



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. **9318 of 2000**

IN THE MATTER OF an application by
The Association of Professional
Engineers, Scientists and Managers,
Australia to vary the Architects (Private
Industry) Award

T No. **8948 of 2000**

IN THE MATTER OF an application by
The Association of Professional
Engineers, Scientists and Managers,
Australia to vary the Architects (Private
Industry) Award

Re: Principle 16 - Award Review
Process

COMMISSIONER SHELLEY

HOBART, 8 February 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING COMMENCED 10.36am

COMMISSIONER: Can I take appearances, please.

MR D. PYRKE: If the commission pleases, I appear on behalf of the APESMA in this matter. My name is PYRKE D.

5 COMMISSIONER: Thank you.

MR J. O'NEILL: If the commission pleases, O'NEILL J., appearing for the Tasmanian Chamber of Commerce and Industry Limited.

COMMISSIONER: Thank you. Just before we begin, I indicate to the parties that, hopefully with their consent, I intend for the purposes of
10 the decision and the order to join this matter with the application of T8948, which was an application that began the process of the reformatting of the award and that the current application really completes that process. It makes sense in terms of resources to issue the one decision and the one order. I take it there's no objection to
15 that?

MR O'NEILL: No.

COMMISSIONER: Thank you. Mr Pyrke, I also note that the commission has received a new document to replace the document that accompanied the initial application?

20 MR PYRKE: Yes, commissioner. I was going to address you on that matter in a minute if I could. If the commission pleases, in lodging the application the association is seeking to secure minimum salaries and employment conditions for the craft of architecture as is practised in the private sector.

25 I'd like to start my submission by seeking leave to amend the application, which I guess addresses the issue that you're just raising there. Specifically, I'd like to table a new draft order to replace the one that was sent with the application, if I could.

COMMISSIONER: Thank you. Mr O'Neill, you have no objection to
30 the replacement of the document?

MR O'NEILL: Certainly not.

COMMISSIONER: That's what we shall do.

MR PYRKE: Commissioner, the application has been discussed with the TCCI and I understand that it has their consent. In broad terms
35 and to the extent possible, given the requirement of different jurisdictions, we've endeavoured to mirror the federal award that was created last year. This award has been given code number T2000 and the relevant print number is L6816.

5 In framing the draft order the parties have also had regard for the commission's most recent statement of principles. I'll have more to say on these matters in due course but at this stage I can flag that we particularly considered the requirements of principle 2 which is the previous State Wage Cases, Principle 10 - First Awards and Principle 12 - Award Review Process.

COMMISSIONER: Can we actually just go off the record at this stage.

OFF RECORD 10.39am

10 **ON RECORD 10.42am**

MR PYRKE: Thanks for that adjournment, commissioner. What I propose to do now, with your agreement, is to just take you through the various parts of the draft order.

15 In Part 1, we propose no change to the clauses dealing with title, index, scope and award interest and I'll address you on the date of operation in due course.

The supersession clause has been changed to reflect the outcome of the award review conducted last year and I guess that fixes up your request that we combine the two orders from the two matters you discussed previously.

20 If we go to Clause 7 - Definitions, the definition of architectural duties, there's no equivalent in the federal award but it's needed because of the wording of the scope clause. Basically, the scope clause refers to architectural duties as defined, so obviously we need to define it. That particular definition of architectural duties has been developed in conjunction and in consultation with the TCCI.

30 The definition of architect. That's been customised for the Tasmanian award from the federal award. Basically, the definition in the federal award is expressed in fairly generic terms. It refers to any Act. I've customised it to the Tasmanian situation by referring to the *Architects Act 1929*. Experienced architect - that's a direct lift from the federal award. The definition of graduate of architecture, again, has been customised from the definition in the federal award.

35 If there's no questions about that particular part, commissioner, I'd propose to move to Part 2. Looking at Clause 1 - Definitions and Clause 2 - Employment Categories. The proposed words have been copied from the Professional Engineers and Scientists (Private Industry) Award, which was approved by this commission under its award review process last year. The clauses deal with the full range of possibilities that we can think of. In my submission, they're also more
40 useful than traditional contract of employment clauses which typically

contain circular definitions, for example, what's a casual employee. So, that being the case, we submit that they've got substantial merit.

5 Moving to Clause 3 - Contract of Employment, subclause (a) is the remnants of the commission's old structural efficiency clause and that's been retained at the request of the TCCI. Subclause (b) is a direct lift from the federal award.

