

HEARING COMMENCED 9.40am

DEPUTY PRESIDENT: I'll take the appearances please. Ms Shelley.

MS P. SHELLEY: If the commission pleases, I appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union,
5 Tasmanian Branch, SHELLEY P.

DEPUTY PRESIDENT: Thank you, Ms Shelley. Mr Brown.

MR R. BROWN: If the commission pleases, BROWN R, appearing for the Tasmanian Chamber of Commerce and Industry.

DEPUTY PRESIDENT: Thank you, Mr Brown. Ms Shelley..

10 **MS SHELLEY:** Thank you, Mr Commissioner. First of all we suggest that these three applications be joined and be heard together if that's acceptable.

DEPUTY PRESIDENT: I don't know about join them but I can hear them together and I think that's probably appropriate but I don't want
15 to take any right of objection from you, Mr Brown, do you have a view about it.

MR BROWN: No, that's certainly consistent with our view.

DEPUTY PRESIDENT: That being the case, with the consent of the parties, I will hear these matters together. If it assists you, Ms Shelley,
20 I think that I don't require copious or lengthy submissions in respect of these matters. If you simply concentrate on matters that are relevant to these awards and the changes that have been made to the proposed model clause to accommodate industry-specific circumstances, that probably might be sufficient.

25 **MS SHELLEY:** Thank you. Yes, well, this is simply to give effect to the full bench decision of T6641 of 1996 relating to the flow-on of the Australian Industrial Relations Commission test case decisions regarding family leave and personal carer's leave. Basically, these are the adoption of the model clauses in that decision of 6641 with some
30 agreed variations in respect of part-time workers. That variation appears at - if we take, firstly, the Security Industry Award, at clause 10, the Carer's Leave clause, paragraph (a) subparagraph (i), there are two new paragraphs in there that relate to part-time employees and those are a consent position which simply allows the same
35 entitlements to part-time workers and allows for an averaging of system where part-time employees' hours may vary during a 12-month period.

There are some amendments to be made to the draft orders. Some problems that arose during the process of cutting and pasting whilst
40 word processing. I'll just take you to those at this point in time. At

Clause 10 - Carer's Leave, (a)(i), the reference to the sick leave clause should read, clause 32, not 25 as indicated in the draft order.

5 DEPUTY PRESIDENT: Could I just ask you bear with me for a moment. Mrs Gillie has given me the benefit of some considerable work that she has done preparatory to consolidating all of these awards and with the insertion of the new clause 10, clause 32 that you refer to will become clause 33. It's a small matter.

MS SHELLEY: That's correct.

DEPUTY PRESIDENT: Yes. Thank you.

10 MS SHELLEY: Over the page, at Clause 9 - Annual Leave, there needs to be inserted in there (j), so it becomes (j)(i), (ii), (iii), (iv) and (v).

DEPUTY PRESIDENT: I see. Thank you.

15 MS SHELLEY: At Clause 17 - Hours of Work, the paragraphs need to be changed to lower case (i) and lower case (j), rather than upper case as is indicated there.

Clause 17 - Hours of Work at (j) - it should be (j)(vi), it says (j)(xi). That should also read, after arrangements - all words after 'arrangements', should be deleted and instead it should read: *Pursuant to regulation 25 of the Industrial Relations Regulations of 1993.*

20 That's it for the Security Industry Award, subject, I guess, to corrections of any other errors or omissions.

25 DEPUTY PRESIDENT: I don't have any other changes in connection with the Security Industry Award. I do have a query but it applies to all of the awards and I'll deal with that when you have finished the amendments.

30 MS SHELLEY: Moving to the Veterinary Services Award, again, the same remarks apply in respect of part-time employees, the changes to the model clause but corrections to the draft orders, clause 10, the last (c), where it refers to grievance process, that needs to be deleted on the basis that there is in fact no grievance process within this award.

Clause 9 - Annual Leave, that should be (g), (h), (i), not (e), (f), (g).

DEPUTY PRESIDENT: Yes, thank you.

35 MS SHELLEY: And the last item in that clause 15 should again be (vi) not (xi) and again, all words after 'arrangements' should be deleted and replaced by the words, *pursuant to regulation 25 of the Industrial Relations Regulations 1993.*

In Clause 17 - Overtime, the existing paragraph that's currently in the award needs now to be numbered, (a), and the Time Off In Lieu of Payment needs to become (b).

5 At (v) in the last line, that should read 1993, not Q993. I believe that's all the corrections that are required for the Veterinary Services Award.

DEPUTY PRESIDENT: Yes. I don't have any corrections for that - any additional corrections, that is, for that award.

10 MS SHELLEY: Moving to - and it's slightly more difficult to amend, the Cleaning and Property Services Award. At Clause 10 - Carer's Leave (a)(i) - we say it should be clause 27 instead of 25 but is that affected by the renumbering to therefore become 28?

DEPUTY PRESIDENT: 29, Mrs Gillie has. I don't know why that is but if you're content to leave the numbering to Mrs Gillie, then so am I.

15 MS SHELLEY: Yes, that would be very good. Still with clause 10, the last part of that, the grievance process - I've got should read 23 but may be 25 is now correct, but again we'll leave that to Mrs Gillie.

DEPUTY PRESIDENT: Yes. Mrs Gillie has just pointed out to me too that clause 10 will in fact become clause 11.

