



TASMANIAN INDUSTRIAL COMMISSION

CITATION: Variation of the Health and Human Services (Tasmanian State Service) Award [2023] TASIC 16

PARTIES:

Minister administering the State Service Act 2000

Australian Nursing and Midwifery Federation (Tasmanian Branch)

Health Services Union, Tasmania Branch

The Community and Public Sector Union (State Public Services Federation Tasmania) Inc

Tasmanian Trades and Labor Council

SUBJECT: *Industrial Relations Act 1984*, s 23(1) application for variation of Award

FILE NO: T15022 of 2023

HEARING DATE(S): 2 May 2023

HEARING LOCATION: Tasmanian Industrial Commission, Hobart

DATE REASONS ISSUED: 17 May 2023

MEMBER: President D J Barclay

CATCHWORDS: Award variation – updated employment categories – superannuation - types of leave - consent application - consent order issued - operative date for the variations, save the variations to clauses 7 and 8 of Part 1 and clause 5 of Part IX, will be from the first full pay period commencing on or after 1 December 2022. The variation to clause 7 and 8 of Part 1 and clause 5 of Part IX will be from the first full pay period commencing on or after 2 May 2023.

REPRESENTATION:

Jane Fitton and Stuart Locke for Minister administering the *State Service Act 2000*

Caroline Saint for Australian Nursing and Midwifery Federation, Tasmanian Branch

Natalie Jones for The (Community and Public Sector Union State Public Services Federation Tasmania)Inc) for the Australian Workers' Union, Tasmania Branch

James Milligan for Health Services Union, Tasmania Branch

VARIATION OF THE HEALTH AND HUMAN SERVICES (TASMANIAN STATE SERVICE) AWARD [2023] TASIC 16

REASONS FOR DECISION

HOBART, 17 MAY 2023

[1] On 24 April 2023, the Minister administering the *State Service Act 2000* (MASSA) lodged with the Registrar, pursuant to section 23 of the *Industrial Relations Act 1984* (the Act), an application to vary the Health and Human Services (Tasmanian State Service) Award.

[2] The Application relates to variations as set out in the Applicants submissions:

- (new) definition of fixed-term casual employee;
- improved superannuation benefits for additional employee contributions;
- improved leave entitlements for paid parental leave (including an increase to the weeks of paid parental leave for the primary and secondary caregiver);
- (new) grandparent leave (paid and unpaid leave provisions to support grandparents acting as primary caregivers);
- personal leave (to insert a new Aboriginal family relationships provision);
- bereavement and compassionate leave (to extend the entitlement to instances of miscarriage and stillbirth; and to insert a new Aboriginal family relationships provision);
- Incorporate a new standard TSS recreation leave provision to provide for ongoing accrual of leave and the management of excess leave accrual;
- family violence leave (increase from 10 days to 20 days; and to insert a new Aboriginal family relationships provision);
- (new) Aboriginal cultural leave (5 days paid leave to enable an Aboriginal employee to be absent from work to engage in Aboriginal Cultural practices and meet Cultural expectations as an active Aboriginal community member during their employment in TSS);
- (new) disability leave (5 days per year to be used for activities (including attending appointments) associated with an employee's long-term physical or psychological disability);
- (new) foster and kinship care leave (up to 10 days per year to support foster and kinship carers);
- (new) gender affirmation leave (4 weeks paid leave and 48 weeks unpaid leave for employees affirming their gender); and
- (new) surrogacy leave (6 weeks paid leave to support an employee acting as a surrogate in a formal surrogacy arrangement);

[3] In the main those variations are self-explanatory. However two issues require specific mention. The first relates to casual employees. In *Assiri*¹ I noted that there was no category of

¹ T14449 of 2016 *Assiri* and Minister administering the State Service Act 2000.

employment known as a casual employee. The Award referred to a category of employee being a “casual employee”. However the *State Service Act 2000* which governs the terms and conditions of State Service employment only refers to permanent and fixed term employees. As such casual employees as conventionally understood cannot fit within either description. As such the Award is to be amended to delete the reference to “casual employee” and to replace it with “Fixed-term casual employee”.

[4] It became apparent during the hearing however that there would be many references within the text of the Award to “casual employee”. In order to remedy that an application was made to amend the Application to include a definition of “casual employee” in Part 1 clause 7 as meaning “fixed term casual employee” as defined by Part 1 clause 8. That variation was accordingly made.

[5] Further an application was made to amend clause 8 of Part I and clause 2 of Part IX as follows:

- In Part I, Clause 8 – Employment Categories, newly amended definition of ‘Fixed-term casual employee’, do not replace ‘Part IX’ with ‘Part VII’. Leave ‘Part IX’ reference as is.
- In Part IX, Clause 2 – Parental Leave, subclause (m)(iii)(1); replace ‘employee was pregnant’ with ‘employee who was pregnant’,
- In Part IX, Clause 2 – Parental Leave, subclause (n)(iii); replace ‘subclause (i)’ with ‘subclause (l)’,
- In Part IX, Clause 2 – Parental Leave, subclause (o)(ii); replace ‘subclause (i)’ with ‘subclause (j)’,
- In Part IX, Clause 2 – Parental Leave, subclause (o)(ii); replace ‘subclause (a)(vii)’ with ‘subclause (b)(v)1’,
- In Part IX, Clause 2 – Parental Leave, subclause (p)(iii); replace ‘subclause (o)(i)’ with ‘subclause (p)(i)’, and
- In Part IX, Clause 12 – Aboriginal Cultural Leave, change starting subclause from ‘subclause (t)’ to ‘subclause (a)’.

[6] That application was consented to and the variations made.

[7] The final matter of importance is a dispute which may arise as to the effect of Clause 2(e) of Part IX. That clause provides that a Secondary Caregiver, after 12 months of continuous service will be entitled to 4 weeks paid Secondary Caregiver leave. The potential dispute as to that clause is to whom it may apply. The Respondent unions submit that it may apply to those who are on parental leave prior to 1 December 2022 (the date the variations come into effect). The Minister submits that cannot be the case.

[8] It is not appropriate to say anything about the dispute. However the fact of the dispute does engage a question whether it is in the public interest to approve a variation where there may be future disputation. The parties urged me to grant the variation. It was noted that if any persons could avail themselves of the argument they are likely to be few. The variation was part of a tranche of fairly substantial variations and I was told there were people whose entitlement to parental leave was affected by the approval or non-approval of the variation. On balance I determined it was in the public interest to grant the variations.

[9] I am satisfied that the application is consistent with the public interest requirements of the Act and does not disadvantage the Award-covered employees.

[10] The application for variation is granted with an operative date, save the variations to clauses 7 and 8 of Part 1 and clause 5 of Part IX, from the first full pay period commencing on or after 1 December 2022. The variations to clause 7 and 8 of Part 1 and clause 5 of Part IX will be from the first full pay period commencing on or after 2 May 2023.

[11] An order reflecting this decision is to follow.

