

COMMISSIONER: I'll take appearances please.

**MR C. BROWN:** If the commission pleases, C. BROWN appearing for the Health Services Union of Australia, Tasmania No. 1 Branch.

COMMISSIONER: Thanks, Mr Brown.

5 **MR I. PATERSON:** If the commission pleases, IAN PATERSON appearing for the Australian Municipal, Administrative, Clerical and Services Union.

COMMISSIONER: Good. Thanks, Mr Paterson.

10 **MS J. THOMAS:** JENNY THOMAS appearing for the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Thanks, Ms Thomas. I take it that we've had pre hearing discussions. Who's going to lead?

15 MR BROWN: I'll lead thank you, Mr Commissioner. Mr Commissioner, the application before you seeks to vary the Disability Service Providers Award to give effect to the full bench decision in matters T6296 and T6441 of 1996 regarding award provisions for family leave and personal carer's leave.

20 There have been some minor modifications to the draft order since the application for this hearing was lodged and I seek leave to table an amended draft order.

COMMISSIONER: Good. Thank you. We'll mark this **EXHIBIT B.1**.

25 MR BROWN: Unfortunately as a result of some last minute discussions this morning there in fact will be a further amendment to that order that I've just put up, but I'll take the commission through that.

30 The draft order as tabled is consistent with the draft model provisions provided by the full bench decision and gives a zoning to the extent required to make it consistent with the actual award and to extend the provisions to make them available to part-time employees. If I could briefly take the commission to the main areas where the draft order varies from the model provisions provided by the full bench. If I could just go to the exhibit and on the first page, E - Carer's Leave, paragraphs (a)(i) and the second and third paragraphs in that section which read:

35 *For the purposes of this clause part-time employees, who are not in receipt of a loading in lieu of entitlements as specified in Clause 26 - Part-Time Employees shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlements per annum.*

And further:

5           *Where a part-time employee's hours of work are not constant the employee's entitlements to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.*

And if I could take you over the page to (b)(ii) of that clause which reads:

10           *A part-time employee in receipt of a loading in lieu of entitlements to paid leave as specified in Clause 26 - Part-Time Employees shall be entitled to take a maximum of one week's unpaid carer's leave per annum.*

15           *Where a part-time employee's hours of work are not constant the employee's entitlements to unpaid carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.*

20           They're the only two significant additions that varied from the model provisions that were provided by the full bench.

          If I could then take you over to the last page which is Clause 18 - Hours, E - Rostered Days Off, you will note, Mr Commissioner, that I'm actually proposing that we delete the current provision that's in the  
25           award. And if I can actually take you to the current award itself which is the last consolidation, Order No. 1 of 1996, and take you to clause 18.

COMMISSIONER: Page 36.

30           MR BROWN: And E - Rostered Days Off, this clause reads as follow: paragraph (a):

35           *Each employee shall be allowed at least two full days off in each week other than rostered days off (as defined) arising out of Clause 18 - Hours, subclause (a) or (b). The days off shall operate from the finishing time of work on that day immediately preceding the days off and until starting time on the day when the work is to be resumed.*

And (b):

*The days off shall be rostered and shall not be altered except by mutual agreement between the employer and the employee.*

And (c):

5           *Any employee who is required to work on his or her rostered days off (as defined) shall be allowed another day off in lieu of one day worked.*

And (d):

10           *The days provided for herein shall be at the rate of 38 hours per week and by agreement may be cumulative but not exceed four days off successively.*

Then if I can take you over to subclause (g) of that same clause, which is the scheduled days off clause -

COMMISSIONER: Are we talking about the same clause?

MR BROWN: The same clause - 18.

15   COMMISSIONER: 18 - Hours.

MR BROWN: Yes, and G - Scheduled Days Off - paragraph (a) then reads:

20           *Each employee shall be allowed at least two days off in each week other than rostered days off (as defined) arising out of Clause 18 - Hours, subclause A or B, et cetera, et cetera.*

And then through the other clauses.

25           Now whilst the wording is not absolutely identical, it's quite clear that subclause (e) of clause 18 and subclause (g) of clause 18 are identical in intent and it's my understanding that what they're really referring to is scheduled days off and not rostered days off. Obviously somewhere along the line there's been a drafting error in the award. I've actually gone back through our history files to determine where that error might have occurred. It actually precedes the establishment of this commission and goes back to the days when it was a -

30   COMMISSIONER: Wages Board.

MR BROWN: - an award of the Wages Board.

