

DEPUTY PRESIDENT: I'll take appearances please. Mr Kadziolka.

MR M. KADZIOLKA: Good afternoon, sir. MARK KADZIOLKA appearing for the Police Association of Tasmania.

DEPUTY PRESIDENT: Thank you, Mr Kadziolka. Superintendent.

5 **SUPERINTENDENT S. McCLYMONT:** Yes, sir, my name is Syd McClymont and I represent the Commissioner of Police.

DEPUTY PRESIDENT: Thank you, superintendent. Mr Kadziolka.

MR KADZIOLKA: Thank you, Mr Deputy President. The application before you seeks to insert a carer's leave clause and a dispute grievance settling clause into the Police Award. Before I go to the substance of the application, sir, I'd like to have leave to vary the application.

The wording of the application I provided to the commission actually wasn't in accordance with the definitions in the award. The application referred to an employee and the employer. That is incorrect in the context of the award which refers to the member and the controlling authority, respectively.

I have, Mr Deputy President, an exhibit I'd like to hand up which has those variations to the application highlighted in italics, if I may, sir.

20 DEPUTY PRESIDENT: This is a replacement application in effect. Is that the case?

MR KADZIOLKA: That is correct. I'd also like to refer to one further omission which isn't incorporated in this after you accept this.

DEPUTY PRESIDENT: Yes. Well, perhaps I'll mark that as **EXHIBIT K.1** and I'll accept that exhibit as a substitute for the proposed variation as lodged with the original application.

MR KADZIOLKA: Thank you, sir. Would you like me to actually go through the changes -

DEPUTY PRESIDENT: Yes, I think you should.

30 MR KADZIOLKA: - highlighting where they occur. In the proposed 14.2(A) - small (a)(i) - the words 'an employee' are changed to 'a member'. If you go to (ii), likewise, 'member' replaces 'employee'. Go to (iii)(1) and (2), likewise, and (iii) and the definition of immediate family (a), 'member' also replaces 'employee'. If you go over the page, the second line, 'member' again replaces 'employee'. In (iv), where appearing, 'employee' is replaced by 'member'. Also 'employer' is replaced by 'controlling authority'. In (v), 'member' replaces 'employee'.

In (b) - Unpaid Carer's Leave, 'member' replaces 'employee' again and 'controlling authority' replaces 'employer'.

In addition, sir, there was an omission from the term 'immediate family' - (a), and I'd like to add that on by putting it on the record now.
5 It should read:

spouse (including a former spouse, a de facto spouse and a former de facto spouse).

Those last words were omitted, sir. I'd like to incorporate those now.

10 DEPUTY PRESIDENT: Superintendent, do you have any objection to these amendments at all?

SUPERINTENDENT: No, sir. They in fact in accordance with the award. There is no provision at the present moment for an employee as a definition, whereas a member is a definition. So it does in fact accord back to our original award, sir, principal award.

15 DEPUTY PRESIDENT: And you have no difficulty with including the words 'a former de facto spouse'?

SUPERINTENDENT: No, sir, in fact that's in accordance with the previous legislation and previous awards under the public service agreements.

20 DEPUTY PRESIDENT: Leave is granted to amend the application in both respects, Mr Kadziolka. I formally order that **EXHIBIT K.1** be accepted as a replacement for the proposed variation order as lodged with the application and that furthermore in clause 14.2(A)
25 (a) under definition of immediate family, the words 'and a former de facto spouse' are to be added to those words that are in the first sentence of that clause as included in brackets. Thank you, Mr Kadziolka.

30 MR KADZIOLKA: Thank you, Mr Deputy President. In relation to the application, sir, it is an agreed application and it's in accordance with the test case decision of this commission in T6296 and T6441 of 1996 which, as you realise, sir, is a flow-on of the Australian Industrial Relations Commission *Family Leave Test Case* and the *Carer's Leave Test Case*.

35 I don't intend to go to substantial submissions, sir, just to say that the carer's leave clause is in accordance with the model clause published with the reasons for decision in the Tasmanian Industrial Commission's test case. It provides for paid leave for all members to care for and support their immediate family members and household
40 members. The application, sir, is a means for members to meet their family responsibilities.

We believe, sir, that the merit is clearly there and is clearly in accordance with the test case decision.

5 Sir, the maximum five day entitlement is derived from the members current sick leave entitlement which is contained in regulation 68 of the *Police Regulations 1974*. I'd like to now tender an exhibit which is an extract of the *Police Regulations 1974* and goes to regulation 68. I'd like to put that on the record, sir, so that the commission understands the current police entitlement.

DEPUTY PRESIDENT: That will be **EXHIBIT K.2**.

10 MR KADZIOLKA: Mr Deputy President, in relation to the development of more - I will go back a step if I may. I'm sorry about that. I'll speak to the exhibit, Mr Deputy President.

