

HEARING RECOMMENCED 9.32am

COMMISSIONER: I'll take appearances 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. Thank you. Mr Paterson were you going to amend your application today?

MR PATERSON: Yes, if the commission pleases. We're ready to proceed on this matter and I have prepared draft orders and tables of changes to the award.

COMMISSIONER: I've got a number of questions so may be we might go off the record and have a look at them beforehand.

MR PATERSON: I'm happy to do that.

OFF RECORD 9.35am

ON RECORD 10.48am

COMMISSIONER: Now, Mr Paterson, I understand we were talking before we went off record about amending your application?

MR PATERSON: If the commission pleases, our original application, I believe was in fact made without consideration for the award review process. I think at that time the application was made in October last year and we hadn't contemplated pursuing the matters under principle 16. I'd seek leave to amend the application to include reformatting. One of the things that the application - this is under statement of particulars - it would add an eighth point: to review and re-format the award in accordance with principle 16 of the Wage Fixing Principles.

COMMISSIONER: Any objection to the amendment? Everyone is nodding their heads. Transcript saw that.

MR WATSON: No, commissioner.

MR BROWN: No objection, commissioner.

COMMISSIONER: Mr Paterson?

MR PATERSON: To take the parties to the substantial draft order that I've provided, I'd seek to - the parties here and yourself and your associate have been provided with a copy. I think that needs to be identified as an exhibit.

COMMISSIONER: Yes, we'll mark this **EXHIBIT ASU.1**.

MR PATERSON: Through our discussions we've identified a number of variations or amendments that need to be made to that document. I will also speak to the other substantive changes. If I could first proceed to the changes to the amendments that I propose to make to ASU.1 which I understand have the consent of the parties and address some of the commission's concerns.

The document that I'm talking to - ASU.1 - at page 5, the date of operation - to seek to amend the date of operation to read: this award shall come into operation from the first full pay period commencing on or after 14 December 1999.

The commission has drawn our attention to a formatting issue in respect of (c) under award interest. That will read: the following organisations have an interest in the award in accordance with the standard format of the commission.

To go then to page 7, a third of the way down the page is a clause that is headed 'probationary'. That is to read: probationary employee.

In (ii) beneath that, delete the words 'and sessional employee'.

To move then to page 9 towards the end of the clause on the certificate of service, delete the words 'chairperson or treasurer' and put 'the employer'.

At page 10 the table of the classification levels and rates of pay, this to be amended to insert the words 'community services employee' before each of the levels, that is, Level 1, Level 2, Level 2B, Level 3, Level 4, Level 5, Level 6 and Level 7.

A similar consequential - or the same issue needs also to be addressed in the classification descriptors commencing at page 20, the heading to each of the levels, the word 'worker' to be replaced by the word 'employee'. Again on page 20. The heading on page 22, 24, 26, 29, 32, I believe is the next, 35 and 38.

The next amendment in terms of correcting errors in the document, I believe it's at page 47 in the Part V - Hours of Work, Shift Work and

Overtime - wherever the word 'public holiday' appears, that to be replaced with 'holidays with pay in accordance with this award'.

5 I believe it occurs twice under shift work, clause (c)(iii). It also occurs under overtime, clause (3) subclause (b). I don't believe there are any other places where the word 'public holiday' is used but to the extent that it is, it is to be replaced by the words 'holidays with pay'.

10 The next amendment to this document goes to page 71 in the structural efficiency enterprise flexibility clause; subclause (c) is redundant - to be deleted. That related to the implementation of the classification structure some three to four years ago. It's a redundant provision in effect.

15 At page 72, Part VIII - Amenities, Residential Services - this clause is in effect provided for within the sleep-over clause so this whole part to be deleted and a subsequent part award compliance to be renumbered as Part VII.

And I believe that summarises the amendments to ASU.1.

20 There is one other - I mean a consequential variation to the table of contents which I understand will need to be reformatted in any event to the commission's standard format with the deletion of Part VIII, there will be a need for consequential amendments to the table of contents.

Mr Brown has also drawn my attention to an omission in this draft and I seek clarification as to whether it's an omission from this draft against the current award, but in the -

25 MR BROWN: No, it's not.

MR PATERSON: It's not. Well, maybe I'll leave Mr Brown to raise that one. The issue is that under superannuation -

COMMISSIONER: Page and clause?

30 MR PATERSON: It's clause 6, commencing page 40 but the actual issue arises at the top of page 41 where union is defined as the Australian Municipal, Administrative, Clerical and Services Union and doesn't include the Health Services Union of Australia. I've no opposition to that being included.

