

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 6472 of 1996

IN THE MATTER OF an application by the
Minister for Public Sector Administration to
make the Professional Employees Award

COMMISSIONER WATLING

HOBART, 4 November 1996

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

MS WATT: If the commission pleases, ANITA WATT, appearing on behalf of the Minister for Public Sector Administration.

COMMISSIONER WATLING: Good. Thank you.

5 **MS STRUGNELL:** If the commission pleases, SUE STRUGNELL, seeking to intervene on behalf of the Community and Public Sector Union.

COMMISSIONER WATLING: Good. Thank you.

10 **MR D. PYRKE:** If the commission pleases, DARRYL PYRKE, appearing on behalf of The Association of Professional Engineers, Scientists and Managers, Australia. Sir, we seek leave to intervene as well.

COMMISSIONER WATLING: Good. Thank you.

MR N. EVANS: If the commission pleases, NICK EVANS, for the Australian Education Union. We also seek leave to intervene.

COMMISSIONER WATLING: Good. Thank you. No objections to the interventions?

15 MS WATT: No. No, objections.

COMMISSIONER WATLING: Leave is granted.

Right. This is an application to make a new award and as far as I'm concerned it runs in three steps. The first step is to argue the reasons why a new award should be made and I'll write a decision on that. If the decision is in favour of the applicant, then all 20 registered organisations that believe they have an interest in it will be able to apply for an interest and we will deal with the interest questions. Then, finally, the award will be completed by those people and organisations that have an interest in it and no-one else.

So, normally, in making a new award of the commission it goes in three steps and I 25 don't intend to depart from that. The reason why the commission would do that is, if there's a decision, say, not to make a new award, then organisations don't have to worry about getting an interest or anything like that and we're required to make awards with organisations that have an interest in it. So, it's easier to make the preliminary decision as to whether or not there should be an award. If there is, then 30 once people know the title and the scope of the award, then they can seek to have an interest in it and therefore they'd make application to the registrar to have their certificate of registration varied to include the new award but the content and the conditions - wage rates and conditions, would then be made with the organisations that had been granted an interest. So it makes it easier on all concerned because they 35 know who they're going to be dealing with and they know who they have to get agreement with, if they're seeking to get agreement.

So, I see today's exercise as being the first step. Normally what would happen is that 40 21 days after a decision is made - say, for example, it was in favour of making the new award - that's the appeal period, that if it wasn't appealed, then organisations could seek an interest in the award. If the decision was to make a new award, it would be - organisations would be able to lodge their applications upon receipt of the decision. However, they'd have to be mindful of the fact that within 21 days it could be appealed but it could mean that a hearing could be ready to go on 22nd day if there was no appeal - a hearing for an interest in the award.

Does that make sense?

MS WATT: Yes.

COMMISSIONER WATLING: I'm not saying if an award is made, or a favourable decision's made, that you have to wait 21 days before you lodge your application for an interest. You could lodge it a lot earlier so it would be ready to go on the 22nd day, if there was no appeal. Then we'd hear those cases for award interests and then there'd be decisions on those matters, so the applicant would know then exactly who they have to deal with.

Is there any other views, queries, suggestions? Well, we might argue the case today for the need for a new award and why you want it and then we'll deal with the content of it later if we have to. Has that messed up your case?

MS WATT: I'm not sure.

COMMISSIONER WATLING: Well, we might just go off the record for a moment, thank you.

15 OFF THE RECORD

COMMISSIONER WATLING: Good. Ms Watt?

MS WATT: If the commission pleases, I wish to seek leave to amend the original application, which I would like to tender now. A copy of the amendment has been provided to the CPSU, the AEU and APESMA. The changes contained in this amendment go to wording and structure of the draft order only and do not alter the intent of the original application.

COMMISSIONER WATLING: Right. Well, you're seeking leave to amend it. Any objections from the parties that have been granted leave to intervene?

MS STRUGNELL: If the commission pleases, I certainly have objection in relation to scope, but whether or not that is argued now.

COMMISSIONER WATLING: Well, it has to be. Well - yes - it will be the main part of the argument today.

