



TASMANIAN INDUSTRIAL COMMISSION

CITATION: Stephen Hall v Minister administering the State Service Act 2000/Department of Natural Resources and Environment Tasmania [2026] TASIC 57

PARTIES: Stephen Hall (Applicant)

Minister administering the State Service Act 2000 (Respondent)

SUBJECT: Industrial Relations Act 1984, s 29(1) application for hearing of an industrial dispute

FILE NO: T15323 of 2024

HEARING DATE(S): Determined on the papers

DATE REASONS ISSUED: 28 September 2026

COMMISSIONER: Commissioner T J Abey

CATCHWORDS: Whether position of Principal Advisor (Legal Services) is correctly classified in the General Stream or alternatively in the Legal Practitioners stream – jurisdiction – appointment or promotion – Power of Head of Agency to assign a classification – offer and acceptance – jurisdiction found

REPRESENTATION:

Stephen Hall the Applicant

Nicole Winton and Nathan Gautam for the Minister administering the *State Service Act 2000*

**STEPHEN HALL V MINISTER ADMINISTERING THE STATE SERVICE ACT
2000/DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT
TASMANIA [2026] TASIC 57**

REASONS FOR DECISION

HOBART, 28 SEPTEMBER 2026

[1] This is an application lodged pursuant to s 29(1) of the *Industrial Relations Act 1984* (the Act). It concerns a dispute relating to the classification of a position under the Tasmanian State Service Award. (the TSSA).

[2] The Applicant was appointed to the position of Principal Adviser (Legal Services), Biosecurity Tasmania, Position No. 707880 (the position) in 2017. He contends that the position, which has always been classified as General Stream, Band 7 of the TSSA should correctly be classified in the Legal Practitioners Stream, specifically as Legal Practitioner Level 3. The Legal Practitioners Stream is found in Appendix 20 of the TSSA.

[3] The Applicant contends that from at least 2019, he has raised internally, his view that the duties of the position were inconsistent with a classification under the General Stream. A formal reclassification request was lodged in September 2023. The Applicant states that these requests have failed to resolve the dispute, culminating in the current application lodged on 23 April 2026.

[4] The Respondent submits that the Commission lacks jurisdiction to hear the matter. Hence the jurisdictional issues are dealt with by way of a Preliminary decision below. The contentions of the Respondent have a number of legs, which are addressed separately.

Not an Industrial Matter

[5] This is an application for Hearing in respect of an Industrial Dispute under s29(1) of the Act. S3(1) relevantly defines industrial matter as:

(a) A matter relating to –

(i) The mode, terms and conditions of employment; or

...

(b) A breach of an award or registered agreement –

but does not include a matter relating to –

(i) Appointments, or promotions, other than in respect of the qualifications required for advancement;

[6] The Respondent contends that the Applicant's claim is for reclassification from Band 7 of the General Stream to Level 3 of the Legal Practitioners Stream. Movement between two distinct classification streams is, in substance, an appointment to or a promotion into a different category of position. It is not a dispute about the terms and conditions of the Applicant's

existing appointment; it is a claim for elevation to a fundamentally different class of employment, with different duties, functions and salary arrangements.¹

[7] The Applicant rejects the Respondent's contention, stating:²

The Applicant was assigned his current duties in 2017 and is not seeking assignment of new, different or higher duties or any variation of duties. The position number, statement of duties, level of responsibility, duties performed and reporting line would be unchanged by correction of the misclassification of the Applicant's position.

Any alteration to the attainable maximum salary would occur not because the Applicant has been assigned new or higher duties, but because the duties assigned to him in 2017 are found to have been historically misclassified for Award purposes. Correcting the Award classification of an existing position does not constitute appointment, promotion, or advancement within the meaning of the *State Service Act 2000*.