COMMISSIONER: Right, so it's agreed.

35 MR WATSON: That's agreed, commissioner, yes.

MR PATERSON: As there or the Health Services Union of -

MR BROWN: Australia, Tasmania No. 1 Branch.

MR PATERSON: Australia, Tasmania No. 1 Branch. I notice that's an omission that also would go back some years.

Unless there are any other amendments to the document that the commission or the parties require, clearly the -

5 COMMISSIONER: So you've tendered with exhibit ASU.1 an appendix.

MR PATERSON: I have.

COMMISSIONER: Is there requirement to amend anything now contained in the appendix?

10 MR PATERSON: There will be, particularly as to the inclusion in that appendix of Part A of VIII - Amenities. That will be deleted and what is there as Part IX will become Part VIII.

COMMISSIONER: And in wage rates, we're putting new wage rates for Grade 2B and inserting classification titles?

15 MR PATERSON: That needs to be in both clauses 1 and 3.

COMMISSIONER: Yes.

MR PATERSON: Insert new classification titles.

COMMISSIONER: Yes.

20 MR PATERSON: Do you wish to deal with that as a separate exhibit or take that as an appendix to ASU.1?

COMMISSIONER: Well, it will have to be an appendix to ASU.1 because we're going to be attaching this to the award as part of the order.

MR PATERSON: That's fine.

25 COMMISSIONER: Because we're required to notify everyone and all concerned as to what sections have changed.

30 MR PATERSON: I'd seek the commission's guidance as to whether the other variations such as adding the words 'employee' or deleting 'sessional employee' or just the tidying up of words need to be specified where they have no substantive provisions.

COMMISSIONER: They do. If we make an amendment to any clause we're supposed to highlight it.

We might just go off the record for a moment.

OFF RECORD 11.00am

ON RECORD 11.04am

MR PATERSON: If the commission pleases, in relation to the table which is headed 'Appendix Variation to the Award by Order No. 2 of 1999', there are several amendments to that document as provided
5 that need to be made. The first arises under Part II - Termination, under 'Notes' add the words 'alteration to separation certificate'. Under Part III, clauses 1 and 3, insert 'new classification title', I'd suggest.

Under that same part, Clause 6 - Superannuation, insert 'Health Services Union of Australia, Tasmania No. 1 Branch'.

10 Under Part V, 2 - Shift Work, and 3 - Overtime, it will be - replace the words 'public holiday' with the words 'holiday with pay'.

Further to Part VII - Structural Efficiency and Enterprise Flexibility, the annotation there should say: subclause in relation to classification implementation deleted. And in terms of this actual document, the
15 words that are there under Part VIII are no longer required because that is not the change being made. And the last part in this draft order will then become Part VIII rather than Part IX.

COMMISSIONER: Good. Thank you.

MR PATERSON: If I can return now to the other matters which I
20 haven't addressed which are the changes that are the substantive changes to the award given effect to by this order. There are a number of changes which arise from the award reformatting and review process. Those are clearly identified. The award interest and supersession clauses reflect the new standard wording of the
25 commission. The other substantial change is the parental leave clause which follows the new standard developed in conference under the commission's guidance.

As part of this process, the parties have further clarified matters related to the employment categories. There are new provisions in the
30 award for probationary employment. These, I believe will assist in preventing disputes in a number of areas in the absence of this type of provision. They have tended to arise with unacceptable regularity.

The option, given the way in which the casual employee is defined, an option is put in for a casual employee to take leave entitlements by
35 agreement in lieu of the loading which is the primary entitlement.

Under wage rates and classifications, in addition to the precision inserted to the award by the words 'community services employee', the classifications also include new rates and new descriptors for a new
40 classification of Grade 2B and the classification descriptors for Grade 2 have also been changed.

As the commission would be aware - and bear with me for just a moment - this matter goes back to the matter that was before the president some time ago in T6702 of 1997 which is an interpretation matter that went to the question of whether an employee could work without immediate supervision. The president was unable to - well, declaration was inappropriate and the applicant was ordered to make application to vary the award to clarify that provision and this application - this draft order - gives effect to that.

A number of other matters are also addressed in terms of being clarified; the sleep-over clause has been clarified and this relates to - I believe the provision now is clearer, there had been some potential disagreements about what the provision actually meant and the way in which it is now stated in clause 2 of Part IV I think will assist the parties in that matter being a lot clearer.

COMMISSIONER: Page 43.

