

COMMISSIONER WATLING: No alteration to appearances?

MR HOLDEN: Not on behalf of the Tasmanian Independent School Teachers Association, Mr Commissioner.

5 COMMISSIONER WATLING: Good. Thank you. And there's none from the -

MR FITZGERALD: No other changes, sir.

COMMISSIONER WATLING: Right. Now, we might just go off the record for a moment to have a look at some procedural things.

**OFF THE RECORD**

10 COMMISSIONER WATLING: Mr Holden, I understand you're batting?

MR HOLDEN: Thank you, Mr Commissioner. Mr Commissioner, as you are well aware, this matter was before the commission on a previous date and was adjourned to allow the parties to attempt to convert what they had in mind to something at least appropriating the format that the commission wished the award to be in.

15 That process has taken up to and including until two o'clock today and no person on either side really claims to be fully knowledgeable about it, so I make the point to you, if we have made any errors in terms of typographical errors and we are agreed that they are errors we will come back and advise you of that but, in general, the parties have reached agreement.

20 COMMISSIONER WATLING: Now, you're tendering this document, I take it?

MR HOLDEN: Yes.

25 COMMISSIONER WATLING: We'll mark this document exhibit H.1.

MR HOLDEN: And we thank Mr Teds of AIST for his effort in preparing it. It was a difficult task, given the magnitude of the changes, to change the old format to this new format.

30 The intent is, that the previous award which I believe is No. 2 of 1994, will disappear and will be replaced by the new award as varied but as contained in exhibit H.1.

COMMISSIONER WATLING: Right. So, today the application is dealing with all the subject matters contained in the index of H.1?

MR HOLDEN: That's correct. Parts 1 to 7 inclusive.

35 COMMISSIONER WATLING: Thank you. No objection to the application being amended?

MR FITZGERALD: Not in those terms. We agree to that in those terms, sir.

COMMISSIONER WATLING: Right. No objection. Leave is granted.

5 MR HOLDEN: Also, in leading off, I make the point that the restructure completes the award review process as required by the commission by way of principle 16, as per the decision of T6941 and others of '97.

10 In addressing the document, Mr Commissioner, I'm also going to have to take my time because I, first of all, got a draft document this morning and went through it and have suggested quite a number of changes and I haven't had - which have been incorporated in the latest document. I haven't had time to check them, so I'm going to be, in effect, going through two documents at once.

15 On pages 1 and 2 we have the index of all the parts and on page 3 we have the scope and as the commission's aware, we did go through this off the record when it was in its previous format. At Clause 4 - Date of Operation, the parties would like the award to apply from 1<sup>st</sup> January 1998 which then flows on from the previous award and it takes effect from the beginning of this year, which is really the employment point generally for new teachers.

COMMISSIONER WATLING: So, you don't want it from the first full pay period to commence on or after the 1<sup>st</sup> January?

MR HOLDEN: That's what it says, from the first full pay period commencing on or after -

25 COMMISSIONER WATLING: I thought you said the 1<sup>st</sup> January.

MR HOLDEN: I did say the 1<sup>st</sup> January, but the actual wording does refer to the first full pay period commencing on or after 1<sup>st</sup> January.

COMMISSIONER WATLING: Good.

30 MR HOLDEN: Since coming here today, we've been provided with a clause which the parties agree should be used as the format to replace Part I, Clause 5 and instead of being titled, Award Interest and Persons Bound, it would be titled, Award Interest and be in the format as contained in the Meat Retailing Award.

COMMISSIONER WATLING: Good. Thank you.

35 MR HOLDEN: Clause 6 - Supersession. I don't really think I need to speak to.

COMMISSIONER WATLING: The commission will be required to put it in the format as that arising out of the conference of the parties.

MR HOLDEN: Both the parties understand, Mr Commissioner, that where any of our terminology or formatting isn't in accordance with what has been agreed and determined by the commission, it will be changed accordingly.

5 Part I, Clause 7 - General Definitions - is exactly that, what we believe to be general definitions.

We move on then to Part II - Employment Relationships and Associated Matters and again, it commences with a number of definitions about which the parties have agreed. Following those  
10 definitions, we come to Clause 1 of Part II, Employment Categories, and we believe that those employment categories set out there cover every form of employment covered by this award.

