

PRESIDENT: Yes - appearances.

**MR P. BAKER:** Sir, I appear on behalf of the applicant organisation - P. BAKER.

PRESIDENT: Thank you, Mr Baker.

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

PRESIDENT: Very good. thanks, Mr Fitzgerald. Well, Mr Baker.

MR BAKER: Sir, yes, since -

PRESIDENT: There's a certain familiarity about this.

10 MR BAKER: Yes, it has. Since we were last before you the original application generated some discussion between Mr Cooper and myself as to the clarity of the clause. I had in fact prepared the application and indeed circulated the draft at the time. Mr Cooper indicated to me that perhaps I hadn't quite far enough as far as the wording was concerned and there was still some slight ambiguities as far as the provisions of the clause were concerned.

15 I undertook to, as a consequence of that discussion, to make sure that the clause was perfectly clear and to that extent I have prepared another - another draft which I'll hand to the commission.

PRESIDENT: Very good. I think this is the first exhibit, isn't it? Yes.

MR BAKER: Yes, it is. I think the other was - the other draft -

20 PRESIDENT: Was the application.

MR BAKER: - was actually in the - and I've given Mr Fitzgerald a copy.

PRESIDENT: Yes. Thank you. Okay. We'll mark this exhibit AMWU.1.

25 MR BAKER: What this provision seeks to do is clearly delineate the differences between full time employees on the one hand, casual employees on the other, and where there is a commonality of the provision applying to both classifications of employees, that is also - well I hope it is clearly shown by way of the application.

30 And if I can simply take you through the clause, sir. Clause 16, as I've indicated, is broken into three parts. Clause (i) relates to the payment for work on holidays for full time employees in (i)(a); (i)(b) again relates to - refers only to full time employees. And you'll see, sir, there in the references to both (a) and (b), full time employees as defined. And there is a definition in the award for that - for that. Likewise, in -

PRESIDENT: Where does that appear?

MR BAKER: You've caught me, sir. It's in the - in the contract - under the contract of employment provisions.

35 PRESIDENT: Oh is that - that's right, yes.

MR BAKER: Yes, and there is a definition in there of both a full time employee and a casual employee.

PRESIDENT: Right. We'd better make sure that that is in fact a definition.

MR BAKER: I do recall it's there under the - under the contract of employment.

PRESIDENT: Well, yes.

MR BAKER: It talks about a -

PRESIDENT: Well subclause (b) full time employees.

5 MR BAKER: Yes.

PRESIDENT: A full time employee shall be engaged by the week.

MR BAKER: Yes.

PRESIDENT: Whether that's a definition of full time employee, I don't know.

MR BAKER: Well perhaps that something that I should need to -

10 PRESIDENT: You might have to have another look at that.

MR BAKER: Have a look at that - yes. Yes. I need to - perhaps we'll need to have another look at that and have a talk to Mr Cooper about that.

PRESIDENT: Good.

15 MR BAKER: But as I was indicating, sir, we've put that in there. So paragraphs (a) and (b) and indeed (c), sir, simply refer to full time employees and we made sure - well I've attempted to make sure that the only references contained to employees in paragraphs (i)(a), (b) and (c) simply relate to full time employees only.

20 In paragraph (d) of subclause (i) the clause deals with casual employees again, as defined, and then it goes on to talk about what happens to a casual employee who works on a holiday with pay Saturday, Sunday and overtime.

PRESIDENT: Yes. And that's as per existing -

MR BAKER: Yes, that's per the existing provision in the award.

PRESIDENT: Yes.

25 MR BAKER: And so that's - I've endeavoured to do that to show that that's clearly what happens to a casual employee as opposed to a full time employee.

30 And then in clause 2 - subclause (ii) of clause - of the new proposed clause 16, it relates to all employees under the award. But to make it specifically - make it specific, so as it relates to all employees, for example, minimum payment for work on a holiday with pay, I've indicated that it's full time employees as defined and casual employees as defined who are required to work on any of the days prescribed in clause 17, et cetera.

35 You must pardon my - our printer that it went a bit of skew-whiff here and presented us with a page 2 in the middle, and likewise under subclause (iii) when it talks about call-out, we've put in there again, full time employees, as defined, and casual employees, as defined, be called to work overtime, et cetera. And likewise in clause 4, rest period after overtime - if a full time employee, as defined - and that - and actually the 'and' should come out and should read 'or', a casual employee, as defined, is engaged, et cetera. So I would hope by the way in which the clause is now worded, that there is no ambiguity as to what happens where an employee, whether

they're a full time employee or a casual employee are required to work on a holiday, a Saturday, Sunday or receive overtime payments or a call-back or this issue of the rest period after overtime, if and to whom it applies.

5 That, sir, is the - is the application that is before you. I understand perhaps Mr Fitzgerald and I had a bit of a misunderstanding as to the procedures involved as far as the applic - the implic - oh, I'll try that again -

MR FITZGERALD: It's Friday morning - don't worry about it.

10 MR BAKER: Yes, that's right. I was at a conference yesterday and spent most of the day yakking, so - the implementation of the provision which no doubt Mr Fitzgerald will sort of allude to very shortly, but, sir, in as far as we're concerned I would submit that that removes any difficulties as to the understanding of the course and if it doesn't - if there's something we've missed I'm sure that we can attend to that in administrative capacity. And that's about it, sir.

15 PRESIDENT: Yes, all right. Well I understand the application. Thank you, Mr Baker, we'll hear from the other parties. Yes, Mr Cooper.

MR COOPER: Mr President, apologies for my tardiness in attending. I was held up with unexpected visitors to the office.