MS STRUGNELL: Yes.

COMMISSIONER WATLING: Title and scope.

MS STRUGNELL: Yes.

COMMISSIONER WATLING: Do you want a few minutes to talk about it?

MS STRUGNELL: We have actually discussed the problems that CPSU has with the scope, as shown in the amendment.

COMMISSIONER WATLING: Right. We might just go off the record.

35 OFF THE RECORD

COMMISSIONER WATLING: Now, there's leave sought to amend the application and you might, Ms Watt, tell me what you seek to amend the application to?

MS WATT: Clause 2 - Title, to: This award is the Professional Employees Award and clause 3 - Scope, to: This award is to apply to persons employed under the Tasmanian State Service Act 1984 for whom classifications appear in this award and are not included in other awards of the commission. Provided that, until the making of this award has been finalised in respect to rates of pay and conditions of employment or until this proviso has been deleted, the following awards or parts of awards thereof, as specified, are to continue to apply; Agricultural Officers Award, the Architects Award, the Foresters Award. clause 8(c) of the Inland Fisheries Commission Staff Award, the Librarians and Archivists Award, Physiotherapists, Occupational Therapists and Speech Pathologists Award, Professional Engineers Award, Psychologists Award, Quantity Surveyors Award, Scientific Employees Award, Survey Officers Award, clause 8(c) of the Tasmanian Dairy Industry Authority Staff Award, clauses 8(f) and 8(g) of the Tasmanian Museum and Art Gallery Employees Award, the Valuers Awards, the Veterinary Officers Award and the Welfare Workers Award.

COMMISSIONER WATLING: Good. Thank you. No objections? There are no objections, then leave is granted.

MS WATT: I propose that the submissions address the amended application. The creation of this new award, entitled The Professional Employees Award, will bring into being the fourth classification stream award that was envisaged as part of the implementation of T5741 of 1995. T5741 of 1995 was an implementation of the parties' agreement to introduce the three streams classification structure into the Administrative and Clerical Employees Award, Technical Employees Award and Scientific Employees Award as contained in T2399 of 1990 and various offsets of conditions of employment.

This decision has been flowed into all other relevant awards of the Tasmanian Industrial Commission in T6130 of 1996.

T2399 of 1990 - the Tasmanian Industrial Commission outlined new classification structures in four new model awards, the Administrative and Clerical Employees Award, the Operational Employees Award, the Technical Employees Award and the Professional Employees Award. We are proposing that this award be known as the Professional Employees Award -

COMMISSIONER WATLING: It's interesting to note - I know it's always used that way, but it is interesting to note that the full bench of the commission abandoned that process. I often see a lot of stuff put up in recent times that talks about that decision. As a member of that bench, I know full well what it decided and at a later stage it decided to abandon that process but I notice we're still hanging our hat on it but, nevertheless -

MS WATT: I think, not necessarily the decision, but the principles in that decision.

COMMISSIONER WATLING: I don't know whether you'd really want to follow that because that said there was to be a package and it was to be dealt with by wages and conditions and that's why it was abandoned at the end of the day because we couldn't get agreement on wages and conditions as a package and then the commission said, if we can't get this package arrangement, then we'll abandon it and it'll be up to people to have enterprise awards or agency specific awards or something like that, because we couldn't get a statewide service deal up on wage rates and conditions, as a package.

Even when it came back on, at a later stage, the commission said that they wouldn't do anything unless by agreement, which I think that's - because the original decision was not being followed and that's why it was abandoned. I do accept that the three

streams had its genesis from that particular case. I do accept that and that's about as far as it goes really.

MS WATT: Or perhaps the four streams.

COMMISSIONER WATLING: Right. Thank you.

5 MS WATT: We're proposing that this award be known as the Professional Employees Award. We submit that this title reflects the application of this award, that it is for professional employees in the Tasmanian State Service. This award is to apply to all professional employees in the Tasmanian State Service, except for those for whom classifications appear in other awards of the commission. We believe that this scope
10 clause properly reflects the application of this award as intended. Creation of an award with this scope will enable significant rationalisation of state service awards and removal of duplication.