We then move on to Conditions of Employment and I don't believe that there is anything there that I need to speak to, other than page 6 of  
15 the award, Part II, Clause 2(a) General Conditions (vi), there is a reference there to 10 weeks notice and - sorry, I think I might have got the - what's the particular provision about falling within a term. Sorry, it's roman numeral (v). I've marked the wrong one. The intent of the parties there is that the 10 weeks notice applies from the time of giving  
20 of the notice, which means it can pass over into periods of leave.

If, or for convenience sake and assistance, it is preferred on all sides that any notice will fall within the term and in fact will in fact conclude at the end of the term. However, as you are well aware, there are occasions when that's not always possible. Notwithstanding that, they  
25 have to give 10 weeks notice but it means 10 weeks notice from the time they give the notice on either side.

COMMISSIONER WATLING: So, it's not mandatory that notice be given within the teaching term?

MR HOLDEN: No. The final sentence and I'll quote it, states:

30 *Such notice is to fall whenever possible wholly within a teaching term.*

And very clearly, from the association's point of view, whenever possible means exactly that. We don't see how you can read it up or down. It cannot be made to be meant to be mandatory. I don't think  
35 there's anything else I need to address in respect of the full-time teachers in (a).

In (b), the part-time teachers - before going on there is one thing I should say about the draft in its current context. There are various references to subclauses, paragraphs, subparagraphs and there are  
40 occasions when there is a need to refer to them as being subject to a specific part of the award because there are seven parts in the award

and as you will see, in Part I there are seven clauses; Part II, six clauses; Part III, five clauses and so on.

5 When, for example, if you were referring to a clause in Part II and you're still in Part II, one would assume you say, subject to subclause 4(a) hereof. However, if it is a different part of the award, there is a necessity to say, subject to Part II, subclause, and that hasn't been done throughout this award and that will certainly need looking at.

Just for argument's sake, if you go to page 7 under (b) - Part-time Teachers, (iii)(3), you will see that it does say it there. It says:

10 *Holidays with pay entitlements will be in accordance with Part 5, Clause 2 - Holiday Pay.*

Now, there are certainly some parts where that does not appear. For example, if you go down to (iv) -

COMMISSIONER WATLING: I think it's been picked up, hasn't it?

15 MR HOLDEN: I think that one is right actually, but there certainly are some parts throughout the award where that needs to be looked at. Special funding teachers is straight forward, as I believe is replacement teachers. We have made provision there that where a replacement teacher - no, let me go back to special funding teachers:

20 *Where a special funding teacher is employed for a period in excess of eight weeks -*

And you see it at page 8, (c)(iii):

*- special funding teachers employed for a period of in excess 10 weeks shall be subject to all the provisions of this award.*

25 The particular reason that appears is, if a special funding teacher is employed for eight weeks, obviously they can only be given eight weeks notice which is at the time of appointment but if they're employed for a period that's longer than 10 weeks, they can be told at the beginning when their termination is but they're entitled to 10 weeks notice if it's  
30 not given to them at that time.

Replacement teachers, I believe is straightforward. Teacher librarians, senior classroom teachers. If you go to page 9, there is the process for becoming a senior classroom teacher. The fact that you have to be on step 12 of the salary scale for at least 12 months and you must be  
35 classified as a minimum of a four-year trained teacher. It's followed by a requirement that the applicant address certain criteria.

Moving on to Clause 3 of Part II - Induction Process. That's straightforward and I think the same as was previously in the award, as is Clause 4 - Teacher Appraisal. Clause 5 - Professional

Development and Teacher Portfolios is the same as was previously in the award.

5 I think it is when you get to Part II, Clause 6 - Redundancy, there may be some provisions there where you may have to write in the 'hereofs' or the 'parts' or whatever. If you go to [a] - Full Time Teachers, [ii] the final line states:

*... in accordance with provisions expressed in paragraph 6(a)(v).*

And one would assume 'hereof' follows that. The next sentence, the first sentence of [iii]:

10 *Where the provisions of paragraph 6(a)(i) are invoked ...*

And again, I would assume there is a 'hereof' so people are clear you are talking about Clause 6 from Part II.

COMMISSIONER WATLING: I don't think it can be, can it?

MR HOLDEN: Pardon?

15 COMMISSIONER WATLING: Where's paragraph 6(a)?

MR HOLDEN: Well, 6 is the clause number. [a] is the subclause number and [i] is the paragraph number, which is in accordance with how the drafting guidelines provided, say -

20 COMMISSIONER WATLING: Yes, but doing the exercise here, where's para 6(a)(v)?

MR HOLDEN: 6(a)(v). Where are you looking at? Sorry?

