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TRANSCRIPT OF PROCEEDINGS

O/N 0492

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 11493 of 2004

POLICE AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Police Association of Tasmania to vary the
above award re Clauses 2, 5, 7, 8, 9, 11, 12, 16, 17,
and 21 to insert new Clauses 22 and 23 and renumber
existing Clauses 23 to 26**

HOBART

9.30 AM, FRIDAY, 28 MAY 2004

HEARING COMMENCED

[9.30am]

PN1

MS A. BRADFORD: I appear for the Police Association of Tasmania.

PN2

MR F. OGLE: I represent the Commissioner of Police and I have with me MR SIMON GARDNER also representing the Commissioner of Police. It is Simon's first appearance, so I would ask you to go a bit easy on him, Commissioner.

PN3

THE COMMISSIONER: All right, welcome along, Mr Gardner. Who do I - Ms Bradford?

PN4

MS BRADFORD: Yes, Commissioner, thank you. If it pleases you, sir, we will deal with application T11493 of 2004 first?

PN5

THE COMMISSIONER: Yes.

PN6

MS BRADFORD: This application seeks to vary the Police Award 1 of 2001. The variations have been negotiated by agreement with the agency, the sum sought by the agency, and others by the association. Variations involve the usual increases to expense related allowances resulting from CPI adjustments, a number of amendments to existing clauses and the introduction of two new clauses dealing with the recently introduced full-time special capability unit and dog handlers. There is also a couple of variations relating to bereavement leave and paid adoption leave which have resulted from the most recent round of workplace bargaining. I will go through all of the changes with you and provide detail on the new clauses.

PN7

THE COMMISSIONER: Thank you.

PN8

MS BRADFORD: Okay. Clause 2, Scope. This amendment is as a result of the introduction of the new Police Service Act 2003, and this change occurs throughout the document. All reference to Police Regulations Act 1898 and the Police Regulations 1974 have been removed and replaced with Police Service Act 2003 or the Police Service Regulations 2003. Clause 5.3, Supersession and Savings, is deleted. Clause 7, Definitions. The definitions of de facto spouse, dependant relative, and spouse currently appear at clause 16.1, Definitions and the Leave Provisions.

PN9

The definition of spouse also appears at clause 12.1, Definitions and Transfer Expenses, and there is also a reference to dependant relative at clause 11.4.2, Isolated Area Expense Allowance. So given that these terms appear in various areas throughout the award, it is appropriate that these three definitions be moved

to clause 7. However, the definitions of de facto spouse and spouse have been amended slightly. De facto spouse has been amended to include recognition of same sex relationships.

PN10

This amendment is a positive change and reflects contemporary management practice. The definition of dependant relative remains the same and the definition of spouse has been amended and no longer includes reference to former husband, wife or de facto spouse of the member. Former husbands, former wives, and former spouses were originally recognised and specific to carer's leave which are included in the leave provisions, and they were introduced into the award in 1997 and they closely follow the model clause appended to the Full Bench decision of 23 December 1996 in matters T6296 and T6441 of 1996. In 2001, when the police award was consolidated, amendments were made that saw changes to the definition of immediate family in the leave provisions.

PN11

Reference to former spouses that were included in that definition of immediate family were moved to the definition of spouse. I can't really tell you why, sir. It has since been realised that this was a mistake, so we have righted that wrong, Commissioner, and reference to former spouses has been rightly moved back to the definition of immediate family, which appears at clause 16.1 in the definitions for leave provisions, and we will come to that in a while.

PN12

The definition of member has changed to reflect the new title of the police service legislation as explained previously. The definition of Tasmania Police Service is deleted as the new police service legislation no longer has any reference to the term police force and clarifying that the police service also means the police force was the original intent of that definition. Clause 8, Salaries. There is a new insertion of a clause here, clause 8.1.4. This clause sets out the formula for payment of salaries. The parties discussed it some time ago and it was inadvertently left out of the last award consolidation.

PN13

The formula is currently used to pay salaries and the shift and penalty allowance which is paid fortnightly. The identical formula appears in the shift and penalty allowance provisions. Clause 8.2, Calculation and Payment of Salaries. Clause 8.2.2 is deleted. All salaries are paid by direct deposit into the member's nominated financial institution currently. There has not been a time in recent memory where a police officer has requested payment of salary by other means, so this clause is seen to be no longer required. As a result of this clause being deleted, clauses 8.2.3 to 8.2.8 have been renumbered to 8.2.2 to 8.2.7.

PN14

THE COMMISSIONER: Yes.

