

AUSCRIPT AUSTRALASIA PTY LTD

ABN 72 110 028 825

**AUSCRIPT**

Level 10, MLC Court, 15 Adelaide St BRISBANE QLD 4000

PO Box 13038 George St Post Shop BRISBANE QLD 4003

Tel:1300 308 420 Fax:(07) 3503-1199

Email: [orders@auscript.com.au](mailto:orders@auscript.com.au) Website: [www.auscript.com.au](http://www.auscript.com.au)

## TRANSCRIPT OF PROCEEDINGS

---

O/N 78367

### **TASMANIAN INDUSTRIAL COMMISSION**

### **DEPUTY PRESIDENT P.C. SHELLEY**

**T No 13077 of 2008**

**T No 13078 of 2008**

**T No 13082 of 2008**

**T No 13083 of 2008**

### **GENERAL CONDITIONS OF EMPLOYMENT AWARD COMMUNITY AND HEALTH SERVICES (PUBLIC SECTOR) AWARD**

**Applications 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, the Community and Public Sector Union (State Public Services Federation Tasmania) Inc and the Health Services Union of Australia, Tasmania No. 1 Branch to vary the above awards re principle 13 of wage fixing principles and review of the award in accordance with the wage fixing principles of the Tasmanian Industrial Commission**

### **HOBART**

**10.00 AM, WEDNESDAY, 9 APRIL 2008**

**Continued from 28.3.08**

**This transcript was produced from tapes recorded  
by the Tasmanian Industrial Commission**

THE DEPUTY PRESIDENT: Thank you. Changes in appearances, are there any? You did appear on the very first day, Mr Pyrke, I think.

5 MR D. PYRKE: Yes, Deputy President, I have appeared before in some of those matters but probably not all the ones which pertain to the public service generally so I certainly appear in respect of those matters.

THE DEPUTY PRESIDENT: Thank you

10 MR PYRKE: We don't have any interest in the health department, though, so I will probably refrain from appearing there.

THE DEPUTY PRESIDENT: Thank you.

15 MS S. GOLDFINCH: Commissioner Shelley, I believe there is a bit of confusion about my appearance.

THE DEPUTY PRESIDENT: Mr Lynch is being you today, I think, but - - -

20 MS GOLDFINCH: Yes.

MR LYNCH: I am happy to hand it back.

25 MS GOLDFINCH: I am - - -

THE DEPUTY PRESIDENT: So you are representing the Health Services Union.

MS GOLDFINCH: Health Services Union of Australia, thank you.

30 THE DEPUTY PRESIDENT: So therefore, Mr Lynch, you are only representing the CPSU today.

MR LYNCH: That's correct, thank you.

35 THE DEPUTY PRESIDENT: Okay, thank you. That's it. Okay, now, since we left this matter on 28 March I take it that there have been discussions of this, Mr Baker.

40 MR P. BAKER: Well, there have been discussions of a sort. There have been a few emails flying around and I can confirm that we are in a position this morning to add a little bit more to the award. So with that I hand up a draft which has been previously circulated to the parties.

THE DEPUTY PRESIDENT: Now, we had had a previous exhibit - - -

45 MR BAKER: Yes.

THE DEPUTY PRESIDENT: - - - but I can't seem to find it marked in the file so - I think you handed up an award that was missing, a draft that was missing in fact.

MR BAKER: Yes, I think you may be correct, Deputy President.

THE DEPUTY PRESIDENT: Yes, and that was MASSA exhibit 1 so we will make this MASSA exhibit 2.

5

## **EXHIBIT #2 MASSA**

10 MR BAKER: Perhaps if I just take the Commission through the document just explain to you what we are proposing to do this morning.

THE DEPUTY PRESIDENT: Yes.

15 MR BAKER: It is in relation to Part VI, leave with holidays with pay. To commence with we have varied the title of the clause 1 so it is now holidays with pay as opposed to simply holidays. Secondly, the references to section 75(1) of the State Service Act '84, and section 75(4) of the '84 Act have been replaced with the current sections of the State Service Act 2000. And finally there is a proviso that in 1994  
20 employees in the area which previously received a Show Day holiday in Devonport etcetera, has been deleted as that clause is no longer relevant. So those are the only changes we have made to holidays with pay.

I should place on the record for the Commission's benefit that I understand, or I am  
25 advised, that there are employees within the North West coast area who, in fact, have the Agfest holiday in lieu of Show Day at the present time and it is simply not our intention to seek to vary that arrangement. As far as we are concerned that is a local arrangement that works perfectly well, and from our point of view it will continue into the future. In respect of recreation leave, we have put together a new recreation  
30 leave clause which is based upon the existing ministerial direction 2 and also some other bits and pieces which we have derived from other relevant awards. It will be a new clause 5 that provides an entitlement to recreational leave and there are three parts to that.

