

AUSCRIPT AUSTRALASIA PTY LTD

ABN 72 110 028 825

Suite 25, Trafalgar Centre 108 Collins St HOBART Tas 7000
Tel:(03) 6224-8284 Fax:(03) 6224-8293

AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 2211

TASMANIAN INDUSTRIAL COMMISSION

PRESIDENT P.L. LEARY

T No 11983 of 2005

AWU (TASMANIAN STATE SECTOR) AWARD

**Application pursuant to the provisions of
section 55 of the Industrial Relations Act 1984
by the Australian Workers Union, Tasmanian
Branch for approval of the above agreement**

HOBART

4.00 PM, MONDAY, 17 OCTOBER 2005

**This transcript was prepared from tapes recorded
by the Tasmanian Industrial Commission**

PN1

MR R. FLANAGAN: I appear for the Australian Workers Union, Tasmania Branch.

PN2

MR P. BAKER: I appear on behalf of the Minister Administering the State Service Act.

PN3

THE PRESIDENT: Thank you. This is an application by the AWU. Mr Flanagan.

PN4

MR FLANAGAN: Thank you, President. President, this application seeks to establish an award known as the Australian Workers Union (Tasmanian State Sector) Award. Since the application was filed with this Commission there have been lengthy and substantial discussions between the union and the representatives of the Minister Administering the State Services Act, arising from which we are in a position to provide you with a copy of a proposed new award to regulate the employment of the persons identified within its scope.

PN5

Now, the history of the regulation of employment of these people is a long one, President. It appears that up until the mid 1970s the employment of persons within the scope regulated by the proposed new award was regulated by the Federal Australian Workers Union Construction and Maintenance Award, an award made by the Federal Commission in settlement of a log of claims served by the union upon numerous employers throughout the Commonwealth. It appears that in 1974 or thereabouts, a decision was taken to remove the Tasmanian Public Sector from the AWU Construction and Maintenance Award and to establish a discrete award.

PN6

At the time that occurred there was significant employment within the scope of the award, indeed employment in excess of approximately 2000 people at that time in 1974. Now, Madam President, in 1985, one of the significant groups which were, until then, regulated by the AWU (Tasmanian Public Sector) Award were employees of the Forestry Commission of Tasmania. In 1985 the Forestry established their own interim award and Forestry Tasmania was subsequently corporatised. That saw approximately 450 people previously regulated by the AWU (Tasmanian Public Sector) Award leave that award to be regulated by the Forestry Tasmania Award.

PN7

In addition, a substantial majority of part of the employment which was regulated by the AWU (Tasmania Public Sector) Award was the construction and maintenance of infrastructure, such as roads and bridges, which were obviously done by employees at that time employed by the State of Tasmania. It is interesting to note that the employment of all of the people traditionally

covered by this award was, until recently, on the basis of weekly hired employees, or day labour, I think, the old expression was, as distinct from State servants; they were not State servants.

PN8

In any event, the Government of Tasmania in the mid 1990s decided to implement competition policy in the area of construction and maintenance. The then Department of Main Roads was split into two sections, the Department of Transport which took responsibility for administering the contracts which were let by the State of Tasmania for the construction and maintenance of civil assets; at the same time the former employees of the Department of Main Roads became employees of a state corporatised body known as the Civil Construction Corporation.

PN9

As you would be aware personally, President, from decisions in the Federal Commission, the civil construction corporatisation's corporation was sold by the Government of Tasmania approximately 18 months ago. The long shot of it is that all the work or predominantly all of the work which was once regulated by the Federal award, in excess of 2000 people, has now been reduced to approximately 40 State servants. In 2000 the Government of Tasmania decided that the remaining employees within the State service that were not State servants would in fact become State servants. And those 40 employees, who are engaged in research farms and are at the Royal Botanical Gardens, have since 2000 been entitled to all benefits and privileges which arise from being permanent State service employees.

PN10

Now, the union, in examining this situation, and as a consequence - well, if I could take you back a step. As you would be aware, the Workplace Relations Act of the Commonwealth, since 1996 has imposed upon the parties certain restrictions as to what might constitute a proper matter to be contained within the award and arising from that the Federal award was butchered - I think the term in the Federal Commission was simplified - - -

PN11

THE PRESIDENT: That is a better expression, yes.

