

HEARING COMMENCED 10.35am

PRESIDENT: Appearances, please.

MR R. FLANAGAN: If it pleases the commission, FLANAGAN R., for the Australian Workers' Union, Tasmania Branch.

5 PRESIDENT: Thanks, Mr Flanagan.

MR J. O'NEILL: If it pleases the commission, O'NEILL J., appearing for the Tasmanian Chamber of Commerce and Industry Limited.

PRESIDENT: Thank you, Mr O'Neill. Mr Flanagan?

10 MR FLANAGAN: Thank you, Mr President. Mr President this application seeks to vary clause 16 of the Shellfish Industry Award to remove from it an anomalous provision which is presently found in clause 16(a) of the award.

Clause 16(a) of the award presently reads:

15 *All full time employees shall be allowed the following days as paid holidays:*

20 *Christmas Day, Boxing Day, New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day (where it falls Monday to Friday inclusive), Queen's Birthday, Show Day (as defined) and Recreation Day in those districts where Hobart Regatta Day is not observed.*

25 Now the offensive reference in the union's view is the reference to *Anzac Day (where it falls Monday to Friday inclusive)*, thus attached to the union's application you will see in clause 16(a) after the word 'Anzac' in the third line which should read Anzac Day there is no reference to Monday to Friday. Now the union's intention is that that is the only provision which would be altered by this application and what we would of course seek is leave to amend the application to insert the word 'Day' after the word 'Anzac' in that schedule.

30 PRESIDENT: Yes. No objection to that Mr O'Neill?

MR O'NEILL: No, certainly.

PRESIDENT: Thank you. Your application is amended accordingly.

35 MR FLANAGAN: Thank you. This is an issue which was considered by the full bench of the commission and subject to a decision on 2 March 1999 in matter T7740 of 1998 and I'd seek to tender a copy of that decision.

PRESIDENT: **EXHIBIT AWU.1.**

MR FLANAGAN: Mr President, as you will recall from those proceedings the Fish, Aquaculture and Marine Products Award suffered from the same anomalous position.

5 In those proceedings at page 2 of the decision the full bench made the following statement:

We are satisfied that the proposed consent variation does not conflict with the principles and has no adverse public interest features. The variation to this award does not extend the number of paid public holidays prescribed by awards generally and will not lead to claims for adjustment to any other award, other than, it was mooted, to the Shellfish Industry Award which is the only other award of this Commission with a similarly worded Holidays with Pay provision.

15 *In the circumstances the consent draft order is approved, operative, it was agreed, from the first full pay period to commence on or after 5 February 1999.*

So what we have here today, Mr President, is that application which was brought to the attention of the full bench in those proceedings. The application seeks to achieve exactly the same variation or amendment to the existing public holidays provision, therefore we say it is clear that the full bench has recognised that the application is not in conflict with the Wage Fixing Principles and that there is no adverse affect on public interest. It has no further flow on effect, there are no other awards of this commission which have this anomalous provision and it is a consent application by the parties.

In those circumstances we would seek that the commission approve the application in the terms of the schedule attached to the application as amended by the parties with the consent of the commission this morning.

If it pleases the commission.

PRESIDENT: What do you have to say about principle 13, Mr Flanagan?

MR FLANAGAN: I wonder if we might just go off the record for a moment, sir?

OFF RECORD 10.40am

ON RECORD 10.41am

PRESIDENT: Thank you.

MR FLANAGAN: In our view, Mr President, this application does not offend principle 13 in that this application is identical to an application which has been considered by the full bench of this commission on exactly this issue and the full bench was made aware, at that time, that this application was coming. So in those circumstances we say that this particular application does not offend principle 13 in the context that it is a matter which has already been before the consideration of a full bench of this commission.

PRESIDENT: Yes, so even though it might be a special case in principle, as it were, you're saying that principle has already been dealt with by a full bench?

MR FLANAGAN: That's right, exactly, Mr President.

PRESIDENT: Thanks, Mr Flanagan. Mr O'Neill?

MR O'NEILL: Thank you, Mr President. We certainly have no objection to the award variation as proposed by Mr Flanagan of the AWU.

It is consistent with a full bench decision of this commission in T7740. It is consistent with the Wage Fixing Principles and does not offend the public interest. As Mr Flanagan pointed out it does not offend principle 13 as it is a matter that has already been dealt with by the full bench in that decision which has been referred to in exhibit AWU.1.

So, with those submissions, we have no objection to the award variation being made and that now lines up that award with other awards of this commission.

If it pleases the commission.

PRESIDENT: Thanks for that, Mr O'Neill. Well having got to that point where there is no objection, date of operation, Mr Flanagan?

MR FLANAGAN: We would seek the first full pay period on or after today's date. In reality it is going to be a number of years before the provision is of any practical consequence, but we would be satisfied with that.

PRESIDENT: Yes. Mr O'Neill?

MR O'NEILL: Yes, that's fine, thank you, sir.

PRESIDENT: The first full pay period on or after today?

MR O'NEILL: Thank you.

PRESIDENT: All right, thank you for those submissions. The award will be varied accordingly, Mr Flanagan.

MR FLANAGAN: Thank you, Mr President.

PRESIDENT: Thank you, this matter is concluded.

HEARING CONCLUDED 10.43am