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TRANSCRIPT OF PROCEEDINGS

O/N 109145

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 13446 of 2009

AWU (TASMANIAN STATE SECTOR) AWARD

**Application pursuant to section 23(2)(b) of the
Industrial Relations Act 1984 lodged by the Australian
Workers Union, Tasmania Branch to vary the above
award re salaries and related matters**

HOBART

12.00 PM, WEDNESDAY, 17 JUNE 2009

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THE COMMISSIONER: Yes, good afternoon, could I take appearances, please?

MR R. FLANAGAN: If it pleases the commission, Flanagan R. from the Australian Workers Union, Tasmanian Branch.

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THE COMMISSIONER: Thank you, Mr Flanagan.

MR K. GREY: If it pleases the commission, Grey K. representing the Minister administering the State Service Act, and with me today are MR M. HASTIE and MR A. PYRKE, from the Department of Environment, Parks, Heritage and the Arts, as it stands. Thanks.

10

THE COMMISSIONER: Thank you, Mr Grey. Mr Flanagan, state the position?

MR FLANAGAN: Commissioner, this application seeks to vary the Tasmanian State Service Award to reflect an agreement entered into between the Government and the public sector unions in November of last year. At that point in time a significant amendment was made to what was then the General Conditions of Employment Award to insert into that a comprehensive new classification structure with associated wage movements. At the time that agreement was entered into it was agreed between the parties that the AWU State Service Award would be varied to reflect the new structure contained in the General Conditions of Employment Award.

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So attached to this application is the schedule of variation which has that effect, and arising from that application is an incidental variation which goes to the annual leave loading. It appears that at the time the new structure was developed there were those in the State Service who were in receipt of an annual leave loading, particularly in the health sector and those that were not, which was the remainder of the State Service and the AWU.

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In the discussions that we have had it became apparent that the structure is in both cases – that is the health area and the greater State Service are structured the same, but there's a slight difference in the rates in the health sector to reflect that difference with the annual leave loading. So the structure which is proposed to go into the AWU Award reflects the broader State Service structure and rates incorporated into that the annual leave loading. The other aspect - - -

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THE COMMISSIONER: So just so I understand that, what, hitherto the annual leave loading has been paid, now it's incorporated into the salary structure; is that - - -

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MR FLANAGAN: Correct. That's right. Commissioner, the other aspect which has arisen since the application or prior to the application being lodged, is there have been substantial discussions between the union and Public Sector Management Office about differences in conditions of employment between the AWU and the greater State Service. The effect of that difference in many cases has been to create

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some administrative burden for those attempting to deal with the arrangements under the awards.

THE COMMISSIONER: Excuse me. Just a minute

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MR FLANAGAN: It must that I think, sorry. I tried to get rid of that problem, obviously I shouldn't have left it on the desk. So what has occurred was, historically because of the differences in the conditions under the AWU Award compared with the General Conditions of Employment Award there has been significant administrative burden on the department.

10

So in the course of discussions it has been agreed that where there is a difference in conditions of employment and where they – the bringing together or standardising of those arrangements does not operate to the detriment of employees that the AWU State Service Award would be amended to reflect the conditions currently contained within the Tasmanian State Service Award. So with that in mind what I would seek to do is, I would seek leave to amend the Schedule of Variation to include a further variation at the end of the schedule which is to amend the AWU State Service Award to incorporate other agreement provisions.

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THE COMMISSIONER: Do you have any objection, Mr Grey?

MR GREY: No.

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THE COMMISSIONER: No. Leave is granted to amend.

MR FLANAGAN: Thank you, Commissioner. Now, in order to give effect to that further variation I would seek to tender an exhibit – or two exhibits. Now, if I can just explain the difference, Commissioner.

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THE COMMISSIONER: Yes.

MR FLANAGAN: One of the copies which you have been provided with has in red ink a T-number.

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THE COMMISSIONER: Yes.

MR FLANAGAN: That is the second exhibit and the other should be marked as the first exhibit.

