

HEARING COMMENCED 10.30am

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

MR I. PATERSON: If the commission pleases, IAN PATERSON appearing for the Australian Municipal, Administrative, Clerical and Services Union.

COMMISSIONER: Good. Thank you.

MR C. BROWN: If the commission pleases, C. BROWN appearing for the Health Services Union of Australia, Tasmania No.1 Branch.

COMMISSIONER: Good. Thank you.

MR M. WATSON: May it please the commission, MARK WATSON; I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Good. Right, Mr Paterson, are you going to give me a bit of a run down?

MR PATERSON: If the commission pleases, I'll take you I guess initially to the substance of the application then to the principles that we'd be seeking to rely on in this application, then I'll provide you with a brief report on where our discussions are up to and how we intend proceeding from here.

COMMISSIONER: Right.

MR PATERSON: There are a number of matters that gave rise to this application. My union had had proposals before the TCCI for some considerable time in terms of clarifying some provisions of the award, particularly in relation to terms of engagement, probationary employment, and fixed term employment. We also had matters that arose from the president's decision in T6702 of 1997 which went to the question of the definition of Community Services Worker Level 2 in which the president found that he couldn't - there was a - in fact found it would be appropriate to declare how the classification standards for Community Services Worker Level 2 should be interpreted and ordered, pursuant to that section of the Act, my union to make application to vary the award for the purposes of clarifying that provision.

As part of the progression of that matter between the parties, the need for the possibility of resolving some of the issues with a new classification that effectively sat between Levels 2 and 3 arose and that matter is dealt with in this application.

The other matters that this application goes to in respect of Clause 10 - Annual Leave, Clause 17 - Holidays with Pay, Clause 27 - Sleep Over,

are effectively clarifying some areas where there has been some ambiguity or difference in practice in the industry. To the extent that the application goes to the wage fixing principles, I believe that we can and will rely on the structural efficiency principle in order to progress most of these matters. The clarifying of the award and the upgrading of the award and the enhancement of flexibility and efficiency in the industry and other aspects of the structural efficiency principle I believe will support the application in those particular matters.

As I mentioned, the question of redefining Community Services Worker Level 2 and inserting a new classification, 2B, is in effect consequent upon the president's order.

Although it's not encompassed with this application at our last meeting we did discuss the prospect of the award review and reformat process being applied to this as well and I believe that there are no major issues as there are with some other awards that go to questions of divisions and different provisions; that the award in fact is quite - a fairly straightforward exercise to reformat this award and I would envisage either an amendment to the application or a subsequent application to be joined with this one to enable the final product to be put forward.

COMMISSIONER: I'm more than happy if you wish to amend this application to include that issue as well which means we can tie it all up with one particular thing if you get some sort of agreement.

MR PATERSON: Certainly I think it may be premature that we haven't agreed to do that at this point in time -

COMMISSIONER: No, but I'm saying that -

MR PATERSON: - but we will do that.

COMMISSIONER: - that's why I think I ended my comment by saying if you've got agreement because I'm happy even when awards come back with the new format if people feel that they have to change something or clarify something, if they come back with agreement then I think the process would be a lot easier.

MR PATERSON: And on that point in particular, Mr Commissioner, it is our hope and expectation that these matters will be resolved by agreement although we have arrived at a point of some need for considerable further in-depth discussions on particular matters. Those include the new classification, 2 B; they also include some aspects of the annual leave entitlements and at this point we're not agreed on how specifically the provision for fixed term employment would be worded in this - in any order that results from this application.

The parties do wish to continue their discussions and I can't indicate at this stage when we would be ready to progress the matter and seek

to have it brought back on but we'd certainly advise as soon as we have some idea of that time frame.

COMMISSIONER: So you're seeking leave to adjourn the matter *sine die*.

5 MR PATERSON: I believe that's probably the appropriate course of action although I wouldn't want to do it in any way that gave any impression that it's not being actively pursued.

COMMISSIONER: No. No.

MR PATERSON: If the commission pleases.

10 COMMISSIONER: I think in suggesting that to you I'm really saying that we adjourn it *sine die* and wait to hear from the parties as to when they wish to proceed and we'll look at a date.

MR PATERSON: I believe that's an appropriate course of action. It may also be, subject to what Mr Brown and Mr Watson have to say today, that it may be appropriate to go off the record and into conference to discuss one or two matters of principle that we are still discussing but I'll leave that to the other parties to raise and suggest if they consider it appropriate. I'm quite amenable to that if it is considered an appropriate course of action. If the commission pleases.