PN15

MS BRADFORD: Clause 8.7.4, Classification Standards for Inspectors. Clause A of this clause has been deleted due to the appointment provisions in the new police service legislation. Clause 8.7.4B has been amended to reflect the title of the Police Service Act and has been renumbered to clause 8.7.4A. Clause 8.7.4C

becomes clause 8.7.4B. Clause 8.7.5, Classification Standards for Superintendents.

PN16

Clause A of this clause - sorry clause A has been deleted for the same reasons mentioned above for inspector in relation to the appointment provisions. Clause 8.7.5B becomes clause 8.7.5A. Clause 9, Allowances, and 9.1, Higher Duties Allowance. The word "full" has been deleted to eliminate misinterpretation. Part-time police officers and police officers who job share sometimes perform higher duties and in practice have been paid this allowance and deleting the word "full" removes any doubt about the entitlement for that group of employees.

PN17

Clause 9.8, Skipper's Allowance, 9.8.1 is deleted and a new clause inserted. In its place is 9.8.1A and B. The new clause broadens the ability for a skipper of a police vessel or an acquired vessel to receive the allowance. Subclause A nominates currently operating vessels, police vessels, Van Diemen, Freycinet, and the Vigilant, as vessels whose skippers will receive the allowance.

PN18

Previously only the skippers of the Van Diemen and the Freycinet received the allowance, although by agreement some time ago the skipper of the Vigilant commenced receiving the allowance. However, the Vigilant fell just short of the length requirement that is mentioned in the skipper's allowance provision and also did not require the engine driver, grade 2. This clause no longer places a restriction on the minimum length that the vessel must be. However, still requires a qualification of Master Class 5, and an EDG2 certificate, or an EDG3.

PN19

Subclause B provides the opportunity for the controlling authority to approve the allowance to members who skipper new police vessels or other required vessels as the case may be providing the officer fulfils the minimum qualification criteria set out in subclause A, that is, that they have their Master Class 5 or EDG2 or 3. Clause 9.8.2 and 9.8.3 remain the same, 9.8.4 has been amended slightly to reflect the new wording of clause 9.8.1. Clause 11, Expense Allowances. The variation to expense related allowances are largely related to increase in monetary amounts, and I would like to make a general submission in relation to those increases, although there are a couple of other amendments which I will explain as I come to them.

PN20

The adjustment to the monetary amounts are in accordance with the Consumer Price Index adjustment calculated for the period March 2003 to March 2004, and this adjustment is calculated at 1.98 per cent. I seek to tender the method of calculation to arrive at the percentage claim together with a document downloaded directly from the Australian Bureau of Statistics.

PN21

THE COMMISSIONER: I will mark that A1.

**EXHIBIT #A1 METHOD OF CALCULATION AND DOCUMENT
DOWNLOADED FROM THE AUSTRALIAN BUREAU OF STATISTICS**

PN22

MS BRADFORD: Thank you. And this indicates the changes to the indices in the relevant quarters. The formula has been established in accordance with T833 of 1987 and which I understand has prevailed since that time. In clauses 11.3.2 and 11.4.2B the location of Tarraleah has been removed as the town of Tarraleah no longer has a police station. Clause 11.7, the Motor Vehicle Expense Allowance. The increase to this allowance has increased somewhat more than the 1.98 per cent.

PN23

This is because we inadvertently omitted this allowance on the previous two variations to expense allowances. In adjusting this allowance, I look to T10847 of 2003 in relation to amendments to the General Conditions of Employment Award and then added the most recent adjustment of 1.98 per cent. The adjustments now brings this allowance into line, Commissioner.

PN24

THE COMMISSIONER: Yes, thank you.

PN25

MS BRADFORD: Clause 11.10, Plain Clothes Expense Allowance, has been amended with the introduction of two new subclauses, 11.10.1E provides the ability for an officer carrying out personal protection duties in a secondary role to be able to receive an advance payment of \$200 to assist in the purchase of appropriate clothing to carry out those duties. It is an advance payment and not an extra payment. In essence, if they receive the allowance or the advance, then the officer would not receive the daily plain clothes allowance that they would be entitled to until such time as the daily allowance exceeds the advance payment.

PN26

THE COMMISSIONER: Where will I see that one, Ms Bradford? Is this 11.10?

PN27

MS BRADFORD: Well, it is 11.10E - 11.10.1E, Commissioner.

PN28

THE COMMISSIONER: Yes, thank you. Yes?