40

THE COMMISSIONER: Right. So we will mark the one that's T13446 and that will be A1.

45

EXHIBIT #A1 T13446

THE COMMISSIONER: And T13227 will be A2, is that correct?

MR FLANAGAN: I believe that is correct.

5 THE COMMISSIONER: Yes.

EXHIBIT #A2 T13227

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MR FLANAGAN: And if I can take you to exhibit 1, what it contains is the consolidated version of the award and exhibit 2 contains within it a reference to the history of the provision. So, if for example you go to the scope clause in exhibit 2 you will see in that – I hope next to it appears in brackets AWU.

15

MR GREY: That doesn't appear on that clause.

MR FLANAGAN: Okay. I'll give you another example.

20 MR GREY: Perhaps date of operation B

MR FLANAGAN: Date of operation.

MR GREY: - - - supersession and those figures, yes.

25

MR FLANAGAN: Yes, that's right. Well, if you go to date of operation you will see it has in brackets after it - - -

THE COMMISSIONER: Eight. Yes.

30

MR FLANAGAN: - - - ten, you say?

THE COMMISSIONER: Yes.

35 MR FLANAGAN: That's to reflect that provision has been picked up from the Tasmanian State Service Award, whereas award interest appearing under that has in bracket AWU - - -

THE COMMISSIONER: Yes.

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MR FLANAGAN: - - - to reflect that the source of the clause is the current AWA State Service Award. So what is contained in the proposed new consolidated award has the benefit of providing administrative ease, not that we are compelled to, but in good faith we have agreed to go down that path, and at the same time providing benefit to employees from that arrangement provided that there's no detriment from what is proposed. Now - - -

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THE COMMISSIONER: Mr Flanagan - - -

MR FLANAGAN: Yes.

5 THE COMMISSIONER: - - - just going back to those two exhibits - - -

MR FLANAGAN: Yes.

10 THE COMMISSIONER: - - - save for the bracket sourcing identification, are the two documents the same?

MR FLANAGAN: They are identical.

15 THE COMMISSIONER: Yes.

MR FLANAGAN: Yes. The second one is tendered just to indicate the source of the clause which is in the proposed consolidated award.

20 THE COMMISSIONER: Is it proposed that both be produced – published, or just the one?

MR FLANAGAN: No, the only one which would be relevant is what we would be seeking, subject to some other comments that I've got to make - - -

25 THE COMMISSIONER: Yes.

MR FLANAGAN: - - - is that a new award be made in the terms of exhibit 1 - - -

30 THE COMMISSIONER: Exhibit - - -

MR FLANAGAN: Exhibit 1.

THE COMMISSIONER: Exhibit 1.

35 MR FLANAGAN: So in other words the current award is varied to reflect exhibit 1.

THE COMMISSIONER: Right. So exhibit A2 is to assist the parties.

40 MR FLANAGAN: For your information.

THE COMMISSIONER: Thank you.

45 MR FLANAGAN: Now, at the back of the document, Commissioner, and I'm referring here to A1, you will see there are a number of appendices, which have been attached and those appendices are concerned essentially with the translation of the current workforce from their existing structure to the structure which is proposed for the award going forward.

Now, the document, which as you can see is a very large document, was provided to the union last week as I understand it, in order that we could check it prior to today's hearing. Due to other commitments that hasn't been able to occur, so what is agreed is that the union and Public Sector Management Office will get together tomorrow
5 just to confirm the content of this and then following that we will contact the Commission to either confirm that the document is okay or that we will need to provide you with an amended exhibit.

10 So that's the path going forward, so Commissioner what we would say is firstly, that this application is consistent with the Public Sector Wages Union Agreement approved by a Full Bench of this Commission last year. Secondly, the arrangements entered into, whilst not compulsory have been an act of good faith on the parties to improve the administrative efficiency of the State Service and at the same time not act to the detriment to employees.

15 Accordingly the union would submit that the proposed variation is in accordance with the public interest as required by the Act and the union would seek that the Commission approve the application subject to the submissions made in the course of these proceedings. If it pleases the Commission.