Looking at Part 3 - Salaries and Related Matters, in drafting this clause we've been mindful of principle -

10 COMMISSIONER: You've actually set it out in the way in which awards of the state commission are generally set out.

15 MR PYRKE: Yes, commissioner. In terms of principle 12 which goes to the consistent award formatting, we've picked up the model which is in the only other professional award I'm familiar with which is the Engineers and Scientists (Private Industry). As you can see, that sets out the base rate, the relativity that each classification relates to, the base rate.

There is no safety net adjustment yet, obviously because we're starting from scratch now and the third or fourth column shows annual salary.

20 The parties recognise that the existing rates will be moving appreciably in the coming months in line with changes to the federal award and subject to the imprimatur of this commission it's been agreed that the Tasmanian law to require consequent adjustment. When this happens we'll seek to rely on the references to structural efficiency adjustments, minimum rates adjustments of principle 2 which is about previous State Wage Cases.

To assist the MRA process, I'd like now to table an exhibit that flags the amounts that we're working towards.

COMMISSIONER: **EXHIBIT P.1.**

30 MR PYRKE: Basically, commissioner, these rates here are the rates which are currently in the federal award and they are also the rates which were shown in the application as it was sent originally but to meet the requirements of the commission, we've changed it to what's now in front of you.

COMMISSIONER: These are agreed future increases?

35 MR PYRKE: I understand that they are, yes. I'm sure Mr O'Neill will tell you shortly if he has a different view.

They also reflect the safety net adjustment for the year 2000. In fact, by the time the minimum rates adjustment process is finished the

actual numbers here could change by virtue of possible State Wage Cases.

Looking at clauses, 2, 3, 4, 5 and 6 of Part 3, these clauses mirror equivalent clauses in the federal award. Clause 7 - Superannuation, this clause reflects the standard clause of this commission. On that basis, I assume that - or I tend to guess, it's okay.

Moving to Part 4 - Allowances, Clause 1 - Equipment and Special Clothing Allowance and Clause 2 - Fares and Travelling Expenses, these clauses mirror the federal award save for the rate of \$10.40, is proposed for meal allowances. Our observation here is that the quantum there reflects a full bench decision of this commission in matter T9245 of 2000.

Looking at the vehicle allowance clause, in this clause it's proposed that an allowance of 45.7 cents per kilometre be paid. To arrive at this figure, it's taken the current figure of 43 cents per kilometre from the Professional Engineers and Scientists (Private Industry) Award of this commission and increased it in line with the formula prescribed in that award.

To show you our calculations and the basis for them, I'd like to table two exhibits, please.

COMMISSIONER: We will mark those two exhibits, **EXHIBIT P.2** and **EXHIBIT P.3**. P.2 being the one which shows the rates of March since 1996 and P.3 being the Consumer Price Index extract.

MR PYRKE: Thanks, commissioner. The rate in the Professional Engineers and Scientists Award is currently 43 cents per kilometre. That reflects the Consumer Price Index of March of 1996. We then increased it by 2.3 per cent from March - or it could have been increased by 2.3 per cent from March 1997, and if I could take you through exhibit P.3 to see how I came to that figure.

On the second page of that exhibit P.3 there's a block called 'percentage change from corresponding quarter of previous year' and more or less in the middle column goes to transportation. And if you go down that page roughly about to halfway you see at March 1997 the figure of 2.3.

COMMISSIONER: Right.

MR PYRKE: Then in March 1998 you can see from that same page that the index actually went backwards by 1.8 per cent. So we've deducted from March 1998 - back on the exhibit P.2 - we deducted the figure of 1.8 per cent.

Then if I can move you along to the fourth page of exhibit P.3, that picks up again the percentage changes in the transportation sector. In

5 this particular part of the exhibit, you're looking at the first column -
for transportation on the fourth page of the exhibit and that shows at
March 1999 that the index went backwards by 1.4 per cent. So again,
from March 1999 we've deducted that 1.4 per cent. Then happily from
the perspective of members at March 2000 the index shows it went up
by 7.3 per cent.

COMMISSIONER: One wonders what it will be for March 2001.

MR PYRKE: Exactly, yes. Yes. But anyway, that explains how we've
chosen the figures of 2.3, 1.8, 1.4 and 7.3 in arriving at 45.7 cents.

10 COMMISSIONER: Thank you for that explanation.

MR PYRKE: If we could move now to Part 5 - Hours of Work and
Overtime, Clause 1 - Hours of Work. This clause mirrors the
equivalent clause in the federal award - yes, that's the federal award
clause.