PN29

MS BRADFORD: Clause 11.10.2 provides the controlling authority with the discretion to approve the plains clothes allowance to officers in special circumstances. That is a new provision and wasn't there previously. Clause 11.11, Relieving Expense Allowance. The wording of this clause has not changed at all but only the format which we believe simplifies it. Clause 12, Transfer Expenses. The definition of spouse has been deleted from clause 12.1 and this is as was explained earlier, it has been moved to 7.1.

PN30

Clause 16, Leave. The definitions of de facto spouse, dependant relative, spouse and immediate family member have been deleted. The definitions of de facto spouse, dependant relative, and spouse have been moved to clause 7.1, and the new definition of immediate family is inserted. This takes the place of the former definition immediate family member and now includes reference to former spouse and former de facto spouse. This definition has specific application to carer's leave.

PN31

Clause 16.2, Bereavement Leave, has been enhanced to provide up to 10 days paid leave in the event of the death of a spouse or child of an officer and such additional leave as approved by the controlling authority. This is part of the recent round of workplace bargaining and is available retrospectively to 1 February 2004. Clause 16.3.1A, Carer's Leave, is amended to reflect the new title of the police service regulations. Clause 16.4, Defence Leave, 16.4.2 has been amended more as an issue of clarification.

PN32

The new words reflect that leave under this clause can be taken in one or more periods totalling not more than 16 days in a calendar year. Clause 16.4.3 is a new provision that allows a police officer whom is also an officer in the structure of cadets and the defence forces to have up to 16 days leave of absence in one or more periods in a calendar year to carry out those duties. This is a new provision and is welcomed by our members.

PN33

The new clause 16.4.4 is a rewrite of the old 16.4.3 and takes into account the new provision I just mentioned. Clause 16.6.10A - 16.6.10A, Special Maternity Leave and Sick Leave, has been amended to where a pregnancy terminates at 22 weeks other than by the birth of a living child or where the stillborn child weighs more than 500 grams. This is an enhancement of the provision which currently is set at the pregnancy terminating at 28 weeks and it reflects practice in Tasmania.

PN34

THE COMMISSIONER: Yes.

PN35

MS BRADFORD: Clause 16.8, Adoption Leave. The provisions for adoption leave will now extend to 12 weeks paid adoption leave. This new condition has resulted from the recent workplace bargaining round and it is available retrospectively to 1 February 2004. Hence, clause 16.8.2 has been rewritten to include the new provisions for paid leave. Clause 16.8.3 deals with adoption leave without pay and the remaining clauses within clause 16.8 have been amended to take into account the new provisions. Clause 16.9.1E, Recreation Leave, has been rewritten - - -

PN36

THE COMMISSIONER: Sorry, just picking that up - the 12 weeks paid leave that is new, is it?

PN37

MS BRADFORD: Yes, it is.

PN38

THE COMMISSIONER: Yes.

PN39

MS BRADFORD: And it is retrospective to 1 February, Commissioner.

PN40

THE COMMISSIONER: Thank you.

PN41

MS BRADFORD: The without paid leave remains the same.

PN42

THE COMMISSIONER: Yes.

PN43

MS BRADFORD: Yes. Clause 16.9.1E, Recreation Leave, has been rewritten to include that an officer is entitled to be credited with one day's recreation leave for any day the member was required to resume duty whilst on recreation leave, and further where a member resumes duty on recreation leave and performs duty in excess of a normal rostered shift of at least eight hours, the member is entitled to claim overtime for those excess hours or they can by agreement have time off in lieu on an hour for hour basis.

PN44

This is obviously in addition to the day's credit the officer would receive for resuming duty whilst on recreation leave. Clause 17, Part-time Service. Clause 17.15, Overtime for Part-time Members, has been amended. This particular clause has been the subject of misinterpretation since its rewrite in 2001. Not so much by us but by people managing it. Hopefully, the new provisions will clarify the issues and I don't mean my colleagues here.

PN45

MR OGLE: I wonder who she does mean?

PN46

MS BRADFORD: Clause 17.15.1 and 17.15.2 are not new words they have simply been split into two subclauses. Clause 17.15.3 are new words and clearly spell out that call-back provisions apply to part-time members. What this in effect means, Commissioner, is that if a part-time officer is called back to duty on a non-work day or even on a work day prior to commencement of duty or after the officer has finished duty for the day, then call-back provisions of clause 15.3 shall apply.

PN47

The only time the part-time officer would not receive overtime payments for work in excess of their normal rostered hours is where their normal rostered shift is less than eight hours duration and they are required or agree to work the extra hours immediately following their normal rostered shift. They would receive single time for the hours up to eight hours including their normal working hours

and then overtime provisions would apply. The part-time officer worked a 10-hour shift then they would receive overtime after their 10-hour shift.

