

## **TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984  
S 23(1) application for award or variation of award

### **Minister administering the State Service Act 2000**

(T14990 of 2022)

## **TASMANIAN STATE SERVICE AWARD**

PRESIDENT D J BARCLAY

HOBART, 23 DECEMBER 2022

### **Award variation – Appendix 19 – Legal Practitioners - operative date from first full pay period on or after 8 December 2022**

#### **DECISION**

**[1]** On 20 December 2022, the Minister administering the *State Service Act 2000* (MASSA) lodged with the Registrar, pursuant to s 23 of the *Industrial Relations Act 1984* (the Act), an application to vary the Tasmanian State Service Award (the Award).

**[2]** At the hearing in Hobart on 23 December 2022, Jane Hanna and Stuart Locke appeared for the Minister Administering the *State Service Act 2000* (MASSA) Natalie Jones appeared for the Community and Public Sector Union (State Public Sector Federation Tasmania) Inc. (CPSU), Robert Flanagan appeared for the Australian Workers' Union (AWU), Jacob Batt appeared for the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU), Caroline Saint appeared for the Australian Nursing and Midwifery Federation (Tasmanian Branch), David Genford appeared for the Australian Education Union, Tasmanian Branch (AEU), and Robbie Moore appeared for the Health Services Union (HSU). Written submissions were also received from the United Workers' Union.

**[3]** The Minister has provided written submissions. I venture to set out the introduction to those submissions:

"1. The purpose of this application is to vary the Tasmanian State Service Award to incorporate the industrial arrangements of Legal Practitioners employed in the State Service. This application is made in accordance with section 23 of the Industrial Relations Act 1984.

2. The conditions of service for Legal Practitioners are contained in the Legal Practitioners Industrial Agreement 2021, the Legal Practitioners Award and the Tasmanian State Service Award.

3. The Legal Practitioners Industrial Agreement 2021 and the Legal Practitioners Award are very limited in scope, encompassing only a small number of legal practitioner specific clauses, along with a number of generic clauses that can be

found in other industrial instruments in the State Service relating to many workgroups in the State Service.

4. The Legal Practitioners Award also contains a provision that establishes the terms and conditions of employment to be those contained in the Tasmanian State Service Award except to the extent of any inconsistency with the Legal Practitioners Award.

5. Accordingly, the majority of the terms and conditions for Legal Practitioners in the State Service are located in the Tasmanian State Service Award, which is significantly broader in scope than both the Legal Practitioners Agreement 2021 and the Legal Practitioners Award.

6. The Tasmanian State Service Award has an associated industrial agreement, the Public Sector Union Wages Agreement. This is a separate instrument and the conditions within it do not flow to employees that are not employed under the Tasmanian State Service Award. This means that whilst Legal Practitioners access conditions in the Tasmanian State Service Award, they do not presently receive the benefit of entitlements contained within the Public Sector Union Wages Agreement.

7. The industrial arrangements for Legal Practitioners have been the subject of ongoing discussions between the Department of Justice, in conjunction with the State Service Management Office, and the Community and Public Sector Union.

8. During those discussions, it became apparent that it would be beneficial to move away from retaining the separate industrial arrangements for Legal Practitioners, and instead integrate those conditions into the Tasmanian State Service Award.

9. Given the limited scope of matters covered by the Legal Practitioners Agreement 2021 and the Legal Practitioners Award, and noting the conditions of employment are well established and settled, the Legal Practitioners Agreement 2021 had over time become a vehicle for pay increases only. These pay increases over successive agreements have been consistent with the salary increases negotiated in the Public Sector Union Wages Agreement and the Tasmanian State Service Award.

10. This means that there is little utility to retaining these separate instruments, along with the associated administrative overhead of maintaining an industrial agreement and award.

11. Conversely, moving to the Tasmanian State Service Award provides an opportunity to gain immediate improvements in the remuneration and conditions for Legal Practitioners, by providing access to the various changes currently being progressed via the Public Sector Union Wages Agreement negotiations.

12. Improvements in the remuneration and conditions of Legal Practitioners are not only good for Legal Practitioners currently employed in the State Service, they also increase the capacity of the State Service to recruit Legal Practitioners in a competitive labour market. Recruitment is increasingly challenging in the current employment market for many occupations in the State Service, and this is the case for Legal Practitioners. One way to address this is to improve the competitiveness of the Legal Practitioner salaries, particularly in relation to the commencement salary, as well as improving other conditions such as leave entitlements.

13. Accordingly, it is proposed to incorporate the Legal Practitioners' conditions into the Tasmanian State Service Award via three steps.

14. Firstly, an Appendix will be added into the Tasmanian State Service Award which will accommodate the existing Legal Practitioner terms and conditions from the Legal Practitioners Award and the Legal Practitioners Agreement 2021.

15. Secondly, the salary points for the Legal Practitioner classifications will be aligned against relative reference points in the Professional Stream salaries. The purpose of this change is to improve the salary relativity between these two classification streams.

16. Thirdly, the salary and conditions changes agreed in the Public Sector Union Wages Agreement negotiations will be applied to Legal Practitioners by making the operative date of the Appendix the same as the operative date of the Public Sector Union Wages Agreement changes (outlined in the PSUWA submissions)."

