

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 4504 of 1993

IN THE MATTER OF an application by
the Australian Municipal,
Administrative, Clerical and
Services Union to vary the
Clerical and Administrative
Employees (Private Sector) Award

re superannuation

PRESIDENT

HOBART, 26 August 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Appearances please.

MRS H. DOWD: If the commission pleases I appear on behalf of the Australian Municipal, Administrative, Clerical and Services Union, DOWD, H.J.

PRESIDENT: Thank you.

MR T.J. ABEY: If the commission pleases I appear for the TCCI, ABEY, T.J.

PRESIDENT: Thanks, Mr Abey. Mrs Dowd?

MRS DOWD: Mr President, following discussions with the TCCI, we have decided that we would like to seek an adjournment on this particular matter until after the national wage case hearing has been heard. If the commission pleases.

PRESIDENT: Yes. You've got no objection to that, Mr Abey?

MR ABEY: No. I would, Mr President, that the thrust of the application was something we support in that under the current arrangements there is an inconsistency between the award and the requirements of the superannuation guarantee. This is not of the making of this commission or indeed the other commission, but the Commonwealth Government, but it is, in our view, an unsatisfactory situation which needs to be addressed. It is one of the subjects being addressed by the current national wage proceedings in the Australian Commission and I think in all the circumstances, it would be appropriate to await the outcome of those proceedings before we deal with the substance of this application.

PRESIDENT: Yes. I mean, there are other matters within it which could have been addressed, I believe, notwithstanding the matters before the Federal Commission. My concern, primarily, was about removing the cap of 3 per cent which is contained in the principles -

MR ABEY: Yes.

PRESIDENT: - and of course, there are other issues that could possibly be addressed, if it was felt necessary to do that, such as complying with the requirement to meet - to make contributions in respect of employees with less than 6 months service.

MRS DOWD: What I have, Mr President, is actually a draft order that was prepared between the TCCI and the - AMAC&SU. If you wish to have a look at that you're quite at liberty to do so, but that actually incorporates all the things that we wish to change in that superannuation clause and also to delete the 6 months of service that is actually in the award

as well. That was another issue - that was one of the main issues that we actually started off with.

PRESIDENT: Yes.

MRS DOWD: But I - the only draft order I've actually prepared is for change to the whole superannuation clause in relation to the superannuation guarantee legislation.

PRESIDENT: We'll go off the record for a moment.

OFF THE RECORD

SHORT ADJOURNMENT

PRESIDENT: Mrs Dowd, that was a fairly short adjournment. I was expecting to be out for the rest of the day.

MRS DOWD: We are very efficient, Mr President. We are very efficient. Mr President, we would like to proceed with part of the application today and I'd like to present the draft order to the commission and seek to vary part of or just deal with part of the draft order and hold the rest over, if that's acceptable to the commission?

PRESIDENT: Yes, we'll have a look at it. It seems it might be appropriate. AMAC&SU.1.

MRS DOWD: Mr President, the draft order - as mentioned - was for the full variation to the award. What we would like to do is to vary the award by using part of the draft order and that part would be deleting '(b) - Casual and Part-time Employees', which is about halfway down the page.

PRESIDENT: Yes. Delete that?

MRS DOWD: That is part of the draft order.

PRESIDENT: That's part - so, -

MRS DOWD: What we want to do is -

PRESIDENT: - tell me which bits you want to remain in it, in this order.

MRS DOWD: The part we want to remain in is 'Delete Casual and Part-time Employees'.

PRESIDENT: Yes. So we delete - the 'Delete (a)' comes out?

MRS DOWD: Yes, that is to be stood over.

PRESIDENT: All right. Okay.

MRS DOWD: Part (a) is to be stood over.

PRESIDENT: But for the purposes of this application -

MRS DOWD: Yes.

PRESIDENT: - I think we should remove it and you can make a subsequent application in respect of that.

MRS DOWD: That's fine. All right. So, if we remove -

PRESIDENT: I think that would be the better way to go.

