



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. **8752 of 2001**

IN THE MATTER OF an application by
the Tasmanian Chamber of Commerce
and Industry Limited to vary the
Disability Service Providers Award

Re: Principle 12 - Award Review
Process of the Commission's Wage
Fixing Principles

DEPUTY PRESIDENT WATLING

HOBART, 27 July 2001
Continued from 20 January 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING RECOMMENCED 10.32am

DEPUTY PRESIDENT: Any alterations to appearances, please.

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

DEPUTY PRESIDENT: Slightly wounded, Mr O'Neill, I take it?

MR O'NEILL: Yes, I am, sir. My wings have been clipped somewhat.

DEPUTY PRESIDENT: So what's the recovery rate like? You won't be back on the football field this week, will you?

10 **MR O'NEILL:** No, in fact, I announce my retirement on the public record, how's that.

MR T. KLEYN: Commissioner, TOM KLEYN, appearing for the Health Services Union of Australia, Tasmania No. 1 Branch.

DEPUTY PRESIDENT: Thanks, Mr Kleyn.

15 **MR I. PATERSON:** If the commission pleases, IAN PATERSON, appearing for the Australian Municipal, Administrative, Clerical and Services Union.

DEPUTY PRESIDENT: Good. Thank you. Mr O'Neill?

20 **MR O'NEILL:** Yes, thank you, sir. This application is made pursuant to section to section 23 of the *Industrial Relations Act 1984* to vary the Disability Service Providers Award in accordance with principle 16 of the commission's Wage Fixing Principles. They were in fact the previous principles of this commission, as this application was lodged in 1999.

25 **DEPUTY PRESIDENT:** Do you want to seek to vary the application, because they're different principles now, aren't they?

MR O'NEILL: Yes, they are. I'm in your hands, sir. If that's appropriate.

30 **DEPUTY PRESIDENT:** I think it would be because every time we send out a notice we send it out under principle 16 when in fact now, the award review process is principle 12.

MR O'NEILL: Sir, I'm a little embarrassed, I don't have the current Wage Fixing Principles with me.

DEPUTY PRESIDENT: It's principle 12.

35 **MR O'NEILL:** It's principle 12, thank you, sir.

DEPUTY PRESIDENT: So, you seek to amend your application to review in accordance with principle 12?

MR O'NEILL: Yes.

DEPUTY PRESIDENT: No opposition to that? Leave is granted.

40 MR O'NEILL: Thank you. On the point, the application was originally lodged back in 1999, this application has some history, sir, that you are aware of as far as report-backs. There has been much discussion within the disability service industry and with the parties here today in respect of the application and the opportunity which is available under
45 the award review process to not only reformat the award into the required format, there is an opportunity to amend award provisions that are obsolete or that are ambiguous or where there is dispute between the parties over interpretation.

50 Unfortunately, sir, we were unable to achieve that objective and hence, the delay in getting to this point. It will be my submission that that is disappointing in itself, however, we are pleased that we have at least got this far, as far as the award being reformatted into the required format.

55 The other issues may in the future be subject to separate application, should the parties be unable to resolve them over a period of time.

The application before you, as I said, seeks to simply reformat the award into the required format. I take you to the scope clause because the scope clause has been somewhat simplified.

60 DEPUTY PRESIDENT: I haven't got any of these documents. **EXHIBIT TCCI.1**. Have we got enough copies? We might just adjourn for a moment.

SHORT ADJOURNMENT 10.38am

ON RECORD 10.55am

DEPUTY PRESIDENT: Mr O'Neill?

65 MR O'NEILL: Thank you, sir. In this application I will be addressing you on principle 12, 12.1(i), consistent award formatting. Just before that, I wish to submit that the scope clause in this reformatted award has been simplified. The award interest, which goes to (iv) of principle 12.1 is in the required format. The parental leave provision is in
70 accordance with the processes and recommendations before former President Westwood and confirmed between the TCCI and the TTLC.

Sir, at this point I'll hand up a draft order.

