

COMMISSIONER: I'll take appearances please.

MS S. STRUGNELL: If the commission pleases, SUE STRUGNELL appearing for the Community and Public Sector Union.

COMMISSIONER: Thank you.

5 **MR D. PYRKE:** If the commission pleases, DARRYL PYRKE appearing on behalf of the Association of Professional Engineers, Scientists and Managers, Australia.

COMMISSIONER: Thank you.

10 **MR P. LEITCH:** If the commissioner pleases, PAUL LEITCH appearing for the Executive Chairman, TDR.

COMMISSIONER: Thank you. Who is leading?

15 MS STRUGNELL: Mr Commissioner, before we commence, I'd like to put to the commission an amended statement of particulars in relation to the variation of the application that we originally put to you. Most of it is in terms of the amendments are just more clearly defining the principal officer role in Tasmania Development and Resources, but also addressing clause 8(c) of the award of the Professional Employees Award in relation to deeming of qualifications which was omitted from our original application.

20 COMMISSIONER: Good. Thank you. I was going to ask you about that.

MS STRUGNELL: The parties are agreed to the amendments as put to you.

COMMISSIONER: No objections to the amendment?

25 MR LEITCH: No, Mr Commissioner. Fully supportive.

COMMISSIONER: Right, well, leave is granted. And now have we had pre hearing discussions on this matter?

MS STRUGNELL: We have, sir.

30 COMMISSIONER: Right. And is there agreement or non agreement, or where are we heading with this matter?

MS STRUGNELL: There is agreement.

COMMISSIONER: Right. Good. Thank you, continue.

35 MS STRUGNELL: Sir, on the basis of that agreement, if I might just to outline to the commission that the reason for us seeking to vary the Professional Employees Award to include Tasmania Development and

Resources as having interest in that award is in order to provide an award safety net for employees of Tasmania Development and Resources. There are two particular categories of employees, if you like, with TDR; those of a clerical nature - and Tasmania Development and Resources are already party to that award - and then there are the professional employees, and the purpose, as I said, is to provide that award safety net for those people.

MS STRUGNELL: Just to take you through take you through the amendments -

COMMISSIONER: Well, maybe you had better satisfy me in relation to the Act first, especially section 62(4) that this is indeed a controlling authority within the meaning of the Act.

MS STRUGNELL: Are you talking about the *TDR Act*?

COMMISSIONER: No. The *Industrial Relations Act*.

MS STRUGNELL: Goodness, I didn't bring it with me.

COMMISSIONER: The *Industrial Relations Act* says that:

A controlling authority shall be deemed to be an organization of employers of State employees registered under this Part and to have an interest in those awards that have application to employees employed by it.

Now I would need to be satisfied that the TDR is a controlling authority within the meaning of the Act. The controlling authority is defined under the *Industrial Relations Act* and I would need to know whether or not the TDR fits that definition.

MS STRUGNELL: Sir, on the basis of what you have just said, could I seek a five minute adjournment so that I can come back to you with that?

COMMISSIONER: No worries.

MS STRUGNELL: And I apologise for that.

COMMISSIONER: We'll just go off the record.

OFF RECORD

ON RECORD

COMMISSIONER: Ms Strugnell?

MS STRUGNELL: Thank you, Mr Commissioner, and thank you for granting us that adjournment.

COMMISSIONER: No worries.

MS STRUGNELL: In order to satisfy section 62(4) of that Act, that being:

5 *A controlling authority shall be deemed to be an organization of employers of State employees registered under this Part and to have an interest in those awards that have application to employees employed by it.*

I would like, sir, to refer the commission to section 3 of the *Industrial Relations Act - Interpretation* - and look at the definition of 'state employee' or interpretation of state employee, and I quote:

"State employee" means a person who is employed in an Agency or by a State authority that is not an Agency other than a person -

(a) who is appointed under section 7, 29 or 60 of the Tasmanian State Service Act 1984;

15 We say, sir, that employees of TDR do not come under that definition of a state employee.

or

(b) whose remuneration is specified in any Act, determined under the Statutory Salaries Act 1979 or determined by the Governor under any Act;

We say that employees of TDR do not come under that particular definition.

or

(c) who is a contract employee under section 38 (1) (b) of the Tasmanian State Service Act 1984;

That definition does not apply to the employees whom we are seeking to be covered by this award safety net.

COMMISSIONER: So in general they're not state - none of them are state employees.

30 MS STRUGNELL: They are not. That's correct.

COMMISSIONER: Yes.

MS STRUGNELL: If we refer to the definition of 'state authority':

5 "*State authority*" means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which, the governing authority, wholly or partly, comprises a person or persons appointed by the Governor, a Minister, or another State authority, but does not include a Government department;

10 Sir, we say that the TDR is incorporated under the *Tasmanian Development Act 1983* and therefore meets the test of a state authority thereby saying that we believe that we satisfy the requirements under section 62(4) of the Act in relation to our application.