As you are aware, Mr Commissioner, in T570, T571 and T6574 that were before the full bench last week, alongside other matters -

15 COMMISSIONER WATLING: I'm not aware. What was that? Give me those numbers?

MS WATT: T570, T571 -

COMMISSIONER WATLING: Go slow. T570?

MS WATT: Sorry. 6570.

COMMISSIONER WATLING: I was going to say that would have been years ago.

20 MS WATT: I apologise.

COMMISSIONER WATLING: No, that's all right. What's the next one?

MS WATT: 6574.

COMMISSIONER WATLING: 6574. And what did they do?

25 MS WATT: The minister sought to vary the wording in the Administrative and Clerical Employees Award, the Technical Employees Award and the Operational Employees Award alongside the annualisation of leave loading into those awards. We have varied the application before you today in line with those applications before the full bench.

30 The issue of wording has been put to the full bench, as we are seeking to establish consistency between our awards. We suggest, with respect, that you may seek to rely on their decision for the purposes of these proceedings. If the full bench decides that the wording of these applications is inappropriate, it may be necessary for us to revisit our title and scope clause of the Professional Employees Award.

35 COMMISSIONER WATLING: Is that an application for adjournment? Are you saying that I shouldn't do anything until the full bench decide?

MS WATT: No. We're just saying that we may need to take it into account at a later stage when looking at the wording that we're adopting in this award.

COMMISSIONER WATLING: Yes. But I thought you were asking me to take on board a full bench decision that hasn't been made yet.

MS WATT: No, it hasn't been made yet. At this stage, we don't know as the decision was reserved.

COMMISSIONER WATLING: So, I should just hang around and wait for it to happen?

5 MS WATT: No, I'm not saying that. All I'm saying is, that if we can take into consideration, that depending upon what the outcome of that decision is, in order to maintain consistency among our awards, then it may be necessary for us to amend some of the wording contained in these variations before you today.

COMMISSIONER WATLING: In title and scope, you mean?

10 MS WATT: Yes. As for example -

COMMISSIONER WATLING: Yes, give me an example.

15 MS WATT: In our original application the Title clause read: This award shall be known as the Professional Employees Award. Whereas, in our amended application we have changed it to: This award is the Professional Employees Award. Now, we have brought this matter of wording before the commission in the full bench and at this stage we are not aware whether the commission will adopt our proposed wording or not but we do wish to maintain consistency among our awards.

COMMISSIONER WATLING: Well, what do you see as the difference?

MS WATT: The difference is the wording only.

20 COMMISSIONER WATLING: Well, why are we hung up on those words for?

MS WATT: I wouldn't say that we are hung up on them, but I would say that in the process of reviewing - rationalising our awards and rewording them in plain English, one of our objectives is to establish and maintain consistency in wording, formatting and numbering between our awards.

25 COMMISSIONER WATLING: Whose awards are they?

MS WATT: They're the awards of the Tasmanian Industrial Commission.

COMMISSIONER WATLING: Yes, that's right.

MS WATT: For which we are a party to.

30 COMMISSIONER WATLING: Yes, but they're awards of the commission. They're common rule awards. You may be a party to them but at the end of the day, they're not ownership on your part. They're orders signed by members of the commission.

35 MS WATT: Yes, which is what the president said, in the numbering will be adopted - which is the format, the numbering which has been adopted by the Tasmanian Industrial Commission in numbering its awards. As for wording, we are unsure as to what will be adopted.

COMMISSIONER WATLING: So, I shouldn't make any decision until I see the full bench decision, because I won't know until you know - until I read it.

MS WATT: Well, perhaps we may need to seek leave to amend again, if that would be more appropriate.

COMMISSIONER WATLING: Right. Good. Thank you.

MS WATT: This application seeks to implement a previous decision of this commission in that it was determined that this was in the public interest at that time this award be established. Upon the establishment of this award, many professional awards currently in existence will be rescinded. Reviewing and simplifying awards is in the public interest and is not contrary to the wage fixing principles. If the commission pleases.

