

AUSCRIPT AUSTRALASIA PTY LTD

ABN 72 110 028 825

Suite 25, Trafalgar Centre 108 Collins St HOBART Tas 7000
Tel:(03) 6224-8284 Fax:(03) 6224-8293

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TRANSCRIPT OF PROCEEDINGS

O/N 2370

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER J.P. McALPINE

T No 12451 of 2005

T No 12456 of 2005

NURSES (TASMANIAN PUBLIC SECTOR) AWARD

**Applications pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Australian Nursing Federation, Tasmanian
Branch and the Health Services Union of Australia,
Tasmania No 1 Branch and the Minister Administering the
State Service Act 2000 for the making of the above award**

HOBART

4.00 PM, THURSDAY, 8 DECEMBER 2005

**This transcript was prepared from tapes recorded
by the Tasmanian Industrial Commission**

HEARING COMMENCED

[4.15pm]

PN1

MS N. ELLIS: I appear in these matters on behalf of the Australian Nursing Federation. With me is MS C. SAINT.

PN2

MR P. BAKER: I appear on behalf of the Minister Administering the State Service Act. With me is MR. T. PEARCE.

PN3

MR T. KLEYN: I appear for the Health Services Union of Australia, Tasmania Number 1 Branch. With me is MR T. JACOBSON. I am seeking leave to intervene in this matter. It is an application from the Australian Nursing Federation but we will be seeking award interest in this award when it is made.

PN4

THE COMMISSIONER: Okay. Thank you. Ms Ellis?

PN5

MS ELLIS: Thank you very much, Mr Commissioner. The Tasmanian Branch of the Australian Nursing Federation is an employee organisation registered, a such, under Part V of the Industrial Relations Act. Our rules, chapter 2, clause (5) provide that we can have as members employees in the nursing industry. The objects of the organisation, chapter 1, clause (3) include, amongst other matters, the promotion and protection of members' interests, representation of members in industrial disputes, any relation to industrial matters, and to improve the conditions of employment of our members.

PN6

Our interest then in this matter, Mr Commissioner, is evident. The parties wish to establish an award of the Tasmanian Industrial Commission and an agreement under the Industrial Relations Act 1984 to resolve their respective claims and regulate the terms and conditions of employment of the employees, the subject of the proposed award. The Australian Nursing Federation Tasmanian Branch makes this application on behalf of our members as we believe that a return to the Tasmanian Industrial Commission will best protect their interest, as outlined in the objects of our organisation.

PN7

In 1992 Tasmanian nurses moved into the Federal jurisdiction of the Australian Industrial Relations Commission and obtained a Federal award. That award provided for a career structure for Tasmanian nurses. Today, that same career structure, among with other matters, is likely to be lost from the Federal award. The Australian Nursing Federation could remain within the Federal arena and, at the end of the five-year transitional period, return to the State.

PN8

However, in the meantime, it has become increasingly evident that the current Federal Government will severely limit the role of the Australian Industrial Commission. Therefore, the only Industrial Commission that will be able to provide a fair and equitable industrial relations system where all parties,

including unions and employees, will be treated fairly, is this jurisdiction in this Commission. It is on that basis, Mr Commissioner, then with that in mind, we have lodged our current application.

PN9

Today, the Australian Nursing Federation has sought to make a proposed award, the Nurses (Tasmanian Public Sector) Award 2005, and an agreement will be dealt with later. Naturally, under the Australian Constitution, so long as we continue to have our award and agreements in the Federal jurisdiction, they will have primacy over those made or approved within in this Commission, at least to the extent of any consistency. We have sought the revocation or setting aside of our Federal industrial instruments and that application has been made to the Australian Industrial Relations Commission.

PN10

The ANF have filed that application to set aside the Nurses (Tasmanian Public Sector) Award 2003, to set aside the certification of the Nurses (Tasmanian Public Sector) Enterprise Agreement 2004, to set aside the Nurses (Tasmanian Public Sector) Enterprise Agreement 2001 and to terminate the Nurses (Tasmanian Public Sector) Enterprise Agreement 1998 and 1995. The Federal award from which the terms that the proposed award has been drawn was made and has been maintained consistently with the wage-fixing principles of the AIRC in force from time to time and, accordingly, would have no inappropriate impact on the award regulation or terms of other Tasmanian employees.

PN11

Mr Commissioner, we submit that our application of the making of an award, namely, the Nurses (Tasmanian Public Sector) Award 2005 complies with the requirements as set down in section 23(1) of the Industrial Relations Act 1984 in that it is in accordance with the form prescribed. It contains names of the award that we seek to have made, contains the name of the applicant and contains a statement, namely, a copy of the proposed award which contains the full particulars of the award we seek.: the award we have proposed, the mirror of the existing award, which is within the Australian Industrial Relations Commission. We suggest the award be referred to the Nurses (Tasmanian Public Sector) Award 2005 and that that be effective from the date of setting aside the Federal award, the current Federal award.

PN12

The Commission is empowered to make an award in the terms sought by reference to Part III of the Act, and section 32, 34 and 36 in particular. The terms and conditions provided for in the award are those presently proposed under the award of the Australian Industrial Relations Commission and, accordingly, the making of an order is consistent with the public interest in accordance with section 36(2). The respective claims of the parties are capable of settlement by the making of the award proposed consistent with section 21 and it is in the public interest for the award to be made having regard to the interests of parties and employees concerned in the Tasmanian community.

