

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 5900 OF 1995

IN THE MATTER OF an application by the
Minister for Public Sector Management
pursuant to section 23 of the Industrial
Relations Act 1984 to vary the General
Officers Award

re: Classifications

COMMISSIONER IMLACH

HOBART, 18 January 1996
Continued from 4/12/95

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: Any change in appearances?

MS RALLINGS: No, Mr Commissioner.

COMMISSIONER IMLACH:

5 **MR R. MILLER:** Well I haven't appeared before in this matter, sir, so I don't suppose I can have changed from what I am - from what I was to what I am.

COMMISSIONER IMLACH: No, this is true. You were here last time, Mr Miller?

MR MILLER: I was not.

COMMISSIONER IMLACH: Well you're appearing today.

MR MILLER: I am indeed.

10 COMMISSIONER IMLACH: Right. We'll put that on the record. Thank you.

MR MILLER: Thank you, sir - appearing on behalf of the CPSU(SPSFT).

COMMISSIONER IMLACH: Right. And you've got your feet firmly on terra firma have you, Ms Rallings.

MS RALLINGS: Yes, Mr Commissioner.

15 COMMISSIONER IMLACH: Good. Now who is telling me what?

MS RALLINGS: I'll lead the application. Mr Commissioner, this application to vary the General Officers Award is in line with the new commission award format as determined by T. Nos. 5881 to 5883. There's a couple of minor variations that haven't been dealt with by those prior cases. What I could do is go straight to where there are differences to the normal award format and where my application might need variation, or I could take you and my learned friend right throughout the entire application and deal with everything so it's all in transcript - it's really up to you.

20 COMMISSIONER IMLACH: Is it really?

MS RALLINGS: Mm. Would you like to hear me talk for the rest of the day or -

25 COMMISSIONER IMLACH: This is very good, Mr Miller, isn't it? Ah, well no -

MR MILLER: As much as I admire my colleague at the end of the bar table, sir, I don't think I could stand a whole day of it.

MS RALLINGS: Thank you - I think.

30 COMMISSIONER IMLACH: No, I think those matters, Ms Rallings, that have already been dealt with and just following we'll leave by the by - just the new ones please.

MS RALLINGS: Thank you, Mr Commissioner.

COMMISSIONER IMLACH: Now what - just - what were those numbers - T.5811 you said, didn't you?

MS RALLINGS: T.5881 to 5883.

35 COMMISSIONER IMLACH: Right -

MS RALLINGS: That was the Administrative and Clerical, Technical Employees, and Scientific Employees Awards.

COMMISSIONER IMLACH: yes - the previous ones. Yes, well lead us through the new ones please.

5 MS RALLINGS: All right. The contents and title have already been explained in the previous decisions. The scope - we have merged a number of paragraphs because they are superfluous - they have no effect and I'll take you through that.

In the scope, the first two paragraphs have been reworked to form the paragraph in our application.

10 COMMISSIONER IMLACH: So we've got one paragraph instead of one - two - three - four -

MS RALLINGS: One - two - three - four - five - six - seven - seven paragraphs.

COMMISSIONER IMLACH: Seven - yes. Right.

15 MS RALLINGS: The second proviso that starts with 'provided always' and refers to Statutory Rule No. 218, that is of no effect. It applies to people that used to be day labourers at the Hobart Regional Water Board -

COMMISSIONER IMLACH: Right.

20 MS RALLINGS: - and were classed as General Officers Class II. And in fact the Hobart Regional Water Board doesn't have anyone employed in that classification any more and doesn't intend to. So on that ground we've moved the second proviso.

The proviso relating to day labour staff, which starts as 'provided further' and goes down to the second last paragraph on page 2, there are no day labour staff any more -

COMMISSIONER IMLACH: Right.

25 MS RALLINGS: - and so once again we've deleted those one - two - three paragraphs. The last proviso talking - is actually a duplication of the second paragraph; both are referring to excluding people who are covered by another award of the Tasmanian Industrial Commission. So we've removed that duplication in our application.

COMMISSIONER IMLACH: Right.

30 MS RALLINGS: Clause 3 - Arrangement - once again has become clause 1 - Contents, which has been dealt with in previous applications. Date of Operation has become Date of Effect and we put the effective date as the 2nd November. Once again that's for illustrated purposes - it doesn't have to be that date.

COMMISSIONER IMLACH: What are you recommending, Ms Rallings?

MS RALLINGS: I will leave that to you, Mr Commissioner.

35 COMMISSIONER IMLACH: We'll just go off the record a minute.

OFF THE RECORD

MS RALLINGS: Mr Commissioner, the date of today's hearing would be appropriate for the date of effect of this award.

COMMISSIONER IMLACH: Yes.

5 MS RALLINGS: The supersessions and savings clause: we've substantially reworked that in our application but since we lodged this application numbers Nos. 4 and No .5 of 1995 of the General Officers Award have been issued and they refer to changing the name of the Tasmanian Prison Officers to the Tasmanian Correctional Officers. I'd like to seek leave to amend my application -

COMMISSIONER IMLACH: Yes.

