

DEPUTY PRESIDENT JOHNSON: I'll take appearances please for the applicant.

MR C. BROWN: If the commission pleases, C. BROWN appearing for the Health Services Union of Australia, Tasmania No.1 Branch.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Brown. Mr Paterson.

5 **MR I. PATERSON:** IAN PATERSON, appearing for the Australian Municipal, Administrative, Clerical and Services Union, Tasmanian branch.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Paterson. Mr Watson.

MR M. WATSON: May it please the commission, MARK WATSON, on behalf of the Tasmanian Chamber of Commerce and Industry.

10 DEPUTY PRESIDENT JOHNSON: Thank you, Mr Watson. Yes, Mr Brown.

15 MR BROWN: Thank you, Mr Deputy President. This is a report-back hearing. The transcript of the last hearing basically is the submission that I wanted to make in relation to this matter. At the end of that submission we went off the record into conference and discussed a number of issues as to how this matter could be advanced. It was agreed at that time that the parties would go away and have further discussions regarding the actual wording of the variation, and also Mr Watson wanted to go away and check out with a couple of his members as to their reaction to it, and Mr Watson can report on that.

20 I can report that we have had a number of discussions regarding the - both the application and the wording of the agreement and we've got to the point where there is agreement on the wording.

I actually faxed through to you this morning for your information, and I apologise for it being so late but we didn't finalise the matter until yesterday, a variation which I wish to make the application, and perhaps if I could formally address that issue now.

25 DEPUTY PRESIDENT JOHNSON: Yes. I did receive that fax, Mr Brown, thank you.

MR BROWN: Perhaps if I formally enter it into record and put up these as a - as the amendment.

DEPUTY PRESIDENT JOHNSON: Yes. Do you wish that to be marked as an exhibit?

30 MR BROWN: Not as an exhibit, but rather, an amendment to the actual application. I mean you can treat it as an exhibit if you like, I don't mind.

DEPUTY PRESIDENT JOHNSON: Thank you.

35 MR BROWN: And if I could just take you to the areas where the application is in fact amended in this. In the first paragraph under roman numeral (v), which will be roman numeral (v)(ii) clause (a), the only changes in the second line, after the word 'other', than - the word 'than' has been included, so it reads - second line - psychiatric and/or sensory disability in locations other than those.

40 Then in subclause (b), the changes in roman numeral (i), are that the words 'and/or' have been inserted in the first line. No - sorry - they were there already - sorry - apologise for that. No, that's right. In roman numeral (ii) - sorry - roman numeral (i) - 'the industry of providing' has been included and then roman numeral two: 'the industry of' has been included there as well. The reason for that is just to simply reflect more exactly what the scope clause of the Disability Service Providers Award

and the Nursing Homes Award are so that it's clear that what subclause (b) is doing is actually excluding the scope clause of those two awards from this particular award. So they're more matters of just simply clarification rather than anything else.

So that if I could seek leave to amend the application to that effect.

5 DEPUTY PRESIDENT JOHNSON: Yes, thank you, Mr Brown. Mr Paterson.

MR PATERSON: I've - the Australian Services Union and AMACSU supports this application and I've nothing to add at this time.

DEPUTY PRESIDENT JOHNSON: And you have no objections to the amendments?

MR PATERSON: No objections.

10 DEPUTY PRESIDENT JOHNSON: Mr Watson, do you have any objections to the amendments?

MR WATSON: No, certainly don't, Mr Deputy President. We're in fact involved in the discussions with Mr Brown regarding the format of the revised applications - no, we certainly support the amendments that have been put forward to you today.

15 DEPUTY PRESIDENT JOHNSON: Thank you, Mr Watson. Your application is granted, Mr Brown, and I formally order that the application be amended in the manner described by you and reflected in the amended application submitted this day.

Did you wish to say anything further to the application -

20 MR BROWN: No, sir. Thank you, Mr President.

DEPUTY PRESIDENT JOHNSON: Mr Paterson, do you wish to -

MR PATERSON: No, no further comment on this.

DEPUTY PRESIDENT JOHNSON: Mr Watson?

25 MR WATSON: Mr Deputy President, we having been involved in the original dispute on this matter which basically involved an organisation called Family Based Care, I guess that was the catalyst for this whole matter. First of all there was a dispute notification and then an interpretation matter, and basically after those two matters were settled, the parties have agreed on this new scope for this award which I think was basically the way it was meant to be in the first place back in 1993. However, at 30 least we have that position now.

We've consulted with Family Based Care who were - our member, who was directly involved in the original dispute and they've advised that they are happy with the amendment to the scope clause of this award and also a couple of other members of ours who will be directly affected - we've also consulted with them, and therefore we're able to advise to the commission that the matter is a consent matter and we command the application too. May it please the commission.

35 DEPUTY PRESIDENT JOHNSON: Mr Watson, I take it that there is no impact in terms of the public interest or economic considerations that flow from this application?

MR WATSON: Well, in relation to Family Based Care who are, I suppose, the main organisation that's involved in this, they in fact have - or as you'd be aware, they have three enterprise agreements under section 61 - sorry - section -

DEPUTY PRESIDENT JOHNSON: Section sixty -

5 MR WATSON: - yes, section 61 -

DEPUTY PRESIDENT JOHNSON: It's near enough, Mr Watson.

10 MR WATSON: - in your previous role you in fact approved those applications - agreements - so therefore this particular change to the scope clause won't directly affect those organisations for approximately two years because their enterprise agreements last for that period.

15 The other organisation - or a couple of the other organisations that aren't directly affected, in our discussions with them, we're basically expecting this to happen. In terms of the public interest argument, I suppose the broader question of funding for the Community Services Award is topical at the moment but I don't really have any submissions to put in relation to that because it's not something that we're directly involved in.

