

COMMISSIONER: I'll take appearances.

**MR D. PYRKE:** If the commission pleases, DARRYL PYRKE, appearing on behalf of the Association of Professional Engineers, Scientists and Managers, Australia.

5 **MR I. PATERSON:** IAN PATERSON, appearing on behalf of the Australian Municipal, Administrative, Clerical and Services Union, if the commission pleases.

**MR M. WATSON:** If it please the commission, MARK WATSON. I appear on behalf of the Tasmanian Chamber of Commerce and  
10 Industry and with me is **JENNY THOMAS**.

COMMISSIONER: Well, Mr Pyrke?

MR PYRKE: Thank you, commissioner. I've had a request from the other parties to the award, sir, to adjourn to a drafting conference. So, if that would be satisfactory to yourself, that would be my application  
15 at this time.

COMMISSIONER: Yes. Is all this documentation slightly awry, is it, Mr Pyrke?

MR PYRKE: I've been told so, sir. We've had a couple of goes at correcting it but we're still not quite happy, so I guess if you could help  
20 us, I suspect we'll get there this morning.

COMMISSIONER: Yes. You don't want me to help you, do you?

MR PYRKE: Well, I think that was the nature of your request, wasn't it?

MS THOMAS: ..[inaudible]..

25 COMMISSIONER: I'd rather not, to be honest, because if you present me with an agreed document, we're in business, but if you present me with a disputation over it, I think because it was a full bench decision, that it sort of puts a spanner in the works. I might look at doing something about it but I suggest that you get together amongst  
30 yourselves first. I'm certainly available to give you an opinion, for what it's worth.

MR PYRKE: I'm getting the nod for that, commissioner, so, yes, we'll take that. Thanks, very much.

COMMISSIONER: All right, Mr Pyrke. Everyone else agree with that?  
35 Yes, all right. We'll adjourn now and I'll give you all the time you want and I'll be waiting to hear from you but I hope it's sooner rather than later. Thank you.

**INTO CONFERENCE**

## HEARING RESUMED

COMMISSIONER: Well, Mr Pyrke?

MR PYRKE: Thank you, commissioner. I'm happy to report that the adjournment was productive and as a result of that, I'd seek leave to amend the application which is before you and to assist you to come to grips with what I seek to do, I'd like to tender an exhibit.

COMMISSIONER: **EXHIBIT P.1.**

MR PYRKE: Sir, there are a number of changes to the original application and they're highlighted by being underlined in exhibit P.1. The first instance where there is a change is in Part 1 of the application. If you can turn to the first page there, there will be some parts underlined. These parts seek to basically address the needs of part-timers.

I can read through them now or perhaps it's probably more appropriate just to highlight what they are and then speak to them later on.

COMMISSIONER: All right.

MR PYRKE: On page 2 of exhibit P.1, at the bottom, again there's an underlined section there, which seeks to address the question of part-timers in relation to unpaid carer's leave.

On page 3, about a quarter of the way down the page, we've sought to change the subclause in relation to grievance process, basically, just to customise it to the award.

Further down the page, at one stage it looked like we were going to have a further amendment, but it was agreed not to make that amendment, so that's now been crossed out.

At page 4, in Part 4 of the application, we decided that it's more appropriate to insert the make-up time provision into Clause 16 - Hours of Work so that's a change to the original application.

At Part 5, which is on page 5, about a third of the way down the page, we've now decided to insert rostered days off as subclause (j). This is necessary because of the previous amendment. If make-up time goes to subclause (i), obviously, the next one is subclause (j).

Sir, that's the extent of the amendments to the original application that we seek to make. I understand it's got the consent of the other parties, but I'm sure they'll speak for themselves when you ask them.

COMMISSIONER: Yes. Is that it, Mr Pyrke?

MR PYRKE: That's the extent of the application for amendments, yes.

COMMISSIONER: Is there any objection to the amendments? No objection. Thank you. The application is amended.

5 MR PYRKE: Thank you. Sir, the amended application seeks to vary the award in relation to carer's leave, which was the subject of a test case in this commission in matter T6296 of 1996. The amended application is in five parts and I'll speak to each of those parts now.

10 Firstly, Part 1 - there are three variations to the model clause in this part. The first variation actually occurs in paragraph (I) of subclause (a) which is about paid carer's leave. In this case we've accommodated the views of our colleagues, the Australian Services Union, by inserting words which address the situation of part-timers. Since you haven't had much of a chance to read them, it's best that I read through them  
15 now so that you can come to terms.