10 MS RALLINGS: - so that our application overrides or supersedes numbers four and five. I'd like it to read, if possible: this award supersedes the General Officers Award No. 3 of 1995 Consolidated, No. 4 of 1995 and No. 5 of 1995, provided that no -

COMMISSIONER IMLACH: Well just -

MS RALLINGS: - entitlement accrued or obligation incurred shall be affected by the supersession.

15 COMMISSIONER IMLACH: Yes. Now, in my document on page 2, clause 5 - Supersession and Savings, it says: Delete the existing wording and replace with: This award supersedes the Technical Employees Award. Has yours got that too?

MS RALLINGS: Yes, Mr Commissioner. I'm -

COMMISSIONER IMLACH: Well we'll cross that out and put general - right?

20 MS RALLINGS: That's right, Mr Commissioner. And include reference to General Officers No. 4 and No. 5 of 1995.

COMMISSIONER IMLACH: So it's General Officers Award - is it - or employees?

MR MILLER: Employees.

COMMISSIONER IMLACH: It's General Officers.

MR MILLER: No - I beg your pardon -

25 COMMISSIONER IMLACH: It could be employees isn't it?

MR MILLER: Should be employees.

MS RALLINGS: Thank you for that. I've actually lost that when I skipped over the clause - yes - it should be General Employees Award -

COMMISSIONER IMLACH: Employees - yes.

30 MS RALLINGS: - because we've renamed it from clause 1.

COMMISSIONER IMLACH: That's at the start is it - the name -

MS RALLINGS: Yes.

COMMISSIONER IMLACH: Well that's interesting isn't it?

35 MS RALLINGS: On page 1 of our application, clause 2 - Title, it says: This award shall be known as the General Employees Award. Mr Commissioner, we also changed

the Scientific Officers Award and the Technical Officers Awards to become Scientific Employees and Technical Employees Awards.

COMMISSIONER IMLACH: Yes.

MS RALLINGS: And that was to reflect the change in terminology

5 COMMISSIONER IMLACH: Just for the record, we'll go back to the - if you have it there - the application on the 18th October, signed by Mr Willingham. I presume - oh, no, this is General Officers Award, isn't it?

10 MR MILLER: If I may sew some light, sir, I believe that the application has to be termed in the words of the General Officers Award because that is the award which is in process at the present time.

COMMISSIONER IMLACH: Yes.

MR MILLER: The application seeks to change the General Officers Award to the General Employees Award.

15 COMMISSIONER IMLACH: Yes. So are you saying, Mr Miller, that on page 1 of the application at the top there, General Officers Award, should still remain?

20 MR MILLER: I believe, sir, that this document is the body of the application by the government. The application is made under the terminology to change the existing General Officers Award to another title and this award should - or this application that we have in front of us titled page 1 should now read General Employees Award and continue with generally that description all the way through.

COMMISSIONER IMLACH: Yes. What do you say to that, Ms Rallings? Do you know what we're talking about?

MS RALLINGS: Yes, Mr Commissioner. Just - just to clarify for my own mind, in clause 2 it remains General Employees Award because we have changed the title.

25 COMMISSIONER IMLACH: Yes. Have you got that page in front of you?

MS RALLINGS: I've got that page in front of me.

COMMISSIONER IMLACH: Yes, but what about up the top?

MS RALLINGS: That should become General Employees Award.

COMMISSIONER IMLACH: Yes, that's what Mr Miller was saying, I believe.

30 MR MILLER: Indeed, sir.

COMMISSIONER IMLACH: Right. So we'll change that. You're going to apply to amend all this when we get it done, aren't you?

MS RALLINGS: Give you a new application? Yes, I will.

35 COMMISSIONER IMLACH: No, no - just apply formally here now to amend these. Right. Page 1 at the top - General Employees. We go over now to page 2 of the draft order. This award supersedes the General Employees Award No. 3 of 1995, No. 4 of 1995?

MS RALLINGS: I think maybe it should be: this award supersedes the General Officers Award No. 3 of 1995, because that was the title of the No. 3 of 1995 award.

COMMISSIONER IMLACH: Yes, well said - General Officers Award - No. 3 of '95 - and you're adding in?

5 MS RALLINGS: Comma - No. 4 of 1995 and No. 5 of 1995 - comma - and then it reads as the rest of the application: provided that no entitlement accrued or obligation occurred shall be affected by the supersession.

COMMISSIONER IMLACH: Yes, all right.

MR MILLER: By your leave, Mr Commissioner, can we just go off record?

10 COMMISSIONER IMLACH: Yes.

OFF THE RECORD

COMMISSIONER IMLACH: Now those amendments we've just been over, Ms Rallings, are you - you've sought - those that weren't there before, you've sought to have incorporated in your application, is that right?