 COMMISSIONER: How do you answer the question that it has to be a controlling authority? You've told me you believe it's a state authority.

15 MS STRUGNELL: Yes, that's correct.

 COMMISSIONER: But the Act says that a controlling authority shall be deemed to be an organisation.

20 MS STRUGNELL: Sir, in terms of controlling authority, referring to again section 3 of the *Industrial Relations Act*, the definition of controlling authority, we refer you to subclause (d) whereby the controlling authority in this case is:

- any other State employee - the principal officer of the State authority by which that employee is employed.

 COMMISSIONER: Right. Thank you.

25 MS STRUGNELL: Having put that to you, sir, and it is our submission that we do satisfy the requirement of section 62(4) of the Act, and I would like now to proceed with moving through the variations as we would see necessary to achieve our purpose in including TDR as party to the Professional Employees Award.

30 As I stated previously, this is an amended application from our original application.

 COMMISSIONER: Well, we'll give this amended application an exhibit number. **EXHIBIT S.1.**

35 MS STRUGNELL: Thank you. And the amendments have been agreed by the parties.

 The first amendment, sir, is in relation to clause 3 of the Professional Employees Award.

We are seeking to delete clause 3 and to insert the clause as we've outlined in our application - clause 3 - being the scope clause, and this is in order to make reference to the *Tasmanian Development Act 1983*. Our amendment therefore would be that:

5 *This award is to apply to persons employed under the Tasmanian State Service Act 1984 or the Tasmanian Development Act 1983 undertaking work of a professional nature for whom classifications appear in this award and are not included in other awards of the Commission.*

10 So the addition is to include *Tasmanian Development Act 1983* into the clause.

The second variation we are seeking is to delete clause 6, subclause (b), of the Professional Employees Award and to insert the following new clause, and what we are doing with the new clause is simply adding roman numeral (ii) to subclause (b) stating:

- *the principal officer, Tasmania Development and Resources.*

By doing that we have obviously had to change the language a little in terms of clause (b) to make it plural instead of singular in terms of the wording in that.

20 The third variation we are seeking is to amend clause 7, subclause (a) - Definitions. The two definitions that we wish to amend are in relation to firstly 'employee', to expand that definition to read:

- *means a person employed under the provisions of the Tasmanian State Service Act 1984 or the Tasmanian Development Act 1983.*

25 And secondly, to amend quite substantially the definition of 'employer' so that that definition would read:

- *being in the case of an employee employed under the Tasmanian State Service Act 1984 means the minister administering the Act; and in the case of an employee employed under the -*

30 COMMISSIONER: Now can I just ask is that a title - the minister administering the Act - because you say in the parties - or you say in point 2 of your thing that it's the Minister for Public Administration and in this particular section you say it's the minister administering the Act.

35 MS STRUGNELL: Yes, that's correct, sir, and that in fact is intentional so that regardless of any change which may occur in terms of the employer and title that it is simply referenced to the employer being the minister administering the Act at that time. I mean obviously if there was a change to the employer in regards to title such as

Minister for Public Sector Administration, we would have to thereby vary the award to reflect that.

COMMISSIONER: Yes, so maybe the capitals are throwing me out.

MS STRUGNELL: Yes, I think you're quite correct, sir.

5 COMMISSIONER: So you're really talking about the minister.

MS STRUGNELL: The minister administering the Act.

COMMISSIONER: Small 'a' - administering the Act as opposed to the title of a minister.

10 MS STRUGNELL: That's correct, yes. And having just been through that with you, sir, I might add that we've also made another typographical error in the previous clause 6 variation; we have omitted public sector administration as the title of that minister.

15 COMMISSIONER: Yes, I was going to question you about that because I thought it had changed. So do you want to change that roman numeral (i)?

MS STRUGNELL: I would - yes - submit, sir, that we would change roman numeral (i) of clause 6 to read:

- the Minister for Public Sector Administration.

COMMISSIONER: Good. Thank you.

20 MS STRUGNELL: Going back to the definition of employer, just to recommence that, our variation would read:

25 *- being in the case of an employee employed under the Tasmanian State Service Act 1984 means the minister administering the Act; and in the case of an employee employed under the Tasmanian Development Act 1983 means the principal officer of Tasmania Development and Resources.*

That variation is lengthy just to ensure that it is very clear of the two separate employers and their relationship to particular employees.

30 A further variation which we seek today, sir, is an amendment to clause 8(c)(ii), paragraph 2, where this refers to the deeming of qualifications in the award. The first minor amendment is to add after paragraph 2 as it stands at the moment a ': or' after the Welfare Workers Award No. 2 of 1997 Consolidated S138 and to insert after that a new subclause 8(c)(iii) which would read:

35 *In respect to employees employed under the Tasmanian Development Act 1983 the principal officer Tasmanian*

Development and Resources has deemed the position to require an essential educational qualification.

