



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. 9049 of 2000

IN THE MATTER OF an application by
the Minister administering the
Tasmanian State Service Act to vary
nominated awards

Re: State Service Accumulated Leave
Scheme

FULL BENCH:
DEPUTY PRESIDENT WATLING
COMMISSIONER ABEY
COMMISSIONER SHELLEY

HOBART, 12 December 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING COMMENCED 2.20pm

DEPUTY PRESIDENT: I'll take appearances in this matter, please.

5 **MS S. CUPIT:** SARAH CUPIT, appearing for the Minister administering the Tasmanian State Service Act 1984 and accompanying me is, **MR TONY MARTIN**.

MS S. STRUGNELL: If the commission pleases, SUE STRUGNELL, appearing for the Community and Public Sector Union. I seek to appear for both matters listed today. I also seek leave to appear on behalf of APESMA. I believe the deputy president has received -

10 DEPUTY PRESIDENT: Yes, I have that authority from Mr Pyrke.

MR P. TULLGREN: If the commission please, my name is TULLGREN and I appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, but only in relation to matter 9049 of 2000.

15 **MS L. FITZGERALD:** LYNNE FITZGERALD, representing the Tasmanian Trades and Labor Council in matter 9049 and also representing the Communications, Electrical, Plumbing Union Electrical Division.

20 **MR T. JACOBSON:** If it please the commission, TIM JACOBSON, appearing on behalf of the Health Services Union of Australia, Tasmania No. 1 Branch.

MR D. LOWE: If the commission pleases, DOUG LOWE, representing the Tasmanian Salaried Medical Practitioners' Society, in matter.

25 **MR C. LANE:** If the commission pleases, my name is CHRIS LANE, I appear on behalf of the Australian Education Union in both matters.

DEPUTY PRESIDENT: Thank you. Ms Cupit, do you want to start off, please?

30 MS CUPIT: If the commission pleases, we seek the commission's approval to amend the relevant awards so that state service employees employed under public sector awards are entitled to participate in the State Service Accumulated Leave Scheme.

35 We are seeking to amend application T9049 of 2000. The parties now have a revised plan containing the terms and conditions of the State Service Accumulated Leave Scheme and we're also altering the way the awards are to be varied. We have copies of the revised plan to submit to the commission and any of the parties that haven't currently got a plan.

DEPUTY PRESIDENT: Thank you. Are you going to tender that now?

MS CUPIT: Yes.

DEPUTY PRESIDENT: **EXHIBIT A.1.** There's no objection to the application being amended to vary it to take in A.1? No objection?
5 Leave is granted. Thank you.

MS CUPIT: Before I give the details of the award amendments we're seeking, I'd like to outline the background and structure of the scheme and some of the benefits that we anticipate it will bring to employees and employers.

10 The State Service Accumulated Leave Scheme, or SSALS, has been developed over a number of years through consultation and significant input by unions and the Tasmanian Trades and Labor Council. Does the commission have any objection to me referring to the State Service Accumulated Leave Scheme as SSALS during my submission?

15 DEPUTY PRESIDENT: No, I'm more than happy. I'm sure other members of the bench are as well.

MS CUPIT: Thank you. The basic structure of SSALS is a work period followed by a leave period. In individual SSALS plans however employees are able to choose the timeframe of the plan and the
20 proportion of work to leave. This flexibility allows employees to elect to participate in a plan that suits their particular circumstances.

During the entire length of the plan a participating employee will be paid a proportion of their normal salary for the work and leave period of their chosen plan. This proportion is calculated as the work period
25 divided by the total length of the plan.

A proportional pay rate allows the employee to accumulate time that will be taken as leave at the end of the work period.

We believe the SSALS scheme will bring significant benefits to employees and to the state service agencies that they work in. We
30 foresee that it will assist in a reduction in workplace stress because employees will be more able to balance their personal and work commitments through access to longer or shorter periods of leave.

The flexibility of SSALS gives employees access to another form of leave when family or personal circumstances necessitate and we
35 believe that it is in the employees' interest and the employer's interest to amend the awards to include an entitlement to SSALS.

Federal awards have recently been amended to include the scheme and a successful application to awards today would allow all state service employees the opportunity to elect to participate in a SSALS
40 plan.

If the commission pleases, I'd like to seek a brief adjournment to provide the commission with further details on the operation of the SSALS, particularly how it'll operate in conjunction with types of leave.