15 MS RALLINGS: That's right, Mr Commissioner.

COMMISSIONER IMLACH: And I understand you agree with that, Mr -

MR MILLER: I have no objections, Mr Commissioner.

COMMISSIONER IMLACH: Thanks, Mr Miller. Yes, that's approved. Now, proceed.

20 MS RALLINGS: We move to clause 6 - Parties and Persons Bound. In line with previous award amendments this has become: Award Interests and Parties Bound. A number of changes have been made to the setting out and the language of this clause which again is in accordance with the new award format of the commission. There has been a change to the title of one of the unions party to this award since this application was lodged with the commission. Mr Commissioner, I'd like to seek leave to vary the name of the Tasmanian Prison Officers Association - which is at clause 6A(v) of our application - I'd like to vary the name to the Tasmanian Correctional Officers Association.

COMMISSIONER IMLACH: Do you agree with that, Mr Miller?

MR MILLER: I have no objection, sir.

30 COMMISSIONER IMLACH: Right - yes, that's granted.

MR MILLER: Clause 7. We believe that -

MR MILLER: By your leave, sir.

COMMISSIONER IMLACH: Yes.

35 MR MILLER: We have gone through clause 6A, we come to clause 6B. The application, as termed, indicates that the award is binding upon the Minister for the Public Sector Management in relation to all employees covered by this award. I have some objection to the application for - as regards this matter, and if you wish I will address you on that matter initially.

COMMISSIONER IMLACH: No, I'd better hear it all through and then I'll come back to that, Mr Miller.

MR MILLER:

COMMISSIONER IMLACH: Thanks for warning us. Keep going, Ms Rallings.

5 MS RALLINGS: I'll go back to where I was - clause 7 - Definitions. We've removed the definition of a temporary employee, because whether an employee is temporary or permanent has no bearing on whether they're bound by this award or the conditions under the award.

10 MR MILLER: By your leave, sir, I wish to register an objection and concern with the clause 7 - Definitions. Certain matters appear to have been removed from previous awards and I flag discussion on that matter, sir.

COMMISSIONER IMLACH: Yes. Right. Thanks, Mr Miller.

MS RALLINGS: Clause 8 - Salaries.

15 COMMISSIONER IMLACH: That's the only one removed from that one - from that clause 7?

MS RALLINGS: As far as I'm aware, Mr Commissioner.

COMMISSIONER IMLACH: That's all right. Keep going.

20 MS RALLINGS: Clause 8 - Salaries: the first paragraph of the existing award has been reworked in our application to simplify the language and remove reference to satisfying prescribed requirements because there are no such prescribed requirements in the award. All reference to the 4% second tier adjustment has been removed, and we've actually included any of the relevant provisions into the conditions of service clause. All reference the State Service Wages Arrangement have been removed.

25 The classification for bookbinder, tradesman and foreman at paragraphs 8A in the current award have been deleted. It's my understanding that there are no employees in the state service employed in these classifications and no intention to employ anyone in these classifications in the future.

30 The rates for general apprentices in paragraph 8B(1) have been included into the new clause of our application. On page 3 of our application you see there's a subclause, clause 8B. and that's where the general apprentices rates have been moved to.

The rates for the apprentice bookbinder in the current award at paragraph 8(B)(ii) and the provisios (a) to (g) applying to apprentice bookbinders have been removed. Again, it's my understanding that no-one will be employed in these classification and there's no longer a profession or classification of bookbinding in the State Service.

35 The adult rate in the current award which you find at subclause 8(C). The rates for the 21 years and over general officers have moved from the current award clause that I've just pointed out to you to become subclause (8)(A) in our application. What we've actually done is moved the adult rates to the front of the salaries clause. This is just to help with readability so that the majority of employers will be able to go to the provisions that affect them straight away.

40

In our application, there has been some amendments to the rates for employees aged less than 21 years. Our application states, at page 6, a note to the savings provision. The reasons why we are seeking to amend the rates for employees aged less than 21

years, basically it's to give intent - to give the true intention of the parties or to reflect the true intention of the parties when the junior rates were first incorporated into the General Officers Award.

Would you like me to read you through the note to the savings provision?

5 COMMISSIONER IMLACH: I think it would be a good idea, Ms Rallings, yes.

MS RALLINGS: Clause 8C of the existing award prescribes rates of pay for employees aged less than 21 years. Usually, these rates are expressed in money terms only; no percentages are included in the provision and there is no mention of a salary to which the junior rates are referenced.

10 The less than 21 years salaries specified in the award are in fact the same as those prescribed in the Clerical Employees Award, clerical assistants scale. The junior rates are percentages of the clerical assistant Class 1, first year of service.

The salaries for the employees aged less than 21 years were first included in the award following a decision of the commission dated 29 September 1986 in Matter T.374 of 15 1986. The matter was an application by the minister to vary a number of clauses in the General Officers (Public and Mental Health Services) Award. Page 13 and 14 of the transcript of proceedings in this matter, on the 23rd of July 1986, show that it was the minister's intention to disband the Junior Employees (Public and Mental Health Services) Award and on this ground the rate for apprentices and junior rates were 20 incorporated into the General Officers Award.

