

AUSCRIPT PTY LTD

ABN 76 082 664 220

Suite 25, Trafalgar Centre 108 Collins St HOBART Tas 7000

Tel:(03) 6224-8284 Fax:(03) 6224-8293



TRANSCRIPT OF PROCEEDINGS

O/N 0330

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER J.P. McALPINE

T No 9925 of 2001

COMMUNITY SERVICES AWARD

Application pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 by the Australian Municipal, Administrative, Clerical and Services Union to vary the above award re wage rates, work value changes and pay equity

HOBART

10.30 AM, FRIDAY, 16 APRIL 2004

**Continued from 24.11.03 before
Deputy President R.J. Watling**

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

PN224

MR I. PATERSON: I appear for the Australian Municipal Administrative, Clerical and Services Union, and I also believe you have authority for me to appear on behalf of the Health Services Union of Australia.

PN225

MS J. THOMAS: Yes, good morning, Commissioner, and hello, and welcome.

PN226

THE COMMISSIONER: Thank you.

PN227

MS J. THOMAS: I appear for the Tasmanian Chamber of Commerce and Industry together with MR E KREMZER from Australian Red Cross, and MS K. THOMPSON from Family Based Care.

PN228

THE COMMISSIONER: Thank you. Well, this is for conference, but I think on record Mr Paterson if you don't mind giving me an overview of where we have been?

PN229

MR PATERSON: Thank you very much, Commissioner, and welcome to your new position. This matter as you would be aware from Deputy President Watling's decision in January originated a couple of years ago. The union formed the view on the basis of what our members were telling us that there had been significant changes in the work conducted under this award, and we initially made application under the pay equity principle. We then amended that to pursue it as a work value case, and over the period leading up to the decision we presented various documentary evidence to the Commissioner, and submissions from the union and from the employers, and that of course led to Deputy President Watling's finding.

PN230

In part of the background, I suppose the other part of the background is the rationale which is more in the record of conference rather than the actual transcript of any decision or the finding of the decision. The union particularly believed that it was a useful, pragmatic and appropriate process to go through to get the significant finding outcome first. Principally, to put the alert out to the funding bodies that there was something real happening that they would have to take account of.

PN231

The dilemma that the union fully appreciates that most of the employers in the community sector have is that they rely very heavily on State and Federal Government funding for the programs they deliver and the people they employ to deliver those programs in the community sector as very difficult to get a precise handle on the extent of the sector in Tasmania, and the best that I can do is with a really broad brush, is to indicate that there is around about \$100 million worth of health and human services funding in the sector.

PN232

We estimate that probably half of that goes to disability services under the Disability Service Providers Award, so that leaves us with funding just from - or not just from - funding through the State Government which includes joint Commonwealth/State programs of something like \$50 million. The best estimates that we have would indicate that somewhere between 70 and 80 per cent of that amount goes on wages. So we are looking at a wages bill that is probably 35 to 40 million dollars per year. There are small areas of Commonwealth only funding that wouldn't be included in that. There are six community legal services. There are probably a number of aboriginal services which would be directly funded by the Commonwealth that would fall under this award, and clearly, we don't have any way of estimating the extent to which all those services in toto actually rely and depend on pay according to the award.

PN233

My estimation would be that there are very few registered agreements that provide for wages at odds to the award. There are a few areas, in fact the area that Kay Thompson represents, I believe had - or has had and I believe still does have, enterprise agreements for their carers. Those people in any event wouldn't be affected by this application.

PN234

So there are very few areas - there is very little wages bargaining over and above the award. I would think that overwhelmingly in most levels of the award people would be paid the award rate. The exception would be at the top end, in the waged managerial executive officer type positions where they are paid according to the award, and I think that is a relevant fact in that that would be some buffering of the cost impact of the making of this award, more or less giving effect to Deputy President's finding.

PN235

In terms of an estimation of the number of employees affected, that is even harder to do. We have through various forums, the union, employers, and peak bodies in the sector, such as the Tasmanian Council of Social Service, TasCOSS, have asked and pressured the Department of Health and Human Services to fund a census to review and estimate the number of people employed, the levels at which they are employed, the length of service, the sort of information that would be very useful in terms of basic workforce planning as well as producing any sort of authority costing on the impact of wage variations under awards.

PN236

The subsequent step, or the steps that have happened outside of the Commission. The union has developed a position that was put to the TCCI, not in any particular formal sense, really an exchange of position really, and the position that we have put is based on three key elements. It puts a new level 8 into the award to deal with the higher level salaried, waged executive officers who exercise a higher level of responsibility, both within their organisations and in relation with the Board of Community Government, and the private sector generally.

PN237

It proposes to put incremental levels into each of the levels 4, 5, 6, 7, and the new - probably not the new level 8. That in fact could probably happily exist as a single spot. And it lifts the base rate, so that at the end of the day the full effect after the increments would be of the order of 18 per cent, is the position that we have put to employers. That has obviously been put without prejudice and should the matter come to you for arbitration in the event that we can't agree, we certainly will be looking afresh at what claim we make in the process of arbitration. We appreciate the dilemma that both the government and the employers have. Governments generally and historically in this sector in this State and in other States in Australia, have been - reluctant is not a strong enough word - but reluctant to make any commitment to a funding program before there is a knowable and costable outcome.

PN238

The exception was the period - I think probably in about 1986 to '95 when the Commonwealth did have a program that funded a sort of an open ticket in the budget, Federal budget, called movement to award wages that was clearly designed to cover the cost of implementing wages in the aboriginal sector originally, and in the wider community sector towards the end of the program. That saw something of the order of \$11 million come into the community sector with the implementation of the Community Services Award back in '94/'95. There is no such program in place at the moment.

