



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. 9897 of 2001

IN THE MATTER OF an application by
The Association of Professional Engineers,
Scientists and Managers, Australia to vary
the Retail Pharmacy Award

Re: Part IV – Allowances, Clause 2 –
Expenses and Accommodation

DEPUTY PRESIDENT WATLING

HOBART, 7 December 2001

TRANSCRIPT OF PROCEEDINGS

UNEDITED

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)

(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING COMMENCED 10.30am

DEPUTY PRESIDENT: I'll take appearances please.

MR D. PYRKE: If the commission pleases, DARRYL PYRKE appearing on behalf of the Association of Professional Engineers, Scientists and Managers Australia.

DEPUTY PRESIDENT: Good. Thank you.

MR R. ROLLINS: May it please the commission, RICHARD ROLLINS appearing on behalf of the Tasmanian Chamber of Commerce and Industry.

DEPUTY PRESIDENT: Thank you, Mr Rollins. Mr Pyrke?

10 MR PYRKE: Thank you, deputy president. Sir, in making the application, our objective is to keep the award up to date. In pursuit of this objective we have two particular proposals, firstly, it's proposed that we insert a formula by which we can keep the award up to date because it's been some time since it's been varied, and secondly, we seek to vary the award in line with agreed
15 formula.

The formula that we propose in the draft order is a variation of the award in September of each year in line with the transportation component of the Consumer Price Index for the 12 months ending in the previous June.

20 We have chosen this particular approach because it's one for which there is precedent in this jurisdiction and I refer here to the Architects Award, the Professional Engineers and Scientists (Private Industry) Award and the Metals and Engineering Industry Award.

The current figure has been in effect since May of 1996 when matter T5172 gave rise to order No. 1 of 1996. With this point in mind I submit that the
25 award needs to be adjusted for the 12 months ending in June of 1997, 1998, 1999, 2000 and 2001.

If it's convenient please, I'd like to tender an exhibit now to show how we propose to justify our figures.

DEPUTY PRESIDENT: **EXHIBIT P.1.**

30 MR PYRKE: Thank you, deputy president. Sir, the front page of the exhibit is a spread sheet showing the calculation which has produced the figures in the drafter order. Basically we've taken the figures from 1996 which are 35.25 cents per kilometre and 30.32.

DEPUTY PRESIDENT: So it's the June quarter 1996 or was it just from
35 June?

MR PYRKE: No, the award started from May – sorry, from June, that's right – in 1996 and they were the original numbers, I believe.

DEPUTY PRESIDENT: Right. Yes.

40 MR PYRKE: We then increased it by 0.1 per cent from June 1997, knocked off 0.9 per cent from June 1998, added back 0.1 per cent from June 1999, 7.5 per cent from June 2000 and 5.5 per cent from June 2001.

Now to justify those increases, behind the spreadsheet are extracts from the Consumer Price Index.

45 If you go to the third page of the exhibit, it's headed CPI Groups Weighted Average of Eight Capital Cities Percentage Changes, and a number of columns, one of which is headed Transportation, and if you go down that column, I've marked the June quarters for various years, so you can see that June 1997 is the 0.1 that I've referred to. June 1998 is the minus 0.9 that I referred to. And then if we go to the last page of the exhibit and go the first
50 column headed Transportation, we pick it up from June 1999 which is 0.1, then June 2000 – 7.5, and June 2001 – 5.5.

Sir, the application was discussed with the Pharmacy Guild prior to lodgement and I understand that the application has the consent of the employer parties. I submit that it's consistent with Principle 7 of the current Wage Fixing
55 Principles. This being the case, I further submit that the application is consistent with the public interest. On the basis of this submission I believe that it's open to you to make the order in the terms set out in the application. If you agree, I ask that you do so from the first pay period commencing on or after today's date. If the commission pleases.

60 DEPUTY PRESIDENT: Good. Just a query; I take it that you want the proviso to go in the award.

MR PYRKE: Yes, please.

DEPUTY PRESIDENT: And say I was an employer that picked up the award in two years' time and did the calculations, I would use the formula as
65 described but I'd be putting it on the 34.15 cents and the 39.7 cents per kilometre; what indication is there to say that you should do that to the calculation on the new amount each time?

MR PYRKE: That's a fair question, it's one which has got me a bit stumped because it's the approaches that we've used in the other awards since it –

70 DEPUTY PRESIDENT: Yes, I know, but someone like myself is going to have an inquiring mind and work out how does that give guidance for someone in two years' time.

MR PYRKE: Yes.