The Commission is not asked to place the Applicant in a different role, nor to displace any other employee. The Commission is asked only to determine whether the Tasmanian State Service Award has been correctly applied to a position as constituted and performed. Any administrative consequences flowing from that determination remain a matter for the Respondent and do not affect the Commission's jurisdiction. The Applicant referred to the *Acts Interpretation Act 1931* (the AI Act), which requires that regard must be had to the purpose of the Act, and that an interpretation which promotes the purpose or object of the Act is to be preferred to an interpretation that does not promote the purpose or object.

[8] The Applicant referred to the definition of promotion in the *State Service Act 2000* (the SSA) which reads:

promotion means the assignment of duties to a permanent employee, other than for a specified period or for the duration of a specified task, which results in an employee obtaining a higher attainable maximum salary level than the salary level that the employee had immediately before the employee was assigned those duties;

[9] The Applicant contends that as he is not seeking new duties, his application cannot be viewed as a promotion.

[10] The Respondent contends that there is no warrant for importing this definition from the SSA.³

In ordinary industrial language, a promotion means moving into a different category of position, with different duties, functions and pay. That is exactly what is being sought here. The Applicant wants to move from the General Scheme, Band 7, into the Legal Professional Stream, Level 3. This is a different classification structure within the Award, with its own entry requirements, definitions, and set of descriptors.

[11] The Applicant contends that using *promotion* in its ordinary sense, rather than the technical definition in the SSA, does not assist the Respondent. Asking whether this case fits the Respondent's definition, he states:⁴

¹ Respondent submissions 16 April 2026.

² Applicant's submissions in reply [16] to [18], 19 April 2026.

³ Applicant's submissions in reply, 19 April 2026.

⁴ Applicant's reply submissions on jurisdiction, 27 August 2026.

It does not. A promotion is advancement into a different role: a vacancy, an application, a selection process, or a movement up the rungs of an organisational ladder within the same classification stream.

The Authorities

[12] The parties referred to a number of authorities, albeit with different constructions as to what they mean.

[13] In T14056 of 2013 *MASSA v HSU*⁵ a Full Bench upheld an earlier decision of Wells DP confirming that classification disputes are resolved by applying the classification descriptors to the position as described on the Statement of Duties (SoD) to identify the “best fit”. The Respondent seeks to distinguish this decision, in that it does not deal with a case involving a separate admission-based gateway. The Respondent mounts a similar contention in relation to T13908 of *CPSU v MASSA*⁶ in which Wells DP granted an application to move from Band 2 to Band 3 within the same stream. This is a recurring theme which I address later in this decision.

[14] In T Nos 10628, 10629, 10632 and 10699 of 2003⁷ Shelley C dealt with cases involving fixed-term teachers seeking new contracts. Both parties acknowledged that these cases could be distinguished on the facts. They are authority for the notion that the Commission does not have jurisdiction to make appointments. Beyond that, I have difficulty accepting that they have relevance to the instant case.

Power of Head of Agency to Assign Classifications

[15] S34 of the SSA relevantly reads:

Functions and powers of Heads of Agencies

(1) Subject to any Employment Direction, the functions of a Head of Agency are –

...

(d) to assign a classification to duties to be performed in that Agency and to vary such a classification –

(i) in accordance with award requirements; and

(ii) in accordance with classification standards and procedures determined by the Employer or, where no such standards or procedures have been determined, with the approval of the Employer; and

(e) to assign duties to each employee within that Agency and to vary those duties;

...

[16] This was addressed by Wells DP in T13908 in which she said:⁸

Whilst this section provides for the Head of Agency to assign a classification to duties performed in a role, it only allows for such a classification to be made in accordance

⁵ T14056 of 2013 *Minister administering the State Service Act 2000 and Health Services Union of Australia, Tasmania No. 1 Branch HSU*.

⁶ (T13908 of 2012) *The Community and Public Sector Union, Tasmanian Branch (State Public Services Federation) Inc. and Minister administering the State Service Act 2000 (Department of Primary Industries, Parks, Water and Environment)*.

⁷ *Australian Education Union, Tasmanian Branch v Minister administering the State Service Act 2000*.