35 One is, if you like, as a day worker who receives 20 days of recreational leave. Two provides for five additional days for a seven-day shift worker as defined, and the third one is for an employee who may be engaged for part of the time as a seven-day shift worker. And then over the page it talks about part-time employees. Casual employees are not entitled to recreational leave. It then provides for a payment for  
40 the period of rec leave. There is the calculation for the continuous service and the accrual of recreational leave. We talk about the maximum accrual of recreation leave. There is obligation on the employer to enable recreational leave to be taken which is something new. Over the page there is the issue of personal leave.

45 Requirements during rec leave, there is a proviso there that enables the employer to re-credit that employee with recreational leave where during a period of rec leave personal leave is accessed. There is an allowance to be paid on termination and we also now provide at subclause (h) that the employee may now request part or whole

of the accrual of leave in advance. And then there is a provision that allows now for the time of taking the leave. So it is fixed, a period not exceeding six months from the date when the right to recreational leave is accrued but not less than four weeks notice of the employee. There is then a proviso in there which goes to the closure of State Service offices. As the Commission would be aware, State Service offices generally close down between Christmas Day and New Years Day inclusive, so that is now provided for in the award.

And finally, at clause (k) payment in lieu is prohibited. And finally, Deputy President, there is a new clause, jury service, which is derived from the MD and the only changes to that are a couple of minor word changes that make the clause read a little better. So they are the three clauses that we would propose to insert into the general conditions of employment award as part of the ongoing process.

THE DEPUTY PRESIDENT: Now, are these all the status quo?

MR BAKER: Yes, Deputy President. Well, certainly the holidays with pay is status quo, nothing has changed. In relation to the jury service, that is the status quo, and the recreational leave, the current clause in my view, that is the ministerial direction, is somewhat deficient in that it doesn't provide a number of things. This clause actually provides a number of additional benefits to employees.

THE DEPUTY PRESIDENT: But closure of the State Service offices for example - - -

MR BAKER: Yes.

THE DEPUTY PRESIDENT: - - - is it currently the circumstances that an employee can be compelled to take their leave during that period. I mean, that is certainly not the way that it works in the department in which I work, for example. Maybe it is not officially closed, that might be the difference.

MR BAKER: I think that might be the difference.

THE DEPUTY PRESIDENT: There is an element of voluntarism about whether or not you work those three days.

MR BAKER: Well, there is to my knowledge. Well, it is an interesting issue, Deputy President, to my knowledge it is mandatory that people take the leave during those three days. In fact, I would – well, that is what the ministerial direction provides for so – but I am aware that not everybody takes leave during that period. I am aware that there are certain offices which are open, and there are literally thousands of employees who are – well, not thousands, hundreds of employees who are required to work during the period, so for them there is no closedown.

THE DEPUTY PRESIDENT: Yes, well, again, this is just from personal knowledge. There is an assumption that the leave is taken but you can decide to opt not to take that leave and notify the pay office accordingly.

MR BAKER: Deputy President, this is part of the problem we now have where we have a ministerial direction, and it was written many, many moons ago, and there are different prescriptions that arise in agencies from time to time. The thing to do is to provide a uniform application across the service and, as I have indicated, the  
5 ministerial direction currently provides that leave is to be taken at Christmas if the office is closed down. I think it is 2.3 or something like that.

The other thing, of course, with the ministerial direction is it does provide for leave to be taken in one hit. Now, I am not too sure the last time that anyone was obliged  
10 to actually take their annual leave in one block so – but I think the other thing I should put on the record, and My Lynch might have discussion about this, if the clause in some way or another is inaccurate then, I have said to Mr Lynch and Mr Lynch agrees with, then we will come back and change it, but we have got to make a start.

15 THE DEPUTY PRESIDENT: Okay. And you just want this to be in the form of a draft, you are not asking for another consolidation at this stage.

MR BAKER: Not yet. I think we will do that on the next round. It is my intention,  
20 and I spoke very briefly to Mr Lynch this morning, that we should do the hours of work and the overtime provisions, and I think that will engage us in some vigorous debate I would think.

THE DEPUTY PRESIDENT: So it is another interim decision just with an order in  
25 relation to the matters that are contained in this exhibit.

MR BAKER: Yes, Deputy President.

THE DEPUTY PRESIDENT: Thank you. Mr Lynch.  
30

MR LYNCH: Deputy President, I would support the application made today as it is in the only logical way we can seem to move forward on this. While we are confident that the holidays with pay clause accurately reflects both entitlements and customer practice at present, the issue that was raised around Agfest is that there are  
35 certain councils, as I understand it, who determine whether a Show Day is taken or whether it is an Agfest Day. I am thinking as far as Circular Head, because they don't have a Show Day they take a day for Agfest and all travel down for that. So I am confident that clause won't create any problems for us. Likewise, the jury service, it's more a reflection of what is occurring now.

