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## TRANSCRIPT OF PROCEEDINGS

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O/N 70433

### TASMANIAN INDUSTRIAL COMMISSION

### DEPUTY PRESIDENT P.C. SHELLEY

**T No 13057 of 2007**

**T No 13058 of 2007**

### 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 to vary the above awards re parental leave**

### HOBART

**9.35 AM, FRIDAY, 7 DECEMBER 2007**

**MR P. BAKER** appears for the Minister administering the State Service Act  
**MR T. JACOBSON** appears for the Health Services Union of Australia,  
Tasmania No 1 Branch and the Communications, Electrical, Electronic, Energy,  
Information, Postal, Plumbing and Allied Services Union of Australia  
**MR D. PYRKE** appears for the Association of Professional Engineers,  
Scientists and Managers, Australia

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

THE DEPUTY PRESIDENT: I will take appearances, please.

MR P. BAKER: I appear for and on behalf of the Minister administering the State Service Act.

5

MR T. JACOBSON: I appear on behalf of the Health Services Union of Australia Tasmania Number 1 Branch, and I understand that you have correspondence from - - -

10 THE DEPUTY PRESIDENT: The first, an email to say that you are also the CPSU today?

MR JACOBSON: That's right, yes.

15 MR D. PYRKE: I appear on behalf of the Association of Professional Engineers, Scientists and Managers, Australia.

THE DEPUTY PRESIDENT: Okay. Mr Baker?

20 MR BAKER: Thank you, deputy president. Deputy president, this application arises following, and is consistent with the decision of the Full Bench of this commission and, unfortunately, I've left the - - -

THE DEPUTY PRESIDENT: The recent one?

25 MR BAKER: - - - the recent decision, the March 2006 decision of the Full Bench of this commission which varied private sector awards to reflect the Full Bench of the Federal Commission of the 2005 Family Test Case decision, that extended the parental leave in a number of areas, or the opportunity for employees to seek - I'm advised it was matter T12444 of '06, which extended parental leave - the wife of the employee to  
30 request part-time work to the school age of the child to extend the period of maternity leave from 12 months to 24 months, and some other bits and pieces.

In addition to that, the minister has included in the draft order that has been circulated to the commission and to the other parties, the provision of the paid component for  
35 maternity and adoption leave, which is contained in there which provides for 12 weeks paid leave. It is our intention that these provisions will flow into other awards of the public sector in a consistent manner. Indeed, that's already occurred in relation to the Fire Services Award which was - the Fire Fighters' Award which was varied earlier this  
40 year when it returned from the federal to the state jurisdiction.

In addition to that we have had discussions with the nursing, the - I'll be careful what I say here, one of the nursing unions, and also of the teacher's union in relation to their awards and the flow of the new parental leave provisions across the sector. It does also provide, in certain areas, increased - an increased benefit for special maternity leave  
45 where the - if the pregnancy is terminated after 28 weeks, we have actually reduced that from 28 to 20 weeks to be consistent with what was agreed for certain unions in the 2001 State Wages - the Public Sector Union's Wages Agreement of 2001.

We would seek to vary the award - the awards, as indicated by the application and in relation to the Community and Health Services Award we would seek to have that included in the relevant provision in that section of the award that goes to maternity leave which is part VI, clause 8, Maternity Leave. We would see that clause being  
5 deleted and it being replaced with the parental leave provisions. In relation to the General Conditions of Employment Award, we would see that - I understand your associate has suggested that it should be clause 26A?

10 THE DEPUTY PRESIDENT: Yes, until such time as the award is next consolidated.

MR BAKER: Yes, and I just raise with you a procedural matter there, deputy president. It is our intention to re-format the award consistent with the rules of the commission. Do we, by necessity, require a separate hearing for that to occur?

15 THE DEPUTY PRESIDENT: Yes, you would need to have a section 23 application for any award variation but I mean, when we first re-formatted the award the commission convened a number of conferences - and we're doing that now, it's just a machinery matter now, really. I don't know that that's necessary, and I think the principles might, in fact, still say that, that the commission convenes a conference,  
20 but - - -

MR BAKER: Yes, there is - and I'm not clear, because I was only thinking this morning that perhaps what we should have done was actually put in an application to re-format the award at the same time as we did the variation. It would appear after that.  
25 But if not, we can do that in the new year.

THE DEPUTY PRESIDENT: Yes.

30 MR BAKER: We would probably leave it and just, I mean, there's a few things that you that are due that needs sort of tidying up, so we might do that after Christmas.

MR JACOBSON: Will travel becoming - - -

35 MR BAKER: Well, there's a few others things we need to look at. Some of those allowances, whether they're still current, will we still have - still have any application, for example, it contains the 17 and a half per cent loading, which hasn't been applicable since 1996, so we'll do that after Christmas. Yes.

40 MR JACOBSON: Yes.

MR BAKER: Deputy President, consistent with the decision in the private sector matter, and also consistent with the wage-fixing principles we would submit that this application conforms with both the principles and the public interest test, section 36 of the Act and, accordingly, we would ask you vary both awards with an operative date  
45 from 1 January 2008.

THE DEPUTY PRESIDENT: Thank you. Mr Jacobson?

MR JACOBSON: Thank you, deputy president. Just a couple of preliminary matters before we go to the particular matter before you. In addition to those awards that Mr Baker referred to that would be varied to take into consideration the parental leave, for these new parental leave provisions, one of those awards would be the Tasmanian  
5 Ambulance Service Award. That is currently subject to a fairly major re-drafting and consolidation of previous agreement matters consistent with another recent decision of this commission so that we would hope would probably be before you in the new year as well.