20 MS SHELLEY: Right. The next part where the draft order says, insert new Clause A - Hours of Work All Employees - if we can delete that and it should read clause - whatever the appropriate number is -

DEPUTY PRESIDENT: Yes. 19 will be the appropriate number.

25 MS SHELLEY: 19 - Hours of Work and if we can insert new subclauses (g) and (h) as outlined there, although there will be some further corrections and at clause 21, which is the Part-time and Casual clauses, insert a new (f) with all of the make-up for time provisions placed therein. I think that might overcome some difficulties that arise because of the fact that the hours of work of part-time
30 employees is dealt with in that part-time and casual employees clause within the award currently.

If you're lost, I'll go through it again.

DEPUTY PRESIDENT: Yes. I have to confess, you have quite succeeded. Yes, I would appreciate that, thank you.

35 MS SHELLEY: If we can insert in Clause 19 - Hours of Work -

DEPUTY PRESIDENT: Yes, I'm with you on that one.

MS SHELLEY: - new subclauses (g) and (h) which reflect the make-up time and rostered day off provisions for carer's leave and also,

5 insert at clause 21, or whatever the number will be, part-time and casuals clause, a new (f) which will have within it the make-up times provisions that are in the draft order. So they need to go in two places. They need to go in the hours of work clause and also in the part-time and casual employees clause.

DEPUTY PRESIDENT: I have the make-up time clause in the draft order. You say that that needs to go in the hours of work clause as well as in clause 21, do you?

10 MS SHELLEY: Yes. It needs to go in both places. The reason for that being that, in this award the hours of work clause currently deals with or only deals with full-time employee and then the hours of work of part-time and casual employees are dealt with at the current clause 21.

15 DEPUTY PRESIDENT: Yes. There isn't a problem with this. It's just a desire on my part to make sure that I vary the award in the way that you both agree. Could I invite you to discuss this with Mrs Gillie at the end of the hearing?

MS SHELLEY: Certainly and I can also provide a clean copy, if that's of assistance.

20 DEPUTY PRESIDENT: Yes. Thank you, Ms Shelley.

MS SHELLEY: Moving back to what happens at clause 19, or the hours of work clause for full-time employees, in the draft order at (h) where it refers to rostered days off, I believe that is now in fact (f)(ii) - we wish to delete (i), (iii), (iv), (v) and what's written there is (x) but is in fact (vi) and only leave (ii) which is that which reads: *an employee may elect with the consent of the employer to take rostered days off in part-day amounts.* The rest is in fact superfluous.

30 In Clause 19 - Overtime, or whatever it will be - 21, if you can renumber the existing paragraph (c) as (c)(i) and then insert what is there, which becomes (c)(ii).

DEPUTY PRESIDENT: There's a minor typographical amendment in the third line of that paragraph.

MS SHELLEY: Oh, yes. Change 'obertime' to overtime.

DEPUTY PRESIDENT: Yes. Thank you, Ms Shelley.

35 MS SHELLEY: I think that that really completes my submission and we would ask that the operative date be from the first full pay period on or after today's date.

DEPUTY PRESIDENT: And you say that because the variation sought by your organisation complies substantially with the model clause,

that it complies with the wage fixing principles so far as that is necessary and the general public interest and therefore the amendment should be granted?

MS SHELLEY: I do indeed say those things.

5 DEPUTY PRESIDENT: I just have one question which is as pertinent for you, Mr Brown, as it is for Ms Shelley. The model clause, in terms of unpaid carer's leave, contains a limitation to a maximum of five days which I see does not reflect in any of these proposed variations, which seem to be open-ended. I don't know that that causes me a
10 problem but it just seems to be a matter that I ought to raise and get the parties explanations?

MS SHELLEY: Yes. I think the reason for that is that currently there's in fact no limitation on an arrangement for unpaid leave in any circumstances. It's a matter of agreement between the parties as
15 happens now, so it's imposing an unnecessary limitation.

DEPUTY PRESIDENT: All right, Ms Shelley, thank you. Mr Brown?

MR BROWN: Firstly, I want to just say that certainly the draft orders are reported in a consent manner and we've certainly discussed the issues that have been raised here this morning with Ms Shelley and in
20 respect to those changes that have been proposed. I do have some queries on some of the changes that Ms Shelley read out in terms of ensuring that they were totally accurate to what we discussed earlier but I think we can overcome those with Mrs Gillie at the end of this session.

25 DEPUTY PRESIDENT: Yes.

MR BROWN: In respect to your question regarding the unpaid carer's leave, consistent with Ms Shelley's view there, it is by agreement with the employer. Now if the employer and the employee cannot agree, then obviously there is a disputes procedure, but we'd
30 certainly see it as advantageous if an employer has the capacity to provide additional carer's leave than would otherwise be available under the award and that is their wish, then we don't see that we would wish to hold them back. I believe these draft orders were discussed some time ago with a counterpart of mine and I'd assume
35 that that issue was discussed and agreed at that point.

Other than that, we believe that the draft orders are consistent with the intentions of the test case decision of this commission and that the application be approved with effect from the first full pay on or after today's date. If the commission pleases.

40 DEPUTY PRESIDENT: Having heard the parties, I accept the submissions put to me. I will vary the three awards according to each of the draft orders submitted, as amended, and subject to settlement

of the minutes of those orders with Mrs Gillie, following the conclusion of this hearing. The commission's orders, when published, will take effect from the first pay period to commence on or after today's date.

5 That concludes the hearing of matters T8151, T8157 and T8158 of 1998.

HEARING CONCLUDED 10.02am