

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 5676 of 1995

IN THE MATTER OF an application by the
Australian Municipal Administrative
Clerical and Services Union to vary the
Community Services Award

re first \$8 safety net increase

COMMISSIONER GOZZI

HOBART, 7 August 1995

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: I'll have appearances, please.

MR I. PATERSON: If the commission pleases, IAN PATERSON, for the Australian Municipal Administrative, Clerical and Services Union, Tasmanian Branch.

COMMISSIONER GOZZI: Thank you, Mr Paterson.

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

COMMISSIONER GOZZI: Thank you, Mr Brown.

10 **MR M. WATSON:** May it please the commission, MARK WATSON. I appear on behalf of the Tasmanian Chamber of Commerce and Industry and the Community Services Employers' Organisation of Tasmania.

COMMISSIONER GOZZI: Thanks, Mr Watson. Now, Mr Paterson.

15 MR PATERSON: I am just going to make a few brief comments and then I think the parties propose that we go off the record and discuss how we progress this matter in light of the full making of the wages and classifications in the Community Services Award.

I have provided Mr Hunter with copies of a draft, which is a very preliminary draft. There hasn't been any discussions with the employers as yet about the draft in total. It was prepared in some haste on Friday to make it available for these proceedings.

20 The principal issue, I suppose, is what we are seeking to do is to incorporate the arbitrated safety net adjustment in an order which is also the same order that will be used to give effect to the classifications and wages in the Community Services Award. There are a number of questions left unaddressed in this, and one is the date that the arbitrated safety net adjustment would take effect. This is one of the matters I think we could usefully further pursue in the off record conference.

25 If I can just say at this stage, subject to the principles and practices of the commission, it is my view that both parties had raised the safety net adjustment in the former proceedings into the classifications, although in different ways. The union, in respect of the previous hearings, sought to incorporate the \$8.00 into the base and to the 100 per cent figure; the employer's association advocated a separate flat \$8.00
30 across the board, and my understanding of your decision is that it determined and decided what that 100 per cent rate would be, and did not in fact in those terms address the safety net adjustment question that entertained - or the question on my mind is, whether we are in fact precluded by the principles from having the \$8.00
35 safety net incorporated from 1 July by virtue of a separate application not having been made until recently. Those, and some of the other matters, I think we can more usefully pursue in conference.

40 COMMISSIONER GOZZI: Yes, well I suppose so that we are not at cross-purposes my understanding was that the inclusion of the first arbitrated safety net in the proceedings before me leading to the outcome of the restructuring exercise was opposed by the TCCI and advocated by AMACSU.

In the decision I relied on \$417.20, and I think, Mr Paterson, AMACSU, the position you articulated was that it should be 425.00. So the relativities, if you like, were established in the Community Services Award, having regard to \$417.20 as the 100 per cent rate.

Now I guess the question is, given that the 100 per cent rate is now in the process of moving to \$433.20, what happens in the Community Services Award, and from what date, and the other aspect of course in respect to the first arbitrated safety net is that when orders were drawn to give effect to that first arbitrated safety net it was against the background that that \$8.00 was absorbed against over awards.

The situation which was spelled out in most award variations and, in fact, in all award variations, to give effect to that increase - which is not the case in respect to the second \$8.00. In other words, the verbiage that's in awards currently reflecting the adjustment of the first \$8.00 talking about absorption has now been deleted where the second \$8.00 has been put in the awards. So there are a couple of things that need to be worked through.

MR PATERSON: Just in response, and very, very briefly, whilst my reading of the transcript of the proceedings is that the TCCI opposed the \$8.00 being incorporated into the base rate, but nothing in their position on transcript says anything about when or how the \$8.00 should apply.

Again, I can go to that if we need to, but the issue there I suspect is not what the parties said or intended in those proceedings, but in the first instance whether we are in fact constrained by the principles as to when the \$8.00 can apply. If we are not so constrained, then I believe that we should entertain further discussions to try and reach agreement on the date that it takes effect.

COMMISSIONER GOZZI: All right. Thanks, Mr Paterson. Mr Brown, anything to add?

MR BROWN: Not at this stage, Mr Commissioner.

COMMISSIONER GOZZI: Thank you. Mr Watson?

MR WATSON: No, not at this stage, commissioner. I am quite happy to go into conference.

COMMISSIONER GOZZI: All right. I think it is a case of everybody keeping their powder dry by the sounds of it. All right, we will adjourn into conference next door.

INTO CONFERENCE COMMISSIONER GOZZI: Mr Paterson?

MR PATERSON: If the commission pleases, we've, I believe, agreed on a - the principles to resolving this matter that we'll embody in a draft order to be brought back to you which, in effect, will be a draft order of clause 8 - Wage Rates, for the Community Services Award.

Those matters that - oh, in terms of the effective date, we've conceded and recognised the immovability of the employer's position which says that retrospectivity is a thing of the past and we'll accept the 7th August as the effective date for the arbitrated safety net adjustment.

The other matters that were not -

COMMISSIONER GOZZI: The first - is that the first full pay period?

MR PATERSON: The first \$8 increase.

COMMISSIONER GOZZI: Yes - the first full pay period?

MR PATERSON: The first full pay period on or after the 7th August will be what's in the order.

5 The other matters that we either have not yet agreed to or have a need for further discussions around, will be either embodied in Appendix A or in a separate clause which we will come back to you with when we come back with the other classification standards which will in effect be clause 7 of the award.

10 At this stage we believe it will be useful in terms of the commission's processes for those orders ought to be handed down at the same time and to facilitate it being produced as a single order of the commission and a single publication of the government printer.

