

COMMISSIONER: I'll take appearances, please.

5 **MR I. PATERSON:** If the commission pleases, IAN PATERSON, appearing for the Australian Municipal Administrative, Clerical and Services Union and I was also contacted by PAUL GRIFFIN from the Shop Distributive and Allied Employees Association, Tasmanian Branch and he asked me to represent him in respect of his application and interest and I believe he was faxing something to the commission to that effect.

COMMISSIONER: He's contacted me.

10 **MS D. MONCRIEFF:** If the commission pleases, DIANE MONCRIEFF, for the Construction, Forestry, Mining and Energy Union. Sir, I appear in matters T6825 and T6831 in the current proceedings.

COMMISSIONER: Good. Thank you, very much.

15 **MR S.J. GATES:** If it pleases the commission, GATES S.J. from the Tasmanian Chamber of Commerce and Industry. Appearing with me today is **THOMAS J.** and in relation to matter T6828 of 1997, an application to vary the Printers Award, we also appear on behalf of the Printing Industry Association of Australia.

20 COMMISSIONER: Good. Thank you. Right, Mr Paterson?

MR PATERSON: Mr Commissioner, I'd like to proceed by making some general submissions in respect of all of my union's applications and I believe the process we've discussed and decided on is to then deal with the procedural matters which are the amendments that I have in respect of the draft orders that accompany the applications and then briefly to go through the detail of how each of those applications either differs from or implements the decision in respect of the full bench matter in T2696 of 1996 and T6441 of 1996.

30 These application give effect to that full bench decision. They variously insert new clauses for carer's leave, and just briefly in respect of that matter, these applications number the carer's leave as a XX clause to be inserted in the appropriate place in the award, presumably in the alphabetical listing in the index and the consequent contents.

35 One of the matters that the application didn't go to but we do seek is the consequential renumbering of the award to reflect that carer's leave insertions into the award and also to draw the drafter's attention to the aspect - there are aspects of the consequential renumbering that are contained in these orders today. For instance, where a reference is made to a sick leave clause in these applications, it's the sick leave clause as it stands at the moment. It may be clause 20 or 30. If there's  
40 a consequential renumbering on account of the insertion of a new

clause at C in the alphabet, then that will have to be reflected also in the consequential renumbering of the award.

5 The submissions - I'll be brief. These applications give effect to the full bench decision and in doing so they meet the principles of the commission and they're in the public interest to so do and in no way contravene the public interest requirements of the commission.

In respect of operative date, the operative date sought in all matters is the date of the hearing, that being today of course.

COMMISSIONER: First full pay period on or after today?

10 MR PATERSON: The first full pay period commencing on or after today's date. If the commission pleases, I'll now proceed to provide you with the amended pages for the various applications.

15 In T6825 the Insurance Award - with the leave of the commission it might be just as easy - in so doing, I'll highlight to you what the changes are and that may also save me having to go into some of that detail later on.

COMMISSIONER: Does that mean you have to amend your application?

20 MR PATERSON: We're seeking leave to amend the applications in respect of these variations to the draft orders.

25 In T6825, the Independent Schools (Non-Teaching Staff) Award the variation puts the make-up time and rostered days off into Clause 19 - Hours. There's no other variation. I believe the application previously put it into Clause 20 - Implementation of 38-Hour Week. That is a pattern that you'll find in some of these matter.

COMMISSIONER: Do you want me to remove -

MR PATERSON: This is a new page 4 for that application.

COMMISSIONER: Is there any objection to the application?

MR GATES: We won't object to any of the -

30 COMMISSIONER: How about - to make it easier all around if we go off the record, you just hand me the amended pages to your draft orders and I'll take it that you're speaking to the document and we won't have to go through this amendment arrangement.

MR PATERSON: That's fine.

35 COMMISSIONER: We'll go off the record.

**OFF RECORD**

## ON RECORD

COMMISSIONER: We were talking about the draft order relating to the Independent Schools (Non-Teaching Staff) Award, Mr Paterson?

5 MR PATERSON: Thank you, commissioner. The differences between these applications and draft orders and the full bench decision essentially reflect two things, the customising of the model clauses to reflect specific award references and award content and they also deal with the question of part-time employees and their entitlements.

10 In this application, in the Independent Schools (Non-Teaching Staff) Award the part-time employees are only a question of the actual entitlement. The question of part-time employees receiving loadings does not arise in this award. The third paragraph in carer's leave (a)(i) says:

15 *Where a part-time employees' hours are not constant the entitlements based on the average number of weekly hours during the previous 12 months, or the actual period of service if less than 12 months.*

COMMISSIONER: How should I interpret the shaded bit in the draft order?