COMMISSIONER: Industrial Board.

MR BROWN: And even then I can't actually find where the switch happened so it may be that that's what was actually inserted when the award was first developed in the first place.

5 COMMISSIONER: You probably only back to '68 anyway and that would have been caught up in the files when the DLI was burnt down.

MR BROWN: That's right. I could only go back to 1980 actually. So that's where it stopped but I didn't bother going back any further because it was academic after that anyway.

COMMISSIONER: Discretion is the better part of valour.

10 MR BROWN: Yes. It's a bit embarrassing that none of us have actually detected this in operation out in the industry but in any case that's the situation. To resolve it I'm just proposing that we delete that clause completely and we insert the draft clause that I'm proposing in the draft orders.

15 COMMISSIONER: So you just take out E completely.

MR BROWN: Yes.

COMMISSIONER: Insert a new E.

MR BROWN: Insert a new E.

COMMISSIONER: What do you want to do with G?

20 MR BROWN: Well G is Scheduled Days Off would still apply so that would stand. No alterations to that.

COMMISSIONER: Right.

25 MR BROWN: The only other thing is that just in discussions this morning even though clause E actually is a scheduled days off clause more than anything else, there are two paragraphs in that that probably are appropriate to keep and to put into this proposed subclause, and if I could just take you back to the award because they're not in the draft orders. They are paragraph (b) and paragraph (c) which read: The days off shall be rostered and shall not be altered  
30 except by mutual agreement between the employer and the employee and it's probably appropriate that that remain. And (c) Any employee who is required to work on his or her rostered day off (as defined) shall be allowed another day in lieu of the one worked.

35 So I'm proposing that we actually insert those two in, and I apologise that that's happened late and I actually haven't got the draft order but I'll provide that in a revised draft order to the commission as soon as possible.

COMMISSIONER: Good.

MR BROWN: Mr Commissioner, the HSUA submits that the application before you and the draft orders, as amended, do not offend the commission's Wage Fixing Principles and that the application is consistent with the public interest and the full bench decision regarding this matter. If the commission pleases.

COMMISSIONER: Good. Thank you. Mr Paterson, have you anything further to add?

MR PATERSON: Nothing further to add other than that the Australian Municipal, Administrative, Clerical and Services Union supports this application.

COMMISSIONER: Good. So you're not going to make the name of the organisation smaller?

MR PATERSON: We have it smaller but it's a trading name and not our registered name.

COMMISSIONER: Good. Thank you. Ms Thomas?

MS THOMAS: Yes, I just confirm this is a consent matter. In relation to Mr Brown's comments concerning Clause E - Rostered Days Off, yes, there does appear to be some unnecessary duplication between that provision and Part G - Scheduled Days Off, but at this stage we would agree to the retention of existing subclauses E, B and C - at this stage.

So yes, I don't know if Mr Brown addressed the operative date.

COMMISSIONER: And you're agreeing to B and C being incorporated in exhibit G.1.

MS THOMAS: Yes, but not as part of that. That last page in the draft order would stand alone as a separate subclause. So probably the existing subclauses B and C would become subclause A and B and then this provision in the draft order would become subclause C.

COMMISSIONER: We might just go off the record for a moment and have a look at this.

**OFF RECORD**

**ON RECORD**

COMMISSIONER: I understand what you're putting to me, Ms Thomas and I don't think that differs from that which Mr Brown has put forward.

MS THOMAS: And just in terms of operative date.

COMMISSIONER: Operative date - yes.

MS THOMAS: The first full pay period on or after today's date.

COMMISSIONER: Have we agreement on that?

MR BROWN: I have no problem with that, Mr Commissioner.

COMMISSIONER: Any further submissions? No further submissions.  
5 Given that this is a consent application and it's consistent in my view  
with the full bench decision arising out of the test case on this matter  
and that the application only varies to the extent of award consistency  
and putting a provision in for part-time workers, I'm going to grant the  
application and it will be operative from the first full pay period to  
10 commence on or after today and I'll hand down a written decision in  
due course which will contain the orders.

MR BROWN: I'll provide the commission with a new set of orders with  
this wording in it or you don't want me to?

COMMISSIONER: I'm happy to pick it up, if you like.

15 MR BROWN: Thank you.

COMMISSIONER: Save you some work. Good. Thank you.

**HEARING CONCLUDED**