COMMISSIONER WATLING: Now this award - just in support of the application for making this new award, what's it intended to cover?

10 MS WATT: It's intended to cover -

COMMISSIONER WATLING: Now, you don't have to deal -

MS WATT: - professional employees employed in the Tasmanian State Service.

COMMISSIONER WATLING: Yes. Now, is it intended to cover wage rates and conditions of employment for these people?

15 MS WATT: Wage rates and some conditions of employment.

COMMISSIONER WATLING: Some conditions of employment. Right. And those conditions not contained in the award will then be via regulation?

MS WATT: Regulation or the General Conditions of Employment Award.

20 COMMISSIONER WATLING: So, you're going to refer - you're foreshadowing that you may wish to refer back to another award of the commission for general conditions?

MS WATT: Yes, we are and this is in line with what we have done in the other streams that have been established to date.

25 COMMISSIONER WATLING: Right. Now, will there be any employees not covered by this award, that are in the state service, or employed under the State Service Act - any exclusions?

MS WATT: Yes, the exclusion is employees that - employees for whom classifications appear in other awards of this commission, for example, those employees coming under the Department of Community and Health Services Award, or perhaps the Legal Practitioners Award, or the Medical Practitioners Award.

30 COMMISSIONER WATLING: Right. And they would be, to your understanding, the three that would be excluded?

MS WATT: To my understanding, yes. I believe that those are the three that would be excluded.

COMMISSIONER WATLING: Right. Thank you. Further submissions? Ms Strugnell.

35 MS STRUGNELL: If the commission pleases, the CPSU at this point would agree to the amended application as outlined by Ms Watt this morning. However, we would see that, at this stage, as an interim position and we would wish to foreshadow to the commission that if the parties cannot reach agreement in relation to a variation of the scope clause to include those employees covered by the Tasmanian Development Act
40 1984, that we will in the future be lodging application if we are seen eventually to be a party to this award, to amend the scope clause.

We have concerns in relation to a number of employees currently employed in Tasmanian Development and Resources, who may be excluded on the rescission or future rescission of awards may then be excluded from appropriate award coverage.

5 COMMISSIONER WATLING: So, Tasmanian Development Resources is the actual agency?

MS STRUGNELL: That's correct, sir.

COMMISSIONER WATLING: And all those people in that agency are employed under the Tasmanian Development Act?

10 MS STRUGNELL: Not all employees are employed under that act. There is certainly a number of them and it is those employees for which we have some concern in relation to the limited scope clause, as put to this commission this morning.

COMMISSIONER WATLING: Good. Thank you.

15 MS STRUGNELL: In support of the rest of Ms Watt's submission, we agree that this is moving towards a significant rationalisation of the number of awards which need to be addressed and we support that rationalisation and we would be supporting the eventual rescission of awards where it be appropriate, depending on the making of this new award. If the commission pleases.

COMMISSIONER WATLING: Good. Thank you. Mr Pyrke.

20 MR PYRKE: Commissioner, the APESMA does not oppose the application. In coming to that position, we believe that the scope clause, as we've now amended it, will apply to all the professional engineers within the state service.

25 If I might also just comment on a question that you raised - I think you had reference to the decision in matter T2399 and the subsequent discussions there - you had concerns that if we're going to follow that decision, we should be following a series of conditions as well and my understanding is that that matter has been addressed through the most recent wages arrangements with the government but I guess you'll hear more about that in due course.

30 COMMISSIONER WATLING: I was only making the point that we often wave that decision around, but if you really look at the factual side of that decision, it was abandoned.

MR PYRKE: Right.

COMMISSIONER WATLING: But it was the start of the three streams debate - a very significant one.

MR PYRKE: If the commission pleases.

35 COMMISSIONER WATLING: All right.

MR EVANS: Mr Commissioner, the Education Union would support the application as amended today. If at a later stage the parties, for whatever reason, feel the need to vary the awards further, I think it would be appropriate at that time that those matters were addressed.

40 COMMISSIONER WATLING: Right. Any further submissions? No further submissions - well, I'll hand down my decision on this matter in due course and this matter is now concluded.

HEARING CONCLUDED