DEPUTY PRESIDENT: We've already marked the draft order, exhibit TCCI.1. Seeing you have informed me that this application is only

75 dealing with certain parts of the award review process, should I interpret that as meaning, you're only requiring an interim decision at this stage to reflect the document TCCI.1 that's been tendered and that you wish to continue with the award review process?

80 MR O'NEILL: Yes, that is correct, sir. I wouldn't be able to address the commission that this application is entirely consistent with previous Wage Fixing Principles, in particular principle 16, now principle 12, if that wasn't the case as we've only addressed two points, in effect, of minor significance as far as the overall award review process goes.

85 DEPUTY PRESIDENT: Yes. You still have to undertake then, as I interpret the task, of removing discriminatory provisions, removing obsolete or amending inaccurate provisions in the award and converting the award to plain English and include appropriate facilitative provisions and the inclusion of appropriate enterprise flexibility clauses.

MR O'NEILL: Yes, sir, I give that undertaking to enter into discussions with the parties to the award.

DEPUTY PRESIDENT: Therefore, I can inform the parties today that any decision arising out of today's hearing will only be an interim decision and this matter will be adjourned to enable the parties to continue the process.

MR O'NEILL: Sir, just before I go on, I wish to tender an amendment, which was picked up in the supersession, to pick up No. 3 of 2000, which wasn't included at the time the application was made.

100 DEPUTY PRESIDENT: How about if we just replace the page on the document?

MR O'NEILL: Yes, I'm happy if that happens.

DEPUTY PRESIDENT: If the parties are happy with that, and we'll just put the new page 3 in and we'll still only be dealing with exhibit TCCI.1. Is that okay? No arguments against that process?

MR KLEYN: No, deputy president, very sensible.

DEPUTY PRESIDENT: It's already in the one I had.

MR O'NEILL: It may well have been amended. The reason why -

MR KLEYN: It's not in the copy I've got.

110 MR O'NEILL: My earlier submissions, sir, where I indicated that I had provided the copies to the parties, those copies didn't have that amendment.

DEPUTY PRESIDENT: Thank you.

MR KLEYN: That's why Mr Kleyn has the unamended copy.

115 DEPUTY PRESIDENT: Certainly, TCCI.1 has that provision in it.

MR O'NEILL: Thank you, sir. Sir, as I indicated, I cannot at this stage address you entirely that the application before you is consistent with the Wage Fixing Principles, particularly those relating to structural efficiency and award review and therefore as has been submitted and agreed between the parties, that an interim order will be issued.

At this stage the application does not offend the public interest and we would seek that the interim order be effective from the first full pay period commencing on or after today's date. If it pleases.

125 DEPUTY PRESIDENT: Just a proposition I would like to raise with you. Have the parties considered whether or not this particular order should include the results of the State Wage Case, in which case that would be operative from 1 August, the first full pay period to commence on or after 1 August and would it be appropriate - I'm only throwing it out for suggestion and comment, that this order also include the State Wage Case decision?

MR O'NEILL: Well, that would make sense, sir, that those increases be included in this consolidated award and on that basis, yes, it would be effective from the first pay period on or after 1 August.

135 DEPUTY PRESIDENT: So they'd both have the same operative date?

MR O'NEILL: Yes, if it pleases.

DEPUTY PRESIDENT: Mr Kleyn?

MR KLEYN: Deputy president, the HSUA is in broad agreement with the TCCI on this matter. There are a few comments I'd like to make. We are pleased that the decision that's going to be made today is going to be an interim one because we have been disappointed that this award review process didn't go into more detail and certainly didn't deal with the numerous ambiguities and lack of clarity of the award.

145 Certainly our intention right throughout, that the award review process would be much more than just simply a reformatting of it, so from our point of view, we intend to continue this award review process and it was our intention that if the award review process wasn't going to continue, we would be seeking variation through section 23 of the Act anyway. So, given that the award review process can continue, we're pleased with that.

We also consent to the wage rates emanating from the State Wage Case being included in the award and hence we agree with the operative date of the first full pay period on or after 1 August.