40 The problem with the rec leave is that we are taking a ministerial direction, which would have been a document that was drawn up virtually without consultation. It is something that is determined by the Minister and put on the table. And I guess if we, at this stage, have any disagreement with that we can come to this place and argue  
45 that. We are building that in now – into an award clause, and I think you have gone to – certainly the clause that gives me the most concern is the clause around the closure of the State Service offices. The custom practice, as I understand it, and the words as they appear in the ministerial direction now do give the employer the right

to close down the offices and where those offices are closed that employees do take rec leave or other accrued entitlements to cover that period.

I am also aware, however, that there are a myriad of ways in which that is applied.  
5 Certainly it seems to me, even in agencies where the agency generally closes over that period, senior staff tend to be given an option if there is work that they need to perform they would still come in and work over that period. If there are projects which are ongoing over that Christmas, New Year period then there is an expectation from the employer that people would continue to work over that period. So  
10 whilst - - -

THE DEPUTY PRESIDENT: And there's the situation where there's skeleton staff. I mean, who gets directed to work or not work, it's not a matter of it being totally closed, just partially closed.  
15

MR LYNCH: Yes, and that brings us to the problem that we now have, as an award clause it will now be read as an entitlement and therefore I think there's the potential here both for employees and employers to not get the optimum outcome because an employer may determine that an agency closes with the expectation that some groups  
20 will continue to work because they always have. And those people might point to the award and say, "Well, hang on a minute. If you are closing this agency, I have an entitlement to take those days off". And vice versa, the agency may have an agency where there is no intention to close down, your Service Tas-type place, where the agency doesn't declare that but really does just want skeleton staff where employees  
25 may say, "I want to continue to work."

We have had some discussions around this and I believe we need to – I'm comfortable that we need to deal with this matter within the award and it needs to be clarified, but I think we probably need some clearer processing here. So I would be  
30 processing that we look at how and when – you know, there needs to be some declaration by head of agency that an office would be closed or that they would request certain people to work and what their entitlements would clearly be if they were required to work over that period.

THE DEPUTY PRESIDENT: Yes, I think I agree that there probably needs to be some provision in there that deals with the circumstances that you have just described, because some people have a history of looking at and avoiding being completely intransigent - - -  
35

MR LYNCH: Absolutely.  
40

THE DEPUTY PRESIDENT: - - - and so there's – you know, there's no – there needs to some ability within the award for something not quite so black and white to be the circumstance, yes, I think.  
45

MR LYNCH: Yes, I guess the question is whether we are comfortable enough knowing that we are not going to run into this for a few months yet to - - -

THE DEPUTY PRESIDENT: Not for eight months.

MR LYNCH: - - - to go with the clause as it stands with us having an understanding that we clearly have to come back and amend (j) at some stage, or whether it's more  
5 appropriate for (j) not to go forward. I am comfortable for it to go forward today because at least it makes it clear in everyone's mind that it has to be dealt with in here, but we also need to end up with a clause that will make this workable.

THE DEPUTY PRESIDENT: Well, you could have a leave reserved position that  
10 leaves reserve to amend (j) to take account of - - -

MR BAKER: Either we put leave reserved or – I mean, I am comfortable that if there is an issue we will come back and sort it out. I put that on the record this morning. If there is a problem with it and it arises somewhere between August,  
15 September, we will come back and fix it. I am not - - -

THE DEPUTY PRESIDENT: Aren't we going to have the whole process finished by end of - - -

MR LYNCH: 30 June.

THE DEPUTY PRESIDENT: Yes.

MR BAKER: You are kidding me.  
25

MR LYNCH: I guess we are probably going a step further than that and acknowledging that we do have to amend this clause, that (j) does need to be amended, that it does leave it too open at the moment to – we have got to get all those ambiguities out and put them in so that everyone knows what their rights and  
30 entitlements are around the State Service offices. So the question is whether we - - -

MR BAKER: I'm happy with that, Deputy President. I am quite prepared to set a time, any time between now and Christmas, and if there's an issue we will sort it out.

THE DEPUTY PRESIDENT: Okay, so it's clearly on the record that (j) needs to be amended and you will have discussions and come up with something.  
35

MR LYNCH: The only point I would just like to make, I guess it's the point I made last time, that taking a clause from somewhere else and putting it into the award has proven difficult because everything is connected to everything else. We have all  
40 committed as we have gone along to make it clear that there is not an intention here to change anybody's rights and entitlements, but if as a result of what we have done that does change someone's rights and entitlements we would like to be able to come back and talk to you about that.

