

COMMISSIONER IMLACH: I'll take appearances.

MR R. CLEGG: If the commission pleases, I appear for the Community and Public Sector Union (State Public Sector Federation of Tasmania), CLEGG, RON.

COMMISSIONER IMLACH: Thanks, Mr Clegg.

5 **MS A. WATT:** If the commission pleases, ANITA WATT appearing with **ROBIN PEARCE** on behalf of the Minister for Public Sector Administration.

COMMISSIONER IMLACH: Thanks, Ms Watt. Now, who's doing the talking?

10 MS WATT: If the commission pleases, I wish to seek leave to make two amendments to the original application. A copy of the first amendment has been faxed to the commission and to the CPSU. The changes contained in this amendment go to wording and structure of the draft order and do not alter the intent of the original application.

15 The second amendment, which I would like to tender now, proposes changes to clause 6, Award Interest only. I propose that the submissions address the amended application. The Minister for Public Sector Administration seeks to vary the Inland Fisheries Commission Staff Award as contained in the amended draft order. We seek to flow on a decision of the commission in T5741 of 1995, in which the commission decided to vary the Administrative and Clerical, Scientific and Technical Employees Awards to include new definitions to incorporate classification standards applicable to various classification levels, an amended scale of salaries applicable to each classification level, a package of agreed conditions of employment changes and translation arrangements.

25 Amongst other things, this application seeks to provide for the translation of employees to the appropriate streams. This application does not seek to alter the intent of the award in any way but attempts to make it easier to read, use and understand, by rewording it in plain English and to simplify it by deleting superfluous provisions. In this application we propose that the format, definitions and wording be aligned to that adopted by the full bench in T5741 of 1995 and T5143 of 1995 to establish a consistency throughout the State Service awards.

30 Mr Commissioner, I intend to firstly outline the major changes to the Inland Fisheries Commission Award and then attempt to answer any questions you may wish to put to me on any other matter.

COMMISSIONER IMLACH: Yes. Thanks, Ms Watt. Now, am I to take it that this last document that you put forward is your final position?

35 MS WATT: Final, in what way, sir?

COMMISSIONER IMLACH: It seems to me the whole of the award is in it.

MS WATT: Yes.

40 COMMISSIONER IMLACH: You've put it forward on the basis of amending your original application in relation to clause 6, for the last time. It looks to me as if this represents your final position. Is that so?

MS WATT: Yes, it does.

COMMISSIONER IMLACH: Right. Well, what do you say about that, Mr Clegg?

MR CLEGG: We don't have a problem with that, sir. It's just that it's, as I understand it, naming the Minister for Public Sector Administration.

COMMISSIONER IMLACH: No, I meant actually, Mr Clegg, are you agreeable to the amendments the applicant seeks to make to its original application?

5 MR CLEGG: Yes.

COMMISSIONER IMLACH: As evidenced in this document?

MR CLEGG: Yes, sir.

10 COMMISSIONER IMLACH: All right. Well, we'll call that exhibit W.1 and we won't mark anything else because W.1 represents the applicant's final position and that application to amend is granted.

15 MR CLEGG: We had a bit of a brief discussion a minute ago, before you came in, Mr Commissioner, and there may be a situation where we might have to amend clause 8 in wording - in some form of wording, but what we've agreed to do in that situation is, we'll go away and look at it. It's on the advice of the president that we look at the wording in clause 8 to make it - well it may be sufficient as it is but it's been suggested to us that we have another look at it.

COMMISSIONER IMLACH: Yes.

MR CLEGG: If need be, we might have to come up with another form of wording which we'll bring back to you later.

20 MS WATT: I intend to address that later in my application, sir.

COMMISSIONER IMLACH: Yes. All I'm concerned about is setting a base for operations and I'm proposing that this be it and if that's your position, I accept it.

MS WATT: Yes.

COMMISSIONER IMLACH: Now, I'm ready. Ms Watt?

25 MS WATT: If I can refer you to clause 2 - Scope, Mr Commissioner. A change in the scope clause of this award was necessary due to the deletion of salaries and classifications from this award, thus the scope clause needed to be reworded in order to continue to cover employees under this award.

30 We believe that it doesn't matter if persons are permanently or temporarily employed and that that can be taken out of the scope clause as they are still covered by the provisions of the award. This is covered by the definition of employee, i.e. they are both covered by the Tasmanian State Service Act. We believe that the change in scope does not jeopardise the proper application of the scope clause that is intended by this award.

35 COMMISSIONER IMLACH: Do you want me to indicate as we go about these things, Ms Watt?

MS WATT: Yes, please.

40 COMMISSIONER IMLACH: Yes, well, as far as I can see there is nothing - I've got no objection to that what you've put forward in relation to Clause 3 - Scope, so I'm ready to proceed to the next one.