PN13

The establishment of an award of the Tasmanian Industrial Commission is sought by the consent of the parties. The making of the award is consistent with the

scheme of the Industrial Relations Act 1984, consistent with the objects and scheme of the Workplace Relations Act 1996 and, in particular, section 111AAA and consistent with the transitional arrangement proposed of the Workplace Relations Amendments Work Choices Bill 2005 in providing for the employees of excluded employees to be regulated by State industrial systems.

PN14

Mr Commissioner, in summing up, ANF submits the application to make the award in compliance with the Industrial Relations Act and that ANF has a valid interest in the making of this award. I now commend the application to you. If the Commission pleases.

PN15

THE COMMISSIONER: Mr Kleyn?

PN16

MR KLEYN: Commissioner, I am not going to add too much more. The HSUA clearly supports the submissions made by the ANF. We see this as an opportune time - well, a necessary time to provide protection for nurse members; certainly, protection from the excesses of the Federal Government's work choices legislation which will take effect from March next year. We believe that the application lodged and the award is consistent with the provisions of the Tasmanian Industrial Relations Act and, likewise, we request that the award be made. Thank you.

PN17

THE COMMISSIONER: Mr Baker?

PN18

MR BAKER: Thank you, sir. I think the applicant organisations have quite clearly demonstrated to you this afternoon the reasons and the necessity for the making of the award in the terms outlined. I will be actually somewhat a little more lucid in my remarks when the revocation order is made in the Federal Commission as to the reasons why we are here before you today. But, having said that, it is, as outlined by Ms Ellis, that this matter by consent of the parties. The Tasmanian Government consents to the making of the award in the terms that have been outlined - or as presented, I should say, to the Commission.

PN19

We would suggest to you, strongly suggest to you that it conforms with principle 11 of the Commission's wage-fixing principles. Principle 11, sir, is of course the first award and the extension to the existing award. The award, as has been pointed out to the Commission, is a reflection of the current terms and conditions and wage rates that are applicable to nursing employees in the public hospital system in Tasmania. In accordance with that principle and in accordance with section 36 of the Act that goes to the public interest test, we would commend the application that is before you and would support the operative date as outlined by the applicant organisations. Thank you, sir.

PN20

THE COMMISSIONER: All right. Well, it certainly is within our jurisdiction to grant the award. I don't see any issues with the public interest principle.

..... in the Federal award, and I am happy to approve this award at the date when the Federal award

PN21

MS ELLIS: We have actually sought to set aside the Federal Award.

PN22

THE COMMISSIONER: When this commission is aware of that date effective on that date. I should say that, accepting that it is a transfer from one jurisdiction to another I do accept that there may be some drafting issues rectified in time and I am expecting that will happen. When we receive the final draft from - on or after

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PN23

MR T. KLEYN: Commissioner I appear for the Health Services Union of Australia, Tasmania No 1 Branch. With me is MR T. JACOBSON.

PN24

THE COMMISSIONER: Yes, Mr Kleyn.

PN25

MR KLEYN: Commissioner, in accordance with section 63 - particularly 63(10) of the Tasmanian Industrial Relations Act, we are seeking to have our - well, two things. One is to have us included in clause 6 of the award and the award interest clause, and also to have our certificate of registration amended to include the Nurses (Tasmanian Public Sector) Award. Now, Commissioner, in accordance with section 63(10), I have to demonstrate to you that we have membership that includes members who are employees of the - who are nurses. We have to demonstrate that it is consistent with our rules to cover nurses, and we have to demonstrate that it is within the orderly conduct of industrial relations of Tasmania that we become a party to this award. Now, I have got evidence of certainly our rules and of membership, if I can tender that.

PN26

THE COMMISSIONER: Yes. We will call the HSUA membership exhibit A1.

EXHIBIT #A1 HSUA MEMBERSHIP OF HSUA

PN27

THE COMMISSIONER: And your Constitution will be A2.

EXHIBIT #A2 HSUA CONSTITUTION

PN28

MR KLEYN: I will deal with the Constitution first, Commissioner, exhibit A2. If you look at Part II, Industry, it states clearly:

PN29

The industries in connection with which the union is registered are the industries of (a) the employment of persons employed or usually employed -

PN30

And then in Part A, the last line:

PN31

All classes of nursing, public or private.

PN32

And then on the next page, page 2, if you go to paragraph 2:

PN33

In the State of Tasmania in or about, or in connection with the carrying on of all community health centres -

PN34

etcetera, etcetera -

PN35

but not including those persons employed as registered medical practitioners.

PN36

Commissioner, I won't take you to every page of these rules, but I think it demonstrates that we have rule coverage to cover nurses. The applications before you are a group of nurses, their applications for membership with the Health Services Union, and on the second page and next pages are receipt of membership dues.

PN37

In terms of the final provision, I think it can be demonstrated by the fact that we have been a party to the Federal Nurses Award for quite some time, and the conduct of industrial relations in the State of Tasmania have not been unduly - well, have not been impacted upon by our coverage of nurses, along with the ANF, so I seek your approval. I seek your decision that we become a party to this award. Thank you.

PN38

THE COMMISSIONER: Thank you. Is there any comments or gestures from any of the other parties? No? Okay. Mr Kleyn, I am quite happy to approve this variation to the award.

PN39

MR KLEYN: Thank you.

PN40

THE COMMISSIONER: We will adjourn.

ADJOURNED INDEFINITELY

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