**[4]** The specific provisions for legal practitioners are contained in the proposed new appendix to the Award which will be appendix 19. All necessary clauses from the Legal Practitioners Award and the agreement are transitioned into the Award.

**[5]** Salaries will be drawn from nominated counterparts in the Professional Stream of the Award with any changes flowing to the legal practitioners. This will result in an increase in most legal practitioners' salaries. Where potential disadvantage might occur to an employee in transitioning to the Professional Stream, any employee who may be so affected will be progressed to the next salary point. The legal practitioners will also receive the benefit of the increases provided from the registration of the Public Sector Union Wages Agreement 2022.

**[6]** It is convenient to set out the Minister's submissions in respect to the key benefits, public interest, questions of disadvantage and need to retire from the Legal Practitioners Agreement 2021 and the Legal Practitioners Award:

"39. As detailed above, key benefits of this change are:

- Increasing the salaries for Legal Practitioners in the State Service;
- Improving salary relativity across occupational groups via the salary point alignment with the equivalent salary points in the Professional Stream;
- Bringing forward the next salary increase for Legal Practitioners from July 2023 to December 2022;
- Improvements to leave entitlements arising from the new Public Sector Union Wage Agreement and related variations to the TSSA;
- Ensuring all benefits from future Public Sector Union Wage Agreements now automatically flow to Legal Practitioners;
- Increasing the commencement salary for Level 1 Legal Practitioner (by removing LP 1.1);
- Increasing the salary horizon for Level 1 Legal Practitioner; and
- Improving the capacity of the State Service to recruit and retain Legal Practitioners.

#### Public Interest

40. This change is in the public interest. As detailed earlier, this change improves the conditions of employment for Legal Practitioners, which assists with retention, as well as the capacity of the State Service to recruit Legal Practitioners in a competitive labour market. The public interest is served by employing and maintaining skilled and experienced Legal Practitioners to provide critical services within the Government and to the community.

41. This award variation is also in the public interest as it supports ongoing harmonious relationships between the employer and Legal Practitioners, providing stability and reducing the potential for costly and disruptive industrial disputes.  
No disadvantage

42. This variation of the award does not create any disadvantage to the conditions of employment for the Legal Practitioners employed in the State Service and instead improves several existing conditions such as salaries and leave entitlements.

43. Additionally, this change to the industrial arrangements for Legal Practitioners will not diminish the capacity of Legal Practitioners to engage in negotiations for their conditions of employment. The capacity for these negotiations presently exists through their union and this will continue as part of the Public Sector Union Wages Agreement negotiations.

44. Furthermore, as outlined earlier, a no disadvantage approach has been adopted in the translation arrangements for current Legal Practitioner employees, ensuring that all employees receive salary increases through the salary alignment and translation process, irrespective of the change to the remuneration of their associated classification.

#### Retirement of Legal Practitioners Award and Legal Practitioners Agreement 2021

45. To give effect to the Legal Practitioners Appendix in the Tasmanian State Service Award, which serves to replace the Legal Practitioners Award, it is necessary to rescind the Legal Practitioners Award in accordance with section 32(7) of the Industrial Relations Act 1984.

46. Given the Legal Practitioners Appendix in the Tasmanian State Service Award will also replace the Legal Practitioners Agreement 2021, it is also necessary to retire the Legal Practitioners Agreement 2021 in accordance with section 55(9) of the Industrial Relations Act 1984.

47. The replacement and rescinding of the Legal Practitioners Award and the retiring of the Legal Practitioners Agreement 2021 forms part of this application.

48. The Community and Public Sector Union has coverage of the Legal Practitioners in the State Service and they support the incorporation of the Legal Practitioner specific provisions into the Tasmanian State Service Appendix and the replacement of the Legal Practitioners Award and retirement of the Legal Practitioners Agreement 2021."


**[7]** I note the written submissions set out that it is necessary to rescind the Legal Practitioners Award. Unfortunately, the proposed variation to the Award does not provide for that to occur. During argument, however, I noted s 37(7A) of the Act, which provides that if I am satisfied that an Award no longer serves any useful purpose, I may, of my own motion, rescind the Award. In light of this Application, and the proposed variation, it is clear that the Legal Practitioners Award indeed no longer serves any useful purpose. It was apparent that the CPSU is the only Union that has members who will fall within the Award. Ms Jones, on behalf of the CPSU, indicated that she had no concerns with the Legal Practitioners Award being rescinded. Accordingly, I determined to rescind that Award, and I shall cause a notice to be published in the Gazette accordingly.

[8] In summary all parties submitted the variations sought do not offend the public interest, do not disadvantage those employees covered by the Award and recommended the variations to the Commission.

[9] I am satisfied that the proposed variation is consistent with the public interest requirements of the Act and does not disadvantage the Award-covered employees.

[10] The application for variation is granted and pursuant to s 24 and 36 of the Act, the Award is varied in accordance with the Application. The variation is operative from the first full pay period on or after 8 December 2022.

[11] An order reflecting this decision will follow.



D J Barclay  
**PRESIDENT**

**Appearances:**

J Hanna & S Locke for MASSA  
N Jones for CPSU  
D Genford for AEU  
R Moore for HSU  
J Batt for AMWU  
R Flanagan for AWU

**Date and place of hearing:**

23 December 2022  
**HOBART**