

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s 23(1) application for award or variation of award

The Minister administering the State Service Act 2000
(T14968 of 2022)

TASMANIAN STATE SERVICE AWARD

PRESIDENT D BARCLAY

HOBART, 17 NOVEMBER 2022

Award variation – Appendix 19: Department of Communities Transition Arrangement – consent application - consent order issued – variable operative dates

DECISION

[1] On 23 September 2022, the Minister administering *the State Service Act 2000* (MASSA) lodged with the Registrar, pursuant to section 23(1) of the *Industrial Relations Act 1984*, an application to vary the Tasmanian State Service Award (the Award).

[2] At the hearing, on 28 September 2022, Jacqui Allen appeared on behalf of MASSA, Tom Lynch appeared on behalf of The Community and Public Sector Union (State Public Services Federation Tasmania) Inc (CPSU), Steven Smith appeared on behalf of the Australian Education Union, Tasmanian Branch (AEU) and Mr Moore appeared for the Health Services Union (HSU).

[3] The Application sought to insert Appendix 19 into the Award. The need for the Appendix arises out of the matters referred to in T14969 of 2022 which should be read in conjunction with this decision.

[4] Ms Allen told me that:¹

“MS ALLEN: So, as your Honour would no doubt well be aware, there are differences in conditions of employment between the Health and Human Services Award and the Tasmanian State Service Award. So, to ensure no overall disadvantage, it was agreed that an appendix would be included in the Tasmanian State Service Award to outline the specific transition conditions previously – that may have previously been under the Health and Human Services Award that would continue to apply to these employees on transfer, ...”

...

[5] In respect to the variations themselves, Ms Allen submitted:²

“MS ALLEN: So, the first clause is what we have proposed would define who these conditions would apply to. Not only have we referred to the State Service re-structuring order but in an abundance of caution, we’ve also referenced employees

being compulsory transferred, pursuant to s42 of the State Service Act. And relevant

¹ Transcript p9 line 31

² Transcript p11, line 8

to that, we do have a precedent letter that we've sent to employees, if your Honour would like a copy of that.

HIS HONOUR: Yes.

MS ALLEN: So, we are proposing two letters to our employees. This is the first one and the second one will be after transition and confirm what leave entitlements will transfer, and anything else that requires confirmation – leave loading payout, as well.

HIS HONOUR: Yes, thank you.

MS ALLEN: So, as you can see from the scope clause, it refers to the divisions or units of the corporate services, Office of the Secretary, Community and Disability Services – being within the Department of Communities Tasmania but as well as the Commissioner for Children and Young People – to receiving agencies – being the Department for Education, Children and Young People, the Department of State Growth, and the Department of Premier and Cabinet that were previously covered by the Health and Human Services Award, but now the Tasmanian State Service Award.

HIS HONOUR: Yes.

MS ALLEN: So, the second proposed clause is related to what I have just provided you, and that is the letter to employees, so that's the communication to employees. The third clause relates to salary, and I'd like to explain to your Honour, I guess, how we've arrived to the position that we're in now. Basically, we have taken the annual salary under the Health and Human Services Award, added the annual salary in terms of leave loading, put the two together and made sure that no person has been disadvantaged. Where we did run into some concerns were people at the top of some of the bands, and for those we've actually proposed that they would have a personal classification or a personal pay level, which has actually been outlined in the clause itself. So, that's I to – well, 1 to 3.

HIS HONOUR: All right, thanks.

MS ALLEN: We also had a similar approach with the Allied Health Professionals. So, whilst we have inserted reference to the Allied Health Professionals in this clause, we have also inserted this same reference in the schedule in the Allied Health Professionals Agreement. So, I believe it was schedule 6.

...

³MS ALLEN: Turning to other matters – so, turning to personal leave. So, included in the application is that employees would transfer with their personal leave accrual, and the best way that I could describe that to your Honour is that say you have an employee that currently has 76 hours, they will transfer with those 76 hours. Obviously, though, under the Tasmanian State Service Award, it is a 73.5 hour week, so they will effectively get – if they needed to access personal leave – more time away not in hours, but in days away from the workplace. I think that equates to 10.3. The same would then apply to recreation leave.

HIS HONOUR: Thanks.

MS ALLEN: My learned friend has actually just reminded me to – the issue with the uncapped personal leave, too – I draw your attention back to that – is that they would not currently – under the Tasmanian State Service Award, there's a maximum accrual of 1,911. We're proposing that employees who transition would not have a cap on

their personal leave accrual.