DEPUTY PRESIDENT JOHNSON: And in any event, Mr Watson, the question of funding is not confined solely to this particular area.

20 MR WATSON: No. I mean if funding was a problem then I guess the avenue open industrially would be for us to come to the commission and put up an argument regarding incapacity to pay which obviously would be a fairly difficult job to convince the commission of that, but that would seem to be one of the only options industrially if it became a problem.

25 DEPUTY PRESIDENT JOHNSON: Thank you, Mr Watson. If I might say so, unrelated to this case, I think you're one of the very few people who have been talking to me this week. I don't know whether that serves as some sort of notoriety of a favourable kind or an unfavourable kind.

Mr Brown, did you want to have anything to say about the public interest.

30 MR BROWN: Yes, just in regard to the public interest, I'd actually argue, Mr Deputy President, that it is in fact in the public interest for this variation to go through. Given that there are - the effect of the president's decision in the interpretation hearing regarding the scope clause was in fact to render quite a few workers who fall into this category award free, we would argue that it is in the public interest that they are covered by an award; that their employment is regulated by award. The experience out there today was that there's a large degree of uncertainty within the industry about what is the correct avenue for employment regulation for these workers and this should relieve a lot of uncertainty within the industry if this variation goes through and it would also mean a degree of industrial stability in the industry that potentially could blow up if these workers remain award free. If the commission pleases.

40 DEPUTY PRESIDENT JOHNSON: Thank you, Mr Brown. Just as a final matter for you, since I'm, as yet at any rate, unfamiliar with the rules of the various organisations who present themselves here, I take it that no question arises as to the coverage of the organisation you represent in terms of this change of the scope clause of the award?

MR BROWN: No, Mr Deputy President, we - on our certificate of registration, the Community Services Award is listed and we are a party to the award and our rules give us coverage within this area.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Brown. Mr Paterson, did you have anything to say about the public interest award coverage?

MR PATERSON: I'm not - really only to support Mr Brown's contention on the desirability of award regulation and to support your observation that any funding issue is, in the first instance, not an industrial - well, in the first instance, is broader than this variation and is a matter for the whole award, and further, that funding per se is not an industrial issue in any event. It's the consequences that flow from funding that become the industrial issues.

And in terms of the latter matter, it's also pertinent to mention that the two unions have an agreement as to coverage and joint coverage of different occupations and types of work within this area and that no issue arises out of that either.

DEPUTY PRESIDENT JOHNSON: Yes, thank you, Mr Paterson. Having heard the parties, I note that this is a consent application. In my judgment there is no issue of the public interest nor of the technical matter relating to award coverage, nor indeed is it a relevant issue for consideration in terms of the wage fixing principles. Accordingly I determine that I will vary the award in the manner sought by the consent application.

I don't know whether in the earlier file, Mr Brown, there was any discussion between the parties in relation to an operative date for this variation. If there has been nothing decided, it would be my intention, subject to your submission, to make the date as set out in the faxed order anyway that I have, being the first full pay period commencing on or after today's date. Is that the parties' agreement?

MR BROWN: This is probably not our ideal option, Mr Deputy President, but I don't know that we have too much choice. I mean part of our concern, if I can just briefly mention it, was that originally the full bench decision regarding the scope of the Community Services Award determined that personal carers, ie, the people that we're seeking to have included now, would be covered by the Community Services Award. For whatever reason that wasn't actually adequately - that full bench decision wasn't adequately reflected in the actual wording of the scope clause and that's what led to the uncertainty as to whether these workers were actually covered or not and that's why we took the measure of lodging an application with the commission to have an interpretation hearing to have that matter determined.

We feel that these workers are in fact the same as any other workers that are covered by the Community Services Award. Other workers have been able to access the wage rates in the Community Services Award from the date of operation which was 1 July 1995, and it seems like because of this technical hitch more than anything else, these workers potentially miss out on that award coverage for the period from 1 July to the date of decision if that's when the operational date is going to be.

Having discussed it with Mr Watson however, I believe we'd strenuously object to any other operational date other than the date of decision and the commission practice to only in extreme circumstances award retrospective date of operation. We reluctantly therefore have amended the application to - down the bottom - to agree to seeking an operative date from the first full pay period on or after today's decision, but we do that with a degree of reluctance. If the commission pleases.

DEPUTY PRESIDENT JOHNSON: Yes - although I suppose the decision of the president was a fairly difficult hurdle to get over in the context of his finding in terms of the actual scope coverage of the award.

MR BROWN: Indeed.

5 DEPUTY PRESIDENT JOHNSON: Mr Paterson, did you wish to comment on this point?

MR PATERSON: Nothing further to add to what Mr Brown has just said.

DEPUTY PRESIDENT JOHNSON: Mr Watson.

10 MR WATSON: Thank you, Mr Deputy President. In relation to operative date, it's our firm position that the operative date should be the first full pay period on or after the date of decision. This amendment to the application that's been presented to you is the parties' agreement in effect, and if the operative date is not the date of decision, well then that would - we would in fact withdraw our consent to the application. So it's either all or nothing as far as we're concerned. We're quite happy with the
15 amendment but it was our firm position from day that we would not agree to any retrospectivity. Both parties are well aware of that and have been for some time.

DEPUTY PRESIDENT JOHNSON: Yes. Thank you, Mr Watson. My order will issue together with the decision under today's date. The order will be effective from the beginning of the first pay period to commence on or after today's date.

20 That concludes the hearing of matter T.6152 of 1996.

HEARING CONCLUDED