MS WATT: I refer you to Clause 6 - Award Interest. This clause has adopted a similar format to that in the Clerical, Technical and Scientific Employees Awards. I believe that you are well aware of our argument, Mr Commissioner, as you were the first to include award interest into the Custodial Officers Award.

5 COMMISSIONER IMLACH: Yes. If this is the same as the Custodial Officers, I'm satisfied.

MS WATT: It is not exactly the same, sir.

COMMISSIONER IMLACH: In what way is it different?

10 MS WATT: The second part, which reads: The following employer is deemed under section 62 subsection (iv) to be an employer organisation having an interest in this award, (a) the Minister for Public Sector Administration, is new to this clause. Parties bound have been taken from this clause and I'd leave the Custodial Officers section which says: This award binds, and then have the Minister for Public Sector Administration, et cetera.

15 COMMISSIONER IMLACH: Yes.

20 MS WATT: It is our view that this proposed provision sufficiently identifies the employer and relevant employee organisation for this award. We believe that the parties and person bound provisions, as are currently in this award, are contained elsewhere in our proposed award variations. Employer, is defined in clause 7 along with employee. The union and indeed the employer are specified here in clause 6. Parties and persons bound is considered superfluous and it adds nothing to the award and can safely be deleted and replaced with award interest.

25 The act binds parties to observe the terms and scope defines the people covered by awards. We are proposing that this clause be amended to provide for consistency in acknowledging that both employee and employer organisations are deemed to have an interest in this award.

COMMISSIONER IMLACH: Yes. Can we just go off the record for a minute, thanks.

OFF THE RECORD

COMMISSIONER IMLACH: Yes, Ms Watt. That's all right with me. Proceed.

30 MS WATT: I refer you now to Clause 8 - Salaries. As you can see, the salary scales that were previously in the award have been taken out. Under subclause (a) we have attempted to provide for salaries to be derived from the three main streams, where employees meet the requirements for classifications contained in the Administrative and Clerical and Technical and Scientific Employees Awards. Some issues have been
35 said, as Mr Clegg has discussed earlier, about whether the subclause (a) is sufficiently clear.

We are seeking an in principle decision on the intent of the parties and we will have discussions with the CPSU to finalise the appropriate words and we'll provide you with the final wording when agreement is reached.

40 Subclause (b) Translations. This proposed subclause provides for the translation of employees to the three streams. Subclause (c) Part-time and Casual Employees. This clause is very similar to the clause contained in the three streams decision adopted by the full bench in T5741 and 5143. It has been reworded slightly for ease of use.

COMMISSIONER IMLACH: Yes. Now, in relation to that clause (c): Part-time and Casual Employees, 1. Employees are paid - that grates on me, in that this is a prescriptive document. It's not a statement of fact and I'm reluctant to delete 'shall be paid'. What do you say to that?

5 MS WATT: I don't have a problem with that.

COMMISSIONER IMLACH: We will go off the record again.

OFF THE RECORD

COMMISSIONER IMLACH: So, I just make the point now that in relation to that word that I mentioned, 'employees are paid' - as far as I'm concerned, that word and
10 others of a similar nature throughout this proposed amendment will be replaced by the expression 'shall be', or whatever is similar to that, but I indicate now that I will discuss this with the president and if he has a different view, well, I'll reconvene the parties and see where we go from there. Is that acceptable to you, Ms Watt?

MS WATT: Yes, sir.

15 COMMISSIONER IMLACH: Right. Proceed.

MS WATT: As you will note, Mr Commissioner, a number of clauses have been deleted from this award. We consider them to be superfluous. Those clauses are, Clause 9 - Allowances; Clause 14 - District Allowance; Clause 13 - Deductions from Salary; Clause 17 - Overtime and Extra Remuneration. These clauses are now
20 amalgamated into clause 10 which provides for other conditions of employment of employees covered by this award.

Clause 10 - Allowance, Scientific Officer Biologist has also been deleted. We believe that this is no longer relevant, as this position no longer exists within the organisation. Clause 15 - Hours of Duty has also been removed. This is in line with
25 the change in the General Conditions of Employment Award. We believe that hours of duty are currently sufficiently provided for in the Tasmanian State Service Act Regulations.

Clause 16 - New Appointments and Promotions, has been deleted. This is consistent with the decision of the full bench in T5741. Clause 3, subsection (1) of the Industrial Relations Act specifically excludes appointments and promotions in the definitions of
30 industrial matter.

Clause 18 - Progression. We believe this clause is superfluous as employees concerned under this clause will translate to the new level 1 of the scientific stream and will progress by increments to the top of that level.

35 COMMISSIONER IMLACH: Proceed.

MS WATT: That's all, Mr Commissioner.

COMMISSIONER IMLACH: Is that for the lot then, Ms Watt?

