

HEARING COMMENCED 9.35am

DEPUTY PRESIDENT: I'll take the appearances, please.

MR C. BROWN: If the commission pleases, C. BROWN appearing for the Health Services Union of Australia, Tasmania No. 1 Branch and
5 with me **MR BRIAN BISHOP.**

DEPUTY PRESIDENT: Thank you, Mr Brown.

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

10 DEPUTY PRESIDENT: Thank you. Mr Brown?

MR BROWN: This is Hospitals one?

DEPUTY PRESIDENT: Yes. I'm a little bit confused, but I'm now sorted out, thank you.

15 MR BROWN: Thank you, Mr Deputy President. The application before you seeks to vary the Hospitals Award to give effect to the full bench decision in matters T6296 and T6441 of 1996, regarding an award provision for family leave and personal carer's leave.

20 There are some amendments to the draft order that I put up, that have come to light. If I could table an amended draft order and just quickly point out to you the changes from the draft order as submitted with the application.

25 The changes are very minor. It was simply to change the actual clause number of the carer's leave provision from clause 44A to clause 14A for it to be consistent with the alphabetical listing of the award as it currently stands and no doubt that will get fixed up when the award gets restructured under the new format.

I think that was the only change that we made to this particular application, Mr Deputy President.

30 DEPUTY PRESIDENT: You can continue straight on, Mr Brown, if you will, please.

MR BROWN: I'll also table up an exhibit.

DEPUTY PRESIDENT: **EXHIBIT B.1.**

35 MR BROWN: This simply shows how the application, as amended, lines up against the model clause that was developed by the full bench in the matters that I earlier outlined. The strike throughs are obviously deletions and the italics are inclusions into the provision.

Overall, the application as it stands is consistent with the draft model provisions provided by the full bench and differs only to the extent required to make it consistent with the award or to extend the provision to make them available to part-time employees and I won't go
5 through all the different ones and I'll just simply address the issue of the part-time employees.

The first variation of significance is at proposed Clause 14A - Carer's Leave, subclause (a)(i), and the last two paragraphs in that provision, in italics there, are to give part-time employees access to the carer
10 leave provisions.

The full bench in its reasons for the decision in matters T6296 and T6441 of 1996 on page 8 states that:

As to the availability of unpaid carer's leave and its possible application to casual and part-time employees, it was submitted that the parties to each award should negotiate an agreed position or failing agreement, argue their respective cases before the commission when processing individual applications.
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We have an agreement between the parties on this matter, that this is the appropriate way to deal with the issue of part-time employees and to allow them access to unpaid carer's leave in this sense.
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The second variation is over the page, in the same clause, at subclause (b)(ii), and again in italics, has the same effect. That is, to allow part-timers access to unpaid carer's leave.

We seek an operational date effective the first full pay period on or after the date of decision and if the decision is made today, then today's date.
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The HSUA submits that the application before you and the draft orders are consistent with the commission's Wage Fixing Principles, in fact have already been tested by the full bench and that the application is consistent with the public interest.
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So, Mr Deputy President, we request the approval of this application to vary the award. If the commission pleases.

DEPUTY PRESIDENT: I'm not sure whether I'm in order or not, but Mrs Gillie mentioned to me that you raised with her the question of the desirability of consolidating these awards and I think Mrs Gillie was a little uncertain as to whether you were talking about these awards or whether you were talking about the approach adopted by the State Wage bench on the last occasion?
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MR BROWN: No. The reference to the consolidation of the award actually is for the next application, which is the Nursing Homes Award, and there's a particular reason for doing that. Obviously, it
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makes life easier for us out there in the industry to have consolidations but -

5 DEPUTY PRESIDENT: I'm happy to do them for both awards and Mrs Gillie, who has to do the boring work, is quite prepared to do so too.

10 MR BROWN: It certainly would be helpful if they are consolidated. Perhaps, the suggestion I was going to make is, that we wait until the State Wage Case is heard and we find out whether there is an arbitrated safety net adjustment which should be - well, if it is approved and hopefully it will be approved as of 14 July, so maybe we wait until that and then consolidate them at that point if they are going to be consolidated.

DEPUTY PRESIDENT: Well, perhaps that's something I'll discuss with Mrs Gillie. I have no objection to keeping the awards up to date.

15 MR BROWN: Yes. My main reason for raising the issue of consolidation was that the - particularly in the Nursing Home. The consolidated award is in fact incorrect. There was a correction order issued which changed all the clause numbers and it's created, over the last, at least 12 to 18 months, rather significant confusion in the industry.

20 DEPUTY PRESIDENT: Yes. I think we will consolidate the awards as they are and we'll deal with any outcome of the State Wage Case at the time and in terms of the omnibus approach which we took on that occasion, I have no way of knowing of course whether it will occur again but perhaps you or one of the other parties from your side of the bar table might put that in the full bench's mind at the time and see what falls out of it.

MR BROWN: Certainly. I'll be happy to approach it that way.

DEPUTY PRESIDENT: Thank you, Mr Brown. Mr Watson?

30 MR WATSON: Thank you, Mr Deputy President. I can advise that Mr Brown and I have had discussions regarding the draft order and the draft order for this award is an agreed document. So, in that sense the application is a consent matter, from our point of view.

35 The application, as Mr Brown has told you, is consistent with the full bench decision in matters T6296 and T6441 of 1996 and it would be our submission that there is no offence to the public interest and the application does not offend the commission's Wage Fixing Principles and we would advise consent of the application from the first full pay period on or after the date of your decision or, if it's approved today, then the first full pay period on or after today's date. If it pleases.

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DEPUTY PRESIDENT: Thank you, Mr Watson. The employer, I take it, has no objection to the application as lodged being withdrawn and replaced by the amended application as submitted by Mr Brown today?

5 MR WATSON: No, Mr Deputy President. We did actually discuss that yesterday so that's quite in order from our point of view.

DEPUTY PRESIDENT: Yes. I formally order that the amended application be inserted in lieu of the application as lodged. Is there anything that you wanted to say by way of final word, Mr Brown?

10 MR BROWN: No, thank you, Mr Deputy President.

DEPUTY PRESIDENT: In the circumstances, having heard the parties, I announce that it is my intention to vary this award in terms of the draft order as amended. My decision giving effect to that intention will be published either later today or on Monday.

15 The commission's order when it comes into effect will come into effect from the first full pay period to begin either on or after either today or Monday and I think that concludes all I need to do in respect of this application at this time.

In the circumstances, I adjourn *sine die* application T8434 of 1999.

20 **HEARING ADJOURNED SINE DIE 9.50am**