

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23(1) application for award or variation of award

The Minister administering the State Service Act 2000

(T14684 of 2019)

HEALTH AND HUMAN SERVICES (TASMANIAN STATE SERVICE) AWARD

PRESIDENT D J BARCLAY

HOBART, 29 August 2019

Award variation – scope - consent application – operative between 1 July 2018 and 31 December 2019

DECISION

[1] On 23 August 2019, 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.

[2] At the hearing in Hobart on 28 August 2019, Mr Brett Charlton and Mr Nigel McCulloch appeared on behalf of MASSA, Mr James Eddington appeared on behalf of the Health Services Unions, Tasmania Branch (HSU), Mr Tom Lynch appeared on behalf of The Community and Public Sector Union, (SPSFT) Inc (CPSU) and Ms Caroline Saint from the Australian Nursing and Midwifery Federation (Tasmanian Branch) (ANMF) provided an email advising that a representative from ANMF could not attend but that they consent to the variation as sought.

[3] Mr Charlton sought a variation to the scope of the Award. As this was the third time the scope was to be varied I set out Mr Charlton's submissions as to why this application is necessary and should be granted:

"The background of this award coverage issue has been well detailed on the record in matters T14603 and T14638 and I won't trouble you further with that today. I will, however, further note that the wider conditions in the industrial environment that hampered somewhat the timely progression of this issue as detailed in – before you in matter T14638 did continue to prevail until recently and as a consequence the degree of progress anticipated under the previous extension was not achieved. Now, I should say that in noting this I do not suggest any delays on the part of my colleagues here.

Nonetheless and certainly on a more positive note, when we last appeared before your Honour on this issue, President, I indicated our expectation that during the period of extension the parties would finalise an agreed position to take to employees and I'm pleased to advise that this has occurred and the proposed position, President, is that the current status quo of award coverage arrangements will continue into the future, reflecting the retention of the award coverage arrangements that existed prior to the creation of Communities Tasmania. In addition Communities Tasmania has undertaken

to complete a number of things: firstly, we would be creating a Communities Tasmania specific policy to facilitate the use of the current market allowance provisions within HAHSAs; secondly, Communities Tasmania will establish a policy to provide for employees covered under HAHSAs to have access to resilience and wellbeing days to support the employees maintaining their resilience and mental health and wellbeing associated with their exposure to workplace incidents and stressors; and, lastly, President, the parties will seek a variation of HAHSAs to include flexitime provisions that would apply exclusively to Communities Tasmania employees within that award and it's envisaged that this would be by way of an appendix for Communities Tasmania in HAHSAs.

Now, I understand that my colleagues may be taking correspondence today, President for your information that we've provided that further details the changes I've just discussed. Should this proposed position be supported by employees following completion of the required actions and union consultation with their members then the parties will make application to this Commission to vary the HAHSAs scope clause to give effect to the above award coverage arrangements and to address the flexitime provisions appendix. I can further advise, President, that the parties have agreed to a schedule of actions and associated timeframes to ensure the timely progression of this matter going forward and I understand that will be tendered today.

The next step in this process is for the Department to communicate the above proposal to employees. Draft communication has been prepared and provided to my colleagues for their consideration and input prior to distribution to Communities Tasmania employees. President, it is submitted that the maintenance of the existing award arrangements for a further four months is in the public interest. The orderly progression of a resolution to the award issue that arose with the creation of Communities Tasmania is in the interest of all employees and the community and this extension facilitates the ongoing efforts of the parties to resolve the matter without any disruption to the operations and associated service delivery. Furthermore, this extension does not create disadvantage to employees as it does not alter their existing terms and conditions and they continue to work in accordance with their long-standing award arrangements and additionally as I have noted, the proposed award arrangements for the future involves the retention of those same award arrangements that will continue under this extension. This proposed variation to the Health and Human Services Award is recommended to the Commission".

[4] Mr Lynch made the following observations in respect to the matter:

"The history of how we reached this point has been detailed in matter T14603 of 2018 and 14638 of 2019. However, it is important to remember that one of the consequences of the machinery of Government changes made by the Hodgman Government in creating the Department of Communities was to effectively transfer a group of employees previously covered by the scope of the Health and Human Services Award to the Tasmanian State Service Award. As a result of the two consent applications brought before you to temporarily amend the scope of the Health and Human Services Award, the status quo has been maintained. However, it is the view of the CPSU that was paramount here is that regardless of how this situation arose, it is the employees who will be impacted by this decision who should decide the best way forward for them.

To this end, we have had some productive meetings over the past few weeks and have developed an agreed pathway forward and a realistic timeline to achieve an outcome. Firstly, the employer has now written to unions setting out its preferred position and detailing what I've described as incentive that it's willing to offer to staff to support its preferred position and for the record, I would like to hand up a copy of two letters from the Secretary of Department of Communities Tasmania, Ginna Webster, to the CPSU and HACSU, the first dated the 26th of August and the second dated the 27th of August. Effectively, the details of these letters are consistent with submissions made by Mr Charlton. There are three matters that I have described as incentives, being the creation of a process around the use of the market allowance that exists in the HAHSA award, the establishment of a policy to allow employees covered by the HAHSA award access to resilience and wellbeing days that will come from existing entitlements – regulation entitlements and thirdly the inclusion of flexitime provisions for Community Tasmania employees, a significant number of whom I understand work flexitime so it would be good to back that practice up with an award provision.

I note that each of these three incentives serve a dual purpose in that they also assist us in addressing an industrial are of concern that the parties have been seeking to resolve for some time, namely issues around recruitment and retention, issues around resilience and wellbeing and flexible working arrangements for DCT employees. The second issue that's been addressed that gives me some confidence in supporting this application is that we have agreed to develop a communication to all DCT employees that clearly sets out the history of this matter, the options available to resolve it, the differences between the two awards and the preferred option of the employer for resolution.

This communication will educate employees about the matter and empower them to decide their preferred way forward. Once we have all the details of the incentives and how they will operate unions will then consult with their members, assess their views and it will be on this basis that we decide whether to support any future application to amend the award or not. And again, for the record I would like to hand up the current draft and I acknowledge that Mr Charlton's put a lot of work into this but it is still very much a draft document and we were only discussing before the hearing started this morning how we changed this from War and Peace into something that workers will actually read and I think we've got some clever strategies to address that.

The final matter that gives me some confidence is that – and hopefully the Commission too – that we won't be back here in December seeking a further extension to this matter is that we have developed a schedule of actions and timeframes for finalisation and I would like to hand up a copy of that document".

- [5]** Mr Eddington supported the submissions which I have set out.
- [6]** It may be seen therefore that all parties submitted the variation sought does not offend the public interest, does not disadvantage those employees covered by the Award and recommended the variations to the Commission
- [7]** In the circumstances outlined above I am satisfied that the variations are in the public interest and that no employees are disadvantaged.

- [8] The application is granted and pursuant to s24 and 36 of the Act the Award is varied in accordance with the application. The variations to the award are operative from 1 July 2018.
- [9] An order reflecting this decision will follow.



David Barclay
President

Appearances:

Mr Charlton and Mr McCulloch for MASSA
Mr Eddington for HSU
Mr Lynch for CPSU

Date and place of hearing:

2019
28 August 2019
Hobart