MS WATT: The lot of the amendments?

COMMISSIONER IMLACH: Yes. That's your -

40 MS WATTS: The major amendments I have outlined.

COMMISSIONER IMLACH: All your submissions?

MS WATT: Yes.

COMMISSIONER IMLACH: Yes. Just a minute while I - now, if we go to page 3, part-time employee.

MS WATT: Pardon?

5 COMMISSIONER IMLACH: Go to page 3, Definitions. Part-time employee. I'll read it to you:

Part-time employee means a person engaged to work on a regular basis for a less ordinary weekly hours.

Now, I suggest, cross out the `a`.

10 MS WATT: Thank you.

COMMISSIONER IMLACH: You will note there in salaries - my associate and I will go through the whole of this document but in that first paragraph (a), second-last line, `are paid`, it'll be, `shall be`. I just had that noted. Do you appreciate that?

MS WATT: Just back to part-time employee -

15 COMMISSIONER IMLACH: Yes.

MS WATT: Could we change it back to `a lesser number of ordinary weekly hours`?

COMMISSIONER IMLACH: `A lesser number`? Is that to fit with others, is it?

MS WATT: Yes. That complies with the three main streams adopted in T5741.

COMMISSIONER IMLACH: Yes. We'll just go off the record.

20 **OFF THE RECORD**

COMMISSIONER IMLACH: points to make. Yes, I note we did - did we - we'll put it on the record - I note that the name - the title of the award has been changed to the Inland Fisheries Commission Award whereas it was the Inland Fisheries Commission Staff Award. Is that correct, Ms Watt?

25 MS WATT: Yes, sir.

COMMISSIONER IMLACH: And one point which is a matter of - it won't affect these particular changes or your submissions but the hours of duty, Ms Watt, you pointed out that they've been deleted because your submission was that they're already in the regulations and that's where they ought to be - is that right?

30 MS WATT: Well yes, sir, and it's consistent with the decision that they were taken out of the General Conditions of Employment Award also.

35 COMMISSIONER IMLACH: Yes. Well I just make the point for you to ruminate on as the years go by, that conditions of employment would be better off in one place or the other - all of them. And this business of having some regulations covering conditions and some in the award - I'm only expressing my personal opinion, but I think in principle I'm right, that, as I say, conditions of employment, wages and conditions, ought to be found in one area not in two, and it seems as though the authorities are reluctant to let go some conditions because they want to be able to manipulate them

without the power of an award to stop them doing it. Does that make sense to you, Ms Watt?

MS WATT: Yes, sir, and it may well be in years to come that everything will be contained in the General Conditions of Employment. We're yet to see -

5 COMMISSIONER IMLACH: Well I'm just saying I think it's preferable - there might be no commission and all be in the regulations which is not preferable, I would hope, from Mr Clegg's point of view because then the employer has the ability to change things virtually without notice. And that's what stands at the moment. So I just make that point with you because you may be in a position to make a decision on these
10 matters as time goes by - times go by.

MS WATT: Yes, I take note of your comments, Mr Commissioner.

COMMISSIONER IMLACH: Now, is there anything else?

MS WATT: Well we believe that this application is consistent with the continuing process of reviewing awards of the commission for relevance. Reviewing and
15 simplifying awards is in the public interest and is not contrary to the wage fixing principles.

COMMISSIONER IMLACH: Yes, thanks, Ms Watt. Mr Clegg.

MR CLEGG: I've nothing further to add, Mr Commissioner. I've had a look at it and I agree with what the agency is trying to do here. And as I say, we don't have a problem
20 with it as it stands at the moment.

COMMISSIONER IMLACH: Good, thanks, Mr Clegg. I don't want to - not - I don't want to get off the beaten track altogether, but what's your reaction to what I said about regulations and awards.

MR CLEGG: I have to agree with you, but with the way things are in the public
25 sector at this stage, sir, there are - some things are bound by regulations and other things that are bound by the General Conditions of Service and actually as part of the agreement in relation to the implementation of the three streams, we are supposed to be sitting down with the government to look at streamlining the General Conditions of Employment and also the state service regulations and there is also an inquiry, I
30 think, ready to commence in relation to the state service regulations and we'll be making submissions to that too, sir.

COMMISSIONER IMLACH: Good, thanks, Mr Clegg. Nothing else, Ms Watt?

MS WATT: No, sir.

COMMISSIONER IMLACH: All right, I indicate now this application will be granted
35 subject to those outstanding matters and I would hope to hear from the parties - or the commission will certainly contact you, Ms Watt, and Mr Clegg to confirm or otherwise what's happening with clause 8 but also I'll advise the parties in relation to the prescriptive nature or otherwise of the proposed amendment. Thank you. This matter is closed.

40 **HEARING CONCLUDED**