Prior to the minister's application in T.374 of 1986, junior general officers were paid under scale 2 of the Junior Employees (Public and Mental Health Services) Award. Scale 2 calculated junior rates as a percentage of the first year of clerical assistants. Clearly the intention of the parties though in Matter T.374 was to alter how the junior 25 rates were calculated and to tie the junior rates to the relevant adult rate in the General Officers Award.

I've got a copy of the transcript here in front of me and I'd like to read an extract of that to you. At page 14 of the transcript, at the top of the page, the minister's 30 representatives states that: Class 1, fourth year rate has been put in as a 21 years and over rate - - the junior rates are referenced to. I'll say that again, the junior rates should be calculated by reference to the Class 1 of the General Officers Award. They were trying to remove junior rates from reference to clerical assistants and move the junior rates to be referenced to a general officer classification.

In fact, when the decision on T.374 was issued, the clerical assistants rate scale was 35 included into the new General Officers award and not the new rates calculated by reference to a general officers classification. There's an explanation in the savings clause about why the minister wanted to use Class 1 fourth year of service as the full rate the junior percentages were calculated against, and that was because there were 40 apparently no people employed or using the first, second or third year of service rates under Class 1 of the Junior Officers Award.

In the decision on the matter, the commission decided that they wouldn't delete the first three years of service for the general officers Class 1 so that part of our application still exists, I suppose, the -

COMMISSIONER IMLACH: They were obtuse even then, were they?

45 MS RALLINGS: I didn't mean to imply that, Mr Commissioner.

COMMISSIONER IMLACH: It's all right.

MS RALLINGS: It was never the minister's intention that sub 21 years rates be applied to anything other than Class 1 of the general officers rate, and there is nothing to indicate that the other parties or commission thought or intended otherwise. Nevertheless, the sub 21 year salaries included, for the first time in the award, No. 3 of 1986 [Consolidated] wrongly prescribed rates. They prescribed the rates as those identical in force at the time for clerical assistants under the Clerical Employees Award and this error has been perpetuated ever since.

Our application seeks to reinstate the original intent of the parties by including a sub 21 year scale in the General Officers Award with reference to the general officers Class 1, first year of service rate which is currently \$18,897, and the standard percentages for employees aged less than 21 years will be continued. Unfortunately, this has the results in reducing existing award rates and for this reason we have included a savings provision in the proposed subclause 8(B)(ii) of our application.

COMMISSIONER IMLACH: Now up the top there, Ms Rallings, it says, 'Note to the savings provisions, Clause 8(c) of the existing award prescribes rates of pay for employees aged less than 21'. They are the ones called Class I, are they?

MS RALLINGS: Yes, and underneath they have 16 years to 20 years.

COMMISSIONER IMLACH: Yes. Right, well I think I have grasped that. Proceed.

MS RALLINGS: Thank you, Mr Commissioner.

Subclause 8(d) in the existing award titled, 'Part-time and Casual Employees' has been reworded to come in line with the award format as decided in decisions T.5881 to 883. We've removed the second proviso in existing subclause 8(d) which states that:

PROVIDED ALWAYS that persons engaged as temporary, part-time and casual employees prior to 1 December 1985 shall not suffer any loss of entitlements through the implementation of this award.

We've removed that proviso because from our understanding there are no temporary or casual employees that have been employed prior to 1 December 1985 and are still employed in that capacity.

Conditions of Service - Clause 9 in the current award -

MR MILLER: If I may intervene, sir?

COMMISSIONER IMLACH: Yes, Mr Miller.

MR MILLER: In Clause 8 of the application - Salaries - which we have just been through, and I won't be obtuse and I noticed that you caste a fly upon the waters, but I think you received a palpable refusal.

However, the CPSU, sir, does have some concerns with the content of that clause, and I will wish to address you on those matters, or on some of the matters relating thereto, but prior to moving away from clause 8 it may be that I misunderstood or misheard, but I also believe that clause (c) of clause 8 at page 8, I believe it is, has a proviso clause - 'PROVIDED. The award I am looking at is the consolidated version, No. 3 of 1995, page 8, has a further proviso which says, and I quote:

PROVIDED ALWAYS that an employee under 21 years of age with dependants may -

- et cetera, et cetera.

COMMISSIONER IMLACH: Yes.

MR MILLER: That has also been deleted from clause 8, sir.

COMMISSIONER IMLACH: Right. So you are flagging that you are going to -

5 MR MILLER: I am flagging that that, together with other issues I have some concerns with.

COMMISSIONER IMLACH: Right.

