

COMMISSIONER: I'll take appearances please.

**MR I. PATERSON:** If the commission please, IAN PATERSON appearing for the Australian Municipal Administrative, Clerical and Services Union.

5 COMMISSIONER: Good, thank you.

**MS F. GALLOWAY:** If the commission pleases, FRANCINE GALLOWAY appearing for the Health and Community Services Union.

COMMISSIONER: Good, thank you.

10 **MR M. WATSON:** May it please the commission MARK WATSON, I appear on behalf of the Tasmanian Chamber of Commerce and Industry, and with me is JENNY THOMAS.

COMMISSIONER: Good, thank you. Are there any preliminary matters we need to discuss off the record first?

15 MR PATERSON: I don't believe there are any off the record but we do have an amendment to the application that we'd deal with, but I think that -

COMMISSIONER: Right, we might just go off the record for a moment, please.

**OFF RECORD**

20 **ON RECORD**

COMMISSIONER: Mr Paterson?

25 MR PATERSON: Mr Commissioner, this application is an application by the Australian Municipal, Administrative, Clerical and Services Union to give effect to the full bench decision in the *Carers Leave Case*. Since making the applications there have been discussions between the ASU and TCCI and a position developed which I've consulted with the Services Union around, and I'd like if the commission pleases to put up an amended application, amend that part of the application that commences Draft Order, which gives effect to the discussions that the parties have had and the agreements reached.

30 COMMISSIONER: All right, and is it your wish that the award be varied as per the document you've just tendered including any consequential amendments that that may - ?

35 MR PATERSON: I believe that there will be consequential amendments that will be necessary. You'll note that this clause is

numbered XX, which the intent of doing that is to allow the commission to insert it in the appropriate place in the award.

5 To the extent that the application needs to be amended to give effect to that, I'd seek leave to amend the application to provide for amendments to the award to provide consequential amendments for clause numbering, index and other matters that relate to the drafting of the award to incorporate this provision.

COMMISSIONER: Is there any opposition to the amended application?

10 MR WATSON: No commissioner.

COMMISSIONER: Leave's granted.

MR PATERSON: If I can just quickly take you through the way I have prepared this draft order. I've done it in a way that you can identify those parts that are different to the original application.

15 If we go to the first clause XX - Carers Leave - Part A(i), you'll see the bottom paragraph there is struck through. That was in the original application as deleted, and over the page the next two paragraphs underlined are the new provisions that go in its stead.

20 Those provisions, as well as the provisions in Part B(ii), deal with the question that was to some extent left open by the full bench decision, the question of part-time employees entitlements to carer's leave. Where a part-time employee is not in receipt of a loading, that is, does accrue entitlements to paid annual leave or sick leave, you'll find those provisions are dealt with in Paid Carer's Leave, Part A(i), and a similar approach, similar wording adopted in the unpaid carers leave for those  
25 part-time employees who do in fact receive a loading. The issue there was not only to establish the entitlement, but also the basis of calculating the entitlement.

30 In both cases the hours of work will often vary for part-timers, particularly in this industry and under this award, and the formula that has been adopted is the average number of weekly hours worked by the employee during the twelve month period preceding the commencement of leave, or the actual period of service if less than twelve months, so as to make it clear that it's not a twelve month  
35 qualifying period type entitlement.

The other provisions of this award are this application to vary the award the additions to Clause 17 - Hours, Shiftwork and Overtime, are in line with the model clause from the full bench decision.

The other matter that I make quick reference to is that the parties have

5 have agreed that the provisions that are already in the award in respect  
of time off in lieu of overtime and the taking of annual leave in single  
days, that flexibility is currently within the award, time off in lieu  
arrangements within the Community Services Award are quite  
extensive, and the annual leave provisions require that - or certainly  
facilitate that the taking of up to or more, in some cases more than the  
five single days of annual leave.

10 The submission from the union is that it's in the public interest to  
make this variation to give effect to the full bench decision and that  
there's no offence to the public interest in any way that would prevent  
this amendment to the award being made. If the commission pleases.

COMMISSIONER: Thanks, Mr Paterson. Any further submissions?  
No further submissions. Mr Watson?

15 MR WATSON: Commissioner, our position in relation to this matter is  
one of consent. We have had discussions with the parties in relation to  
the draft order and as far as we're concerned it is in order, as per the  
draft that was provided prior to the hearing. We believe that the draft  
order is in accordance with the full bench decision and it's in fact been  
tailored to the needs of the Community Services Award as per Mr  
Paterson's' submission. It doesn't offend the Wage Fixing Principles  
nor the public interest and we would commend the order to you as a  
consent matter from the first full pay period on or after today's date. If  
it please the commission.

25 COMMISSIONER: Thank you. Right no further submissions? That  
being the case I can indicate to the parties that I'll hand down a written  
decision in due course and it will be in favour of the application and it  
will be operative from the first full pay period to commence on or after  
today.

30 The award will be consolidated and there will be some consequential  
amendments arising out of the consolidation.

Thank you for your participation, the matter is closed, thank you.

**HEARING CONCLUDED**