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TRANSCRIPT OF PROCEEDINGS

O/N 95578

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 13307 of 2008

AUSTRALIAN WORKERS UNION (TASMANIAN PUBLIC SECTOR) AWARD

**Application pursuant to the provisions of section 23(2)(b)
of the Industrial Relations Act 1984 lodged by the
Minister administering the State Service Act 2000
to vary the above award re rates of pay and
personal leave**

HOBART

11.30 AM, FRIDAY, 21 NOVEMBER 2008

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THE COMMISSIONER: I'll take appearances, please.

MR P. BAKER: Commissioner, I appear on behalf of the applicant. P. Baker.

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THE COMMISSIONER: Mr Baker.

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

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THE COMMISSIONER: Thank you, Mr Flanagan.

MR BAKER: Commissioner, if I may, before we start this morning I wonder if we could just go off the record for 30 seconds.

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THE COMMISSIONER: Certainly.

OFF THE RECORD [11.31 am]

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RESUMED [11.35 am]

MR BAKER: Thank you, Commissioner. I'd hand the commission an exhibit in relation to a draft order that is proposed to amend the AWU State Central Award.

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THE COMMISSIONER: Thank you.

MR BAKER: The exhibit before you is in two parts. The first is - - -

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THE COMMISSIONER: I'll just mark that MASSA1.

EXHIBIT #MASSA1 DRAFT ORDER PROPOSED TO AMEND THE AWU STATE CENTRAL AWARD

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MR BAKER: The first part deals with the calculation of salary. The AWU Award is the last award in the Tasmanian State Service that does not contain this provision. This provision was in fact agreed to as part of an enterprise bargaining outcome way back in 1996. So it's probably that this award has finally caught up and will make the payment of wages uniform across the State Service. The second part of the application deals with a matter that was previously dealt with by the commission.

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THE COMMISSIONER: Just before you go on - - -

MR BAKER: Yes.

THE COMMISSIONER: You've got the definition of annual pay and then in the formula it refers to "annual salary". Should they read the same?

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MR BAKER: Well, yes. I've just copied it straight out of the 1996 - - -

THE COMMISSIONER: I'm not fussed, but it just seems if you're going to define the terms it should say the same. Someone, you know, smarter than me might make a point on that one day.

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MR BAKER: Well, that's right. I mean, we do have annual salary.

THE COMMISSIONER: We do, and if you use the – in the definition if you just put "annual salary" rather than "annual pay".

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MR BAKER: Yes.

THE COMMISSIONER: Would that make sense?

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MR BAKER: Yes.

THE COMMISSIONER: Right. Sorry.

MR BAKER: And in respect to the second matter: this, sir, actually arises out of the previous decision of the commission in matter 13208 of 2008 in which we amended the personal leave provisions of the AWU Award. When we put the new calculation into the award it became apparent that there were several employees whose current leave balance – their personal leave balance – actually exceeded the revised calculation that is now found in the award. This is a savings provision that says should an employee currently exceed the calculation that is prescribed in the award then they will have access to any additional accrued leave that may sit there at the time of the making of the award provision in October 2008.

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And finally, Commissioner, in relation to amending the exhibit, we would seek to insert a new sub-clause (2)(c) under Rates of Pay in the AWU Award in the form that has been presented to you to enable classifications contained in that award to receive a 4 per cent increase in salary effective from the first full pay period to commence on or after 27 November 2008. I'd submit, sir, that it is in the public interest and meets the test under section 36 of the act and what is proposed today does not offend the wage-fixing principles. Thank you.

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THE COMMISSIONER: Yes. Thank you, Mr Baker. Mr Flanagan?

MR FLANAGAN: Thank you, Commissioner. Commissioner, the union supports the proposed amendments to the award as detailed by Mr Baker. The application in effect is a tidying-up exercise designed to give effect to the intent of the parties from

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the outset. We can categorise the variations which are proposed into two groups. The first category is the definition of “calculation of fortnightly salary” and lent to that is the proposed new clause (2)(c). Both of those clauses are intended to give effect to the agreement between the union and the Minister administering the State Services Act in relation to proceedings before the Full Bench on 3 November this year.

At that time the Minister administering the State Service Act and the public sector unions generally proposed a variation to create a new State Service Award, if you like, and as part of those proceedings the AWU identified that we had a separate award. But a part of what we had reached agreement to – although it wasn’t actually reduced to writing anywhere – was that we would move in line with the rest of the State Service in terms of the methodology for calculating rates of pay based on a number of days per year rather than a number of weeks, which has been the traditional approach to the AWU. So the effect of the first variation in relation to calculation of fortnightly pay is designed to give effect to that intention which was expressed before the Full Bench.

Likewise the variation to include a new clause (2)(c) is of the same ilk. It provides a mechanism – an interim mechanism – for the payment of the 4 per cent wages outcome which arises from the negotiations between the minister and the state sector unions. It is an interim measure because ultimately an application will come before the commission next year which will seek to insert into the AWU Award a classification structure which is consistent with the structure which was approved by the Full Bench in those proceedings on 3 November.

The second aspect of the application is the savings provision in relation to the sick leave matter which was before you in matter number 13208 of 2008. It was indeed not the intention of any party that anybody would be disadvantaged by the introduction of the tri-annual system and it appears that there are a small number of employees who, without this provision, would in fact be disadvantaged. So in those circumstances the union would submit that the variations which are proposed do not offend the commission’s principles and are consistent with the public interest and the commission should prove the variation sought. If it pleases the commission.

THE COMMISSIONER: Thank you, Mr Flanagan. Would an operative date of on or after the first pay period or on or after 27 November be appropriate?

MR FLANAGAN: That would.

THE COMMISSIONER: That would be the tidiest way of doing it. Having heard the parties I’m satisfied that the application is consistent with both the wage-fixing principles and the public interest requirements of the act. The award will be – sorry, the application as amended is granted and the award will be varied to reflect the draft order presented operative from the beginning of the first pay period to commence on

or after 27 November 2008. On that basis the commission stands adjourned. Thank you.

5 MATTER ADJOURNED at 11.45 am INDEFINITELY

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EXHIBIT #MASSA1 DRAFT ORDER PROPOSED TO AMEND
THE AWU STATE CENTRAL AWARD

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