20 MR PATERSON: The shaded bit is, moving to that section, unpaid carer's leave (b)(ii) - that is a matter that is not agreed between the parties. It was put in as the draft application but in our subsequent discussions that is a single matter that we've been unable to reach agreement on and in these applications, we've consented to that being  
25 deleted from the draft order in all of these matters you have before you.

COMMISSIONER: So everything shaded is to be deleted?

30 MR PATERSON: It is the same thing that is shaded in every application and it is the same provision. We have not reached agreement on that and further discussions between the TTLC and TCCI will have to take place on this matter. But the fact that that is not included at this stage is a consent position between the parties.

COMMISSIONER: Thank you.

35 MR PATERSON: Part C - Grievance Procedure, inserts a grievance procedure in this carer's leave as there isn't a relevant procedure within the award to be adopted and applied. The make-up time and rostered days off are inserted into Clause 19 - Hours and in respect of the provision on page 6 - Overtime, the parties are of the view that the award already provides for the flexibility in the model clause facilitative  
40 provisions and this is the only aspect of the model clause that is not already embraced by the award as it stands.

5 Similarly, there is no provision in this matter and I think in very few of these applications are there provisions in respect of annual leave. Where there is no facilitative provision in respect of annual leave, it is because the parties have agreed that the existing provisions provide as much or more flexibility than that which would have been provided by adopting one of the facilitative provision out of the full bench decision.

That's my submissions on this particular application.

COMMISSIONER: All right. T6830?

10 MR PATERSON: If I may move to the Retail Trades Award - T6830. In order to keep this process as efficient and effective as possible, I won't repeat those matters that I have already stated there. The difference here is that this award does have provisions for part-time employees who receive a loading in lieu of entitlements to paid leave. Therefore, there's a slightly different wording in the second paragraph of that  
15 clause, XX (a)(i). That refers to part-time employees who are not in receipt of a loading and allows the entitlement in accordance with the full bench provision.

To go to the unpaid carer's leave, this draft order provides for part-time employees who have a loading in lieu of entitlements to paid leave  
20 with an entitlement to unpaid carer's leave.

Similarly, this application provides for a grievance process to settle disputes that arise in relation to carer's leave. In respect of make-up time and rostered days off inserted in Clause 19 - Hours and the insertion of a new subclause into Clause 32 - Overtime. They are to  
25 give effect to the full bench decision, very much in line with the facilitative provisions in the model clause.

I don't believe there are any further submissions I need to make on this particular application, other than to say that my discussions with Mr Griffin from the Shop Distributive and Allied Employees  
30 Association this morning - I provided him with a copy of the draft order, as you have before you, and he advised me that he consents to that being his position advocated in these proceedings as well.

COMMISSIONER: Right. So that goes for application T6842 then?

35 MR PATERSON: That's correct. I would understand from my conversations with him that this single draft order that I have presented, in front of you, goes to both applications.

COMMISSIONER: Yes. Thank you. That brings up to T6831 - Textile Award.

40 MR PATERSON: T6831 - the carer's leave provision, to insert the new carer's leave clause in this award in terms of paid and unpaid carer's leave in effect is the model clause attached to the full bench decision

with the addition of the provisions for part-time employees, very much in line with the provisions I previously mentioned in respect to the Retail Trades Award.

5 The grievance process, this award does have a grievance process and therefore the subclause (c) refers to the application of the existing clause 43 to the operation of this carer's leave clause for the employee side covered by Division B and C. So, although clause 43 is in only one of those divisions, this extends its application to all employees who are in those two divisions of the award.

10 This application puts the carer's leave provision into the Division B clerks and then as per page 4 of this, adds the clause, carer's leave, to the general conditions in the, I believe, Division C of this award. So, there's the internal cross-referencing for Division C employees with the carer's leave inserted into the general conditions.

15 The annual leave provision is included in this application because it appeared there was not any flexibility currently existing in the award to the extent that the full bench decision envisaged. Therefore, there is an insertion, subparagraph (o) into Clause 35 - Annual Leave.

20 Make-up time and rostered days off are inserted into clause 18 in line with the facilitative provisions of the decision and similarly, make-up time and rostered days off are inserted into clause 45. That's covering the two divisions B and C of this award and similarly there is, consistent with the other applications you have before you today, a single paragraph inserted into the overtime clause to achieve within  
25 the award as a whole the flexibility envisaged by the decision.

COMMISSIONER: Right. Then there's application T6828.

MR PATERSON: This is an application to vary the Printers Award. In this application, the carer's leave clause adopts the model clause of the full bench decision with the additions of provisions to cover the  
30 entitlements of part-time employees. Under paid leave, those who are not in receipt of a loading and under unpaid leave, those who do receive a loading and their entitlements to unpaid leave.