The words are in these terms:

*For the purposes of this clause, part-time employees who are not in receipt of a loading in lieu of entitlements to paid leave as specified in clause 11(c)(ii) shall be entitled to use up to a  
20 maximum of one week of any current or accrued sick leave entitlement per annum.*

*Where a part-time employee's hours of work are not constant, the employees entitlement to the carer's leave should be based on the average number of weekly hours worked by the employee during  
25 the 12-month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months. .*

COMMISSIONER: Can I just interrupt there, or is that all for that part, Mr Pyrke?

30 MR PYRKE: That's all for the first variation for the model clause in relation to paid carer's leave, yes.

As I foreshadowed, there are two further departures there.

COMMISSIONER: Yes, keep going.

35 MR PYRKE: And a second variation from the model clause occurs in paragraph (II) subclause (b) which is about unpaid carer's leave. And again we seem to accommodate the situation of part-timers.

If I could read to you paragraph (II) - it's in these terms:

*A part-time employee in receipt of a loading in lieu of entitlements to paid leave as specified in clause 11(c)(ii) shall be entitled to take a maximum of one week's unpaid carer's leave per annum.*

The next page it goes on to say:

5           *Where a part-time employee's hours of work are not constant the  
employee's entitlements to unpaid carer's leave shall be based on  
the average number of weekly hours worked by the employee  
during the twelve month period immediately preceding the  
10 commencement of the relevant period of carer's leave or the  
employee's actual period of service if less than twelve months.*

So consistent with the full bench decision and the views of the parties, we seek to address the situation of part-timers and in so doing we also seek to address how you would calculate the quantum of the entitlement.

15   COMMISSIONER: Yes, just go to page 2, there's an underlining under a subparagraph (ii) there.

MR PYRKE: Yes.

COMMISSIONER: Does that mean anything or is it just a -

20   MR PYRKE: Sir, that's - you might recall back to the application to amend the original application, that was just by way of highlighting the difference between what's before you now and the amended application and what was sent to the commission originally.

COMMISSIONER: That's different is it? Oh, I see. Just correcting it. Thank you. Right.

25   MR PYRKE: And speaking here, too, about the departures from the model clause in subclause (a) - Paid Carer's Leave, the third such departure is about a third of the way down page 3 where we seek to customise the model order to this particular award and so that the original words which come out of a model test case decision, we say in  
30 Clause 12 - Disputes and Grievance Procedure of the award shall apply.

35   COMMISSIONER: Yes. Can I just interrupt there, Mr Pyrke, it's a matter of interpretation of course, but it seems to me it would be better to put in Clause 12 - Disputes and Grievance Procedure of the award also applies to a dispute about the effect or operation of this clause. I'm just testing it with you and the other parties. This, as it reads, could be interpreted to mean that it only applies to this type of dispute. That clause only applies to this type of dispute. Do you agree with that or -

MR PYRKE: I hadn't thought about that, sir. I'll ask my colleagues, if I may, through you.

MR PATERSON: Well, I see no problem in putting it in to clarify it.

COMMISSIONER: Do you agree with what I'm saying, Mr -

5 MR PATERSON: I'm not that familiar with the award so I really couldn't say how this would affect the stand alone effect of clause 12. I presume in one sense if clause 12 comes before this clause, it may stand alone.

10 COMMISSIONER: Yes. I mean in a way it's neither here nor there but it's the sort of thing that parties get caught up on; what do you say, Mr -

MR WATSON: I'm quite happy for that to go in there, commissioner, to clarify.

15 COMMISSIONER: You do agree with that? Now I don't want to impose this business.

MR WATSON: No, that's fine, commissioner, I do agree with you.

COMMISSIONER: Good. Thank you. We'll put that in. Yes, proceed, Mr Pyrke.

20 MR PYRKE: Thank you, commissioner. Sir, I proceed now to Part 2 of the application which seeks to insert a subclause (m), the facility provision in relation to annual leave and seek to do that into Clause 9 - Annual Leave.

25 We need to do this because just in subclause (d) - Broken Leave, it doesn't provide access to the full number of days referred in the model clause. In other words, the interest in provision provides for four days of broken leave or single days. This model clause provides for five and the parties are agreed that the extra flexibility option is appropriate.

COMMISSIONER: Now, where are we? I'm confused. I'm looking at what you've got here.

30 MR PYRKE: Okay. So we're looking at Part 2 of the application.

COMMISSIONER: Yes.

MR PYRKE: Which is on page 3 of the exhibit, P.1.

COMMISSIONER: Yes.

35 MR PYRKE: And that seeks to insert a new subclause (m) into Clause 9 - Annual Leave.

COMMISSIONER: Yes. And where is it different from the original?

MR PYRKE: Well, it's no different from the -

5 COMMISSIONER: Oh, I see, I'm looking at - I'm not looking at the decision, I'm looking at your original application, I'm sorry. Yes - so tell me again.

