

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s 23(1) application for award or variation of award

The Minister administering the State Service Act 2000
(T14969 of 2022)

HEALTH AND HUMAN SERVICES (TASMANIAN STATE SERVICE) AWARD

PRESIDENT D BARCLAY

HOBART, 17 NOVEMBER 2022

Award variation – Part I, Clause 3: Scope – consent application - consent order issued – operative from 1 October 2022

DECISION

[1] On 23 September 2022, the Minister administering *the State Service Act 2000* (MASSA) lodged with the Registrar, pursuant to section 23(1) of the *Industrial Relations Act 1984*, an application to vary the Health and Human Services (Tasmanian State Service) Award (the Award).

[2] At the hearing, on 28 September 2022, Jacqui Allen appeared on behalf of MASSA, Tom Lynch appeared on behalf of The Community and Public Sector Union (State Public Services Federation Tasmania) Inc (CPSU), Steven Smith appeared on behalf of the Australian Education Union, Tasmanian Branch (AEU) and Mr Moore appeared for the Health Services Union (HSU).

[3] The Application sought to vary the scope of the award, laid out in Part I, Clause 3 of the Award. At the hearing Ms Allen explained by way of background:¹

“MS ALLEN: Okay, thank you, your Honour. So, by way of background, on 24 February 2022, then Premier Peter Gutwein announced changes would occur to departmental structures through machinery of government. This includes the transfer of functions from the Department of Communities to other agencies and the establishment of a new authority, being Homes Tasmania. So, as a result of these machinery of government changes, the transfer of employees to other departments needs to occur.

The changes to departmental structures have been occurring progressively since 1 July and were scheduled to be completed on 1 October 2022. However, it is noted that there have been some legislative delays which will impact the creation of Homes Tasmania and, therefore, the abolishment of Communities Tasmania. The applications before the Tasmanian Industrial Commission are to facilitate the transition of current employees of Communities Tasmania to various receiving agencies and the new government business enterprise, Homes Tasmania.

So, specifically, these applications involve firstly amending the scope of the Health and Human Services Award to enable employees outside the now Department of Health – previously the Department of Health and Human Services – to be covered due to human service responsibilities, specifically responsibility for children and young

¹ Transcript P3, line 6.

people transferring to the new Department for Education, Children and Young People – otherwise known as DECYP – and the proposed new authority of Homes Tasmania, responsible for delivering social housing.

The applications also involve amending the scope of the AHP agreement to enable employees transferring to the Department of Premier and Cabinet to retain coverage; amending schedule 1 to the AHP agreement to remove reference to Communities Tasmania but include the division of the children, youth, and families, which transfers to DECYP; amending schedule 2 of the AHP agreement to include health professionals who will be transferring to the Department of Premier and Cabinet; and providing an appendix to the Tasmanian State Service Award, which will outline transitional conditions that will apply for employees previously covered by the Health and Human Services Award in Communities Tasmania transferring to the Tasmanian State Service Award in other departments.

Now, when considering the approaches to be taken, the parties have been guided by transition principles that were outlined in its workforce transition plan, including uninterrupted continuity of services to some of the most vulnerable Tasmanians, no negative impact on service delivery and continuation of these services, minimal disruption and changes to scheduled timeframes, no job losses or overall reduction in conditions entitlements for individual employees and State Service employees, and minimal disruption to employees themselves.”

[4] In respect to this particular application Ms Allen submitted as follows:²

“MS ALLEN: So, in relation to the application to vary the Health and Human Services Award, the purpose of the application is to resolve issues with the scope of HAHS, enabling it to cover former Department of Health employees who are transferring to other agencies because of the machinery of government change, and I previously noted that the current arrangements will expire on 30 September.