⁸ *Ibid* [108] to [109].

with award requirements. This matter is being dealt with as an alleged breach of award, I find the Commission has the power to affect an order remedying any possible breach and there is no jurisdictional issue.

As discussed previously in this decision at paragraph 9, this matter is heard pursuant to s29(2) of the IR Act and the Commission derives its power to make orders to remedy any breach of award from s31(1) which states:

“Subject to this section, where the Commissioner presiding at a hearing under section 29 is of the opinion, after affording the parties at the hearing a reasonable opportunity to make any relevant submissions and considering the views expressed at the hearing, that anything should be required to be done, or that any action should be required to be taken, for the purpose of preventing or settling the industrial dispute in respect of which the hearing was convened, that Commissioner may, by order in writing, direct that that thing is to be done or that action is to be taken.”

[17] The Respondent does not ask the Commission to depart from this decision but seeks to distinguish it on the basis that it involved a move from Band 2 to Band 3 within the same stream.

[18] I propose to follow Wells DP. This leads to me to a broader consideration of classification structures.

Classification Structures

[19] As I understand the Respondent's position, it is within jurisdiction for the Commission to hear a dispute which is confined to the relevant stream. For example, a claim that an individual classified at say Band 3 of the General Stream, should be classified at Band 4, could be entertained. This, the Respondent contends, is consistent with T13908 and T14056. It is not, however within jurisdiction to entertain a claim which seeks to go outside the Stream, as in the instant case.

[20] In my view neither T13908 or T14056 actually say what the Respondent contends.

[21] Classification structures are the property of the Award parties and are fluid in nature. That is, subject to change.

[22] The exclusion of “appointments and promotions” was expressed in identical terms when the Act was proclaimed in 1984. However classification structures looked very different in the period following proclamation to what they do today. For example, the TSSA did not exist and its predecessor, The Administrative and Clerical Employees Award spoke of “levels” of Administrative and Clerical Officers with “years of service” within each level. There was no mention of “streams” and “bands”. Indeed, the private sector awards of the day generally spoke of single point classifications such as “carpenter” or “sales Assistant.”

[23] The exclusion of “appointments and promotions” must be capable of sensible application irrespective of the style of the classification structure and how it changes over time.

[24] It is important not to conflate “merit” with “jurisdiction”. The only consideration is whether the duties, responsibilities and skills of a particular position, are, after applying the appropriate *test/s*, *found to be properly covered by an alternative classification found elsewhere in that Award*, or for that matter, another Award. If that is not the case, the

application fails. It is not a matter of, as the Respondent seems to suggest, of adding duties to meet the claimed classification definition.

Conclusion as to Appointment and Promotion

[25] For there to be a promotion, there must be some change in either duties or responsibilities.

[26] For there an appointment there must be, at the very least, a vacancy and a selection process.

[27] Neither circumstance applies in the instant case. I have no hesitation in concluding that the Applicant is neither seeking a promotion or appointment and that the application does not fail for want of jurisdiction on this ground.

Offer and Acceptance

[28] The Respondent contends that the application goes to the heart of the employment contract itself. The Applicant was offered, and accepted employment in Position 707880 as General Stream Band 7 Position. At no point was an offer made of employment as a legal practitioner, noting that, at the time, Legal Practitioners were subject to a separate Legal Practitioners Award. What he now seeks is not the correction of a role whose nature has stayed the same but appointment or promotion to a different form of employment as a legal practitioner.

[29] I have dealt with this contention above and reach the same conclusion.

[30] In any event I consider the notion that an employee is, for all time, bound by the terms of offer and acceptance at the time of appointment, a bridge too far, particularly as the Commission has a clear jurisdiction to deal with alleged award breaches.

Other Respondent Contentions

[31] The Respondent has raised a number of other issues, which in my view are clearly merit considerations, and not relevant to the jurisdiction issue.

Conclusion

[32] I have no hesitation in concluding that the application is within the Commission's jurisdiction.

[33] A Directions hearing will be convened in the near future to progress the merit hearing.



Tim Abey
Commissioner