

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23(1) application for award or variation of award

The Minister administering the State Service Act 2000
(T14755 of 2020)

HEALTH AND HUMAN SERVICES (TASMANIAN STATE SERVICE) AWARD

PRESIDENT D J BARCLAY

HOBART, 31 MARCH 2020

Award variation – extension of scope time frame- consent application - operative from 1 July 2018 until 31 March 2021

DECISION

[1] By Application dated 25 March 2020 the Minister administering the *State Service Act 2000* sought a variation of the Health and Human Services (Tasmanian State Service) Award by increase in the period for which the scope of the Award would apply from 1 July 2018 to 31 March 2021.

[2] The issue of scope has been dealt with on a number of occasions. I was asked to deal with this matter in chambers. I have agreed with that course.

[3] Accompanying the Application was the following email from the Applicant:

"I am emailing in relation to Matter T14718 of 2019.

As detailed in the decision issued by the Commission for Matter T14718 of 2019, the parties have nearly completed the agreed actions outlined in the schedule of actions (enclosed) regarding the award coverage issue at the Department of Communities Tasmania. When this matter was last before the Commission, it had progressed to the stage for the unions to consult and ballot their members on the proposed outcome. Subject to the outcome of that consultation, it was hoped that the parties would have been in a position to seek the Commission's assistance in varying the Health and Human Services (Tasmanian State Service) Award.

The parties had been working to the timeframe of completing the consultation and balloting of members by 16 March 2020. As the Commission is aware, the emergence of the Covid-19 has necessitated considerable focus from unions and State Service Departments in developing appropriate responses and supporting employees. It has also impacted upon the capacity for bringing people together in workplaces.

The full consultation and ballot process was not completed within the proposed timeframe of 16 March 2020. The Health and Community Services Union had advised that they anticipated consulting with members in the weeks following 16 March 2020 and intended to complete this prior to 31 March 2020, however noted that Covid-19 would impact on their capacity to engage directly with members.

As per the enclosed email from Mr Tom Lynch dated 18 March 2020, the Community and Public Sector Union (CPSU) were able to undertake initial consultation with members and reported that significant concerns had been raised with a number of elements of the proposal. Mr Lynch further noted that these are significant issues that won't be resolved in brief discussion and that the timeframe remaining for the parties was extremely short, requiring consideration as to the best way forward.

Given the initial feedback from the CPSU, the parties may need to revisit the proposed award variations and accompanying Market Allowance procedures. Should there be any change to the proposed provisions, further internal consultation and approval would be required. There would also be a consequential requirement for unions to take the revised provisions to their members for consultation and ballot.

These actions will take some time and clearly cannot be completed within the current timeframe of 31 March 2020. Additionally, the capacity of the parties to undertake these actions is impacted upon by the current Covid-19 pandemic and the current uncertainty regarding the extent of the impact and the likely duration.

For these reasons, the parties jointly consider the appropriate approach is to seek the support of the Commission in further extending the current industrial arrangements for a period of 12 months to 31 March 2021. The length of the proposed extension reflects the current uncertainty present in this extraordinary situation. It remains the intent of the parties to continue to progress this matter in a timely manner and should there be opportunity to resolve it earlier than 31 March 2021, the parties will do so.

A consent application seeking the variation is enclosed and the original hard copy application has been provided to the Commission. This application seeks to maintain the status quo of award arrangements; is in the public interest as it facilitates the continued progression of this matter in a consultative and orderly manner and presents no disadvantage to employees given the award coverage arrangements it maintains are those proposed for the future. The unions support for this application is detailed in the enclosed emails from Mr Lynch, Mr Moore and Ms Saint. For completeness, I note that the response from Mr Moore is on behalf of HACSU in lieu of Mr Jacobson and Mr Eddington.

Given this is a consent application, noting the matters have been previously canvassed in detail before the Commission, the parties request that consideration be given to hearing the matter in chambers on the basis of the documentation submitted, although the parties are of course available to attend at the Commission's convenience should a hearing be required.

If you require any further information in support of this application, please advise.

The issues raised by the CPSU were identified as follows (from an email from the CPSU to the Minister):

Apologies it has taken so long to get back to you. Yet again circumstances have intervened that make it very hard to get this important issue to the top of the list of issues we need to talk to members about.

The CPSU has undertaken initial consultation with representatives of groups of DCT members and they have raised some significant concerns about a number of elements of your proposal.

Firstly, there is a feeling that wellbeing and resilience leave should be separate to personal leave. There are concerns that having this as another category of personal leave has the potential there will be an interpretation that staff suffering from stress/trauma issues will have access to personal leave limited to 5 days. We

understand this is not what the appendix says but there are concerns this may happen if wellbeing and resilience leave is a category of personal leave.

Secondly, there are concerns about the leave needing to be approved in advance and about staff needing to explain to their manager the circumstances that lead to them requiring this form of leave. When we initially talked about this leave the concept seemed to be about staff taking a day or two off when they assessed they needed a break from the pressures of their work for their personal wellbeing. This seems to have been lost somewhat and the process proposed will be dependent on good managers.

Finally, the market allowance clause says that a market allowance can't be used to address a geographical recruitment problem. This is definitely something we would want to do because it's often regional areas where we have recruitment problems this allowance might address.

I realise these are significant issues that won't be resolved with a quick chat and our timeline is extremely short. Given that we should give consideration to the best way forward."

[4] All parties agree to the variation to the Award.

[5] I agree that the variation is appropriate. I agree the issues outstanding are matters which may take some time to resolve. I note the presently unknown impact of the COVID-19 outbreak. All that can be said about it now is that it will cause delays in dealing with this matter. Accordingly I am content to extend the scope for a further 12 months.

[6] I am satisfied that the variation is consistent with the public interest and that no employees are disadvantaged by the variation.

[7] The application is granted and the Award is varied in accordance with the application. The variation to the award is operative from 1 July 2018 until 31 March 2021.

[8] An order reflecting this decision will follow.