10 MS RALLINGS: Mr Commissioner, just on that point, the provisos - the one relating to employees aged under 21 years with dependants - that clause has been deleted, but it has also been moved in our application. If you look on page 3 of our application Clause 8 - Salaries, the second proviso down, it says:

PROVIDED FURTHER than an employee aged less than 21 may, at the discretion of the employer, be paid as if that employee had attained the age of 21.

15 COMMISSIONER IMLACH: So what you're saying is that matter that Mr Miller has referred to is covered as far as you're concerned by that 'provided further' at the start?

MS RALLINGS: Mr Commissioner, I understand that Mr Miller has concerns with the content of that proviso, but on transcript he read that that had been deleted in our application.

20 COMMISSIONER IMLACH: Yes. All right.

MS RALLINGS: I was just clarifying that it had been included in another part of our application.

25 MR MILLER: Well, sorry, sir. On a pedantic point that clause and its wordings - the proviso and its wordings - has been removed and deleted. Other words are being put in substitution, therefore.

COMMISSIONER IMLACH: Yes. Well, we will hear all about that when your time comes.

MS RALLINGS: Clause 9 - Conditions of Employment: again the content and wording of this clause is in line with the new award format of this commission.

30 At this point, Mr Commissioner, I would like to seek leave to amend my application to reflect a change in the title of the Conditions of Service Award. It was recently changed to be the General Conditions of Employment Award. I would like to seek leave to give effect to that change of name.

35 COMMISSIONER IMLACH: General Conditions of Employment Award. That only appears once, does it? No, it appears twice, doesn't it? Is that true?

MS RALLINGS: Yes, Mr Commissioner, it appears in both the first paragraph and in the proviso.

COMMISSIONER IMLACH: Proviso. Have you got that - proviso?

MS RALLINGS: The third proviso?

COMMISSIONER IMLACH: Yes.

MS RALLINGS: Thank you, Mr Commissioner.

COMMISSIONER IMLACH: Right.

5 MS RALLINGS: Clause 10 and Clause -

COMMISSIONER IMLACH: Mr Miller.

MR MILLER: By your leave, I have no objections, sir.

COMMISSIONER IMLACH: Right. I think we'll leave it to - poor Ms Rallings is really - I think he is having sport with us, Ms Rallings.

10 MR MILLER: Far from it.

COMMISSIONER IMLACH: So we won't hear any more from you, Mr Miller, until Ms Rallings has finished, thank you.

MS RALLINGS: Clause 10 of the current award, new appointments and promotions - has been deleted. That's in line also with the new award format of this commission.

15 Clause 10 - Salary Increments, again this has been amended to bring it into line with the new award format.

Mr Commissioner, would you like me to address any of those matters further, or can I -

COMMISSIONER IMLACH: No. You've completed, have you, Ms Rallings?

20 MS RALLINGS: Yes. At the start I said I was only going to go to those parts of the application that differed from the award format as decided in Decisions T.5881 to 883, and I believe I have done that, Mr Commissioner.

COMMISSIONER IMLACH: Yes, I have accepted that.

MS RALLINGS: If the commission pleases.

25 COMMISSIONER IMLACH: So we'll hear from Mr Miller and then you'll have a chance to reply.

MS RALLINGS: Thank you, Mr Commissioner.

COMMISSIONER IMLACH: Good. Now, Mr Miller?

30 MR MILLER: If the commission pleases, and I would like to put on transcript that if it appeared that I was having some sort of sport with my colleague at the end of the bar table that was not so, sir, and I do apologise for any inference that may have been drawn.

COMMISSIONER IMLACH: I think that was a bit of a latitude allowed on my part was the trouble, Mr Miller.

35 MR MILLER: If the commission pleases.

I will attempt to be brief, inasmuch as that I will indicate only those areas of the application apart from those which the CPSU has already indicated that it has no concern with, sir, and are in agreement.

5 If I, therefore, may take you to the commencement of the issues that are under concern, which in the award - or the application, I beg your pardon - is Clause 6 of the Award Interest and Parties Bound at section (b) thereof. It states that:

This Award is binding upon the Minister for Public Sector Management in relation to all employees covered by this award; and

(2) All employees covered by this Award.

10 It is my belief, sir, that the award should also indicate that the Tasmanian Development Authority should also be regarded as an employer as it is an employer with its own act and has employing powers thereunder.

15 We've had no argument proposed as to why the TDA should be removed or expunged or deleted from the clause, and certainly to my knowledge there are persons employed in the TDA which is a division of the Tasmanian Development Authority which still has, I believe, its own employing powers in persons as clerical officers, secretarial assistants, administrative staff and others under various awards and entitlements.

20 Similarly, as a definition there is no definition of the employer being an employer or being employed by the Tasmanian Development Act 1983. If we have one, then we just have the other to define what that employee is, or what that employer is, I beg your pardon - no, I don't, I apologise - I reiterate - if there is to be an inclusion of the Tasmanian Development Authority having an interest in the award, then it follows that there has to be a definition of what an employee is, being a person employed either by the Tasmanian - under the provisions of the State Managed State Service Act 1984 or/and the Tasmanian Development Act of 1983.