5 DEPUTY PRESIDENT: Before the hearing commenced, I was approached to see whether or not we would adjourn to enable the applicant to take us through a PowerPoint slide production, to take us through the nuts and bolts of this scheme. Is there any objection to adjourning to go through that process?

10 MR TULLGREN: Mr Deputy President, I have a question, how long is it proposed that the presentation will take and I ask on the basis that on reading the application, I took the view that it perhaps would not take a long period of time for this matter to be dealt with and I've made some alternate arrangements and I don't particularly want to be in a position where I have to bolt from here, showing any disrespect, so I
15 just wonder how long the presentation might be planned to take.

MS CUPIT: If the commission pleases, we foresee that the PowerPoint presentation will take approximately 20 minutes.

DEPUTY PRESIDENT: No objections? We'll adjourn to the conference room.

20 **HEARING ADJOURNED 2.28pm**

HEARING RESUMED 3.05pm

DEPUTY PRESIDENT: Ms Cupit, are you prepared to continue your submission now?

25 MS CUPIT: Thank you. If the commission pleases, I have the following exhibits to submit, the State Service Accumulated Leave brochure. That gives some examples about the scheme and some of the reasons why the employee would like to access it.

DEPUTY PRESIDENT: **EXHIBIT A.2.**

30 MS CUPIT: The second exhibit is a hand-out detailing the way other forms of leave will work in conjunction with the State Service Accumulated Leave Scheme.

DEPUTY PRESIDENT: **EXHIBIT A.3.**

MS CUPIT: The third exhibit, are the draft orders for the award amendments.

35 DEPUTY PRESIDENT: **EXHIBIT A.4.**

MS CUPIT: If the commission pleases, application T9049 of 2000 seeks to vary the General Conditions of Employment Award - SO85, the Community and Health Services (Public Sector) Award - S177, the

Electrical/Electronic Trades (Public Sector) Award - S150, the Medical Practitioners (Public Sector) Award - SO99, the Metal Trades (State Employees) Award - S146, the Miscellaneous Workers (Public Sector) Award - S148 and the Tasmanian Ambulance Service Award - S004, by including the State Service Accumulated Leave Scheme in the contents clause of the awards listed; by inserting an additional clause in each award that entitles an employee to participate in the SSALS, and by inserting an appendix at the end of the awards that contains the terms and conditions of the SSALS.

For the Tourism Tasmania Award - S145, we are seeking to amend it by adding the State Service Accumulated Leave Scheme as another leave provision that employees are able to access under the award through the General Conditions of Employment Award.

Would the commission like me to go through the specific variations to the awards as detailed in the draft orders?

DEPUTY PRESIDENT: No. I think we can read it from the exhibit, thank you. Any further submissions, any questions?

COMMISSIONER ABEY: I will have some questions, but it'll probably be more convenient to hear everybody out first, I think.

DEPUTY PRESIDENT: Right. Ms Fitzgerald?

MS FITZGERALD: Thanks, very much. Unions have been seeking the introduction of an accumulated leave scheme, or a similar model, since 1983 when David Elliott from the Australian Education Union first proposed the four over five plan.

The previous government, in its 1996-1997 budget, directed that a flexible delivery salary screen be available to employees in the Tasmanian State Service. The difficulties that were encountered with that plan occurred because the government were proposing that salary be accrued or banked rather than leave be banked.

In April 1999 unions finally received a draft document which reflected our objective of public sector workers sacrificing salary in exchange for a new form of leave. Since that time we've been resolving issues associated with the implementation of this scheme. Public sector workers - and I must make the point, that it's more likely to be public sector workers on higher salaries - will now be able to participate in this accumulated leave scheme, for any reason, whether they wish to work for four years and have a fifth year travelling or after working for, say, eighteen months, spend six months studying something purely indulgent, for example, medieval history or cooking in Tuscany, or, for example, parents with children at school may seek an additional four weeks leave to cover school holidays and as has been suggested this is possibly the most likely option that public sector workers will take.

I'd make a final comment that this is in fact a great union initiative, one that has taken a long time to bring to fruition but one which will be truly welcomed by a vast number of public sector workers. Thank you.

5 DEPUTY PRESIDENT: Mr Tullgren?

MR TULLGREN: If the commission pleases, I support all the submissions of my learned friend, save for one, the personal observation is that someone who studies medieval history, I don't see it as an indulgence on the basis that, those who fail to understand the lessons of history are doomed to repeat them.