5 We thought it would be more appropriate to have an additional subclause added to 8(c) rather than include the deeming provision for Tasmania Development and Resources to be included in another existing paragraph, just to ensure again that there is clarity as to whose responsibility lies where and to which employees in relation to the deeming of essential qualifications.

10 COMMISSIONER: Just a question of clarification. Were you saying there that the educational qualification has to be from some tertiary institution or could we say, look, the employer says, you've got to have a leaving certificate and therefore it's an educational qualification?

15 MS STRUGNELL: The qualifications in relation to the Professional Employees Award are actually included as part of the criteria for those qualifications and I think -

COMMISSIONER: Well, keep in mind that this is a separate section for these people in TDR.

MS STRUGNELL: That's correct.

20 COMMISSIONER: So, we're just saying, as long as the employer deems the position to require an educational qualification, which might be any qualification.

MS STRUGNELL: Yes, you're quite correct and bearing in mind it is quite separate for those people. It may be clearer if we were to specify a tertiary qualification rather than educational qualification.

25 COMMISSIONER: Yes. They're obviously gaining some tertiary qualification, I would think, as opposed to an educational qualification. We might just go off the record and think about it.

OFF RECORD

ON RECORD

30 COMMISSIONER: Thanks, Ms Strugnell?

35 MS STRUGNELL: Sir, I would seek to amend the application as it is before you in relation to the new subclause wording, to substitute the word 'educational' with 'professional'. So, that will make it without question in terms of the type of qualification that would be deemed by the principal officer.

COMMISSIONER: So it would read: deemed the position to require a professional educational qualification?

MS STRUGNELL: No. It would read: deemed a position to require an essential professional qualification.

COMMISSIONER: Right. No objection to that amendment?

MR LEITCH: No, sir.

5 COMMISSIONER: Leave is granted.

MS STRUGNELL: Thank you, sir. Sir, they are the variations before you, as I've outlined, with some minor amendment as we've gone through and I put these to you as being a means of satisfying concerns in relation to establishing an award safety net for this particular group of employees in TDR. Thank you.

COMMISSIONER: Good. Thank you. Who do we envisage actually being covered by this award, just for my own interest? Is there anyone there now that would immediately fall into this award?

MS STRUGNELL: Yes, sir, there would be.

15 COMMISSIONER: In what sort of area?

MS STRUGNELL: There is an information officer at Tasmania Development and Resources who would fit to this.

COMMISSIONER: A librarian qualification?

MS STRUGNELL: That's correct, yes, and that has been an agreed position previously so it really would be necessary for that particular position to have that.

COMMISSIONER: Is there anyone else that would fall into this?

MS STRUGNELL: Well, Mr Leitch may be able to probably give you more information on that because we have - you'd be aware that there are contract employees and it is difficult for me to actually identify specific positions that have a requirement although I imagine there would be managers in investment, attraction and those sorts of positions which do require professional qualifications.

COMMISSIONER: It's envisaged that there will be contracting outside of the award after a certain level?

MS STRUGNELL: Yes. There are individual contracts for employees in TDR.

COMMISSIONER: Would it be outside the levels within the award? Say, for example, the highest level in the award is \$64,549, so the contracting out would be above that level?

MS STRUGNELL: That's correct, yes.

COMMISSIONER: Mr Pyrke, you haven't got any engineers there, have you?

MR PYRKE: We have had engineers employed by the TDR in the past. I suspect they have been on individual contracts but looking at the nature of the work that that agency performs - that authority performs, advising industry and so forth, it's not beyond the bounds of possibility that there would be engineers there over a period of time.

COMMISSIONER: Yes, but there's none at the moment?

MR PYRKE: Not that I'm aware of, sir, no. Commissioner, Ms Strugnell has put to you the view that we needed that award safety net for professional employees and that's a view that we certainly support. She's addressed you on the reasons for the particular amendments that she seeks and, again, having had the benefit of your comments and thoughts on the matter, I certainly agree that the proposed amendments as they now stand are appropriate.

Ms Strugnell has also addressed you on section 62, Part IV of the Act and I certainly agree with the comments she's made there. It's certainly my view that the application doesn't offend the public interest, so in those circumstances we certainly support the application. If the commission pleases.

COMMISSIONER: Good. Thank you, very much. Mr Leitch?

MR LEITCH: Mr Commissioner, I'd also like to concur that TDR supports the amended application made by the CPSU for the reasons raised by Ms Strugnell here today.

COMMISSIONER: Right. Thank you. Well, no further submissions? I'll hand down a written decision in due course. The parties haven't addressed me on the operative date so I'll take it it will be date of decision. Thank you very much. I will hand down a decision as soon as practicably possible.

HEARING CONCLUDED