20 COMMISSIONER: Mr Brown, have you anything further to add?

MR BROWN: Just a couple of things, Mr Commissioner, thank you. I mean hopefully we are going to be able to come before you with a consent matter on all of these things. The one that's getting a little bit complicated, if you like, is the Level 2 B which is of particular interest to my organisation because it purports to cover personal carers.

The category of personal carer, if you like, is one that has evolved fairly rapidly over the last couple of years and continues to do so. It's also a fairly massive growth area. Already the personal carer, that is, the provision of care services to people in their homes rather than in a workplace is almost bigger in terms of the number people to be employed than the nursing home industry at the moment and the indication of the types of resources of both Commonwealth and State governments are putting into that area, it is one that is going to change quite dramatically - or grow quite dramatically over the next couple of years.

The problem with it is, is that the style of the work and the nature of the work is such that it's not properly accommodated in any of our existing awards including the Community Services Award. The type of work and the nature of work is such that it requires flexibilities that just aren't there at the moment, so the issue just isn't an issue of level, it's also an issue of the whole nature of that style of work.

If you recall the full bench decision on the scope of this award originally indicated that personal carers should be covered by this award. That was then, for whatever reason, subsequently not reflected in the wording. I recall -

5 COMMISSIONER: That's because the unions went away and did a deal.

MR BROWN: There was a deal done, in fact, there was more than one deal done from what I recall.

COMMISSIONER: I remember it quite well.

10 MR BROWN: The outcome of that however was we ended up taking the matter to interpretation before the president as to whether personal carers fell into that scope clause given the full bench's decision, and the answer was probably not, if you like, so we then moved to vary the scope clause of the Community Services Award so
15 that it clearly did include personal carers and that's our case. The argument now is where they fit within the Community Services Award, not whether do fit in there.

Since that time, however, the nursing home industry in particular has been employing fairly large numbers of personal carers and some
20 organisations - individual nursing homes - are employing, you know, up to 150-200 of these people to provide that type of service out in the community.

We've been dealing with that by Section 55 Industrial Agreements which have not only determined what the rate of pay will be but also
25 what some of the flexibilities in terms of working conditions are.

In anticipation of that style of work, if you like, becoming more and more permanent or more and more constant, if you like, we - the HSUA has sent to the TCCI a copy of an award variation from the Nursing Homes Award effectively to do the same thing in the nursing
30 homes, that is, to insert the same category as Level 2 B into the Nursing Homes Award with the new classification almost identical to what's in the Community Services Award so that both awards are complimentary, if you like, without conflicting each other, and that is, that we'd clearly scope the Nursing Homes Award for those people who
35 are employed by nursing homes in the aged care industry as opposed to other activities that might be covered by the Community Services Award.

Those discussions are going on but obviously by bringing two awards into it and therefore two different industry areas with different needs,
40 it has to some extent complicated the negotiations, if you like. So that's probably where we're at with 2 B. I mean Mr Watson will indicate at this stage, I think, that they are not consenting to the

insertion of Level 2 B, but part of what we're going to have to work out is this relationship between those two award areas.

COMMISSIONER: So you're putting him under pressure?

MR BROWN: Absolutely.

5 COMMISSIONER: Bombarding him.

MR BROWN: Absolutely. What makes it even more complex is that we've learnt just in the last couple of months that there's a new funding program that's providing that same type of funding package to disability organisations so that they can provide those services to people with disabilities in their home which obviously then complicates it even further.

10 So given that it's not going to go away, it is something we're going to have to address. It is not a typical workplace-type arrangement so it does require looking at it afresh which is what we're willing to do. But obviously we're concerned about ensuring that peoples conditions are protected and unfortunately at this stage we don't have any clear agreement on what these people should be getting paid even under the Community Services Award.

15 So I just thought I'd mention those things as to how we're going in terms of the negotiations. If the commission pleases.

COMMISSIONER: Thank you. Mr Watson, have you anything to add?

MR WATSON: Not too much, commissioner, other than to indicate that we have been involved in discussions as late as last week in relation to these matters. We would also hope that we can proceed by consent in relation to all these things but it has become rather complex of late and as Mr Brown has just indicated, that particular issue is a fairly big issue for our members and we need to make sure that this exercise is done properly and at this stage, as I said, we would hope that we can proceed by consent but if that's not possible then I guess we'll have to have the matter arbitrated.

20 But at this stage we would be happy to have the proceedings adjourned to enable us to attempt to come to a consent position.

COMMISSIONER: Well, I hope you can come to some consent position because it is going to be easier all round if we can do that for everyone including myself.

35 So I'll take on board the request for adjournment and it's granted and I'll await to hear from the applicant in this matter. Nothing further?

The matter is adjourned.

HEARING ADJOURNED 10.45am