also - and I just throw this up for the parties to take hold of if they want to, but the union may have different ideas. But it seems to me the point Mr Gates made about doubling up - receipt of moneys and engaged in delivery duties, or any other, was a reasonable point. You may be fiercely opposed or whatever, but I just make the point now you might come to an agreement on it, if you desire. Otherwise we'll see how we go.

MR JOHNSON: May I make one statement. There's a third one in the same thing, the way I see it, sir, and that's cooking duties, including baking - baking, pasty cooking or butchery. That's repeated as well.

COMMISSIONER IMLACH: Doubling up.

MR JOHNSON: Yes.

COMMISSIONER IMLACH: Yes. Well I'll leave that with the parties for the time being. Mr Gates has made his point. I presume he refers to that as well, or any other doubling up. If the union is agreeable to consider it, and reach a settlement on the terminology, all the better. Otherwise it will have to be arbitrated. But I just make the point now, prima facie it's a reasonable proposition, as it came to me. I might be wrong, but that's all I'm saying.

Are we clear on that last bit? That you might be able to get a little bit - eke a little more settlement out of the whole business, maybe. All right, well thank you for that. Mr Mathewson, what about this - Mr Gates is proposing to resume on the 28th - keep going, in other words. Now, fair enough?

MR MATHEWSON: That's fine, commissioner, yes.

COMMISSIONER IMLACH: Yes, that's what I thought.

MR GATES: The parties have been notified of that.

COMMISSIONER IMLACH: Yes, I mean, as far as I'm concerned it's part of your proceedings and that's all there is to it. All right, well thanks for cooperating with me. I have to go somewhere else, and I appreciate that. This matter is adjourned until the 28th February.

HEARING ADJOURNED