15 Clause 2 - Overtime. This clause reflects the federal award standard of
time and a half for overtime, whilst incorporating this commission's
preferred clause regarding time off in lieu of overtime or time off in lieu
payment.

20 Moving to Part 6 - Leave and Holidays with Pay, Clause 1 - Annual
Leave. This clause mirrors the equivalent in the federal award save
that the subclause headings have been converted from questions to
statements. This has been done in the interests of consistent award
formatting within this jurisdiction.

25 Clause 2 - Bereavement Leave. Since drafting the application last year,
I've been made aware that a number of awards of this commission
make provision for the bereavement leave clause to include
grandparents and grandchildren in the list of family members in
respect of whom leave may be granted. The association wishes to
ensure this award reflects the emerging standard and proposed an
30 appropriate variation to the TCCI. In reply, the TCCI indicated that
they would not be able to consent to the variation without further
consultation with their members. Rather than hold up the making of
the whole award for a relatively minor condition of employment, we
propose to preserve the status quo for now but we certainly flagged it;
35 we will nevertheless make separate application regarding this matter
in due course.

Looking at Clause 3 - Carers Leave. This clause reflects the preferred
wording of this commission.

40 Clause 4 - Holidays with Pay. In drafting this clause, we've been
mindful of, I guess, the existence of awards which have different
prescriptions in them in relation to the payment for work on public
holidays which includes payment at the rate of time and a half.

COMMISSIONER: Double time and a half.

MR PYRKE: Sorry, double time and a half, that's right, yes. In the event that the federal award is varied to mirror the federal test case standard of double time and a half, it would certainly be our intention
5 to review the provisions of this award.

Moving to Clause 5 - Parental Leave. This is a standard clause of this commission and that we ask that it be inserted when the order is issued; chose not to include it in the draft order for reasons of economy, I guess. It tends to be a long clause.

10 Clause 6 - Sick Leave. The federal commission has its own test case standard clause for personal leave but it hasn't been adopted in this commission. Accordingly we propose to adopt the clause from the Professional Engineers and Scientists (Private Industry) Award which I understand has been approved by this commission.

15 Through to Part 7 - Consultation and Dispute Resolution. In particular, the disputes and grievance procedure clause, and Part 8 - Award Compliance and Union Related Matters and Clause 1 - Employees Representative. These clauses have been copied from the Engineers and Scientists (Private Industry) Award of this commission
20 and they were approved as part of the review last year.

So that is as much as I'd like to say about the proposed clauses. If you've got no questions about that I might address you on the principles and the public interest.

COMMISSIONER: According to my notes, that you have dealt with all
25 of the matters that we dealt with in conference in relation to changes to be made. So it is fine to move on to the principles and public interest.

MR PYRKE: Regarding the application's consistency with the commission's current statement of principles, I submit that we've
30 endeavoured to comply with Principle 12 - Award Review Process when drafting the order. As you can see it's got the new style of format where we have various sections. We've got the clause numbering system of this commission and I think therefore that we've complied with what's required there.

35 In terms of the public interest, if successful, the application will create a level playing field between employers bound by the federal award and any new employees of architects who might start up. Basically, if this award doesn't come into play, those people will be award-free. We submit that the level playing field created by the creation of this award
40 is in the public interest.

On the basis of this submission, I believe that it is open to you to make the award and to grant the application as sought and if you

agree then I ask you to do that from the date of the order. If the commission pleases.

COMMISSIONER: Thank you, Mr Pyrke. Mr O'Neill?

5 MR O'NEILL: Thank you, commissioner. The TCCI concur with the submissions as put to you by Mr Pyrke. We consent to the application before you today.

10 The date of the order - the date of operation - we accept to be the date of your order. In respect of the clauses of bereavement leave in Part 6, clause 2, and holidays with pay - clause 4, the TCCI submit that it is open to Mr Pyrke to make application in respect of those two clauses when the need arises.

15 In respect of the commission's Wage Fixing Principles, Principle 12 - Award Review, the award is in the required format and therefore it is in accordance with the principles in that regard and it does not offend the public interest - section 36 of the Act - in any way. If it pleases.

20 COMMISSIONER: Thank you. Well, I say to the parties, well done on reaching agreement on this award. It's my intention to issue an order granting the amendments sought which I shall do in due course dependent upon a thorough checking of the document that's before us and putting it exactly in the commission's format, but I anticipate that that shouldn't take too long and when the order is issued the operative date will be the first full pay period on or after the date of the order.

The matter is adjourned.

HEARING ADJOURNED 11.00am