10 DEPUTY PRESIDENT: You could learn something then. Ms Strugnell?

MS STRUGNELL: If the commission pleases, I would just like to add my support to the submissions that have been put. We see this certainly as a great leap forward in terms of promoting family friendly working conditions and we commend the variations to the bench. Thank you.

MR JACOBSON: The HSUA supports the application and the submissions made by my colleagues with regard to this matter.

20 DEPUTY PRESIDENT: Thank you.

MR LOWE: The Tasmanian Salaried Medical Practitioners' Society also supports the proposal before the commission, sir. I would simply want to place on record that there is one reservation I have and I will seek appropriate clarification - and I'm sure an exchange of letters will be sufficient for that purpose - in relation to the preservation of sabbatical leave within the Salaried Medical Practitioners (Public Sector) Award 1995, but that is the only reservation that I can see. I wouldn't want to hold up the proceedings or the application of that award for the sake of clarity. I think the general intention, as it's been outlined to me by the officers, has been that it's not intended that there be any interference with the normal process of taking of sabbatical leave. It's imperative however that that be clarified by correspondence between the bodies quite separate.

30 DEPUTY PRESIDENT: So it's not your intention to seek that this award be adjourned until such time as that's clarified?

MR LOWE: No.

MR LANE: If the commission pleases, on behalf of the Education Union, I'd like to commend the employer for at last ensuring that this matter is brought before the commission for the variation of the awards. The benefits are many and varied and have already been alluded to in the way of reduced stress and the fact that they will

produce a more family friendly environment which must be to the good of employees and the agencies for whom they work.

5 As has already been noted David Elliott, from the Education Union, did raise this concept some years ago and I suggest that it should be called 'deals' which is the David Elliott Accumulated Leave Scheme, but perhaps we'll leave that for another day. If the commission
pleases.

DEPUTY PRESIDENT: Good. Thanks. Any other submissions? Before I ask the employer to respond, questions from the bench?

10 COMMISSIONER ABEY: Yes. Ms Cupit, I have two or three questions and I hasten to add that this shouldn't be interpreted in any way as me feeling negative about this application; to the contrary I think it's very innovative. There are questions as to fact and practice and financial arrangements which I do have an interest in.

15 Firstly, if I can go to a fairly technical one, clause 7.14 - long service leave - as I read it, the period of leave, that is SSALS leave, does not count for the accumulation of long service leave. Am I reading correctly?

MS CUPIT: Yes, that's correct.

20 COMMISSIONER ABEY: Well, if I can just give you a hypothetical example: if an employee is on a salary of \$10,000 a year and works for 10 years, they would be paid a total salary of \$100,000 over that period and they would have accumulated, as I understand, the State Service *Long Service Leave Act*, 13 weeks long service leave. If they in
25 fact elect to go on the four over five option, over that same period they'd be paid a total of \$100,000 in salary, then on my calculation if the two years that they were on SSALS leave doesn't accumulate for long service leave purposes, they would have only accumulated eight years' worth of long service leave at the end of the 10 year period - is that right? Mr Martin?
30

MR MARTIN: Commissioner, the original work-up that we did with the TTLC had long service leave actually accruing in the same proportion as all other periods of leave through the advice of the Solicitor-General; that was one of the areas that he felt with the actual state employees *Long Service Leave Act* that it may not accommodate
35 what we were seeking to do, that being the *Long Service Leave Act* and we didn't want to have anything in conflict with what we were seeking to do under the *Industrial Relations Act*. He suggested that the actual period of leave that accumulated, rather than being proportional would be at the actual rate - at the full-time rate. So long service leave would
40 still balance out in the same proportion to what it would have in the part-time or the plan rate.

5 So an employee, having worked 12 months, would still accumulate 6½ days long service leave, but it would be again at the 100 per cent factor rather than the plan rate. So the actual equations would be the same, and of course it's when a person takes it. So that was the reason why we have the change so that doesn't conflict with the above pieces of legislation.

10 COMMISSIONER ABEY: That's a good explanation and I understand the arithmetic, as long as the parties are happy that the documents accommodate that. I didn't read it that well when I first read it, I must say.

MR MARTIN: That's okay. It has been quite a task, as my colleagues on the right have said, in getting to what we have.