20 THE COMMISSIONER: Yes, thank you, Mr Flanagan. Mr Grey?

MR GREY: Thank you, Commissioner. I do have other copies here if that would be at all – of any assistance to the Commission.

25 THE COMMISSIONER: Well - - -

MR GREY: Or perhaps electronically.

30 THE COMMISSIONER: Electronically would be – cut down less trees.

MR GREY: Yes, absolutely certain.

MR FLANAGAN: We have a page of electronic provision there, Commissioner.
35 Cut down the trees would be our view, there you are.

THE COMMISSIONER: Right.

40 MR GREY: Commissioner, the Minister agrees with the submission by Mr Flanagan about the goodwill, the good faith and the overall objectives of this arrangement. The idea is to be for as many instruments as possible, to be as consistent as possible, where there is no reason for a difference. So the object of this exercise was for this AWU Award to be as consistent as possible with the Tasmanian State Service Award which was handed down in decision T13227 of 2008 and as
45 well as to reflect the State Service Union Agreement of 2008 in T13303. The parties have negotiated long and hard about the merit of maintaining differences where they

are real. The changes that you would find are in appendix 5 on page 127 of A1 and page 128.

5 An accurate summary of the provisions from the Tasmanian State Service Award that have now been inserted into the AWU Award, however as Mr Flanagan has pointed out, administratively there may well be a slip up or two and for example, I could point to one I've just noticed on page 6. The definitions on page 6 have an asterisk at the top on call out and the explanation for that is provided underneath
10 "working day" saying they're no longer required as they are already stated, however, that is a discussion that hasn't actually occurred amongst the other discussions that have, so it's really a matter of tidying up the provisions in here. Although various provisions have been discussed at length some provisions have not been thoroughly sorted out because of, I guess, the vagaries of industrial work interfering with the best laid plans.

15 THE COMMISSIONER: Are those matters on the agenda for tomorrow's meeting or - - -

MR GREY: Yes.
20

THE COMMISSIONER: They are?

MR GREY: Yes, yes. So that the final form of words to be confirmed tomorrow are the ones that the parties intended to get right in the first place. It does appear
25 that, for example, on the following page, clauses – well, clauses 9, 10 and 11 may not in fact be consistent. So it's a matter of sorting those things out. The – apart from that, perhaps if I could take you to appendix 6 on page 129. This is the first of three appendices relating to a translation structure for the classification of work performed by employees covered by this award. While Mr Flanagan is absolutely correct that
30 there is a degree of administrative ease for – in having consistent provisions, and there is also no detriment to employees, there is also significant benefit to employees covered by these arrangements in terms of the classification structure, the salaries and a range of conditions of employment matters and allowances.

35 This appendix is one of those. It provides for the fire crew currently employed in the Parks and Wildlife Service, it provides an interim translation structure that provides for salary increases and it also provides a final operational structure. Now the fire crew are, for example, have had a history that – of emerging and evolving operational effectiveness, I suppose: there's been significant changes to the terms
40 and conditions of employment of these employees over recent times and this takes another major step towards providing a firm operational structure, salaries and as well as, if you turn to page 130, a range of qualifications and experience criteria required for individual employees to move to the classification envisaged in the classification structure.

45 And for example, on page 132, subclause 5, points out that the agency responsible for the administration of the National Parks and Reserves Management Act 2002

under which these employees were employed – sorry, under which the operational aspects of this work is carried out, shall provide all reasonable practical means to provide relevant assessors and assessment processes to enable the fire crew to achieve the relevant qualification and competencies required to meet the criteria specified in the tables of this appendix within 12 months of the operation of this agreement. This is an initiative designed to have the work that’s performed by employees currently and what is expected to continue to apply and evolve, to have qualifications recognised nationally, if not internationally, and to reflect the operational structure deemed appropriate and relevant for today’s conditions.