PN48

Clause 21, Physical Surveillance Services and Technical Surveillance Services. The definition of member has been amended to reflect the title of the new Police Service Act. The monetary amount in clause 21.11.1 has increased in line with the increases to expense related allowances. Clause 21.11.2, 21.11.3, 21.11.4, and 21.11.5 have been rewritten. However, the intent remains the same. It is a rewording of the clauses. Clauses 21.11.6 remains the same and 21.11.7 is a rewording of the existing clause.

PN49

Clause 22, Taskforce Operations, has been renumbered to clause 24, and the definition of member in clause 22.1 has been amended to reflect the title of the new Police Service Act. Specialist Capability Unit. This next clause is the new clause 22, and relates to police officers who work in a full-time capacity in the recently formed specialist capability unit. This new unit and the bomb dog handlers which I will speak of shortly are part of the State Security Unit, which was launched by the Premier in May 2003.

PN50

The specialist capability unit is a group of highly trained police officers with specialist skills. However, most carry out their specialist role be it as a negotiator, bomb response officer, or special operations in a secondary role. This group of officers are recognised under clause 9.5, Specialist Squad Allowance. The State Security Unit provided for some special operations officers to carry out their duties in a full-time capacity, hence this new clause.

PN51

The new clause provides for conditions of service that they will work by. It provides a 26.25 per cent shift and penalty allowance and a 5 per cent allowance in recognition of flexible working conditions including limited travel allowance claims, flexible rostering with quick shift changes, and rostered changes without notice for major events and unplanned circumstances involving high risk events with immediate threat to life.

PN52

Also, it provides for 12 hour shifts and restricted over-time when shifts change. There is an identified need for a significant degree of flexibility with this group of employees. The full-time members will no longer receive the specialist squad allowance. This new agreement was struck in consultation with the police officers affected and was negotiated over a period of time with the Commissioner of Police and the President - with the Commissioner of Police, and the Commissioner of Police and President of the Police Association signing the agreement on 26 March 2004, and I seek to tender a copy of that signed agreement.

PN53

THE COMMISSIONER: Thank you. I will mark that A2.

EXHIBIT #A2 SIGNED AGREEMENT DATED 26/03/2004

PN54

MS BRADFORD: The wording of the new clause is exactly the same as the wording of the signed agreement. There is one small amendment however, clause 22.2.4, the word "ember" on the last line should read "member".

PN55

THE COMMISSIONER: Yes.

PN56

MS BRADFORD: And I have an amended page, Commissioner, that I will tender. That is page number 15.

PN57

THE COMMISSIONER: Thank you, yes. Yes, we will incorporate that into the document.

PN58

MS BRADFORD: The affected officers took up their new positions in October 2003 and the entitlement to this clause is available retrospectively to 23 October 2003. The agreement is in place for a period of 12 months from that date, and a review will occur prior to its conclusion and will take into account the flexible roster requirements expected of members during this period. Clause 23, Dog Handlers. This is also a new clause and the officers affected are also part of the new State Security Unit.

PN59

The new clause provides the conditions of employment for officers who commenced duty in a full-time capacity as dog handlers in November 2003. The provisions of the clause were negotiated over a period of some months and involved consultation with the officers affected. An agreement was reached and the Commissioner of Police and the President of the Police Association signed the agreement on or about 23 April 2004, and I will tender that signed agreement. Thank you.

PN60

THE COMMISSIONER: So mark that A3.

EXHIBIT #A3 SIGNED AGREEMENT

PN61

MS BRADFORD: The dog handler's allowance is set at a rate of \$6000 per annum and will be adjusted in line with award agreement wage increases that occur from time to time to the base salary for police constables. This allowance is payable in recognition of availability and standby either rostered or required by the Commissioner to ensure coverage. Also the requirement to train, care, feed, clean and maintain their dog and kennel on any non-work day and outside normal

rostered hours. Also for the disturbance of leisure and for the specialist skill and training required for dog handlers.

PN62

It is expected that unless special circumstances arise, dog handlers will feed and train their dog during normal rostered hours. Unfortunately, there have been a couple of omissions from the document you have as in the variation document, and also an error with the clause number, and I have the new amended pages 20 to 23 here to tender, and I will take you through those three amendments.

PN63

THE COMMISSIONER: Thank you.

PN64

MS BRADFORD: I won't be very - they are not cumbersome, Commissioner.

PN65

THE COMMISSIONER: Thank you.

PN66

MS BRADFORD: There is an omission from clause 23.2.2 and I seek to insert the words, Commissioner, the words being 23.2B, requirement to train, feed, clean and care for their dogs and kennel on any non-work day. Those words were inadvertently left out.