COMMISSIONER WATLING: In Clause 6(a)(ii).

MR HOLDEN: Yes. 6(a)(v) hereof, because it is referring to Part II and it is in fact referring to the particular clause, redundancy.

25 COMMISSIONER WATLING: It's really [a](v) of this clause?

MR HOLDEN: Well, it's -

MR SHORTER: It said in the guidelines to list the clause number when you had paragraph.

COMMISSIONER WATLING: Yes.

30 MR HOLDEN: That's what we have done. It says here, for instance, Name of division, paragraph, mode of citation -

COMMISSIONER WATLING: Yes. I think we're very familiar with it because that's what the format is. But, anyway, leave it to us. We will fix it. It's not para 6 -

MR SHORTER: No.

5 MR HOLDEN: But that's not the way the guidelines say it and we followed them religiously.

COMMISSIONER WATLING: Well, I think you'll find that you might be misinterpreting it. Anyway -

10 MR HOLDEN: It just says here, in cross-referencing, refer para 1(a)(i) and that's exactly what we've done.

COMMISSIONER WATLING: Yes. Well -

MR HOLDEN: But if it's wrong, well -

MR SHORTER: Because if you have to put the clause, you have to put the title after clause.

15 COMMISSIONER WATLING: Yes. Let us not end up in debate with it. We're really talking about (a)(v) hereof.

MR HOLDEN: Mm. I can agree with that. As I say we read this and did that.

20 COMMISSIONER WATLING: It's para (a)(v) hereof. The 6 was the clause number.

25 MR HOLDEN: Look, I agree, but our document says, put that in. That's all I can say. On page 11, (v) there is a change in the duration of service pay. It ends up with the same provision but calculated slightly differently with a proviso added. There is now special attention paid on page 12 under (b) Part Time Teachers because there was some confusion as to the interpretation of the award, that no longer applies. This spells it out very clearly, exactly what will apply.

30 If you go on to Part III - Salaries and Related Matters. It commences with definitions. You've already drawn attention to the verbiage used on 13 in the total salary definition and the parties have no problem with the terminology that you have proposed. Clause 1 - Classification Descriptors. Then you drew attention to the need for some changes in (b) Entry Levels, in terms of whether it appears as salary scale step 1 or whether it appears as step 1 salary scale and there are a number of similar references and the parties accept your proposal that that be  
35 changed.

Moving on to Clause 2, again the parties accept your proposal that instead of salary rates the title would be Salaries and where Salary per Annum appears, it should be replaced by Salary Scale. Likewise on

page 15 under (b) Senior Classroom Teacher. Where the word salary scale, step 12 appear, that would change to annual salary for step 12. The heading under (c) would have the 's' removed off the end and on the final two lines of that paragraph where it says, salary scale 12, that would be replaced by the annual salary for step 12 of the salary scale.

Mr McFarlane has drawn my attention to page 15 (c) administrative allowance. There is now a - after the word 'curriculum', there is a comma and - the question is whether a comma is adequate between those or whether 'or' needs to be added in and you have pointed out that if the 'or' is not there it could be considered, a separate allowance applies for (e), so the parties agree that 'or' will appear after 'care', 'or' will appear after 'curriculum' and on the next line where 'and' appears between the words 'sport' and 'extra', the word 'or' will be inserted there and I've already drawn attention to the change at the end of that paragraph.

On page 16 under Daily Rate you have proposed a change so that instead of what is there now it would read:

*With the exception of Relief Teachers, and only where appropriate, the daily rate of pay shall be based on the teacher's annual salary.*

Then it's equal annual salary divided by 260 and that is so as to make sure that what is divided by 260 is the teacher's proper salary rate and not some general rate taken from anywhere in the salary scale.

Part III, Clause 3 - Payment of Salaries, is a new clause and is agreed by the parties.

Part III, Clause 4 - Part-Time Teachers, is quite straightforward and I really don't think needs any description.

Part III, Clause 5 - Superannuation, is a brief statement of what legislative requirements shall be followed.

We then move on to Part IV - Allowances. The only matter addressed is protective clothing, which is currently in the award.

We then move on to Part V - Hours of Work, and we commence with the definition of Show Day, followed by Clause 1 - Hours of Work. The spread of hours have in fact been extended in this award and I draw attention to that because it does give additional flexibility to any of the schools to use. The contact time - and for the commission's benefit, there's a spelling error on the third line in, contact time. Instead of fortnight, it's fortnite. We've referred there to fortnight and the hours in a fortnight which obviously means two weeks or ten school days.