25 Similarly, there has to be a definition of what an employer is, being the Minister for Public Sector Management or the Tasmanian Development Authority.

30 So we have the award interest being regarded as being the TDA, an employer definition and an employee definition both incorporating the Tasmanian Development Authority and the acts relating thereto.

Similarly, sir, under clause 7 of the application we have the definition of a full-time employee means:

A person engaged to work for the full ordinary hours of work -

- and my concern is with the following words:

35 *- of the relevant position.*

40 I believe that is superfluous. A person could be a full-time employee within an agency - and there are some who I can give you examples of - who work roughly 50% of normal time in one position and 50% of normal time in another position. But, for all purposes, they are regarded as being a full-time employee. They are employed by an agency, albeit in two different positions, but all their entitlements, disadvantages, advantages, are those appertaining to a person working a full-time position.

My submission, therefore, would be, sir, that those words 'of the relevant position' are superfluous.

COMMISSIONER IMLACH: Right.

MR MILLER: We come now, sir, to Clause 8 - Salaries, and if I may say at the outset, sir, Ms Rallings' succinct description of the application to change the junior rates I believe fully outlines the need to bring the award salaries for junior officers together with their percentage rates in line with other awards, and I have no difficulty with that.

I can accept that there are some minor diminution in salary - in the words of 'take-home-pay', as it were - but on a close reading of the application and the transcript and files relating thereto it just seemed, sir, that there was - to use a colloquial expression, 'a cock up', and the full adult rate of the particular award should be applied, and I believe that is only fair and reasonable so to do. However, we then come to the proviso of - the first proviso -

COMMISSIONER IMLACH: I am sorry, Mr Miller, that reference you just made to the - Ms Rallings' general approach, or the minister's general approach, and the tying to the adult rate, are you saying that you accept it up to that stage?

MR MILLER: I accept the general thrust of that application. My concern is not so much with the change to the percentage rates of the adult rate. As I said, I believe that was a mistake that was made and has been perpetuated, and to bring it back to the appropriate adult rate I believe is reasonable. The proviso clause is in there and no-one is going to, or should not get hurt by it. My concern, sir, is not so much with those rates as expressed but with the proviso clauses under clause 8.

COMMISSIONER IMLACH: Right.

MR MILLER: And that is, and I will read it into transcript:

PROVIDED THAT an employee aged less than 21 appointed to a position classified at Class II or above -

I beg your pardon, sir, delete that. It is the second clause:

PROVIDED FURTHER that an employee aged less than 21 may, at the discretion of the employer be paid as if that employee had attained the age of 21.

That could well mean, sir, that a person less than 21 years of age could well be, at the discretion of the authority - of the employer - be paid something greater than the base 21 year of age for that particular award. In this case it is the General Employees Award.

After the expiration of a year my question is, and I would seek some response and if I get that response which is acceptable and it is on transcript I will be quite happy to leave it there. But a person may have 12 months service and would have an expectation of gaining incremental advancement through the salary scale. That would be a reasonable proposition. However, the words as laid down give me some cause for concern that there could well be an agency head or an employer who says, no, you are under 21 years of age - it could well be 18 - we are paying you as if you were 21 years of age, but at our discretion we will not advance you through the classification grading system or the incremental system.

Now if I can get an assurance from my colleague that the attitude of government is that those persons will be advanced through the normal incremental process, providing that they have full diligent service, et cetera, et cetera, I am willing to be silent on the matter and continue.

COMMISSIONER IMLACH: Yes, as I understand it, Mr Miller, what you are saying is if you have got a junior who is paid as an adult that if the person continues to be paid as an adult for 12 months and not yet having reached 21 they should go on to the next step of the adult rate.

5 MR MILLER: Yes, sir. The normal progressive incremental system should take effect.

COMMISSIONER IMLACH: Right.

MR MILLER: And there are checks and balances within that.

COMMISSIONER IMLACH: Right.

MR MILLER: If the commission pleases.

10 My next concern, sir, is with the deletion from the award which is presently at page 8 of the consolidation No. 3 of '95 General Officers Award, the second proviso there. I won't bother reading it into transcript, sir, but in the second paragraph of that it says, 'For the purposes of this proviso dependant', and talks all the way through from the
15 proviso clause of 'dependants may, on the determination of the controlling authority be paid the salary that would normally be received at the age of 21 years of age'.

Now again, sir, my concern with this may be seen to be somewhat pedantic, however, the award I believe is a document which is open to all persons who are employees covered under that award, and this particular proviso goes to those persons who are young persons under the age of 21 years of age.

20 In many instances those persons would not have a great deal of knowledge regarding award entitlements and matters relating to their occupation, and that's understandable. That's part of our raison d'etre for being that we as unions ensure that those persons to the best of our ability are informed and knowledgeable regarding conditions of service - or employment, rather.