And it does involve fairly significant increases in classification – or in salaries. The next appendix, appendix 7 on the next page, is again a structure – translation structure for the Royal Tasmanian Botanical Gardens. It also provides for increases in salaries, changed classification arrangements, and again, the arrangements are consistent with the arrangements throughout the majority of the State Service, and it has been subject to extensive discussion between the parties of recognising the trade qualifications, the post trade qualifications and a range of things under the current AWU Award and aligning this to the new classification standards and structures.

And, similarly, on the next page, appendix 8, for the Parks and Wildlife Service there are two other groups of employees variously referred to as the works crew and the track workers. The works crew are people – employees have traditionally operated within a Parks and Wildlife field centre, work alongside rangers, but because of the provisions of – the different provisions between the different industrial instruments they have a different work title, a lower classification, a lower salary, for no obvious apparent operational difference. So this is another attempt at lining the work up according to the value of the work that’s performed by employees and rewarding them appropriately.

It does appear that somewhere along the line the various lines on these tables have disappeared in printing, however, we’ll try and rectify that in a moment. So Commissioner, these changes do represent a significant modernisation of the Australian Workers Union (Tasmanian State Sector) Award. They are reflective of the process of modernisation undertaken by the minister in recent times for classification standards, structures, salaries and work arrangements and allowance throughout the remainder of the service. It reflects the ongoing commitment of the minister to continue this process, and in the near future there will be a number of other agreements coming before the commission that have adopted measures complementary and consistent with this. As well as there have been a number in the past.

So apart from any other questions the commission may have, we would agree with the Australian Workers Union to accept this application. We believe it’s consistent with the Tasmanian State Service Union Agreement 2008, with the wage fixing principles of this commission and section 66 of the public interest provisions. We’d seek an operative date, Commissioner, of 5 March 2009. The AWU Award has been varied to payment of 4 per cent effective from 28 November last year and for

5 payment of 1.5 per cent from 5 March this year. However, these new classification arrangements and allowances, etcetera, are intended – sorry, they are designed to be consistent with the translation and review processes for all other state servants, and for the classification standards to apply to the employees covered by this award from 5 March.

THE COMMISSIONER: So the date of operation in clause 4 is to be changed, that refers to 27 November 2008?

10 MR GREY: That's another administrative oversight, Commissioner, I'm very sorry. There's a range of these things that are just in the - - -

THE COMMISSIONER: They're going to be sorted tomorrow, aren't they?

15 MR GREY: They'll be sorted tomorrow somehow, thank you. With that in mind that is the end of the minister's submission. Thank you, Commissioner.

THE COMMISSIONER: Mr Flanagan, do you agree with that operative date?

20 MR FLANAGAN: We certainly support the overview of those submissions, and we seek that the award be varied to reflect what the parties have discussed. There is one small oversight that I need to point out in respect to appendix 8. There are, in fact, three individuals in the works crew and track workers section who do not translate in accordance with the table which is identified here, so we'll amend that table.

25 Those are a Mr Verne, Allan who is based in north eastern Tasmania and two employees at Arthur River where those translations will need to be on their individual merit, as we've been able to reach agreement with the department about the appropriate translation process. So to that extent appendix 8 will have a
30 comment around those issues, but hopefully all going well, Commissioner, we'll be able to provide you with the final document by close of business tomorrow, albeit if it has to be electronically. If it please.

35 THE COMMISSIONER: Well, firstly may I congratulate the parties on the work they've done and, in particular, the quality of the work and the documentation which has resulted from those negotiations. It does represent a significant step forward. I have no hesitation in indicating that the application will be approved, operative from 5 March 2009 – the first pay period to commence on or after 5 March 2009. I am
40 advised that the party will be meeting tomorrow to tidy up certain aspects of the documentation, the result of which will be conveyed electronically to my associate. When that document is received we will issue a formal decision and order reflecting the changes as presented today. On that basis the commission stands adjourned. Thank you.

45

MATTER ADJOURNED INDEFINITELY

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EXHIBIT #A1 T13446 P-3

EXHIBIT #A2 T13227 P-4