The pay cycle arrangements between the Department of Health and – who administer Communities Tasmania payroll and receiving agencies is different, and we have written to our employees, which is outlined in that precedent letter I provided you of the template letter, what the changes to pay arrangements will be. But, effectively, employees in Communities Tasmania who are transitioning will receive – and also transitioning awards – will receive one pay on the 5th of October, which is paid up until the 1st, and they will also then receive another pay one week later, but will actually cover 11 days due to how the awards operate. Employees have been notified of this for some weeks, including in this latter.

The last aspect that we have included in the scope clause relates to the ordinary hours of work, which I have touched on, as well – 38 compared to 36.75.”

[6] Mr Lynch made the following submissions:⁴

“MR LYNCH: Thank you [indistinct words]. So, I endorse the submissions made by Ms Allen. Just for clarity – so, the scope clause is effectively made – perhaps a step back. We understood when the government decided they were transferring people from one agency to another, this was being done by way of restructuring orders and, certainly, the early groups were done in a restructuring order 2, restructuring order 3, and then the restructuring order 6.

There were some groups that were not in any of those restructuring orders, which we came to discuss last Friday, and I think the minister advises that they had – they had advice that they didn’t need to do anything. We were entirely uncomfortable with that. We felt that there were three ways that people could be transferred: voluntary, compulsory under the act, or through a restructuring order. Hence, the group who are now being transferred by way of s43 – compulsory transfer – and that is being done through that template letter that you have received.

HIS HONOUR: Yes.

MR LYNCH: The obligations on the employer under s42 is that no disadvantage – you can’t be moved to a lower salary – and the principle here, it was a little bit more complex because we were looking at salary and leave loading versus a salary that had leave loading rolled into it, but it was agreed that it would be a dollar-for-dollar, you would not be – you would either go to the same amount or to a higher amount. When we did that with that group of 100 people, there were a number of classifications that to transfer them to a classification of the TSSA Act, the same salary or higher would have meant moving over a band level, and then that would have created a whole lot of complexities about whether people were then stuck at that point or whether they could move through the other band.

They were also significant amounts, so we reached an agreement that we would strike these personal salaries for those three HSU pay points, being 5 range to level 2, 6 range to level 5, and 7 range to level 3, and there is no more science to it other than it is the HSU salary, plus leave loading, plus half a per cent to ensure that they are – they are at a point that is higher. Now, those people will –

HIS HONOUR: Sorry, you might be about to say something about this, but the approved salary increases – how is that going to work?

MR LYNCH: So, the salary in this table will become that person’s personal salary.

HIS HONOUR: That’s right, and so the ordinary provisions as to advancement won’t apply?

MR LYNCH: Yes, if that – well, in these cases, all of them are at the top of the band,

⁴ Transcript p14, line 3

so they won't –

HIS HONOUR: No.

MR LYNCH: They wouldn't progress anyway but if they weren't, then they would, and if there are changes made to the award, then they would still progress on their anniversary date. Whilst they are receiving –

HIS HONOUR: This is where I was having some issues about this. One of the risks that one might face with a construction such as this is that the appendix in fact provides for an independent salary – an independent personal salary – for the people who fall within those three bands and that the only way that they will get an increase in salary is subject to approval. So, that's a risk of construction of this ethics.

MR LYNCH: So, the intention of the parties is that, for example, we take the person – the band 5 range 2 level 2 –

HIS HONOUR: Yes.

MR LYNCH: – that person will actually translate to TSSA band 5 range 2 level 2.

HIS HONOUR: With a different salary.

MR LYNCH: With a different salary. They will then receive any increase in the future that applies to TSSA band 5 range 2 level 2.

HIS HONOUR: Yes, and any provisions in the award that relate to advancement through the bands and the like will apply.

MR LYNCH: They would, but technically –

HIS HONOUR: If they're available.

MR LYNCH: They are all at the top of the band, hence why we had the problem with not being able to translate them to the next level."

[7] All parties submitted the variation sought does not offend the public interest, do not disadvantage those employees covered by the Award and recommended the variation to the Commission.

[8] In light of the submissions I am satisfied that the variation is consistent with the public interest and that no employees are disadvantaged, the purpose of them being to specify the transition conditions from the Health and Human Services (Tasmanian State Service) Award to the Tasmanian State Service Award.

[9] The application is granted. The Award is varied in accordance with the application, commencing from 1 October 2022.

[10] An order reflecting this decision will follow.



D J Barclay
PRESIDENT

Appearances:

Mr Locke for MASSA
Ms N Jones for CPSU
Mr Katarzynski for UUU
Mr Smith for AEU

Date and place of hearing:

2022
4 October
HOBART