Holidays with Pay is basically a standard clause but it now makes reference to a teacher who performs boarding house duties and because - there are usually students who stay there unless they live quite close and on those days the person is required to do some form of work. Part V, Clause 3, sets out what are generally considered to be the extra-curricula activities and in effect really codify existing arrangements.

Part VI refers to Leave and Holidays with Pay and Clause 1 - Annual Leave and School Holiday Leave, and there is provision in that clause for proportional calculations to cover - how shall I say - unusual arrangements, whereby teachers' leave other than end of term et cetera. Clause 2 - Bereavement Leave, which follows a standard arrangement. Clause 3 - Examination Leave -

COMMISSIONER WATLING: Not quite, but it is similar to what was in your previous award.

MR HOLDEN: Well, generally, yes.

COMMISSIONER WATLING: Because you can get leave on account of serious illness here as opposed to just death.

MR HOLDEN: Clause 3 - Examination Leave, provides that the employer can grant up to half a day for examinations, if the employer approves the particular course of study. Leave Without Pay is basically somewhat similar. You can apply but it's at the discretion of the employer. Parental Leave, the whole lot of these -

COMMISSIONER WATLING: Just an interesting point on that Leave Without Pay. I take it that there's no accruals going on during that time? If someone was off with leave without pay, are they still accruing annual leave during that time?

MR HOLDEN: I don't the subject's been particularly discussed but I would imagine that there wouldn't be because it they're not really subject to any other award benefits.

COMMISSIONER WATLING: No, of course.

MR HOLDEN: Parental Leave includes all the normal provisions of maternity, paternity, adoption leave and the normal part-time clause which is attached to those forms of leave and that runs through to page 38, I think. At 38, we come to Part VI, Clause 6 - Sick and Associated Leave, which includes Carer's Leave. You will note that those leave applies to part-time and full-time teachers but not to relief teachers who are, in industrial terms, comparable to casual type employees.

We then move on to Part VII - Consultation and Dispute Resolution. Clause 1 is an Enterprise Flexibility provision and Clause 2 is

Structural Efficiency provision. Clause 3 is the Dispute Settling Procedure and Clause 4 is Due Process, which I understand we now have general agreement should read something along the lines of:

5           *In instances where the employer is dissatisfied with the performance/conduct of an employee the employee shall be entitled to procedural fairness and the employer shall comply with the requirements of ILO Convention 158 TERMINATION OF EMPLOYMENT AT THE INSTIGATION OF THE EMPLOYER.*

10          It may be necessary for you to add some words to that, but that's the general gist of the position and that will replace everything that currently appears under (a) and (b).

15          As I said at the outset, given the nature of the process that has been gone through in this, it is far from impossible that there may be some minor errors contained in it. If the parties detect any of those and agree that they are in fact errors, they will discuss how best to process them with you, Mr Commissioner - whether it's necessary to make application or whatever.

20          COMMISSIONER WATLING:    On that point, can I just say that I'm happy for you to pick up any errors and omissions prior to me issuing the order. However, once the order is issued, then if you find something there'll be a need to make an application to correct it.

25          MR HOLDEN:    Okay. As has been said, the operative date the parties seek is the 1<sup>st</sup> January '98, in terms of it being from the first full pay period and as there are no increases in wage rates, the question of a work value datum point isn't of huge importance, however it has been indicated to me that the last work value in respect of teachers that had any affect on this award was in fact, I believe, a flow-on of the Public Sector Award which was concluded, I believe, some time in the early 1990s. I'm not at this point able to give you an exact date.

30          COMMISSIONER WATLING:    No, but you're really referring to the full bench - the major full bench case for teachers' salary review.

MR HOLDEN:    Mm. In the public sector.

COMMISSIONER WATLING:    In the public sector.

MR HOLDEN:    Not the TAFE Award.

35          COMMISSIONER WATLING:    No.

MR HOLDEN:    Otherwise they're not getting enough money. That concludes my submissions, Mr Commissioner.

COMMISSIONER WATLING: And I take it that it's your view that the process you've undertaken conforms with the requirements of the wage fixing principles?

MR HOLDEN: Of course, sir.

5 COMMISSIONER WATLING: That's good.

MR HOLDEN: And I would ask that our agreed document be ratified by the commission at the earliest possible date.

COMMISSIONER WATLING: Good, thank you. I think Mr Fitzgerald was going to address the wage fixing principles and the public interest,  
10 anyway.