PN12

MR FLANAGAN: - - - in January of this year, which led the union at that point in time to make the application which is currently before you. What we are concerned to achieve is an award which does underpin the employment of the State servants affected by the application, but we also wish to have in place an award which is validly made. The union is concerned that the log of claims which gave rise to the respendency of the State of Tasmania in respect of the day workers, as they were, which led to the making of the AWU Construction and Maintenance Award, probably is no longer sufficient to cover the terms of the award which have been made.

PN13

In addition to that, whereas the employees were previously day labour, weekly-hired persons, they are now State servants in the genuine sense which raises a

constitutional issue about whether or not the Commonwealth actually has the capacity to regulate State servants.

PN14

THE PRESIDENT: According to the Federal Award, the original document number, which is the dispute finding, goes back to 1986, so it is nearly 20 years. It may well be out of ambit.

PN15

MR FLANAGAN: Yes. I am not certain, but I think what is certain is that in 2000 the status of the employment changed and that is absolutely certain.

PN16

THE PRESIDENT: Yes.

PN17

MR FLANAGAN: And that absolutely raises questions in the context of section 51 of the constitution. So for the sake of caution the employer has agreed with the union's request that we establish a new State award to provide appropriate regulation for these persons going into the future. What I would say, President, is that the higher - the form of the document is one which both parties simply reserve the right to check, but we ask that the award be made effective from the first full pay period on or after Wednesday of this week.

PN18

THE PRESIDENT: So after today, that will pick up - the pay period commencing on Wednesday, is that - - -

PN19

MR FLANAGAN: That is correct, yes.

PN20

THE PRESIDENT: The document that you have provided, which is the proposed new award which I will mark as A1, they also need to check it, but can I just ask you, the scope clause, does that need some amendment to address the matters you have raised in submissions. For instance, Forestry is named as one of the - - -

EXHIBIT #A1 PROPOSED NEW AWARD DOCUMENT

PN21

MR FLANAGAN: Well, hope springs eternal life, we hope that one day Government may return to that area, President, but it is certainly - - -

PN22

THE PRESIDENT: Yes, yes. There are a lot of things we hope for that won't necessarily happen.

PN23

MR FLANAGAN: Certainly in the short - - -

PN24

THE PRESIDENT: We need to live in the now.

PN25

MR FLANAGAN: It is certainly in the short term, it is correct, that the Government no longer is directly and actively involved in forestry as such, but the research farms are concerned with a number of the areas that are identified here and I - - -

PN26

THE PRESIDENT: Yes. It just may be that the - because it is a very large scope provision, it may need to be addressed, and considered in the light of the changes that have taken place over the period. The other question that I want to put to you is, we presume - no, we never presume anything. It may be that the application to set aside the Federal award does not eventuate, so whatever we do then with this award, it can't come into effect while that Federal award is still in place.

PN27

MR FLANAGAN: Yes, that is right.

PN28

THE PRESIDENT: I don't know. I think this is one of the first ones that will go through.

PN29

MR FLANAGAN: Yes. Well, it certainly - as the union has indicated, there is an application to rescind the Federal award; that is listed quite soon, before the Federal Commission. So perhaps if the union undertakes to correspond with you - - -

PN30

THE PRESIDENT: Yes.

PN31

MR FLANAGAN: - - - regarding the outcome of that application.

PN32

THE PRESIDENT: And in the event - and as I say, I have no idea whether - I can think of no reason why it shouldn't be, but then as I say, we should never presume or assume anything.

PN33

MR FLANAGAN: Yes.

PN34

THE PRESIDENT: If it doesn't go through and the parties are still of the view that they want state coverage, it may be that some form of industrial agreement might buy us some time, but that is something we can address in the event that happens.

PN35

MR FLANAGAN: Yes.

PN36

THE PRESIDENT: The only other question was the rates of pay, they will need to be checked. In fact, the whole document will need to be checked to make sure that it fits into the formatting of the state award, but that can be done in due course.