15 COMMISSIONER ABEY: The second question is: in terms of accounting provisions, again I can give you a hypothetical example. If - and I appreciate this is a long bow, and it's not likely to happen, but it is a hypothetical example - if in year one 20 per cent of the public sector chose to, and were approved, to adopt the four over five principle, on my quick calculations that would result in a reduction of the salaries budget for that year in the order of 10 per cent which no doubt the government of the day would look upon with approval, but of course there is a deferred cost, and my mind goes back to a period some years ago when despite warnings to the contrary the government of the day introduced a superannuation provision on an unfunded basis which had the effect of vesting on future generations of taxpayers a very substantial liability which has only started to be
20 addressed in recent years.
25

What I would like an assurance on is the accounting mechanisms so that the taxpayer can be confident that in future years this deferred liability will not be an unanticipated drain on the public purse for which no financial provision has been made.
30

MR MARTIN: If the commission pleases, I might answer that again. We've had quite extensive discussions with Treasury officials on this and as is the case for annual leave and long service leave, where an employee moves from one agency to another agency, those accruals will be funded from the agency from where the person goes across. So the longer term plans, again, I can't foresee anything longer than five years in the short term, but the Treasury officials - my understanding certainly is that they've got provisions in place for that to occur, commissioner, because the funding will be on the same basis as is for annual leave and long service leave - the transferring of funds between agencies.
35
40

COMMISSIONER ABEY: I'm not concerned about the transfer, I'm talking in a global sense the cost to the Tasmanian taxpayer is what concerns me, not into agency transfers. If, for example, if you take an employee who elects the four over five plan for simplicity, that means
45

that the cost - the cash cost to the public purse in year one is, I think, 80 per cent of the full-time salary and so the cash cost is 80 per cent. What I'm concerned about is what happens to the 20 per cent? It's not a cash cost in that year, it should, in my view probably be part of the profit and loss statement for the government for that year and some provision made for it in the future, but that's what I seek an assurance from; that it's not just an unfunded liability that will manifest itself in five or ten years hence.

MR MARTIN: Commissioner, obviously I'm not in a position to give a categorical response to that question. I can certainly seek a response to it, other than obviously with any of those leave provisions that the state currently has in the leave liabilities, we do meet them on a rising basis. But I could seek an assurance if required.

COMMISSIONER ABEY: Well, it would certainly assist me. I think this is a very positive scheme and a very innovative scheme but it does concern me and my mind does go back to the superannuation arrangements and the nightmare that that put the state government finances in in recent years, and it's only recently been addressed. I'm not pretending this is of the same magnitude, but it's potentially of the same principle.

MR MARTIN: I am also aware, commissioner, that the state government is moving towards accrual budgeting but that's a few years away at the moment, but that would certainly accommodate, I would have thought, the concerns that you are raising, but I can't again give a definitive response without seeking some instruction on that.

COMMISSIONER ABEY: Well, would it be possible for - I'm not asking this be reconvened or anything, but perhaps if you could ask the question of presumably Treasury about how this is to be accommodated and that could be communicated in writing. It would certainly be appreciated for myself in any event.

Finally, has the government put its mind to what are the long term implications for total employment in the public sector as a consequence of this scheme? Is it likely to stay the same in terms of total hours worked - and I think that's the only way you can measure it. Is it likely to reduce slightly or is it likely to increase slightly?

MR MARTIN: Commissioner, the actual equations - full-time equivalents would obviously be the same because of the number of hours that a person would work, and the head count - the actual head count - may increase because of the backfilling of those positions, but the overall cost would remain the same because the person would be on leave.

As I indicated in the adjournment, it would be on the agency as to whether they backfilled in the shorter or in the longer period. Certainly

David Elliott from the AEU has strengthened the view that it will be an employment generator but it would still be on a 100 per cent factor. So the full-time equivalents would remain the same but the head counts would go up.

5 COMMISSIONER ABEY: So the total cost impact is likely to be either neutral or slightly negative?

MR MARTIN: Slightly negative or neutral.

COMMISSIONER ABEY: Thank you. I have no further questions.

DEPUTY PRESIDENT: Ms Fitzgerald? Do you want another go?