DEPUTY PRESIDENT: I can understand it for next year.

75 MR PYRKE: Perhaps if I could explain how it's worked out in practice with the other awards, and that is, it's understood by my organisation when it's actually applied to vary the award each year before CPI increase takes effect, so basically from my perspective the employer will pay the rates currently shown in the award until such time as it's varied.

80 DEPUTY PRESIDENT: Oh, right. So you'd still be varying it each year. This is not a tool to say this will save us varying it each year.

MR PYRKE: No, not at all, sir.

DEPUTY PRESIDENT: My scenario then wouldn't come into play if it was varied each year.

85 MR PYRKE: No. No.

DEPUTY PRESIDENT: Because the 39 cents and the 34 cents would be increased each year.

MR PYRKE: On application, yes. Yes. So I mean I think this cuts both ways. I mean I guess in a year when there is a negative figure as there has been in
90 these numbers, I guess I wouldn't bother to make application, I'd leave to Mr Rollins or his colleagues.

DEPUTY PRESIDENT: Yes. Well, so I misunderstood you. I thought you were putting that proviso in to say that in future years we won't have to take such a case because the formula is in the award.

95 MR PYRKE: No, that's not the intention, sir, we do intend to make application and understand that any increase wouldn't take effect until the application had been granted. It's basically a reminder, if you like, or an *aide memoir* to myself and my colleagues to keep the award up to date.

DEPUTY PRESIDENT: Yes. So it is a provided that clause, or is it a note to
100 say that these rates have been – will be derived by the following method?

MR PYRKE: It's really an indication to the parties as to how the award will be kept up to date – that's how I see it – and again it's – I guess the philosophy behind it, instead of being actively discussed between myself and the TCCI because it's an approach that I inherited, it seems to have worked out okay in
105 practice, but if you think me to be a bit tighter in the wording I'm certainly happy to hear some suggestions as to how we might achieve that.

DEPUTY PRESIDENT: The proviso is nothing more or nothing less than an indication of how you arrived at the amounts, so I just question whether it's a proviso or whether it's a note that indicates how these amounts have been
110 arrived at or the methodology adopted to vary these amounts.

MR PYRKE: Perhaps therefore we should delete the proviso and make it two subclauses perhaps, so you'd have the first subclause would be the rates and the second subclause would be the indicator as to how it's to be kept up to date.

DEPUTY PRESIDENT: We just might go off the record for a moment.

115 **OFF RECORD 10.38am**

ON RECORD 10.40am

DEPUTY PRESIDENT: Mr Pyrke, I understand that there might be a word missing in the proviso – provided that this rate shall be adjusted on application?

120 MR PYRKE: Yes, thanks, deputy president, I think that would go a long way to addressing the issue that we've been discussing.

DEPUTY PRESIDENT: On application on 1 September. Right. So that will read: provided that this rate shall be adjusted on application on 1 September each in accordance with the movements in the transportation component
125 weighted average of eight capital cities of the Consumer Price Index for the 12 months preceding the June quarter in the same year.

MR PYRKE: Thank you.

DEPUTY PRESIDENT: Good. Thank you.

MR PYRKE: If the commission pleases.

130 DEPUTY PRESIDENT: Mr Rollins?

MR ROLLINS: Thank you, deputy president.

DEPUTY PRESIDENT: You might also address me on the operative date as well.

MR ROLLINS: Yes, sure. The TCCI has examined this application in
135 regards to the CPI figures used and has found that the CPI has been calculated correctly for the travelling allowance provisions in this award. This application is consistent with the Wage Fixing Principles and we believe it does not offend the public interest.

In regards to the proviso clause there, our understanding is that each year an
140 application will be made to adjust these figures in line with the formula displayed there. We also agree to an operative date of today's date.

DEPUTY PRESIDENT: Today's date or the first full pay period on or after?

MR ROLLINS: Sorry, first full pay period on or after today's date. We therefore consent to the variation of this award.

145 DEPUTY PRESIDENT: Good. Thank you. Any comment on the operative date, Mr Pyrke?

MR PYRKE: Sir, I thought I'd addressed you on that, but I didn't I apologise for the omission and certainly concur with it being the first pay period commencing on or after.

150 DEPUTY PRESIDENT: Good. Thank you.

MR PYRKE: If the commission pleases.

DEPUTY PRESIDENT: I can indicate to the parties that I'm going to approve your consent arrangement to vary this award and it will be operative from the first full pay period to commence on or after today. I will hand down
155 a written decision sometime today.

HEARING CONCLUDED 10.43am