

AUSCRIPT PTY LTD

ABN 76 082 664 220

Suite 25, Trafalgar Centre 108 Collins St HOBART Tas 7000

Tel:(03) 6224-8284 Fax:(03) 6224-8293



## TRANSCRIPT OF PROCEEDINGS

---

O/N 0229

### TASMANIAN INDUSTRIAL COMMISSION

#### COMMISSIONER P.C. SHELLEY

**T No 11312 of 2004**

**T No 11313 of 2004**

**T No 11314 of 2004**

#### RESTAURANT KEEPERS AWARD

**Application pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 by the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch to vary the above award re clause 25, overtime and other penalty rates**

#### LICENSED CLUBS AWARD

**Application pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 by the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch to vary the above award re clause 16 casual employees, and clause 36 shift allowance**

#### HOTELS, RESORTS, HOSPITALITY

## **AND MOTELS AWARD**

**Applications pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 by the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch to vary the above award re clause 14 casual work, and clause 27 overtime and penalty rates**

## **HOBART**

**10.30 AM, THURSDAY, 18 MARCH 2004**

**This transcript was prepared from tapes recorded by the Tasmanian Industrial Commission**

**HEARING COMMENCED**

**[10.30am]**

PN1

MR P. TULLGREN: I appear on behalf of the applicant, now the Liquor, Hospitality and Miscellaneous Workers Union in all three matters.

PN2

THE COMMISSIONER: Yes, I have noted that.

PN3

MR P. MAZENGARB: I appear on behalf of the Tasmanian Chamber of Commerce and Industry Limited in all three matters.

PN4

THE COMMISSIONER: Thank you. Now, the orders that were sent by fax, do they differ from the ones that came with the application?

PN5

MR TULLGREN: They do Commissioner, but only in relation to the dates. Commissioner, the three applications before you are applications to vary these awards in relation to the monetary amounts which are paid as effectively penalty rates or shift payments within the three awards. The monetary amounts that are subject to these applications are all drawn from the Federal Hotels,

Resorts and Hospitality Industry Award 1992 and its predecessor awards. Now, those awards have had the monetary amounts which are contained at clauses 15.22 and 19.3 of the Federal award on a regular basis.

PN6

THE COMMISSIONER: I am sorry are you entering an appearance?

PN7

MS .....: I am actually just here to see what happens. I am from the Australian Hotels Association.

PN8

THE COMMISSIONER: Fine.

PN9

MR TULLGREN: The monetary amounts have been subject to regular variation in the Federal award usually in connection with the National Wage Case decision. However, the amounts in Tasmania have not been subject to change at the same time and they have fallen somewhat behind the provisions in the Federal award. What the applications seek to do is simply to vary to increase the rates, but to increase them in two bites, Commissioner.

PN10

The first increase would be effective from the first pay period on or after 1 April this year and the amounts are set out. And then there would be a further increase effective from the first pay period on or after 1 January 2005 and the terms of the orders make that clear in the variations. And then from then on the intention of the parties is that these allowances would be varied at the time allowances are varied with the State Wage Case.

PN11

THE COMMISSIONER: So you want the orders that are issued to have both amounts? Both the April amount and the January 2005 amount included in them?

PN12

MR TULLGREN: Yes. And if I can take you - - -

PN13

THE COMMISSIONER: But the next State Wage Case would influence wouldn't it, what the amount would be in January 2005?

PN14

MR TULLGREN: No, what is intended is that these amounts will be increased and then in the State Wage Case in 2005 the allowance will be increased from then on.

PN15

THE COMMISSIONER: Okay, so not in 2004.

PN16

MR TULLGREN: No.

PN17

THE COMMISSIONER: So the first State Wage Case variation that would have application is 2005?

PN18

MR TULLGREN: Yes.

PN19

THE COMMISSIONER: Right.

PN20

MR TULLGREN: And as Commissioner you can see that for instance taking the Restaurant Keepers draft order in the first column, column A for licensed establishment, it says that the rate will be \$1.21 from the first pay period on or after provided that the amount will increase to \$1.38 from the first pay period. So that in each of the orders the wording is the same or similar and it is written that way on the basis that anybody who reads the award would see that the allowance is moved again. It is done this way simply to save having to come back and effectively vary the award again, but I have been at pains to try to draft this to make it clear to any employer or person advising them when these allowances come in. I know that that could be considered a tad unusual - - -

PN21

THE COMMISSIONER: There are precedents for that however.

PN22

MR TULLGREN: But it was thought that would be - and I think it has also has something to do with my prosaic mind that it is easier and tidy to do it that way. The application is by consent. I have had discussions with my friend on and off over a period of time and we have reached an amicable settlement in relation to operative dates and we would submit that there is no reason that the Commission could not vary the awards in the terms of the draft order. We would seek that - all the orders provide that the variations come into force on the first pay period on or after 1 April.

PN23

THE COMMISSIONER: There are a number of other employee organisations that are parties to some of these awards at least. Now, we have received no correspondence, so I take silence as consent in this case.

PN24

MR TULLGREN: Yes, I think that the deafening silence is taken to be consent.

PN25

THE COMMISSIONER: I am satisfied that all the relevant parties have been served with notice of the hearing.

PN26

MR TULLGREN: And equally, Commissioner, I can say that in relation to any other employer parties, we have received no correspondence or advice that there is any issues and my friend hasn't advised me that he has any instructions in relation to those.

PN27

THE COMMISSIONER: Right. Yes, they have definitely all been served. Does that complete your submission?

PN28

MR TULLGREN: Yes, Commissioner, save for any questions you might have or in response to any matters my friend raises.

PN29

THE COMMISSIONER: Yes. Thank you. Mr Mazengarb?

PN30

MR MAZENGARB: Yes. Thank you, Commissioner. I can indicate as stated by Mr Tullgren that we have been in negotiations on this matter since early November of last year and that we have reached an amicable outcome as outlined quite efficiently by Mr Tullgren. So we do not oppose the application and that opposition is based on the fact that we have examined the Federal award as referred to by Mr Tullgren and certainly there was a nexus at some stage in the dark distant past in relation to the allowances subject to today's proceedings. And in light of the fact that that nexus was there at that stage that we have no reason to object and we do not believe that the application is at variance with the State wage fixing principles or the public interest components of the Industrial Relations Act.

PN31

THE COMMISSIONER: And as from 2005 the problem will be solved because it will automatically move each State Wage Case.

PN32

MR MAZENGARB: Yes.

PN33

THE COMMISSIONER: Very good. Well, in the light of the submissions that have been made and the fact that it is a consent - they are consent variations I indicate to the parties that the awards will be varied in the manner sought with an operative date of the first full pay period on or after 1 April 2004 and a written decision will issue in due course. These matters are adjourned.

**ADJOURNED INDEFINITELY**

**[10.38am]**