MR FITZGERALD: I was going to. I usually do and in fact I intended to do that first of all. Mr Commissioner, it's certainly in our view in the making of any new award and Mr Holden's already covered the point in terms of the current wage fixing principles, particularly principle 16  
15 which talks about the award review process and I suppose it's somewhat history making that this is, I think, the first award in part of that process and in fact even prior to the process actually starting. So, I'd say that it does take into account those matters which are contemplated in principle 16(i) to (vii) and of course that means that  
20 we wouldn't want to be going through the process again, certainly not in the short term.

I understand - I just simply make my point clear now at this point, that I'd certainly congratulate the principal parties concerned. We've been involved in a very much advisory capacity but both the AIST and  
25 TISTA, I think, have been very persistent in their desire to review the award and it has been as a result of two applications and I think their persistence has paid off and I certainly congratulate the parties for moving to this agreed document. It is an agreed document.

In terms of the commission's requirement to take into account the public interest provisions of the act, section 36 of the act sets those requirements out and it's my submission, Mr Commissioner, that it doesn't in any way offend the public interest provisions specifically set out in 36(2) - that's relating to the economic position of the industry or the likely affect on the economy of Tasmania or I can't contemplate any  
30 other aspect where the commission may assume it to be - to in fact offend the public interest.  
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The consultation process in the making of this award has indeed been long and professional, I would suggest, and has been consultative with the various members of both TISTA and AIST and I think that's  
40 important, that parties who are subject to the award and affected by the award have been involved and have been consulted with the process.

Again - you've already mentioned, but all matters which are contained within the index and I didn't intend to go through the document as Mr Holden has because he has done it very fully and comprehensively, but we would adopt his submissions in respect to the individual clauses.  
5 All those clauses -

COMMISSIONER WATLING: That's contained in exhibit H.1, which you're supporting?

MR FITZGERALD: We are supporting that, yes, sir. I can indicate that - as amended of course - where the amendments have been made  
10 and we note and thank you also for your flexibility in terms of - if there are any incidental oversights or errors or omissions, I'm sure they're of a mechanical nature and not of a substantive nature and obviously we will be examining it just to make certain that we haven't missed anything and we would certainly have those to you prior to the issuing  
15 of any order but we thank you for your flexibility in that regard.

I don't think I really have anything further to say in respect of the document. Of course, the operative date relates to the first full pay period commencing on or after the 1<sup>st</sup> January 1998 and that's of course effective with the start of the school year and the commission,  
20 as you would be aware, is able to, where there is agreement between the parties, to endorse the retrospective nature of the document, albeit very slight in terms of the effective commencement of the school term recently.

I believe it's a significant step forward. Obviously, in a changing world,  
25 particularly in the education industry, it's important at this level and also at the individual school level, parties continue to address the productivity and efficiency issues and I look forward to that happening at that level. If it please the commission, I would seek the commission's endorsement of the document before you.

COMMISSIONER WATLING: All right. Given that you're supporting exhibit H.1, as amended, as the final draft of the revamped award, where does that now leave your application, T7243 of 1997?  
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MR FITZGERALD: We'd seek to formally withdraw that application, commissioner. Yes, we'd seek to withdraw it.

COMMISSIONER WATLING: Good. Any further submissions?  
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MR HOLDEN: No, Mr Commissioner.

MR FITZGERALD: No.

COMMISSIONER WATLING: Well, I can indicate to the parties that I'll hand down a written decision in due course. It will be in support of  
40 exhibit H.1, as amended through the course of this hearing and private conference. A decision won't be handed down until the order is

5 prepared and I understand that the parties are going to provide me with a disc containing the words. The commission will put the document into the format of the commission and between now - as I said earlier, between now and the issuing of the order if there are minor errors or omissions, I think the parties are entitled to pick that up but once the order is released, that'll be it.

10 Thank you for your cooperation. It eliminates also another conference - an award restructuring conference under the wage fixing principles. So, I'll alter my list to make sure that we're not calling that back on again and I'm sure, as we all know, this award is really the base upon which enterprise bargaining takes place and I encourage the parties to continue enterprise bargaining at the enterprise level but that's another issue for another day.

15 Thank you for your cooperation. The matter is now closed. In relation to Mr Fitzgerald's application - that's the application by the Chamber of Commerce and Industry, that's T7243, I'll hand down a written decision saying that there was a request from the applicant to discontinue proceedings in that matter. No further business. Thank you. The matter is closed.

20 **HEARING CONCLUDED**