THE DEPUTY PRESIDENT: Thank you. Mr Pyrke.  
45

MR PYRKE: Yes, thanks, Deputy President. I agree with what has been put to you today about the proposed variation being consistent with, by and large, the status quo. I hear what you are saying and what the other parties are saying about Christmas and I think it's wise that we are leaving provision for there it to be further  
5 debated. On balance, we support the application. If the Commission pleases.

THE DEPUTY PRESIDENT: Thank you. Mr Wishart.

MR D. WISHART: Commissioner Shelley, we would agree with what has been  
10 said and we are happy that Mr Baker has made it clear that that can be amended. Just for the record we would like to state that the AEU would like to have a further look at ministerial directions 11 and 13 to be dealt with in the future and I will talk to Mr Baker about that.

15 THE DEPUTY PRESIDENT: Well, what do they concern?

MR WISHART: They are concerning voluntary transfers and leave for emergency services. We think those are industrial issues and consistent with the advice given the Public Sector Management Office on ministerial directive not being lawful. If  
20 they include industrial matters we would like to have some discussions about that.

THE DEPUTY PRESIDENT: Okay, thank you.

MS GOLDFINCH: Deputy President, the HSUA fully supports the application for  
25 variation and recognises that clause (j), to do with the closure of State offices during the Christmas, New Year period, is going to be looked at and further amended at a future date.

30 THE DEPUTY PRESIDENT: Thank you. Now, Mr Baker, do you want to respond, especially I guess as to what the AEU has said about ministerial directions 11 and 13 being part of this process, I think was what was foreshadowed. Is this news to you?

MR BAKER: The one that deals with emergency – sorry, leave for emergency  
35 service volunteers, I will need to have a look at that one. I think that one – that's something which applies to the service generally and perhaps that does need to be looked at in the context of the award.

40 THE DEPUTY PRESIDENT: Okay, voluntary transfers issue might be more problematic.

MR BAKER: I am not sure about that one. I will have to raise a query about that, but that's about – I can have a discussion with Mr Wishart about that, but I'm not  
45 sure about that one.

THE DEPUTY PRESIDENT: Okay.

MR BAKER: But the other one clearly is an industrial matter.

THE DEPUTY PRESIDENT: Right, okay. So I indicate that the award will be varied in the manner sought as set out in MASSA exhibit 2 and that will be issued shortly along with another interim decision and we need to set down a further hearing so that those outstanding matters can be finalised. In two weeks' time, is that too soon?

MR BAKER: Probably, Deputy President. I think – I want to have a go at the hours and the overtime, all that business, so just perhaps a month if that's all right with the other side too.

THE DEPUTY PRESIDENT: Okay.

MR LYNCH: Yes.

THE DEPUTY PRESIDENT: So we will set it down for Monday 5 May at - - -

MR LYNCH: 5 May is problematic, the first three days of that week are rather problematic for - - -

THE DEPUTY PRESIDENT: Okay, Friday 9 May.

MR LYNCH: That would be good.

THE DEPUTY PRESIDENT: So we will adjourn until 10 am on Friday 9 May.

MR BAKER: There is one final thing which I had overlooked, Deputy President. I was wondering if we could have a prospective operative date for the annual leave – sorry, for the annual – well, I suppose for the variation, I have got to – the agencies may need to make some recalculation in relation to the quantum for the annual leave, it's an internal process thing so perhaps if it goes - - -

THE DEPUTY PRESIDENT: Okay.

MR BAKER: - - - ten days from today or something.

THE DEPUTY PRESIDENT: Right, so that is the first full pay period on or after 18 April. Now, the other – just before we go, we have been calling on the CAHSA award each time as well because the matters were all heard together in the first instance. What is happening with the CAHSA award? Shall we, in fact, drop that off this process at this stage?

MR BAKER: Well, it has taken a bit of a back seat, I suppose, because there was a perception, I suppose, that it wasn't quite as urgent as GCOE because it is, for all intents and purposes, an award unlike the GCOE which is part of an award. But we have had – I have had a very brief discussion with Mr Jacobson from HSUA, I have also had a meeting with representatives from the Department of Health. They are undertaking work as we speak, and they are going through some of their – well, all of their administrative directions which underpin the award which will become part of

that document. There are some administrative directions that, in fact, override the application of the award to the advantage of the employee, so - - -

5 THE DEPUTY PRESIDENT: So we set that down for 9 May as well?

MR BAKER: Yes, I think that may be appropriate if we have a discussion about that as well.

10 THE DEPUTY PRESIDENT: Okay. So we are adjourned until then.

**MATTER ADJOURNED at 10.30 am UNTIL FRIDAY, 9 MAY 2008**

**Index of Witness Events**

--	--

**Index of Exhibits and MFIs**

EXHIBIT #2 MASSA	P-21
------------------	------