COMMISSIONER GOZZI: Is that for clause - what - for the wage adjustment and the -

MR PATERSON: And the classifications.

15 COMMISSIONER GOZZI: We'd be - won't that take a while though to do the classifications? Couldn't we just get the clause 8 first arbitrated safety net out of the way quickly? I mean you can give me an order on that in the next day or so - that adjustment can go into the award and it gets rid of it. I mean it would just be a variation and we can do the consolidation of the award when the classification standards are available. I'm just a bit concerned that the classification standards could take a little while. Maybe.

MR PATERSON: It's possible. I think that the parties are committed to working towards a deadline on that which is to all intents and purposes at the end of this month. I'm prepared -

25 COMMISSIONER GOZZI: Well look, I must say I would prefer just to get the wages draft order on the first arbitrated safety net and that will just be an award variation in its own right, and we can then consolidate the award when the classification standards are finalised. So at least the \$8 arbitrated safety net is specified and out of the way and it's a simple matter, the consolidation, further down the track.

MR PATERSON: I'm -

30 COMMISSIONER GOZZI: What's your concern with it?

MR PATERSON: I suppose the concern is in part, how do you apply - if an order is produced prior to the classification - or separate to the classifications order that it - it may be difficult particularly in -

COMMISSIONER GOZZI: It shouldn't be difficult -

35 MR PATERSON: - terms of the over award issue to identify -

COMMISSIONER GOZZI: Well it -

MR PATERSON: - what's absorbable and where -

COMMISSIONER GOZZI: Yes.

40 MR PATERSON: - without having resolved somebody's classification level. What may look like an over award payment may in fact be an under classification and without the classification standards in place that may be impossible to address.

COMMISSIONER GOZZI: Yes - I see what you're getting at. I guess simplistically I just thought that everybody currently would get their \$8 safety net adjustment subject - subject -

MR PATERSON: If there -

5 COMMISSIONER GOZZI: - to the absorption clause and then any new translation would take care of all of that when the translations take place. What do you -

MR PATERSON: Yes, I suppose it comes back to what's going to be simplest and practical on the ground in terms of making it work is really the interest that I have in the outcome. I mean at the end of the day I don't think it makes much difference.

10 COMMISSIONER GOZZI: Mm.

MR PATERSON: Maybe Mr Watson might like to -

COMMISSIONER GOZZI: We'll just go off the record for a minute.

OFF RECORD

15 COMMISSIONER GOZZI: All right, Mr Paterson, I think - well I do understand what you're saying about that and the decision I'll issue then will be with an operative date of date for the prospective order which will then be - form part and parcel of an order for the variation of the award in its entirety in respect of classifications and definitions and so on.

20 MR PATERSON: So the body of that order would then be new clauses 7 and 8 for the award plus appendices and only one or two minor other matters.

COMMISSIONER GOZZI: Right, fair enough. Okay.

MR PATERSON: I think that clears that?

COMMISSIONER GOZZI: Yes, thank you, Mr Paterson.

MR PATERSON: Good thank you, Mr Commissioner.

25 COMMISSIONER GOZZI: Mr Brown?

MR BROWN: No, I have nothing to add, Mr Commissioner. We - the HSUA supports the comments that have been made by Mr Paterson.

COMMISSIONER GOZZI: Thank you, Mr Brown. Mr Watson?

30 MR WATSON: Commissioner, yes, we advise of our agreement to the first arbitrated safety net adjustment for the - for this award effective from the first full pay period on or after today's date and we also would agree to the situation which I guess is maybe a little bit unorthodox in the circumstances to in fact come back to the commission with a full consolidated order which will include the new wage rates, the arbitrated safety net adjustment and the classification standards. So on that basis I don't think there's
35 anything further that we have to add.

COMMISSIONER GOZZI: No. Just one other thing that comes to mind now though: the new classification standards and the translations will operate from, in terms of the first instalment, the 1st June - or the 1st July.

MR WATSON: The 1st July.

COMMISSIONER GOZZI: So that order, in part, will need to operate - well will need to operate from the 1st July.

MR WATSON: Yes, that's right.

5 COMMISSIONER GOZZI: And then this will operate from the first pay period on or after the 7th August.

10 MR WATSON: Yes, I think we could still cope with that with one order by just having different operative dates as far as the columns are concerned and identify that the \$8 is effective from the 7th August and also identifying that the other rates, subject to phasing are operative from two other different dates. So you would have an operative date of 1 July 1995 for the weekly wage rate in one sense for the first phasing arrangement, the 7th August for the first \$8 and then the 1st January '96 for the balance of any phasing.

15 MR PATERSON: Well, if I may, the other way to look at it is that the full base rate decision - full effect of your March decision is effective on 1 January, and what is effective on 1 July is the implementation and so we have three dates in effect. But in terms of effective dates of the order, it would be on or after the 7th August, on or after the 1st January with the 1 July phasing-in dealt with through the appendix in the award which I think is the best way because once the award - once that date, 1 January, is passed, and if the - you know - then the appendix becomes redundant and
20 the body of the award stays unaffected by that passage of time.

COMMISSIONER GOZZI: I think that will work.

MR WATSON: Yes, thanks, commissioner.

25 COMMISSIONER GOZZI: We'll soon find out if it doesn't. Well in the circumstances the application to vary the award in respect to the first arbitrated safety net is granted operative from the first full pay period on or after the 7th August 1995, a decision along those lines will issue in due course and as discussed when the award is varied to give effect to the classification standards and the inclusion of those standards in clause 7 a consolidated order will issue implementing that variation along with the wage rate variation. Right? These proceedings are concluded.

30 **HEARING CONCLUDED**