20 In terms of the clause, Mr President, we have briefly had the chance to look at that now this morning in its new format and it does appear to be heading in the right direction in terms of the application, seeking to clarify an ambiguity that existed in the award.

25 In that respect, Mr Baker does seem to have identified those things that were originally in the original draft that did cause some concern and they have been removed and tidied up. So, having said that, Mr President, we think it is appropriate that an ambiguity, where one is identified, should be removed but having only just received the clause as an exhibit this morning, I would like an opportunity just to quickly go through it and make sure there isn't anything that has been missed out. I haven't been able to do that since I've received the exhibit this morning. I shouldn't think that will take long because it does seem to be set out in a fairly straightforward manner and it does seem to be set out with the design in mind of removing that ambiguity, so I don't think there's anything untoward in all of that.

30 Just to comment on the full-time employee, in terms of that definition - I was of the opinion that there was a definition but there wasn't one included in clause 7. Usually when it has, as defined, in that manner, it is included in clause 7. Having just briefly checked back, there appears one for casuals but one for a full timer and obviously then that reference back to an, as defined, would be incorrect because it's not actually included in the award.

PRESIDENT: Yes.

40 MR COOPER: But that's only a technical matter in terms of drafting. I think we all understand what a full-time employee is when we read the contract of employment clause that Mr Baker refers to. So, other than deleting those words possibly, the rest of the clause does seem to be set out and as I say, is designed to remove that ambiguity that exists prior to the application. Having said that, I would like some time just to study the clause to make sure there are no other problems with it.

45 PRESIDENT: Good. All right. Thank you, Mr Cooper. Mr Fitzgerald?

MR FITZGERALD: Thanks, Mr President. Yes, I think Mr Baker's already alluded to - I suppose, just a process problem we might have regarding it, in that it was my understanding and I understood it was also Mr Cooper's understanding that Mr Baker was to come back to us with a revised proposed from the last hearing and he has done that, but only today, and acting out of some caution I suppose, given that we haven't in fact put this to our membership because we haven't had this revised proposal until today, but I would think it's likely that it will be approved.

I think it would be wrong for me to today to endorse it without our members having an opportunity to have some input. Now, it obviously affects one member particularly and we've got over that problem, we believe, in a prospective sense but I think it would be unreasonable for me, given the time constraint we've had and we've only got this today, for us to consent to it without some referral back to our membership and I don't expect too many problems with that but I'd be happy to endorse it, subject to that criteria.

PRESIDENT: Yes. I'm not putting any pressure on you. I'm just interested - did the original application go to your members?

MR FITZGERALD: There has been some communication to members in respect to it, yes.

PRESIDENT: Because, fundamentally, it's the same - has the same portent.

MR FITZGERALD: Well, I agree, but I think - what I could do, subject to any comment received by a certain date and we could put a limit on it, we could agree to the application in principle, if that were -

PRESIDENT: Look, to put everybody at ease. I understood this hearing this morning to be a report-back. So, I mean, it doesn't have to be finalised today but it needs to be finalised fairly soon.

MR FITZGERALD: Okay. Well, that being the case, we'd be happy to support it in principle but subject to that receiving endorsement, which we will put in the form of recommendation to our members that we accept this application and that it does remove the ambiguity which Mr Cooper's referred to.

PRESIDENT: And it does not appear to alter the general application of the award in any event. It just gets rid of that confounded nuisance that we ran into the other month.

MR FITZGERALD: The matter which it emanated from has of course been settled now and resolved and this application would operate prospectively, I assume. I don't think there would be any problem with that, unless Mr Baker has any other point on that, but we'd just like that opportunity just to basically protect our backs, if you like, if I can put it that way.

PRESIDENT: Yes, I understand that. What sort of time period do you think you need?

MR FITZGERALD: I think probably only - three weeks I think would probably be reasonable and we could then communicate with the commission by correspondence, if necessary, to save a hearing if that would resolve it.

PRESIDENT: We'll go off the record for a second.

**OFF THE RECORD**

MR FITZGERALD: I think it's probably incumbent for me to respond, following that conference, thanks, Mr President.

5 Yes, we can indicate that in terms of the application as amended - we consent to the amendments, which are very much procedural amendments where the definition of full-time employees wherever it appears where it has got the words, as defined, those words would in fact be deleted and the subclause (iv) where it says, and a casual, that word will be deleted and substituted with the word, or.

10 So, we can consent to the application in principle, subject to receipt of instructions or endorsement from our membership, which I don't expect there will be any concerns.

My suggestion, Mr President, is that that consent be registered here today; that it be conditional upon endorsement by our members that within, say, a period of 3 months - 3 weeks, I am sorry - if I could communicate with the commission in writing that would, I think, obviate the need for any further hearings.

15 So we can indicate our consent to the application subject to that condition which I just indicated to the commission and it will be our undertaking that we would communicate with the commission in writing, say in a period of 3 weeks from this day, and if there is no advice to the contrary, then the application can proceed in my submission with prospective effect from that date. If it pleases.

20 PRESIDENT: Yes. Very good. Thank you, Mr Fitzgerald. That would imply a letter of confirmation by the close of business on the 20<sup>th</sup> of - Friday, 20 December.

MR FITZGERALD: We will certainly do that.

PRESIDENT: And the effective date of the order would be from the date of its issue. So that is satisfactory, Mr Baker, Mr Cooper?

25 MR BAKER: Yes, sir.

MR COOPER: Yes, Mr President.

PRESIDENT: Very good. Well, thank you for your efforts this morning, gentlemen. The matter is virtually adjourned sine die and, hopefully, we won't have to resume. Thank you.

30 **HEARING ADJOURNED SINE DIE**