PN37

MR FLANAGAN: There has been substantial work done in an attempt to achieve that outcome, President, but yes, we accept that that is the case. If it pleases the Commission.

PN38

THE PRESIDENT: Okay. Thank you. Mr Baker.

PN39

MR BAKER: Thank you. President, the Minister fully supports the application that has been made by the AWU to the Commission today. And we do so principally on the grounds, which is, it has been more than adequately outlined by my colleague and likewise, we will be supporting the application that is before the Federal Commission for the rescission of the Federal Award. I understand that matter is before the Commission tomorrow and we will be represented at those proceedings.

PN40

Insofar as the structure of the award is concerned, as has been outlined, there has been some shortness in time in the preparation of the document that has been marked exhibit A1. And the parties had indicated to you, and I will likewise indicate, that we will turn our immediate attention to finalising the document so that it conforms with the principles of formatting, so far as the Tasmanian Industrial Commission is concerned. That matter will be attended to as a matter of some priority and we will present to the Commission via email, I would presume, President, a completed copy of the new award.

PN41

Subject to a - there is one further thing I should add. That is, the document does contain some clauses which one might argue as somewhat superfluous and/or out of date and need some adjustment. It is the intention of the parties to address those matters in an "award reviewing process" so that we can have an up-to-date and accurate award, a compendium of conditions of employment that do apply to state servants who are either members of the AWU or who are covered by this award. And with that, subject to any comments from yourself or questions, I will conclude my submission there.

PN42

THE PRESIDENT: All right. Thank you. You don't want to add anything else, do you?

PN43

MR FLANAGAN: Look, I will just add that the award in terms of its substance, which is proposed, reflects the current simplified award. We are unhappy with that process and in the course of the review process that Mr Baker has referred to, we intend to pursue the recovery of some of the matters which have been removed from the award.

PN44

THE PRESIDENT: The non-allowable matters we are talking in terms of, I take it?

PN45

MR FLANAGAN: That is correct, yes.

PN46

THE PRESIDENT: The alleged non-allowable matters.

PN47

MR FLANAGAN: So it - you know, it should - this is the foundation, if you like, but the parties both see that the award needs to be updated.

PN48

THE PRESIDENT: Sure, yes.

PN49

MR FLANAGAN: If it pleases the Commission.

PN50

THE PRESIDENT: But I think at the moment, all we need to do is to make the award, subject to my checking and your checking on the document that you have presented, recognising that there are some things in there that need to be clarified and may be defined. And then if there are changes, it will be done
- - -

PN51

MR FLANAGAN: Subject to - - -

PN52

THE PRESIDENT: - - - in the normal process of an application to vary.

PN53

MR FLANAGAN: That is right.

PN54

THE PRESIDENT: Because I don't want the award to be in limbo.

PN55

MR FLANAGAN: No, no, any change from that which is proposed by the parties today, other than drafting matters would be subject to a separate application.

PN56

THE PRESIDENT: Yes. All right.

PN57

MR FLANAGAN: But I think it is fair to say that both parties pursue the leave reserved generally proposition in respect to the award's content.

PN58

THE PRESIDENT: With some alacrity.

PN59

MR FLANAGAN: Yes.

PN60

THE PRESIDENT: Yes. All right. We will make the award in the terms of the draft that has been attached to the application and is marked A1, subject as I say to checking by each of the parties, including the Commission. The award will take effect from the first full pay period on or after today, which meets the required pay period which commences on Wednesday. Without going into too much detail, because at this stage it is not necessary, that is all, of course, subject to the Federal award being set aside, rescinded, revoked or whatever the expression, proposed to be used.

PN61

But I am happy with what you have now done so far and we can amend any parts of it as necessary as to make it fit in with this Commission's requirements. All right. On that basis the award will be made, as I say, subject to checking, effective from the first full pay period on or after today and if one or other of the parties advise me of the outcome of tomorrow's proceeding, I shall be most interested. This matter is adjourned, thank you, and don't wait for me to stand up.

ADJOURNED INDEFINITELY

[4.43pm]

INDEX

LIST OF WITNESSES, EXHIBITS AND MFIs

EXHIBIT #A1 PROPOSED NEW AWARD DOCUMENT PN21