

HEARING RECOMMENCED 10.30am

COMMISSIONER: No alteration to appearances? Right. Ms Shelley?

MS SHELLEY: Yes. Can I seek leave to amend the application?

COMMISSIONER: Yes.

5 MS SHELLEY: And to delete all of the words that go to the particulars and to replace them with 'amend the award to give effect to clause 16.1 of the review of the Wage Fixing Principles 1998'.

COMMISSIONER: Yes. Good. Thank you. Any opposition to that?

MR O'NEILL: No, certainly no opposition, sir, to that, thank you.

10 COMMISSIONER: Leave is granted. Ms Shelley.

MS SHELLEY: It's my understanding, Mr Commissioner, that the TCCI has provided you with a copy of a reformatted award - is that correct?

COMMISSIONER: I don't think so.

15 MS SHELLEY: No. Right. Can we just go off the record for a minute?

COMMISSIONER: Yes.

OFF RECORD 10.31am

ON RECORD 11.55am

COMMISSIONER: Good. Over to you Ms Shelley.

20 MS SHELLEY: Thank you. I understand the commission has now been provided with a copy of a document which was prepared by the TCCI which is a reformatted award and I think the simplest thing would be to have the TCCI take you through the document pointing out, I suppose, how it complies with the elements of 16.1 of the
25 principles and also indicating a few changes to the document as a result of the discussions which have just taken place - a few minor amendments.

COMMISSIONER: Right. Well, I'll tell you what, I don't want to deal with any minor amendments in a document of this nature. I need to
30 get the document. I'm not going to sit here and go through amending a document of this size, some sixty pages.

MS SHELLEY: Okay. There are four such amendments.

COMMISSIONER: Are there? Well, I still at the end of the day, I want the completed document before me so I think that's a job you have to do.

5 I think there is a need also to get that index of the changes and that will have to be attached to the order and the decision saying precisely what the application seeks to do, and it will be vary all those clauses in a certain way. So that will have to be done.

The wage fixing principles require this new format; I'm not too sure that I want to go chapter and verse into every conceivable variation.

10 MS SHELLEY: We'd be here for a month.

COMMISSIONER: That's right. But if you want to take me through where it complies with the wage fixing principles, I think that's essential for just the sake of the case.

15 MS SHELLEY: Yes. I think what the intention was a brief description of how it does things like deal with updating parties and persons bound.

COMMISSIONER: Yes, the things that are mentioned in the principles.

MS SHELLEY: The reorganisation and those types of things.

20 COMMISSIONER: Right, rather than the document itself.

MS SHELLEY: Yes. Except, as I say, we did pick up four changes that we made in order to make sure that the award was absolutely up to date.

25 COMMISSIONER: Well, are you going to be providing me with those changes on the disc?

MS SHELLEY: Yes, I believe that that will happen, yes.

COMMISSIONER: Because we're not going to start to type this from afresh.

MS SHELLEY: No.

30 COMMISSIONER: So it's a matter of when we get the disk. How about then we give this exhibit number as **EXHIBIT S.1** and you can just then explain to me the variations, but I do expect, as I say, to get a fresh disk or something.

35 MS SHELLEY: Yes. Okay. Yes, you will be provided with a clean copy that incorporates all of the results of our short discussion this morning. If I can ask for the TCCI now to present the document.

COMMISSIONER: Well, you want to take me to those short amendments first, do you, Mr O'Neill?

MR O'NEILL: Yes, I would, sir, if I could. Firstly, the parties have conferred and we are pleased to present to you this document this morning and we believe the document does comply with principle 16 of the Wage Fixing Principles.

If I take you to the award interest, the ANF have been removed under principle 16(1)(iv) in updating the parties and persons bound which is -

COMMISSIONER: How do you actually do that though? That has to be done through the registry. Have you got some sort of agreement from them that they be removed, have you?

MR O'NEILL: No, we haven't.

MS SHELLEY: Yes, if I could just explain, prior to 1991 there were classifications within the award of nursing positions; they were removed in 1991. The last appearance was I think in October or November of that year. At the end of some eight months of hearings in relation to the restructured award, at that point Commissioner Gozzi refused their request to intervene saying it was really too late to appear at the very end and they haven't had any involvement in any matters to my knowledge, or made no appearances in relation to this award since that date

COMMISSIONER: I suppose the question is whether they have a certificate of registration that has their - you might check that for me please - if they have a certificate of registration with this award on it then they'll have to be taken off the list via their certificate of registration which means that someone may have to call on the acting registrar to take the necessary steps to do that. But the award only reflects what's on the certificate of registration.

MS SHELLEY: Yes, and we did have some discussion about what may be the proper process to do this, but given that principle 16 does talk about updating the parties bound, I mean clearly they're very out of date, they've had no involvement now for however many years it may be - eight or more.

COMMISSIONER: Yes. Well, certainly you can't - all I'm saying is, you can't do it via taking them out of the award and think that they have no interest because the Act says that to get a certificate of registration, and it's the certificate of registration that says what award you have an interest in and that has to be reflected in that area first.

MS SHELLEY: I suspected that might be the case but in terms of having an up to date reformatted award, it would seem a pity to put them in only to have to have the award amended again.

5 COMMISSIONER: Well, that's why - and they may have it off their certificate. We'll get into that - we'll just check to see if its on there - anything first on their certificate, and then if it is then we'll have to work out how we deal with it.

MR O'NEILL: I take you to page 5 of the document, Clause 3 - Employment Categories.

10 COMMISSIONER: Employment Categories, page 5 - yes.

Associate returns.

COMMISSIONER: Right, well it looks like you might be right if they haven't got a certificate with it on.