155 The only other point I would like to make is that issue of parental leave and we would like to revisit that clause and see exactly where it came from, whether we're compelled to include that clause as it is currently drafted because we do have some concern about the wording of that in terms of what we consider to be the appropriate definition of a casual. So I just put on record that that is one of the things that we will be
160 looking at again when we continue this award review process.

DEPUTY PRESIDENT: So what you're saying is, it's not the intention of the parties to redefine casual as it's currently defined in the award through the parental leave clause.

165 MR KLEYN: Precisely. That is exactly what I'm saying. The broad definition of casual in Part II of the award is the definition that stands and certainly we would not like to see that definition altered by any means really other than if the TCCI wants to put an argument that it should be changed then fine, but not through the parental leave provisions.

170 I take it that there is no argument on that question, Mr O'Neill is there?

MR O'NEILL: No, there is not, sir.

175 MR KLEYN: So that's all I need to say, I think, that we look forward to continuing this process and at the end of the day having an award that everybody can understand.

DEPUTY PRESIDENT: Good. Thank you. Just one thing before I ask Mr Paterson - and it's probably directed to all the parties - are you happy for me to make the necessary change in award interest to reflect the proper names of the registered organisations that have an interest
180 in the award because I notice one is wrong there, and also the organisations that are deemed to have an interest in the award, they need to be split because I think you'll find section 62(2) of the Act deems the Tasmanian Chamber of Commerce and Industry to have an interest in the award, and section 62(3) deems the Tasmanian Trades
185 and Labor Council to have an interest. So you don't mind if I split them during our process?

MR KLEYN: No, that's fine, commissioner.

MR O'NEILL: That's fine, sir. I thought it was in the required format, but I stand corrected.

190 DEPUTY PRESIDENT: No, it was one that was put up by someone
some time ago and it's been quite a few times varied to sort of get the
new format right. It's not quite the new format.

MR O'NEILL: I must have been simply a sheep and followed it.

DEPUTY PRESIDENT: Yes.

195 MR KLEYN: Thank you, commissioner.

DEPUTY PRESIDENT: Mr Paterson?

MR PATERSON: Thank you, commissioner. You've addressed one of
the issues that I could have addressed you on that in award interest.
The words 'Municipal, Administrative, Clerical and' have been omitted
200 from the title of our union.

DEPUTY PRESIDENT: Yes, we'll we've picked that up.

MR PATERSON: Pick that one up. Three other issues I wish to
address the commission on; in terms of the scope clause of this award,
the issue for my union is the intersection between this award and the
205 Community Services Award and I'd like to propose that the -

DEPUTY PRESIDENT: I think that it's already attached to my
document here.

MR PATERSON: I don't know that it's been placed on the record.

DEPUTY PRESIDENT: No, you might need to place it on the record.

210 MR PATERSON: In terms of I'd propose an amendment to the scope
clause as in TCCI.1 and that amendment to read - to add a new
paragraph that reads: this award shall not have application in respect
of an employer that is subject to the Community Services Award as at
Part I, Clause 3 - Scope (a)(v) which reads: disability services which are
215 demonstrably social welfare in nature - and then goes on to list five
points under that.

I wouldn't propose - well, it's open to the parties and maybe it's a
matter for future discussion as to whether the full subclause from the
scope of the Community Services Award is included or just the clause
220 reference. Maybe for completeness it would be appropriate to include
the full exclusion from that subparagraph of the scope of the
Community Services Award.

DEPUTY PRESIDENT: You're saying that would save people going
back -

225 MR PATERSON: To a second award which they may not have a copy
of -

DEPUTY PRESIDENT: Yes.

MR PATERSON: - in order to determine the application of the Disability Service Providers Award.

230 DEPUTY PRESIDENT: Good.

MR PATERSON: If the commission likes, I have a copy of the Community Services Award with me and that page could be photocopied and placed on the transcript if that's necessary, given that it's an award of the commission.

235 DEPUTY PRESIDENT: I think we'll be satisfied it's an award of the commission.

MR PATERSON: Satisfied to include that full subparagraph - (v). Well, in fact, if I may come back a second, maybe the full exclusion should be to the scope - Clause 3 - Scope (a) in its entirety which is
240 the coverage of the Community Services Award, but specifically at (v) there is a disability services mentioned.

