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**AUSCRIPT**

## **TRANSCRIPT OF PROCEEDINGS**

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O/N 116578

### **TASMANIAN INDUSTRIAL COMMISSION**

**COMMISSIONER J.P. McALPINE**

**T No 13524 of 2009**

### **TASMANIAN FIRE FIGHTING INDUSTRY EMPLOYEES AWARD**

**Application pursuant to section 23(2)(b) of the  
Industrial Relations Act 1984 lodged by the  
Minister administering the State Service Act 2000  
to vary the above award re Part III – Wage and  
Salary Provisions, Clause 3 – Superannuation –  
amend subclause (a)**

**HOBART**

**9.00 AM, THURSDAY, 24 SEPTEMBER 2009**

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THE COMMISSIONER: Can I have appearances, please?

MR F. OGLE: If the commissioner pleases, Frank Ogle representing the Minister administering the State Service Act.

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THE COMMISSIONER: Thank you.

MR R. WARWICK: If the commission pleases, Richard Warwick for the United Firefighters Union of Australia, Tasmanian Branch, and the United Firefighters

10 Union of Tasmania, pending hearing from the registrar about an amendment to our rules as a State-registered organisation.

THE COMMISSIONER: Thank you. Yes, over to you, Mr Ogle.

15 MR OGLE: Thank you, Commissioner. Hopefully today is a simpler variation to the award .

THE COMMISSIONER: There is nothing simple.

20 MR OGLE: Yes. Well, I say that with some trepidation. The Tasmanian Fire Fighting Industry Employees Award was amended by Commissioner Abey in June of this year and specifically in relation to a new clause, clause 3 in Part III in relation to superannuation. Really the purpose of the variation today is to amend the date where appearing in that clause of 14 November to 14 December.

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The reason for that, Commissioner, is that with all the best intent there was a number of administrative and legal arrangements to go through including the amendment to the trust deed – obviously the Treasurer has got to sign the trust deed putting together a deed of release – and as a result of discussions with the UFU it was agreed that 30 there needed to be a time lag from the signing of the trust deed and the gazettal of that trust deed of three months to allow the members to take advice and do whatever they had to do to make that decision to exit the scheme.

35 So the gazettal occurred on 11 September. So what we are proposing today is to vary that clause, as I said, where appearing 14 November, to make those dates 14 December. The operative date for the variation would be today, and probably that's all I need to say in submission.

THE COMMISSIONER: Okay. Mr Warwick?

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MR WARWICK: Might I say, Commissioner, that I agree entirely with Mr Ogle's submission, but there is one other matter that I think it would be useful if we dealt with today, and given the fact that the document that Mr Ogle has tabled is currently with our lawyers - - -

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THE COMMISSIONER: This is the deed of release?

MR WARWICK: Yes.

MR OGLE: Are you presenting this as an exhibit?

5 MR OGLE: Yes, sorry. Commissioner, I have presented that more for your information, a deed of release which individuals will sign that legally exits them from the State Fire Commission's Superannuation Scheme. Really, it's not part of the award, but outlines, if you like, the commitment on both sides, so I'm sorry if I missed that.

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THE COMMISSIONER: To complete this we will just call this M1 - - -

#### **EXHIBIT #M1 DEED OF RELEASE**

15

MR OGLE: Yes, thank you, Commissioner.

THE COMMISSIONER: - - - just so we have got a record. So over to you.

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MR WARWICK: Commissioner, there is a matter, and I should say – sorry, to clarify firstly, of course we agree with the alteration of the date from 14 November to 14 December, because that clearly advantages our members in respect to the time they will need to make a decision about what they are doing. But there is the matter in the deed of release which was raised in a previous advice from our lawyers, which I think probably should be included in the award, and we should take the opportunity to do that now, but that would require Mr Ogle to amend his application.

25 THE COMMISSIONER: Yes.

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MR WARWICK: I wonder if we might go off the record and just discuss that?

THE COMMISSIONER: Sure, thanks. Are you aware of this, Mr Ogle?

35 MR OGLE: I am now. That's all right. I don't have any problems. I know what the issue is.

THE COMMISSIONER: All right. Well, let's talk about – what is the issue first of all?

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COMMISSION OFFICER: Do you want this on the record?

THE COMMISSIONER: Sorry?

45 COMMISSION OFFICER: Do you want the issue on the record?

THE COMMISSIONER: No, no. We will discuss it and then we can put it on the record.

5 **OFF THE RECORD**

[9.10 am]

**RESUMED**

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THE COMMISSIONER: Okay, Mr Ogle?

MR OGLE: Thank you, Commissioner. As Mr Warwick has indicated the United Firefighters agreed to the variation of the dates. I would like to just vary the application by the Minister as a result of some legal advice, and I will read out that variation. It's a variation to the clause III – superannuation (a) and I think we should include a new roman numeral (ii) which reads as follows:

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*The additional employer's superannuation contribution specified in I above will be treated for all purposes the same if it were a superannuation guarantee contribution.*

Then the present (ii) becomes Roman numeral (iii) – I will supply those words in writing for the benefit of the Commission and cc Mr Warwick into that but I am sure that Mr Warwick would agree to that variation, or I hope he would.

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THE COMMISSIONER: Okay. Thank you. Mr Warwick?

MR WARWICK: Thank you, Commissioner. I concur with Mr Ogle's submission and the additional clause that he has proposed is appropriate in our view, based on the advice of our solicitors, and I think they quite rightly point out that unless there is some definition around the additional 5 per cent that is comprehended by the award, there is the potential for disputation into the future, long after I'm gone and even perhaps yourself Commissioner.

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THE COMMISSIONER: I could answer that but I won't.

MR WARWICK: It is the responsibility of all parties to ensure the orderly conduct of industrial relations into the future and it would be our submission that putting a definition around that 5 per cent payment will achieve that objective.

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THE COMMISSIONER: Excellent. That's good. Thank you. And as far as you both are concerned these amendments take effect today?

45 MR OGLE: Correct, operative date of today.

THE COMMISSIONER: Operative date of today. Comfortable?

MR OGLE: Yes, Commissioner.

THE COMMISSIONER: Okay. Well, I am more than comfortable to approve these. I don't see there are any problems with the wage fixing principles or indeed  
5 the public interest, so a very sensible thing to do. Okay. Well, I will adjourn.

MR WARWICK: Thank you, Commissioner.

MR OGLE: Thank you, Commissioner.

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**MATTER ADJOURNED at 9.15 am INDEFINITELY**

**Index of Witness Events**

**Index of Exhibits and MFIs**

EXHIBIT #M1 DEED OF RELEASE

P-3