10 Again, a fairly momentous and fairly technical process which should, in fact, also take into consideration the drafting - the re-drafting of the award. Just in relation to this particular matter before you, I guess, certainly from our perspective and I can speak on behalf of the Community and Public Sector SPSFT with respect to this as well, whilst it's - there's no dispute between the parties in relation to this particular application, I  
15 guess from our perspective what is particularly displeasing is that Tasmania, the Tasmanian Public Sector lead the way with respect to the introduction of 12-weeks paid maternity leave some years ago.

It was certainly hailed at ground-breaking, and certainly provided for significant better  
20 opportunities for female employees to remain in the workforce and to pursue careers. Unfortunately, now, but for one other state, we now fall at the bottom of the heap with respect to paid maternity leave, and I guess in terms of this hearing that probably sheds a bit of a shadow over what it is that we're, or puts a bit of a shadow over what it is that we're, in fact, pursuing today.

25 We will obviously, as Public Sector Unions, continue to pursue the extension of further paid maternity leave to bring it into line with, generally speaking now, what is the national standard and, obviously, further provide for opportunities for female employees to remain in the workforce, particularly - while we have a state that has  
30 some significant skills - skills issues and we believe that not providing that incentive does provide - does put Tasmania at a significant disadvantage.

Having said that, we concur with the submission made by this debate on behalf of the  
35 minister and, again, believe that it meets requirements of the commission with respect to the wage-fixing principles, and clearly section 36 of the Act, and we believe it's in the public interest and would also submit that the application be given consent and operative from 1 January 2008.

40 THE COMMISSIONER: Okay. Mr Pyrke?

MR PYRKE: Yes, thanks, deputy president. I hear what Mr Jacobson is saying about the standard and I'll also be supporting our colleagues in pursuing the 14-week reduction to the present application. Yes, we support the application and agree that it's consistent with the test case standard with the principles and the public interest and we  
45 ask that the order issue from the date proposed by Mr Baker. Having said that, I think we would a few more days just to test - check the final draft order; is that something we discussed previously? Yes, if we could - - -

THE DEPUTY PRESIDENT: Okay.

MR PYRKE: Yes.

5 THE DEPUTY PRESIDENT: So you want it to be approved subject to a final test - - -

MR PYRKE: Yes.

10 MR JACOBSON: Yes.

THE DEPUTY PRESIDENT: - - - a final perusal of the draft.

15 MR JACOBSON: Yes, if that's okay.

THE DEPUTY PRESIDENT: Yes, that's fine. In relation to the re-formatting of the award, the principle 13 does - and this is what happened with the private sector awards, but it's only just off - it hasn't really happened to a great extent with the public sector awards, so the commission will convene conferences of the parties to each award to receive reports on the award review process and timetables, etcetera, and that review, including consistent formatting, removal of discriminatory provisions, removal of obsolete provisions and so on. Now, where that sits with what's happening generally with public sector awards and needs - attempt to have an omnibus award I don't know whether - how you want to proceed?

25 MR JACOBSON: Well, I think we should probably have some more discussions between us because, in reality, there may well be a couple, or a number of issues that come together at the same time which doesn't simply go to the formatting, but the inclusion of other matters from previous agreements, so - but do I take it then that  
30 whilst there can be conferences that still - you would still need to make a section 23 application to actually vary it.

THE DEPUTY PRESIDENT: Yes, you would. It was just more a matter of the commission having oversight of all of the awards - - -

35 MR JACOBSON: Yes.

THE DEPUTY PRESIDENT: - - - and ensuring that they were all - it was a matter of trying to make them relevant and modern - - -

40 MR JACOBSON: Yes.

THE DEPUTY PRESIDENT: - - - at the time and to re-format them into this wonderful new format that I hate. I much prefer alphabetic - alphabetical, it was more user-friendly, but - - -

45 MR JACOBSON: Well, I know when we did the nurses' award it was a bit of a - and that was federal, it became a bit of a dog's breakfast frankly.

THE DEPUTY PRESIDENT: Yes. I think it's a bit arbitrary, really, in which sectional tings get put?

5 MR BAKER: Yes. Perhaps if I could just respond to Mr Jacobson's comment there?  
Look, I agree in relation to the Carter's award there are a number of matters that actually  
sit outside the award through various administrative obstructions that - sorry,  
administrative instructions that should be incorporated into the body of the award and  
I've spoken to Mr Brown in relation to that and he and we have an understanding that  
10 we have got to try and tidy that up by June 30 next year.

And I think we - well, I don't see a reason why we shouldn't and, perhaps if we did the  
same with the GCOE. Unfortunately, the GCOE - because there is so little in the award  
and so much outside the award it's a rather different exercise, but I take Mr Jacobson's  
15 point and the commission's point and perhaps, I think, perhaps to start that process off  
we might just file an application in the new year in relation to both awards and just use  
that as a vehicle to progress them through.

THE DEPUTY PRESIDENT: Yes.

20 MR JACOBSON: Yes.

THE DEPUTY PRESIDENT: I don't have their timetables, and if either party feels the  
other's lagging then there's a forum where you can get them to the table, at least. Okay.  
Well, I will vary the awards in the manner sought and you will receive a written  
25 decision and draft order in due course. The matter is adjourned.

**MATTER ADJOURNED at 9.45 am INDEFINITELY**