MRS DOWD: Right. If we remove the first one which is 'Delete (a) Contributions and insert in lieu'.

PRESIDENT: Yes.

MRS DOWD: Where we have 'Re-name "(c) definitions" as "(b) definitions"', delete that.

PRESIDENT: Delete.

MRS DOWD: And on the second page, if we delete all the renaming.

PRESIDENT: I see.

MRS DOWD: And what we have left, Mr President, is a draft order to amend clause 33 - Superannuation by deleting (b) casual and part-time employees from the award.

PRESIDENT: Yes.

MRS DOWD: Delete the definition 'eligible employee' which is in the award and insert in lieu:

Eligible Employee shall mean all employees other than -

(i) an employee who earns less than \$450 per month

(ii) employees under 18 years of age working for not more than 30 hours per week

And then -

PRESIDENT: Yes. This is - this conforms with the Commonwealth legislation, does it not?

MRS DOWD: Yes, it does, Mr President.

PRESIDENT: Yes.

MRS DOWD: But we've also inserted a provision that existing employees who:

- were in receipt of the 3 per cent superannuation contributions as a consequence of the pre-existing award provision shall continue to be entitled to have contributions made on their behalf, notwithstanding that they may not be eligible under the criteria referred to herein.

We might have to amend that wording too, Tim.

PRESIDENT: I'm not certain - I'll wait to hear from Mr Abey, but I'm not -

MRS DOWD: Right.

PRESIDENT: - sure just how that would conflict with the principles, if that's what you are worried about.

MRS DOWD: And we wish that savings position to be there for at least 2 years. We would then have to -

PRESIDENT: This proviso?

MRS DOWD: Yes.

PRESIDENT: All right. Okay.

MRS DOWD: That proviso is to cover the existing casual and part-time employees who are already in receipt of the 3 per cent superannuation.

PRESIDENT: Yes. Okay.

MRS DOWD: I've just realised -

PRESIDENT: We have to fiddle with those words a little bit just to make sure that the saving - this date of 1st of September 1995 only applies to the proviso related to the 3 per cent - in excess of - sorry -

MRS DOWD: It only is applicable to those employees -

PRESIDENT: - for those already in receipt of 3 per cent -

MRS DOWD: Yes.

PRESIDENT: - who wouldn't otherwise according to the proposed new definition.

MRS DOWD: According to the legislation they wouldn't receive it.

PRESIDENT: Yes.

MRS DOWD: I've just realised, Mr President, we will have rename some of the other definitions as well because we've deleted one definition which is the casual and part-time employees, so we will have to rename existing subclauses.

PRESIDENT: All right. Well we can attend to that in the drafting. You're virtually saying we need a -

MRS DOWD: They will be consequential amendments by -

PRESIDENT: Renumbering exercise.

MRS DOWD: Yes.

PRESIDENT: Okay.

MRS DOWD: If the commission pleases.

PRESIDENT: Yes. Thank you.

MR ABEY: Thank you, Mr President. We consent to the amended application in that at least for casual, part-time and some junior employees it brings the award into line with the superannuation guarantee charge and will remove a significant area of confusion.

The savings clause is appropriate for a period of 2 years. Thereafter, I suspect that those employees who may benefit from the savings clause would have worked themselves into a situation where they would in any way be entitled to a contribution under the superannuation guarantee charge, so the problem would have removed itself. You're basically talking about your particular employees aged 16 and 17 at present who would have an entitlement.

PRESIDENT: Yes. All right.

MR ABEY: If the commission pleases.

PRESIDENT: Yes. Thanks, Mr Abey. Well I think that might solve one of the more pressing problems that we have in relation to this particular provision, so I will have a good look at it. We may be in touch with you over wording just to make sure when the order is made it's quite accurate, but given the possibility that that might happen - or notwithstanding the possibility that that might happen, the

award will be varied in due course to take account of these particular new provisions.

Thank you very much for your assistance and work on the matter and we'll conclude it. A decision will be handed down in due course.

HEARING CONCLUDED