DEPUTY PRESIDENT: It probably wouldn't hurt if the whole of the award was excluded.

MR PATERSON: I mean if the full scope - the scope clause -
245 subclause (b) of the Community Services Award is in fact the exclusions to the Community Services Award, so Part I clause 3(a) is in effect the full scope - active scope - of the Community Services Award and I retract my previous comments and request that the parties consent to the inclusion of that in this award as a second paragraph in
250 scope which, as I previously mentioned, should say something to the effect that this award shall not have application in respect of an employer that is subject to the Community Services Award, Part I, Clause 3(a) - Scope (a).

The matter of the parental leave; my understanding from having been
255 involved in the conferences that produced this model clause was in fact to deal with the issue of entitlements of people who have been employed on a continuous basis but may never have been classified as permanent. I support the contention that this shouldn't in any way affect the definition of whether - or the determination of somebody's
260 employment status, however what this clause allows to happen is, it allows the matter of this leave entitlement to be resolved without having to resolve or take to dispute the matter of the employment status. So in effect it's a short cut which may obviate the need to determine somebody's employment status prior to granting leave. For
265 that reason I support it being there provided that it is clearly understood that it in no way affects or diminishes the definitions that otherwise apply to a casual.

270 In respect of the unfinished business, there is one matter in particular that my union has a concern with; in the process of award reformatting in other areas we developed a simplified clerical classification stream. That's not been included in this draft and we would seek to revisit that matter and include that in future discussions and hopefully include it in a further application to vary this award.

275 For the reference that is the classification structure that was developed in the reformatting of the Aerated Waters Award.

With those four comments made I indicate that we otherwise support the variation of the award in this matter.

DEPUTY PRESIDENT: Good. Thank you. Mr Kleyn?

280 MR KLEYN: Commissioner, can I just ask - can we just go off the record for a moment?

DEPUTY PRESIDENT: Yes.

OFF RECORD 11.12am

ON RECORD 11.15am

285 MR KLEYN: Commissioner, in terms of the scope clause -

DEPUTY PRESIDENT: Well, we'd better let the record show that the parties have had a private discussion in relation to the scope clause and, Mr Kleyn, I understand you wish to report progress on those discussions.

290 MR KLEYN: Yes, commissioner. What we've decided is the best option at this stage is to leave the scope clause in the Disability Services Award as is before it was reformatted and before it was amended and the parties will get together to draft an appropriate scope clause that takes into consideration the demarcation between the
295 Community Services Award and the Disability Service Providers Award. So at this stage we'll leave the scope clause and we'll deal with it with the ongoing review of the award. Thank you.

DEPUTY PRESIDENT: Good. Thank you. Is that your understanding, Mr Paterson?

300 MR PATERSON: I can confirm that understanding, thank you, commissioner.

DEPUTY PRESIDENT: Mr O'Neill?

305 MR O'NEILL: Thank you, sir. We consent to that, however we do reserve our right to revisit the issue of the scope clause in the ongoing discussions that will occur.

DEPUTY PRESIDENT: Well, this is an interim process anyway so you've got ample opportunity. Any further submissions? No further submissions. Mr O'Neill, you might e-mail me the document.

MR O'NEILL: Yes, I certainly will, sir.

310 DEPUTY PRESIDENT: It might save some time. No further submissions? Well, I can indicate that I'm going to vary the award along the lines as set out in TCCI.1 except for those matters that have been raised - example, the scope and the award interest clauses have to be looked at.

315 I emphasise this is an interim decision only and I encourage the parties to continue with their discussions under principle 12 to finalise their review of this award and we might just go off the record to talk about timetables.

OFF RECORD 11.17am

320 **ON RECORD 11.22am**

DEPUTY PRESIDENT: Let the record show we've had discussions about resumption of this application and the parties are agreed that the matter should be adjourned sine die and I'll await to hear from the parties to the award in respect of relisting this application.

325 That adjourns this matter, I suppose, because it's only interim, so this matter stands adjourned to a date to be fixed.

HEARING ADJOURNED SINE DIE 11.23am