25 And this particular clause relates to persons under the age of 21 years of age having to care for aged or dependant other persons, and for that there is the ability to grant to those persons, given the situations as described, a salary as if they were 21 years of age for that particular purpose of caring for dependant relatives.

30 My concern is, if this explanation is not in the award in the terms in which it is presently covered those persons who could well benefit from the proviso will have no reference point to even indicate to them that this is indeed a situation that they may well make application for.

35 That the matter is a total discretion, in any case, and that it will be applied without fear or favour in circumstances where it arises, and I again have little concern with that sentiment, however, I would put it to the bench that at the present time very few people in the state service as a whole - human resource managers may be aware of it - probably most personnel officers are not aware of it - the proviso, that is; and as a document, a legal binding document among all parties, I believe that the document
40 should be clear, be concise, and cover as far as genuinely possible those instances whereby - especially those younger people in the community in the working community - have the ability to pick up a document and look at it and within reason say I am now aware majoritively of the conditions or some of the conditions and entitlements to which I have the ability to apply.

45 I am not saying it is a statutory thing. As you'll read from the words it's, 'may on the determination of the controlling authority', et cetera, et cetera, apply and that - to that end, sir, I take the matter no further but would commend it to you. And I believe,

5 The Tasmanian Development Authority - well, TDR, Tasmanian Development
Resources, is a shotgun wedding of the old Tasmanian Development Authority,
Workers' Compensation Board, Mines and Industry and Safety, so basically we've not
got a body called Tasmanian Development and Resources and it has two employing
powers; it's got employing powers under the Tasmanian State Service Act and
employing powers under the Tasmanian Development Act. The Tasmanian
Development Act is purely for people under the Tasmanian Development Authority
who are employed on 3-year contracts. The TDA - sorry, the Tasmanian Development
Authority was formed in 1983 when it use to be the Agricultural Bank of Tasmania
10 and some people are still there who use to work in the old Agricultural Bank, and
when those people worked in the Agricultural Bank they were employed under the
Clerical Employees Award and that is why the Clerical Employees Award still refers to
the Tasmanian Development Authority.

15 I've spoken to a number of people at Tasmanian Development Authority to find out
whether any of their employees are employed under the Tasmanian Development
Authority Act. There is no employees under the General Officers Award. There is no
intention to employ anyone under the General Officers Award. The charter of the
Tasmanian Development Authority to promote Tasmania development and resources -
20 promote the economy of Tasmania. As such they don't employ any labourers or that
type of person. The cleaners that go there are actually employed by the Tasmanian
Development and Resources body under the Tasmanian State Service Act. Basically
there's no employees under the General Officers Award and that's it hasn't been
included in the past as the employing authority and that's why it would really have no
effect if we include it in the current General Officers Award.

25 That being the case, if we don't include Tasmanian Development Authority as an
employer, there would be no need to change the definition of employee in section 7 or
the definition of employer in section 7 of our application.

30 In relation to the definition of full-time employee on page 3 of our application, the
reason the words - the reason there is reference relevant position is that if you talk
about full ordinary weekly hours, ordinary weekly hours can imply the junta of the
whole state service or the normal working hours for anyone in a particular occupation.
It may not in fact be the hours that that employee is working. That is why the words
'relevant position' have been included.

35 COMMISSIONER IMLACH: And Mr Miller - sorry, to interrupt but we are on to it -
Mr Miller referred to one employee occupying two positions. What do you think about
'position' or 'positions'?

MS RALLINGS: That would be appropriate, I think, to deal with the situation as Mr
Miller outlined.

COMMISSIONER IMLACH: What do you think, Mr Miller?

40 MR MILLER: I couldn't quite follow Ms Rallings' reasoning there, sir. At -

COMMISSIONER IMLACH: Well just a minute - I think I'll let you complete - I'm
sorry about this - we're interrupting again. You complete what you are saying and I'll
ask the question after all that, Ms Rallings. Sorry.

45 MS RALLINGS: Now that I am aware that my explanation was unclear I will attempt
to do it again. The current clause refers to the four - the application refers to the four
ordinary weekly hours of work of the relevant position. The words 'relevant position'
have been included because of the board interpretation that can apply to ordinary
weekly hours. For example, if someone was a clerical assistant in the Department of
Community and Health Services, they have to work 38 hours a week. If they are a

sir, that that in essence would be the total summation of the concerns that the CPSU has with the application of the government.

5 If, sir, you are persuaded that the proviso clause as described clause as described - as I was recently talking about should be retained with inside that award, then perhaps on the second line the controlling authority may need to be changed to read, 'Agency' or 'Head of Agency'.

COMMISSIONER IMLACH: Yes. Thanks, Mr Miller. A couple of questions: at the - the reference to the TDA, it's not in the current award, is it?

MR MILLER: No, sir.

10 COMMISSIONER IMLACH: Is that - ?

MR MILLER: I don't know why it was excluded.

COMMISSIONER IMLACH: So you would like - submit, therefore, that the current award is deficient as well, is that right?