MR PATERSON: Page 43 in fact, yes. The point (b)(ii) is where the change takes place and it clarifies that the sleep-over period is a maximum of eight hours worked in conjunction with a minimum of four hours paid at night shift rates. The way it was worded before, previous to these changes, left some ambiguity around that arrangement.

The annual leave clause now includes a provision that actually obliges the employer to pay the employee. Whilst there was an entitlement to paid leave there previously was a potential argument that there was no specific clause that obliged the employer to pay.

Holidays with pay are amended to include Recreation Day where Regatta Day is not observed. That is a very standard provision and was an omission in the early drafting of the award.

I believe that fairly and accurately summarises the changes that we seek to have made through this application. It is a consent application. The submissions to you are that this application gives effect to the principles of the commission in respect of making and varying awards. It's not against the public interest to do so and that it complies with the Wage Fixing Principles.

There is one further matter that we wish to put on record and I understand that we have consent to put this matter on record, that the parties here today are consenting to this draft order as amended. It is an agreed order but it is subject to the following provisions. It is put forward as an agreed draft order subject to the following provisions: there are three matters which the parties have agreed to continue discussion on. They are: the question of the definition of casual employment; the definition of fixed term employment, and a revisiting of the structural efficiency and enterprise flexibility clause.

Discussions will continue with a view to a further application to the commission to amend this award by consent and in consenting to this variation to the award, the parties agree that it doesn't limit or preclude such an application being made pursuant to the further implementation of principle 16 of the current Wage Fixing Principles in respect of those three matters.

I must say, just to put on the record, that particularly in respect of the fixed term and casual employee definitions, I believe that the matter here is somewhat different to other circumstances where I've been involved in this debate in other awards; that the parties have given this matter quite considered and considerable attention. The difficulty is that we have been unable to reach agreement on a position. It's not for lack of position which is often the case, it's not for lack of work or lack of commitment or lack of mutual recognition about the need to make the change. I think it comes back to the difficulty of actually reaching agreement on a precise set of wordings that the parties are prepared to consent to.

But again, I'd just like to take the opportunity to put on the record both in respect of the other union party through Mr Brown and through the TCCI - Mr Watson, it's my view, not been from lack of intent or will, it is more that it is a matter that is difficult to resolve in a way that the parties can agree, but I am more than willing and keen to give the commitment to progress that matter and to make whatever applications or undertakings are necessary to do that. If the commission pleases.

COMMISSIONER: Good. Thank you. Mr Brown?

MR BROWN: Thank you, Mr commissioner. I advise that the HSUA consents to the application before you in that the draft document ASU.1 is amended. We have no problems with them therefore are happy for it to go through as a consent order.

Certainly, in terms of the provisos that Mr Paterson outlined, and that is the further work that needs to be done in relation to the casuals definition, the fixed term provision and the structural efficiency and enterprise flexibility provision, those matters are all very important and they certainly are matters that the HSUA has a keen interest in. We hope that the parties will be able to satisfactorily resolve those matters in the new year and come before you again with an application that is a consent application which fixes those matters up for the benefit of the whole industry. If the commission pleases.

COMMISSIONER: Good. Thank you. Mr Watson?

MR WATSON: Commissioner, I can confirm that the document that's been provided to you today by Mr Paterson is a consent document which reflects the award review process thus far which includes reformatting and also changing of the clauses as outlined by Mr

Paterson and as confirmed by the document headed up 'Appendix - Variation to the Community Services Award'.

5 In relation to the matters that have been specifically identified as still requiring discussion, I'm confident that we can resolve those matters although I'd probably like to say we can deal with it this century but I don't think so, commissioner. But hopefully in the new year we'll be able to resolve those matters by consent and if that is the case then we will come to commission with a consent application under principle 16 to vary the award in relation to those matters. If it please the
10 commission.

COMMISSIONER: Right. No further submissions?

MR PATERSON: Only that I'd like to see those other matters done next year.

15 COMMISSIONER: Good. Right. I can indicate to the parties that I'll hand down a written decision in due course and an order in due course. There's still some work for the commission to do, however, it will be in favour of the application and the parties have put to me that this consent order should be operative from the first full pay period to commence on or after 14 December. That will be the case and we'll try
20 and get the award and the decision out as soon as practicably possible on the understanding that the parties still have three issues to consider as part of their ongoing deliberations on principle 16 of the Wage Fixing Principles.

25 I will make some comment in my decision that even though it's a consent document and a consent order there are still matters that have to be finalised and that you are going to progress those in the new year.

Thanks for your participation. This matter is closed.

HEARING CONCLUDED 11.18am