

COMMISSIONER: I'll take appearances please.

MR D. PYRKE: If the commission pleases, DARRYL PYRKE appearing on behalf of the Association of Professional Engineers, Scientists and Managers, Australia.

5 COMMISSIONER: Good. Thank you.

MS J. THOMAS: JENNY THOMAS appearing for the Tasmanian Chamber of Commerce and Industry Limited, if it pleases.

COMMISSIONER: Thank you. Who shall I turn to? Mr Pyrke?

10 MR PYRKE: Thank you, commissioner. Sir, I'd like to start by making a number of variations to the application, if I may.

The first of those is to delete from the application Part 1 which goes to the insertion of a clause regarding settlement of disputes.

15 Our colleagues at the TCCI have got a view that they would rather not have a clause of that nature and since that's not a pressing concern of mine, I don't seek to have an argument about it, but I need - a disputes procedure is addressed by another application for amendment.

COMMISSIONER: Is there a disputes settlement procedure in the award?

20 MR PYRKE: No, sir, but we do seek to insert one in relation to the carer's leave clause at the appropriate point.

COMMISSIONER: Right. So you're taking out 1?

MR PYRKE: Yes.

COMMISSIONER: So 2 becomes 1.

25 MR PYRKE: That's right, 2 becomes 1. And in relation to the new Part 1 which was related to the carer's leave clause, I'd seek to insert into subclause (a)(i) some words which address the needs of part-timers. And if it pleases the commission, I'll tender an exhibit to that effect.

30 COMMISSIONER: So (a)(i) - where do you wish to insert that?

MR PYRKE: Yes - sir, I apologise for this being in the form of a fax but my computer system is playing up at the moment and it's the best I could do, but if I could take you to three-quarters of the way down this fax. Shall I give that an exhibit number by the way?

35 COMMISSIONER: Well, it's part of your application.

MR PYRKE: Okay, yes. Well, if we could insert the words in subclause (a)(i) - these words: *For the purposes of this clause, part-time employees shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlement per annum. Where a part-time employee's hours of work are not constant, the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the twelve 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 twelve months.* That's the nature of the request for amendment of the application.

COMMISSIONER: And where do you want to actually insert it? After the words 'leave may be taken' or -

MR PYRKE: That's right, sir, yes.

COMMISSIONER: - 'part of a single day'.

MR PYRKE: Yes. Yes.

COMMISSIONER: Good. Right. Any other amendments to your application?

MR PYRKE: Yes, there are, sir. If I could take you now to page 3 of the application and in particular subclause (c) of this clause which will address carer's leave. I'd seek to delete the words that are there, which are no longer relevant because of the decision not to insert a separate grievance procedure but what I would do though, sir, is insert now some new words to apply specifically to carer's leave and I've got an exhibit here with some words which may assist.

COMMISSIONER: So you want to insert what is now a new 2?

MR PYRKE: I would seek to insert these words as a subclause (c).

COMMISSIONER: Yes, but it's 2(c), isn't it, because we took out 1?

MR PYRKE: Sorry. As the application was sent to you, it was Part 2. That obviously now become Part 1 of the application.

COMMISSIONER: Yes. You've taken out number 1 of your claim?

MR PYRKE: That's right, yes.

COMMISSIONER: So number 2 becomes number 1 and now this is number 2 of your claim?

MR PYRKE: No, sir. This is actually going into the new Part 1 of the application.

COMMISSIONER: Good. Thank you. So, it's Part 1 of your application, carer's leave and then (c) of that?

MR PYRKE: That's right, which is headed, grievance process.

COMMISSIONER: Good. I'm with you now.

MR PYRKE: In an ideal world, I would have given you a draft order.

5 COMMISSIONER: Well, it's just underneath, you've got another (c) and I got a bit mixed up.

MR PYRKE: Okay. I would have liked to have given you a fresh order but my computer is down so this is what happens.

COMMISSIONER: They do play up every now and then, as we've found out in the past.

10 MR PYRKE: If I could now take you to what was originally Part 3 of the application, which is obviously now Part 2, which addresses subclause (c) of Clause 9 - Annual Leave, and in particular (vi) which is on page 4 of the application as you see it. You will see there at the end of Part 6 some words in italics. Now, these were words which were in
15 the model clause but the parties have concluded that it's got no application to this particular award because there's no clause within this award which actually refers to the time and wages book. We're proposing to delete those words - the italicised words.

COMMISSIONER: So you're just letting the Act do the work there?

20 MR PYRKE: We've got no choice because there's no clause in the award which has application there.

COMMISSIONER: Yes, but it doesn't stop you does it from giving the employer some direction that records should be kept in time and wages records full stop?

25 MR PYRKE: I see. We've made the assumption and we can perhaps improve on it if you deem it is appropriate but the previous subclause (v) actually makes reference to Regulation 25 of the Act, so it's our conclusion that there is some guidance there.

COMMISSIONER: Good, thank you. So we'll delete (vi).

30 MR PYRKE: Well, not (vi) in its entirety, just the italicised words as prescribed in clause *.

COMMISSIONER: Right.

35 MR PYRKE: I move now to the next part of the application which is now Part 3, which refers to subclause (c) of Clause 17 - Hours of Duty. Again, we have a situation in (vi) where we have some italicised words. They read *as prescribed in clause * - title of this award at each time the provision is used*. We propose that those italicised words be deleted.