15 The regulation is regulation 68 and in (1)(a) and (b) you'll see there that the entitlement for employees in continuous days is 75 full days recreation leave in any one year. That has been converted by agreement to working days - 54 working days rounded up from 53.57. That is the current entitlement for police officers.

DEPUTY PRESIDENT: I'm not really with you. Do those figures appear on this exhibit?

20 MR KADZIOLKA: No, those figures don't appear. There is actually an agreement between the association and the controlling authority to convert the leave to working days, not only in relation to sick leave but also in relation to recreation leave and what it provides for is ease of administration and the association has agreed to it.

25 DEPUTY PRESIDENT: Yes, thank you, Mr Kadziolka.

30 MR KADZIOLKA: Thank you, Mr Deputy President. If I may move on to the development of more flexible work practices through facilitative clauses. With police, there already exists the ability to take firstly single day annual leave absences and that is part of the agreement that I referred to a bit earlier which is commonly known as the Remus Pay and Personnel System. In addition, sir, there is currently the ability in the award to take time off in lieu of overtime. Under the enterprise agreement, sir, there is the ability to swap shifts with another member with the agreement of the supervisor. Now that may
35 be seen as the ability to have flexible RDO's.

40 Sir, at this point in time, the association is not looking at make-up time. If the association believes that any further award provision is necessary in relation to those facilitative clauses, then we will make further - we will have negotiations, discussions and make further application in future. But at this point in time we believe that the provision which relates only to sick leave is sufficient.

DEPUTY PRESIDENT: Thank you.

MR KADZIOLKA: In relation to the dispute settling procedure, as the model clause required, we have provided a general provision - well, the model clause requires a provision with inserted a general provision. It provides a process to identify and settle any dispute between the parties with the ability to have the matter arbitrated by the industrial commission.

It also provides that the *status quo* or situation that existed prior to the change or decision which created the dispute remains in place until the matter is resolved.

Sir, this application, I submit, is consistent with the Wage Fixing Principles, the public interest considerations of the commission and the full bench decision of T6296 and T6441 of 1996. We'd submit, sir, that the date of operation in accordance with the decision should be the date of your decision.

Sir, I have nothing further to add. Unless you have any questions, that's all I intend to go to.

DEPUTY PRESIDENT: Just as a matter of housekeeping and for no other reason than to simply have something on the record, this award contains a number of obsolete and redundant provisions and I think you courteously informed Mrs Gillie, who asked you at my request, the intentions of the association and the controlling authority with regard to these matters and it is the intention, as I understand it, that the parties will look at these and consider these matters later on this year. Is that the position as you confirm it?

MR KADZIOLKA: Yes, that is the position, sir. We have already started the process of negotiating the next enterprise agreement. Part of those negotiations include updating the award and rectifying any anomalies or inequities in it; that would also include getting rid of provisions which are redundant. I accept that there are provisions in the award which expired - their relevance expired in March 1994 and at this point in time we'd see no problem with taking those out.

As an organisation, we'd like to do that in conjunction with the department through the discussions on the next enterprise agreement.

DEPUTY PRESIDENT: Yes. I mention the matter - and let me say I have no disagreement with the approach you've outlined - but I mentioned the matter because as a consequence of the most recent State Wage Case which was by consent, the review of awards will, after publication of that decision, be driven by the commission rather than by the parties, so that you might expect that I'll take a supervisory interest in ensuring that these things do get done.

MR KADZIOLKA: Yes, sir.

DEPUTY PRESIDENT: Thank you, Mr Kadziolka.

MR KADZIOLKA: Thank you, Mr Deputy President.

DEPUTY PRESIDENT: Superintendent.

5 SUPERINTENDENT: Thank you, sir. The controlling authority, sir, do
agree to this particular amendment. The provisions are in line with
previous awards that have been made to other sectors of the state
service and the provisions, as outlined by Mr Kadziolka, have been
agreed to by the controlling authority.

10 I, too, sir, can confirm Mr Kadziolka's comments in relation to the
provisions of the award being looked at between now and the end of
this calendar year.

DEPUTY PRESIDENT: And do you agree with the operative date
suggested by Mr Kadziolka?

15 SUPERINTENDENT: Yes, sir, I believe that should take effect from the
date of your decision.

DEPUTY PRESIDENT: Thank you, superintendent.

20 Having heard the parties, I am satisfied that this application is within
the terms of the current Wage Fixing Principles and consistent with
the full bench decision in matters T6296 and T6441 of 1996
concerning carer's leave, and furthermore, that there is nothing in the
application of which I am aware in terms of section 36 of the Act that
might be arguably contrary to the public interest.

25 In those circumstances, it is my intention to approve this variation. I
will shortly publish my reasons for decision in that regard, the
operative date of the order which will be attached to the decision. And I
should indicate that it is my intention to make that order in the form
of a consolidation. The date of operation of that order will be from the
first pay period to begin on or after today's date.

That concludes the hearing of this matter T6969 of 1997.

30 **HEARING CONCLUDED**