The only other variations to the award necessary to achieve the effect of the full bench decision are to insert into Clause 15 - Hours, make-up  
35 time and rostered days off and to add a new subclause (d) to Clause 17 - Overtime. That's the effect of that application and draft order.

COMMISSIONER: Right. That takes us to T6827 - Optical Industry Award.

40 MR PATERSON: This application to vary this award similarly inserts a new clause to provide for carer's leave adopting the full bench's decision model clause and in addition, providing for the entitlements

for part-time employees, both those in receipt of and not in receipt of a loading in lieu of entitlements.

5 It also provides for a disputes settling - a grievance process for resolving any disputes or claims that arrive out of the carer's leave provision and also varies the award in Clause 17 - Hours to include make-up time and rostered days off and a new subclause in Overtime, those being the variations that the parties agree are necessary to give effect to the full bench decision through the facilitative provisions of awards - aspect of that decision.

10 I have no further submissions on that application.

COMMISSIONER: Right. That brings us to T6826?

15 MR PATERSON: This application to vary the Insurance Award, similarly implements the full bench decision, extends it in respect to part-time employees, both those who are in receipt and not in receipt of a loading in lieu of entitlements. It gives effect to a grievance procedure, for addressing any claim or dispute in respect of carer's leave. It adds to Clause 17 - Hours, the facilitative provisions in respect to make-up time and rostered days off and also adds an additional flexibility to Clause 20 - Overtime.

20 That's my submissions in respect of that application.

MR GATES: Sir, if I could just clarify a point. My reading of that draft order, there's no part-time employees not in receipt of a loading.

MR PATERSON: You're correct. That's right.

25 That's true and the reason for that is that the award itself does not provide for the part-timer to - my memory of that is, it doesn't provide for part-time employees to have a loading in lieu of entitlements and that's the reason why that's not there. I thank my colleague for drawing that to our attention.

30 COMMISSIONER: Good. It brings us now to application T6832 - Wholesale Trades Award.

35 MR PATERSON: This application, Mr Commissioner, seeks to vary the award to insert carer's leave in accordance with the full bench decision, to provide for paid and unpaid carer's leave. It also deals in a way that is consistent with our other applications and draft orders, to deal with the matter of the part-time employees' entitlements both those who receive a loading in lieu of entitlements and those who have entitlements.

40 In terms of the facilitative provisions, the application inserts into Clause 16 - Hours, subclause (f) - that extends the provisions that are already in the award to provide for rostered leisure days. In an earlier

subclause of clause 16, RLDs are identified as the acronym for rostered leisure days and this extends those provisions in relation to rostered leisure days in line with the facilitative provisions of the model clause of the full bench decision and provides for make-up time in a new subclause [g].

There's also the minor amendment to Clause 18 - Overtime. That is also there to extend the flexibility within the award to meet the decision of the full bench.

In conclusion, on all those matters, I would, with the leave of the commission, like to make the single submission that in respect of all those matters these applications seek to give effect to the full bench decision and the orders as drafted have been agreed to by the parties at the table and we believe that they comprehensively address the full bench decision in respect of its direction for applications to vary awards to give effect to that decision.

As I mentioned earlier, the matter is a consent matter, with the understanding that the shaded provisions in clause [b] of the carer's leave clause are not agreed and it is the intention of the parties that that be deleted from the consent order and I did deal with that before.

Our submission is, these applications give effect to the full bench decision and therefore the orders and variations should be made with effect from today's date - the first full pay period on or after. If the commission pleases.

COMMISSIONER: Good. Thank you. Ms Moncrieff?

MS MONCRIEFF: Sir, the CFMEU is in agreement with the proposed changes as they affect the Independent Schools (Non-Teaching) Staff Award and the Textile Award, and accordingly support the application. If the commission pleases.

COMMISSIONER: Thank you. Mr Gates?

MR GATES: Thank you, commissioner. We're in a position today where we can consent to the applications that are before you. We consent to the draft orders which you now have before you in the version which we've been ..[inaudible].. the course of it.

It's our submission that the applications today are all in accordance with the full bench decisions pertaining to carer's leave and that the orders simply give effect to those.

The individuality amongst the applications simply reflects the idiosyncrasies pertaining to each of the awards. We also confirm that those areas which are shaded in the applications will not form part of the formal orders of the commission.

It is our submission that none of the applications contravene the public interest. In that regard we consent to the applications and in relation to operative date we consent to the first full pay period on or after today's date. If it pleases the commission.

- 5 COMMISSIONER: Thank you. Well, I thank you for your efforts. I will hand down a written decision - one decision and several orders in due course and it will be in favour of the applications and the operative date will be the first full period to commence on or after today and I can't say when it will be out. There's a lot of work involved here for us  
10 but anyway we will try and get them out in due course.

Thanks very much.

**HEARING CONCLUDED**