PN67

THE COMMISSIONER: That is in?

PN68

MS BRADFORD: 23.2.2.

PN69

THE COMMISSIONER: 23.2.2, yes.

PN70

MS BRADFORD: B.

PN71

THE COMMISSIONER: Yes.

PN72

MS BRADFORD: So B, C, and D will now read C, D, and E.

PN73

THE COMMISSIONER: Yes.

PN74

MS BRADFORD: Yes. Clause 23.5.4 near the top of the page - near the top of page 21 should read 23.4.4. Just a misnumbering there. And finally clause 23.5.2 should read dog handlers start and finish work from home when in care the dog handler and/or vehicle. Now, in relation to that it is accepted that there will be times when the handler won't be finishing work or starting work from home

because they may very well be in another location like the academy or another location within the State, but generally speaking if they are working from their home stations, it is accepted that they would start and finish work from home.

PN75

These amendments have been agreed upon by the parties, Commissioner. The new allowance recognises the added responsibility of dog handlers to care for their dog at all times. There may be exceptions to this whilst they are on leave, but generally speaking it is acknowledged that whilst a dog handler has the care of a police dog, the dog is their responsibility both on and off duty. There are also other conditions relating to leave and expectations with tenure contained within the document.

PN76

As the dog handlers took up their full-time positions in November 2003, the entitlement to this clause is retrospective to 10 November 2003. Clause 23, Salary Sacrifice, has been renumbered to clause 25. Clause 24, Public Holidays, has been renumbered to clause 26. Clause 25, Consultation and Dispute Settlement Procedures, has been renumbered to clause 27, and clause 26, No Extra Claims, has been renumbered to clause 28. That concludes the award matters, Commissioner. If you don't have any questions, I will move on to the wage fixing principles and public interest?

PN77

THE COMMISSIONER: Yes, certainly, thank you.

PN78

MS BRADFORD: This is an application by consent, Commissioner, and aside from increase to expense related allowances the variations before you today have been made for good and practical reasons, that is, clarification of intent, improved or broadening conditions, and ease of managing conditions. I would submit that the variations do not offend the wage fixing principles and the public interest considerations of the Act. I would submit that the agency has agreed to the variations and therefore has the economic capacity to pay.

PN79

Further, I believe the application is consistent with the principles of the Commission. I would submit that the variations have retrospectivity, namely, bereavement leave, paid adoption leave, the specialist capability unit allowance, and the dog handler's allowance be approved as the parties agree on the retrospective dates. Other than the retrospective dates, I would submit that the date of operation be effective from the first full pay period after date of decision. My colleague informs me that the agency is able to manage the change with a minimum of bother, and that concludes my submission.

PN80

THE COMMISSIONER: Just on that last point, Ms Bradford? The retrospective components are identified in their respective clauses, are they?

PN81

MS BRADFORD: They are.

PN82

THE COMMISSIONER: Yes.

PN83

MS BRADFORD: Yes.

PN84

THE COMMISSIONER: So if the total document is operative, for example, from the first pay period to commence on after today?

PN85

MS BRADFORD: Yes.

PN86

THE COMMISSIONER: That takes care of itself, there is no problems with that?

PN87

MS BRADFORD: I don't believe so, so no.

PN88

THE COMMISSIONER: No, no, I am sure you are right but I just wanted to clarify that. Yes, thank you, Ms Bradford. Mr Ogle or Mr Gardner, what is your position? Mr Gardner?

PN89

MR GARDNER: Commissioner, the Department of Commerce and Public Safety agree the overview of Ms Bradford. We would just like to make some additional comments and they clarify some of the amendments that have been made. In respect of 16.6.10, Special Maternity Leave and Sick Leave, some consultation was had with the Royal Hobart Hospital and that is how we came to the number of 22 weeks and 500 grams for that clause, and in respect to 16.8.2, Entitlement to Paid Adoption Leave, at point B, paid adoption leave was previously six weeks and has been changed to 12 weeks.

PN90

THE COMMISSIONER: Yes, thank you, Mr Gardner. Having heard the parties, I am satisfied that the variations are consistent with both the wage fixing principles and the public interest requirements of the Act. The award will be varied and shall operate from the beginning of the first pay period to commence on or after 28 May 2004. The clauses which have retrospective application are identified within the clause and I am instructed, or I am advised that there is no administrative difficulties associated with that. So the variations are approved and a formal decision to that effect will be issued in the new few days. Can we turn to the next matter?

ADJOURNED INDEFINITELY

[10.04am]