15 MR MILLER: Well, see - yes, when I look back to, say, the Clerical Employees Award - and I'm looking at No. 2 of 1995 [Consolidated] which was issued or gazetted on the 10th of January 1996 under persons and parties bound clause 6(b), I read as follows:

This award is binding upon:

(1) The Minister for Public Sector Management

- et cetera. And -

20 *(2) The Tasmanian Development Authority;*

(3) All employees covered by this award.

25 And then goes on, sir, again, in definitions of Clause 7 of the Clerical Employees Award to describe an employee and indicates the Tasmanian Development Act is the employing power and then goes on to the define the employer being the Minister for Public Sector Management or the Tasmanian Development Authority. I have no understanding as why it was kept in the clerical award which was a latterly updated award, but not in the General Officers.

COMMISSIONER IMLACH: Yes. Thanks, Mr Miller. A bit more grist for the mill there. Yes. All right. Thanks, Mr Miller.

30 MR MILLER: If the commission pleases.

COMMISSIONER IMLACH: Now what do you say to all that, Ms Rallings?

35 MS RALLINGS: Mr Commissioner, I'll go through and address Mr Miller's concerns in the same order that he raised them. The first concern was that the Tasmanian Development Authority is not referenced as an employer in subclause 6(b) and later on he also made reference to the reason - or the fact that the Tasmanian Development Authority was included as an employer in the Clerical Employees Award, but not in the General Officers. What I'd like to do is just run through a little history of what the Tasmanian Development Authority is and that might shed some light on why in the Clerical Employee Award they are included as an employer.

clerical assistant in the Public Sector Management Office they work 36.75. There can be argument and confusion about what the ordinary weekly hours refer to. Does it refer to the whole occupation of clerical assistants? Do it refer to the person within their organisation? For that reason we have included the words 'relevant position' so that there can be no, I suppose, confusion about which hours we're talking to. Is that a bit clearer or - ?

COMMISSIONER IMLACH: Yes, quite clear as far as I am concerned. We'll go off the record later about it.

MS RALLINGS: All right. The next concern that was raised was the proviso relating to employees aged less than 21 and whether they get incremental movements. The current award doesn't seem to address that. The clause applying to employees aged under 21 years of age with ... , on page 8 of the current award, does not refer to incremental movement once an employee has attained the age of twenty - sorry, once an employee has been in a position for over a year. Our application - because it's not in the current award, our application hasn't referenced incremental movement. I'm unclear of the practice in the State Service about whether juniors who are paid as adults actually receive incremental movements. It may be an appropriate issue to come before you on interpretation, but I don't think it really relates to this application here before you.

COMMISSIONER IMLACH: Yes, keep going.

MS RALLINGS: My colleague also referred to - or once again to the proviso relating to the employees aged less than 21 years of age. We have attempted, in our application, to reword that proviso in the form that you see - page 3 of our application - second proviso. The proviso is:

PROVIDED FURTHER that an employee aged less than 21 may, at the discretion of the employer, be paid as if that employee had attained the age of 21.

That clause in our application intended to replace the second proviso on page 8 of the current General Officers Award. If that - if our clause in our application is not appropriate the minister would be quite happy to delete the clause in our application and insert the current clause from the General Officers Award.

COMMISSIONER IMLACH: Yes. And that's it, is it not?

MS RALLINGS: Oh, there was another matter raised about if we include this proviso then we need change reference to the controlling authority to refer to head of agency. I would prefer if that was changed to reference to the employer who is defined as the Minister for Public Sector Management. In the public service, there is a series of delegations which determine who gets the controlling authority powers under awards, so it may be appropriate to still leave the determination of those delegations to the Minister for Public Sector Management.

COMMISSIONER IMLACH: That's - as I understand it, that's if I accept what Mr Miller said. Is that right?

MS RALLINGS: If Mr Miller accepts - well, I suppose my approach to the problem with the employees aged less than 21, that approach being to delete the clause we have included and insert the one in the current award into our application, then we may need to look at changing the wording of 'controlling authority' to 'refer to employer'.

COMMISSIONER IMLACH: Yes. Thanks, Ms Rallings.

MS RALLINGS: If the commission pleases.

COMMISSIONER IMLACH: Thank you. Now we'll just go off the record, thanks, Liz.

OFF THE RECORD

5 COMMISSIONER IMLACH: Yes. Well those matters will be attended to in my decision that we have discussed. I have noted your submissions. The operative date will be the - today's date.

Now is there anything else you'd like to say, Ms Rallings?

MS RALLINGS: No, thank you, Mr Commissioner.

10 COMMISSIONER IMLACH: Mr Miller?

MR MILLER: Nothing further to add, Mr Commissioner.

COMMISSIONER IMLACH: Right. All right. Thank you for that. And I propose as well to make sure, because it is quite a significant amendment, to prepare a draft and call the parties back privately to check the draft together. All right? This matter is
15 closed.

HEARING CONCLUDED