Right. Well, there's no problem. That's your first point up.

15 MR O'NEILL: Subclause (b) - Part-time and intermittent Employees - of that clause, the parties have deleted (i) of that subclause. We say that it is obsolete in accordance with 16(1)(iii) of the principles and it applied to the implementation of the 38-hour week and therefore the parties submit that that be removed.

20 COMMISSIONER: It's only (i) of (b)?

MR O'NEILL: Yes, correct.

COMMISSIONER: Is that supposed to be a capital 'I' - intermittent employees. We're talking about two categories of employee here are we? Part-time and Intermittent employees?

25 MR O'NEILL: Yes, yes, that should be a capital 'I'. And of course that will result in a renumbering over that page. If I could just take you to now, which will be renumbered (iv) of that clause, there's been an amendment. It should read now: The contract of employment for intermittent employees shall be in accordance with Part II -
30 Employment Relationship and Associated Matters, Clause 2 - insert (c) - Clause 2(c) - Contract of Employment of this Award.

Sir, if you please turn to page 7 to clause 5 - Mixed Functions, the second paragraph: 'Provided that'; the classification contained therein is incorrect and needs to be Level 5A - Assistant Director. So delete
35 Grade II Child Care Assistant in Charge, and insert Level 5A - Assistant Director. And there again that is in accordance with principle 16(1)(iii).

The next page, if you turn to page 8, there is an anomaly with the classification structure with the weekly wage rates. If I refer you to

Children's Services Worker Level 2, at the bottom of that page under the column 'Weekly Wage Rate', you'll notice it is 420.80, whereas in fact to be consistent with the rest of the wage rates it should be 423.50. And there again, we propose that in accordance 16(1)(iii).

5 COMMISSIONER: So you have to alter the base rate as well?

MR O'NEILL: Yes, correct.

COMMISSIONER: To 375.50?

MS SHELLEY: Yes.

10 MR O'NEILL: Yes. If you turn please to page 10 in the document before you, under subclause (c) - Junior Rates, the wage rates have been included and in fact we should only be showing the percentages so those rates will need to be deleted and just the percentages shown and that will in fact occur and that is consistent with wage rate formatting of this commission.

15 COMMISSIONER: Yes, it is, especially arising out of the last State Wage Case.

MR O'NEILL: Yes. That is it for the amendments to that document, sir. There are some other provisions that I need to point out to you, however. The reference to union is clause 26, has been deleted, as has
20 deduction of union subscriptions, clause 13, has been deleted.

The superannuation exemptions have also been deleted.

A carer's leave provision has been inserted in Part V - Leave and Holidays With Pay and the carer's leave provision is clause 4.

25 There has been a minimum start time provision included, and that has been included in Part IV - Hours of Work, Penalty Payments Shift Work and Overtime, and that is also clause 4.

30 There has been a slight variation to the casual employees definition in Part II - Employment Relationship and Associated Matters. I refer you to employment categories which is clause 3 on page 5. The amendment there or the inclusion there is simply that a casual employee's weekly wage rates will be determined commensurate with that employee's qualifications, training and years of experience.

Sir, the award before you is of a consistent formatting with the award review format as outlined by this commission.

35 Sir, subject to any errors and omission in respect to cross-referencing together with the amendments so pointed out to you, we submit that this award be accepted by the commission. If it pleases the commission.

COMMISSIONER: Good. And the date of operation will be the day the commission hands down the order?

MR O'NEILL: Yes, correct.

5 COMMISSIONER: Now the error and omissions, who is responsible for those? You or me?

MR O'NEILL: Well, we will be, sir. When the award comes back to you with the amendments as detailed -

COMMISSIONER: Yes.

10 MR O'NEILL: - essentially what I'm saying is the document before you mightn't be correctly cross-referenced in every respect but the parties will be satisfied once that document comes to you with those amendments. So as it stands today is what I'm saying in respect of that comment.

15 COMMISSIONER: Good, and then if at a later stage you found there were errors in it, then it would be up to you to make application to vary the award.

MR O'NEILL: Well, I think that would be the only way the parties would be able to proceed then.

20 COMMISSIONER: Yes, because I think if you give me a final document and you tell me that that's your position and I accept that that's your position, then at a later stage I don't think it's up to the commission to issue a correction order when it's not the commission's mistake. You'll have to make application to vary.

MR O'NEILL: Yes.

25 COMMISSIONER: Anything else? I might just ask when should I expect, say, a disk - a disk in particular - and I'm certainly interested in the appendix that will have to be attached to this award?

30 MR O'NEILL: Sir, could I give an undertaking that I would have that document together with the appendix by the close of business on 14 May.

COMMISSIONER: The 14th. There are no problems with that? Ms Shelley, have you any submissions?

35 MS SHELLEY: No, only to support what Mr O'Neill has said and I suppose to be clear that the final document, whether it be in disc or on paper, to be submitted by 14 May, would have to be agreed with ourselves that it was correct before Mr O'Neill puts it forward.

COMMISSIONER: Yes, I think I take that as being read. I would suggest that when you submit the disk and the appendix stating all

the changes that have been made to the award then I would take it as read that it's been checked and I'll be accepting that it's the view of the parties.

MR O'NEILL: That was certainly the understanding in my mind.

5 COMMISSIONER: Well, I can indicate to you I'll hand down a written
decision in due course. *Prima facie* it will be in favour of the
application but I'll have to await the final documentation and the
appendix - or the attachment to the award before I make my final
10 decision then issue the order. But I'd have to say, *prima facie* it will be
in favour of the application.

This matter is now concluded.

HEARING CONCLUDED 12.15pm