PN239

The sector's view. I almost cynically say that we could ask for 50 per cent wage increases and they would probably agree, so long as it was funded. Obviously, when it is here in the Commission the tests are a bit more rigorous than that, but whilst the employers generally acknowledge and did acknowledge the weight of our submissions and the genuineness of the evidence that we put up, they are not in a position to agree if it is going to expose them to a cost impact where there is no commitment from government to fund.

PN240

The other part of the background. The union has written to the Premier and Treasurer and the relevant Minister, and I take their silence to mean that we are not likely to get any answer prior to the handing down of the State budget, and that the real work that needs to happen - principally, it is the employer's responsibility to secure the financial resources to deliver the programs they choose to deliver. However, we are not standing back and throwing eggs at them for doing nothing. We appreciate the whole system and we do as a union co-operate in a number of sector forums that work with organisations, and employers, and government.

PN241

So I think the reality of it is that any response from government is not going to be forthcoming before the handing down of the State budget, and that that is when the real political lobbying of government around the funding issue will have to take place. In relation to the timing of this matter, we believe that it should be possible and practicable to have an effect from the beginning of the next financial year. That would be what we would be aiming to, that is what we have been promoting to our members and to employers, to have an effective date of 1 July.

PN242

We have indicated that we remain willing to look at a negotiating - sorry, a phased-in process. In the model that I have suggested we would have a new level, a new rate of pay for a single spot salary at step 1. At step 2, we would have a first level and first - second increment, two levels, and then a third step, we would have the full implementation. That has certain practical advantages in terms of avoiding translation costs up front, and means that the full effect will be staged. I estimate that the cost - the full effect at the end of such a process is probably less than \$5 million, and I also had informal discussions with other people and I have more knowledge of the detail, and their numbers through a whole different set of assumptions end up not being a lot different to mine. So a very broad brush that approach.

PN243

That is where we are. I think we do appreciate also that in giving effect to this, there may need to be some work done to reflect the findings and the evidence that was presented to the Commission into the classification structure. We would not propose that there is any sort of wholesale review which would see the outcome delayed by 12 months or more, further.

PN244

On the other hand, I think the principles and the key points that we relied on in the evidence - and it may be useful if almost rather than doing it in this formal sense, if it is useful for me to in effect brief you or sit down with those documents and work through them, I am happy to do that. If you think that needs to be re-presented to you formally in this form, I am also happy to do that.

PN245

But to reflect some of those key principles. The working with clients with complex and multiple needs. The new models and the newer higher obligations in respect of managerial positions, and I suppose the other point that reflects in that is two-fold. One - two points, some of the boundaries between the classifications are not altogether clear to everyone who looks at them for the first time.

PN246

I believe that they are workable. It is a conceptual service delivery industry, it doesn't work with tools. The qualification regime for the levels that we are talking about is not precise. There are relevant checkpoints, but I think the industry continues to recruit people of degrees of skill and to graduate them through the industry without the sort of reliance on a formal qualification structure you might find in a professional award in State service, for example.

PN247

The other point in making that, is that I would whilst not relying on Federal awards for any outcome, there are in particular four Federal awards that cover social and community services. They are called the SACS awards - Social and Community Services Awards, particularly those in Western Australia, Queensland, the ACT, and the Northern Territory, and I mention those because they have a point-to-point comparison in terms of the classifications.

PN248

The classification structures adopted both in this award and those four Federal awards have a common origin, and the substance and the definitions are very, very comparable. So that highlights to me the fact that they are relevant classifications to use, but some of the boundary issues and some of the issues that we raised in this matter may be usefully put in as key indicators or benchmark functions in some of those, particularly around the boundaries between 4 and 5, 5 and 6, 6 and 7, and that the new level 8 would need to be clearly and obviously defined and demarked from the existing level 7. I think we would like to seek - well, we are happy to have wider discussions in conference. I think it would be useful if there were some directions coming out of today's proceedings to the parties. I think that something of the order of a calendar month to report back would be an appropriate time-frame, and within that frame I think there are probably certain tasks that either side can undertake.

PN249

Some work on that latter aspect that I mentioned, the classification indicators that may be appropriate to the implementation of this, and also by that time we will have had - or maybe a little bit longer, I stand to be corrected, but I think the State budget is due to be handed down on 20 May. So it may in fact be that some time towards the end of May might be an appropriate time to have the matter re-listed. Unless there is any further clarification or information you would like, we will leave it at that at this point.

PN250

THE COMMISSIONER: Thank you. Ms Thomas, would you like to - I am not looking for a response, but if there is anything that you want to clarify, would be helpful.

PN251

MS THOMAS: No, that was a comprehensive and accurate summary of where we are at today. I just wanted to have put on the record that the TCCI is working actively on the funding issues and has commenced some fairly high level discussions in the hope that on any day prior to the handing down of the budget, we might see something positive come out before then. So we are certainly working very hard on that, and we have had a few rebuffs to date but we won't accept that as a no at this stage, we will keep on trying, so, yes - and certainly happy with the time-frame that Mr Paterson has outlined, and believe it would be useful now to go into conference and maybe talk in a more informal manner.

PN252

THE COMMISSIONER: Yes, okay, thank you. We will go into conference now.

OFF THE RECORD

[10.50am]

RESUMED

[11.10am]

PN253

THE COMMISSIONER: So thank you for that. I would like to hand down a direction. I will read out what I have, but obviously if it is not exactly what we have agreed to, correct me. And what I will do is direct the parties to confer with a view to reaching an agreement, and towards a joint approach on the issues of funding the variations to the awards and the overall implementation, and that I ask you to report back within six weeks. Everybody comfortable with that?

PN254

MR PATERSON: Yes, that is fine.

PN255

THE COMMISSIONER: Okay. Approved. Thank you very much.

ADJOURNED INDEFINITELY

[11.12am]