10 MS FITZGERALD: If the commission pleases. I'd like to respond to the question Commissioner Abey asked and have some qualms about the question. The question seems to me to not be to deal with the award variation but is a matter of policy in terms of how a government or any employer would seem to make provision for entitlements due,
15 and I'm uncomfortable with the question in terms of an assurance that the government in fact will provide - make provision for rather than as you've ..[inaudible].. superannuation. We may be able to get an assurance along those lines from the current government that could subsequently change with another government. So it's very much a
20 policy matter and I've got some concerns that it's being raised in the context of this matter.

DEPUTY PRESIDENT: I wouldn't underestimate though that we have to look at the public interest. It is a new form of leave, as you're putting to us, so therefore we have that requirement, as well by virtue
25 of section 36 of the Act. So I don't think it's an unreasonable question.

MS FITZGERALD: No, I'm not suggesting that it's unreasonable, but it is unusual and it is very much a policy decision by an employer, and in this case the government, as to how in fact they will make provision for or fund entitlements as they arise.

30 DEPUTY PRESIDENT: I think those sort of questions come forward when there's been little or no submission on the public interest. And see, we haven't had any arguments in relation to the public interest test for a fairly significant award provision, and it's a new form of leave, and I suppose - well, we don't have those submissions put to us
35 it begs that question.

COMMISSIONER ABEY: Put simply, Ms Fitzgerald, if we took the extreme situation that 100 per cent of the public sector in year one opted for the four over five scheme, that, on my estimation would reduce the salaries bill by 20 per cent or thereabouts in that year.

40 In year five, presumably all those employees, theoretically, could be on leave and there would have to be a backfilling arrangement, and as a

consequence the wages bill, if no provision has been made in some form or another - and I'm not sure what is the proof counting way of dealing with this, could be vested on the government of the day in year five and subsequent years and we could have a crisis of the sorts that we've experienced in the past with unfunded superannuation.

So I do believe it's a fair question and I would feel fairly confident that the Treasury people would be well equipped to answer it. Of course, it can only bind the government of - it's only a question that can be addressed to the government of today and how future governments deal with it is up to them, but it's a question that I'm asking, if the parties are able to answer it then it helps me.

MS FITZGERALD: With respect, you did say it was a long bow and I accept that it is that. The percentage of employees that we envisage will take advantage of the four over five plan is going to be very small. You have already heard that because the head of agency can not offer a plan or refuse an employee's request to participate in a plan on the basis of operational requirements, that there are, for example, some teachers who accept that it is going to be extremely difficult for them to be able to participate in the plan. So the take up of four over five is going to be small. As I've said, it's more likely at the other end of the scale where you actually get some workers who actually take smaller amounts of leave.

So I don't actually think that the cost or the provision that has to be made is going to be substantial. I think your concerns may well be valid if there was going to be a great likelihood of a significant percentage of the public sector availing themselves of the four over five plan, as indeed was certainly the case with superannuation contributions or superannuation provision; that applied to every employee in the public sector.

So I don't think they are similar matters, but again I make the point that it is very much a policy decision by an employer as to how they make provision for this.

COMMISSIONER ABEY: Yes, the other side of that of course is if you took the cynical view, a government - and I use the term advisedly - a government - could introduce a scheme like this with the sole motivation of a short term cost saving which would be vested on it at some time in the future, but in the short term it would be a short term cost saving. That is why I ask the question. I'll leave it in the hands of the parties how it is answered, if it is answered at all.

DEPUTY PRESIDENT: Mr Lowe?

MR LOWE: May it please the commission, I think that there is a simple explanation to the question asked by Commissioner Abey and it is, that under the provisions of the *Financial Management and Audit Act* there is a requirement for each agency to ensure that there is a

head of expenditure in the reporting process to provide complete transparency on an annual basis for such contingencies and the very point that was made by Commissioner Abey I think one of the reasons that the unfunded superannuation liability actually came to the fore
5 was the arrival of the *Financial Management and Audit Act*.

It requires both the accounts of the department that's involved show transparently what accrued liabilities there are in relation to untaken leave, et cetera, and also an explanation of that in the actual verbiage of the report from the head of agency. So I think that that's the simple
10 answer to the question that was raised by Commissioner Abey. If it please the commission.

COMMISSIONER ABEY: Thanks, Mr Lowe. If the Treasury were able to confirm that I would greatly appreciate it.

DEPUTY PRESIDENT: Further submissions? No further submissions.

15 I can indicate to you that we will hand down a written decision in due course. We will reserve our position at this moment and convert our decision to writing.

That concludes this matter thank you.

HEARING CONCLUDED 3.25pm