5 If I could move now to the new Part 4 of the application, which refers, sir, proposed subclause (d) of Clause 17 - Hours of Duty. On this occasion clause (v) we have some italicised words. They say: *As prescribed in clause * title of the award at each time this provision is used* we propose that those words be deleted and the same in Part 5 of the application. In this particular case it's at (vi) where again there are some italicised words. We propose that they be deleted.

COMMISSIONER: Have you had a look at the word in (v) on the second line at the right-hand side where it says, 'he'?

10 MR PYRKE: Not before I sent the application but I must say, your associate pointed it out to us this morning, that that ought to be changed to, 'the', so that's a further change.

15 Sir, that's the extent of the proposed changes to the application. I understand they have the concern of Ms Thomas but I guess she will speak for herself.

COMMISSIONER: Well, there's a request to amend the application. Is there any opposition?

MS THOMAS: No objections to that.

20 COMMISSIONER: Leave is granted then, Mr Pyrke, so we'll be dealing with your amended application now.

25 MR PYRKE: Thank you. Sir, the amended application seeks to vary the award in relation to carer's leave, which was the subject of a test case in this commission in matter T6296 of 1996. The amended application is in five parts, the first of which seeks to insert an entitlement to carer's leave. We have proposed a number there but I guess - I'm not really sure what policy you take there but we'll be guided on what you have to say on that. There are two variations. This is the model clause issued by the commission in matter T6296.

30 The first variation occurs in paragraph (i)(a), where we seek to address the situation of part-timers. We believe that there could well be some part-timers who are working in the industry and it's appropriate that we address their needs.

35 In relation to the particular set of words that we have put before you, I understand that they have been approved by this commission in the Metal and Engineering Industry Award. I, unfortunately, can't quote you the particular T number in that case.

40 The second departure from the model clause in relation to carer's leave is in subclause (c) where we've customised the model clause for this particular award by inserting a grievance process and the need to do that arose because there isn't a grievance process in the award.

5 If I move now to Part 2. Part 2 of the application seeks to insert as subclause (c) the facilitative provision in relation to annual leave and we do this because the existing annual leave clause is silent on the matter of broken leave. When I say, broken leave, I refer to the capacity to take up to five days of single day absences.

10 With Part 3 of the application, we seek to insert the model facilitative provision in relation to time off in lieu of overtime and we do that as subclause (c) of Clause 17 - Hours of Duty. This step is necessary as the existing clause doesn't address the matter of time off in lieu of overtime.

With Part 4, we seek to insert the model provision regarding make-up time as subclause (d) of Clause 17 - Hours of Duty. Again, this step is necessary because the existing award clause doesn't address the situation of make-up time.

15 Finally, as we track through the particular parts of the application, with Part 5 of the application, we seek to insert the model provision regarding rostered days off as subclause (e) of clause 17 - Hours of Duty. Again, there's a need to do this because the existing award clauses are silent in relation to rostered days off.

20 If I could turn now to the merit of the application and the arguments in support. Our argument in support of the application follows what was put to the commission by the Trades and Labor Council in matter T6296. In that particular case, Ms Fitzgerald of the Labor Council addressed the full bench regarding social and economic changes such as increased participation by women in the work force, increased involvement of men in parenting and reduced level of institutional care for aged and disabled people.

25 Sir, if these changes are to be accommodated, it's important that carer's leave be available as of right when it's needed and it's our submission that this applies to engineers and scientists just as much as it does to other occupations.

30 We believe that the TCCI accepts this view as they have indicated their consent to the application. As the application follows the test case, it's my submission that it conforms with the Wage Fixation Principles and it doesn't offend the public interest. On the basis of this submission, I believe it's open to you to make an order in the terms set out in the revised application and I ask you to do so from the first pay period commencing on or after today's date. Subject to any questions you may have, that's my submission, sir. If the commission pleases.

40 COMMISSIONER: Good. Thank you. Ms Thomas?

MS THOMAS: Yes, very briefly. This is a consent matter. The application as amended reflects the decision of the full bench and the

agreement of the parties. The award should therefore be varied operative from the date sought. If it pleases the commission.

COMMISSIONER: Good.

5 MS THOMAS: Just one matter, I assume the commission will be consolidating the award for this amendment?

COMMISSIONER: Yes, if that's what you want me to do.

MS THOMAS: Not necessarily.

COMMISSIONER: Well, I think we've got to insert it in the appropriate place within the award.

10 MS THOMAS: It's whether it's an A clause or -

COMMISSIONER: It's not going to be with me.

MS THOMAS: Right. Thank you.

15 COMMISSIONER: I don't agree with A clauses, so it should fit in the appropriate place so I take it, Mr Pyrke, that your application is amended to suggest that I should make the appropriate variations to slot it in in the appropriate place?

MR PYRKE: Yes, sir. That's not an issue about which we've got strong views. We know that the commission's got policies on that and we're happy to comply with those policies. If the commission pleases.

20 COMMISSIONER: Right. We'll do that. No further submissions, Ms Thomas?

MS THOMAS: No, sir.

25 COMMISSIONER: I can indicate to the parties then that the award will be varied in the form of the amended application and I'll hand down a written decision in due course and it will be operative from the first full pay period to commence on or after today. Thank you.

HEARING CONCLUDED