So, as you’re no doubt aware, your Honour, that the scope clause has been an issue before this commission on a number of previous occasions – and I don’t propose to read through what the current scope clause is or the current interim cause, as you would have both of those available, but it has been agreed between the parties to amend the scope clause to provide coverage to those employees that are currently within the Children, Youth and Families division within Communities Tasmania that will transfer to DECYP, as well as Homes Tasmania, once established, and the Community And Disability Services Unit that are transferring to – no, sorry, I withdraw that one, I’ve gone one too extra there. Sorry, Business Information Systems transferring to Housing.”

[5] Mr Lynch made the following submissions:³

“MR LYNCH: Thank you. So, this has been an extremely long and drawn-out and complex process which, unfortunately, hasn’t been resolved until the very last moment, hence we’re here with you a few days before these things are implemented. We have a long history of talking to you about the HSU scope laws since the establishment of the Department of Communities, which has now been abolished. We have been unable to resolve that scope clause, so that will be one good thing that we’re able to put to bed today.

The complexity in what arose was that in moving various parts of the Department of Communities Tasmania to other agencies, there was all this overlapping of award coverage. So, some parts of the department of DCT were already covered by the TSSA, and they moved to parts of the State Service that were also within the scope of the TSSA, and most of those areas moved back in in July, and there was not much to be done there. There were parts of the department that moved to – that were under

² Transcript p5, line 1.

³ Transcript p7, line 1.

the HSU award that moved to the Department of Health, for example – that is also under the HSU award – and so there was little to be done award-wise there.

The complexity came from the fact that there was a large part of DCT that is the children and families – so child safety and youth justice and some other parts that were under the coverage of the HSU award but that were going to a department which was under the coverage of the Tasmanian State Service Award – and after long consideration, particularly of the workload and the potential disruption to those areas, it was agreed that those areas would go over to the Department of Education but remain within the scope of the HSU award. And that is what the second part of this change is designed to do today in the second dot point of the scope clause.

The third part goes to this complexity we have now that there was an intention to move Housing Tasmania into a new entity called Homes Tasmania, which was dependent on legislation being passed, which is, I understand, being debated in the Legislative Council today and may or may not proceed, but given there was a sunset clause on those Housing Tasmania people remaining at HSU anyway, that needed to be addressed by Monday or by the end of this week. We also needed to then make sure that wherever they were in the interim period, that that remained within the scope of HSU, and then wherever they went to also remained within the scope of HSU to ensure that those people doing that vital work with housing are not disrupted.

And then the third thing that arose – and this is very late in the day – is because Housing Tasmania is not going to a new entity by the 1st of October, they're staying in what remains of the Department of Communities Tasmania – there still needs to be some departmental structure around that – so, Office of the Secretary and some corporate affairs functions. So, those people who would have gone to other receiving agencies are now going to stay within DCT as supporting Housing Tasmania to do their work until that legislation is passed or that matter is resolved going forward, and that's the fourth part of that scope clause.

HIS HONOUR: Yes, I follow that.

MR LYNCH: There is a modicum of logic in our madness. We have – one advantage is we have actually ended up with a far simpler HSU scope clause than the one we had, and we hope we have accurately picked everybody up here. I would make the point that this has been complex and it has gone down to individual work groups and individual people within work groups, and you'll see that when we get to the Allied Health Professionals Agreement.

So, there may be some people that have not been dealt with here but we've put forward the principles – we've put forward the schedule of transition and what we have been aiming to do to give people certainty going forward, and we hope we have picked that all up accurately in this proposed change to the scope clause."

[6] All parties submitted the variation sought does not offend the public interest, do not disadvantage those employees covered by the Award and recommended the variation to the Commission.

[7] In light of the submissions I am satisfied that the variation is consistent with the public interest and that no employees are disadvantaged. I attach for the assistance of anyone reading these reasons a Schedule of Transition relating to the transfers.

[8] The application is granted. The Award is varied in accordance with the application, commencing from 1 October 2022.

[9] An order reflecting this decision will follow.



Appearances:

Mr Locke for MASSA

Ms N Jones for CPSU

Mr Katarzynski for UUU

Mr Smith for AEU

Date and place of hearing:

2022

4 October 2022

HOBART