MR PYRKE: So this is basically the model clause in relation to single day absences, but we seek - I'm explaining that we seek to insert this because the existing award provision doesn't create the option which is created by the model clause.

10 COMMISSIONER: I see. Right. Sorry about that. Yes - proceed.

MR PYRKE: Part 3 of the application seeks to insert the model facilitative provision in relation to time off in lieu of overtime as subclause (i) of Clause 21 - Overtime, and we see this step as being necessary because the existing clause doesn't address time off in lieu of  
15 overtime.

COMMISSIONER: Yes. Are some of these things going to be - I suppose we'll realise that as others come along, but do you think some of these will be brought along with other matters as well, Mr Pyrke, or you haven't considered it.

20 MR PYRKE: I can't say I haven't considered it but I understand that the full bench has views on that; that they want the facilitative provisions to be in there to the extent that the existing award doesn't cover the situation. So if I had to guess, I'd say yes, they will be coming along but I can't really speak for others.

25 COMMISSIONER: Yes. Right.

MR PYRKE: If I could move now to Part 4 of the application, sir. For this part we seek to insert the model provision regarding make-up time as subclause (i) of clause 16 - Hours of Work. And again, we see this step as being necessary because the existing award clause doesn't  
30 address the situation of make-up time.

And regarding Part 5 of the application, we seek to insert the model provision regarding rostered days off as subclause (j) of clause 16 - Hours of Work. ..(inaudible).. of subclauses (f), (g) and (h) of the existing award, this could be seen as a belts and braces move, but the point  
35 here is that the model clause provides additional flexibility in that it refers to the taking of part or parts of rostered days off, and that's a flexibility which doesn't currently exist.

If I could turn now to the merit of the application. The arguments in support of the application follow what was put to the commission by  
40 the Trades and Labor Council in matter T6296. In that case, Ms

Fitzgerald addressed the full bench regarding social and economic changes such as increased participation by women in the workplace, increased involvement of men in parenting and reduced institutional care for aged and disabled people.

5 If these changes are to be accommodated, it's important that carer's leave be available as a right when it's needed, and it's our submission that this applies to engineers and scientists just as much as it does other occupations.

I believe that the TCCI accepts this view as they've indicated their  
10 consent to the application.

When I scanned the test case decision to see how carer's leave sits with the current wage fixation principles, I can say I found nothing which assisted me. Now maybe I just missed it, I couldn't see it there. Perhaps its not a consideration in relation to full bench cases. Nevertheless, I  
15 certainly support the view of the commission and the test case parties that carer's leave is consistent with the public interest.

On the basis of this submission, sir, I believe that it's open to you to make an order in the form that's set out in the amended application  
20 and I ask that you do so on and from today's date. If the commission pleases.

COMMISSIONER: Thanks, Mr Pyrke. Mr Paterson?

MR PATERSON: I can indicate, commissioner, that the Australian Municipal, Administrative and Clerical Services Union supports the  
25 application and the submissions made by Mr Pyrke. If the commission pleases.

COMMISSIONER: I couldn't have put it any better, Mr Paterson. Thank you. Now, Mr Watson?

MR WATSON: Thanks, commissioner. Yes, initially we can indicate  
30 that there is consent to the application, as amended, before you today. I just want to clarify in relation to 2 subclause (m)(i), which is on page 3.

The two paragraphs which were in the order which are underlined have in fact been deleted on your copy.

35 COMMISSIONER: My word they have, Mr Watson, yes.

MR WATSON: I just want to clarify that because -

COMMISSIONER: That's fair enough, I understand that.

MR WATSON: Yes. It would be our submission, commissioner, that the order that's been presented will in fact be in accordance with the

full bench decision in relation to carer's leave; that the application doesn't offend the commission's wage fixing principles nor the public interest and we would consent to the application from the first full pay period on or after today's date.

5 COMMISSIONER: Fancy not having that settled.

MR WATSON: Yes, well we didn't discuss it, commissioner, but I think administratively it's going to make it a lot easier to be the first full pay period in accordance with the normal procedure of the commission.

10 COMMISSIONER: I recommend that to you, Mr Pyrke.

MR PYRKE: I ..(inaudible).. about that, commissioner.

COMMISSIONER: You don't object to that, Mr Paterson?

MR PATERSON: No objection.

15 COMMISSIONER: Thank you. Well, I commend the parties on getting a settlement about that. All these things are open to snags at any time. I indicate now this application will be granted operative from the first full pay period to commence on or after today's date. Is that correct? Yes. All right, this matter is closed.

**HEARING CONCLUDED**