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INDUSTRIAL RELATIONS COMMISSION OF SOUTH AUSTRALIA

COMMISSIONER DOYLE

No 290/12

SA AMBULANCE SERVICE ENTERPRISE AGREEMENT 2011

Adelaide

9.13 AM, FRIDAY, 3 FEBRUARY 2012

**MR B DUFFY with MS J KEAN appeared on behalf of the Chief Executive,
Department of Premier and Cabinet, and the Chief Executive, SA Health**

**MR P PALMER with MR R LEARY appeared on behalf of the Ambulance
Employees Association**

COMMISSIONER: Good morning, appearances please.

MR PALMER: Morning.

5 MR DUFFY: Yes, may it please the commission, my name is Duffy, initial B, and with me is Ms Julia Keane, initial J. I appear on behalf of the employer, the Chief Executive, Department of Premier and Cabinet, and the Chief Executive, SA Health.

10 COMMISSIONER: Thanks, Mr Duffy.

MR PALMER: If it pleases the commission, I appear for the Ambulance Employees Association; Palmer, P, and with me is Mr Leary, initial R.

15 COMMISSIONER: Thank you, Mr Palmer. Mr Duffy.

MR DUFFY: Thanks, Commissioner. The parties appear today seeking approval from the commission in respect to the SA Ambulance Service Enterprise Agreement 2011, pursuant to section 79 of the Fair Work Act
20 1994. The application that has been lodged with the commission sets out the requisite information in relation to the proposed agreement, which you have a copy of. Subject to the commission's approval, the proposed agreement will replace, and therefore supersede, the SA Ambulance Service Enterprise Agreement 2007, which nominally expired on 31 December 2009.

25 Just as a bit of background, commissioner, as you are aware, the proposed agreement has been the subject of extensive negotiations between the parties. The parties have also participated at extensively numerous conferences before the Industrial Relations Commission of South Australia, to assist the
30 progression of the agreement.

The proposed agreement, subject to the application, covers approximately 1143 operational employees from the patient transfer service stream, the professional emergency stream, the professional emergency management
35 stream, and emergency operations centre stream, classifications for these streams being in the schedule 2 of the proposed agreement.

Terms and conditions of employment for administrative non-operational employees who are located at SAAS are provided by the South Australian Government Wages Parity (Salaried) Enterprise Agreement 2010 in the SA
40 Public Sector Salaried Employees Interim Award. As a result of the discussions with the Ambulance Employees Association, during the course of these negotiations, a specific provision has been included in the proposed agreement, that certain administrative non-operational employees based at
45 SAAS may elect to opt in to the proposed agreement. This provision arises from particular circumstances of the negotiations for the proposed agreement, and is not to be used as a precedent in any other public sector negotiations.

5 The proposed agreement provides that where an employee elects to opt in, it
is subject to and will take effect from the date of approval by the
commission. The proposed agreement, Commissioner, provides the
following details in relation to the administrative non-operational employees;
it provides criteria and the process by which an employee may opt in. It also
provides the terms and conditions that will apply to such an employee. It
provides conditions under which the opt-in provision no longer applies; and
finally it also provides that an employee may elect to opt out of the proposed
10 SA Ambulance Service Agreement.

15 For your information, Commissioner, as at last Friday, 27 January, SA Health
advised that 93 administrative non-operational employees have provided a
written election to opt in to this proposed agreement. Now, I'll provide some
information in relation to that, and to my friend. This information is
evidenced by paragraph 5 of the statutory declaration I have from
Ms Saphron Kennedy from SA Ambulance Service dated 27 January 2012. I
request to table that document for the record, and provide a copy for my
friend.

20 COMMISSIONER: Do you want that as an exhibit?

MR DUFFY: Yes, I think it would be worthwhile making it Exhibit 1 or
whatever you think.

25 COMMISSIONER: We can do that.

**EXHIBIT #DPC1 - STATUTORY DECLARATION OF
SAPHRON KENNEDY DATED 27/01/12**

30 MR DUFFY: Thank you. So, yes, paragraph 5 is, I draw your attention
there, as to the number of administrative non-operational employees who
have opted in to the proposed agreement. Employees to be covered by the
proposed agreement are primarily represented by the Ambulance Employees
35 Association of South Australia. The application lodged with the commission
for approval contains as one of the attachments the statutory declaration of
the AEA Secretary, Mr Phil Palmer. The statutory declaration states that the
AEA has a membership of approximately 1189 members placed at SAAS.

40 I'd like to deal just with the statutory requirements under the Fair Work Act
1994. I note that in relation to the requirements under section 76, the notice
of intention to negotiate an enterprise agreement was issued on 7 June 2010
by Public Sector Workforce Relations on behalf of the employer, parties to
the AEA, parties to both the AEA, United Voice, and also the Employee
45 Ombudsman. Now, the notice of intention was also sent to the Public
Service Association South Australia on 8 June 2010. SA Ambulance Service

advises that it issued a rapid information bulletin to all employees based at SAAS on 8 June 2010, attaching a copy of the notice of intention.

5 In relation to section 77 of the Fair Work Act, I note the following, in terms of satisfying the relevant statutory requirement, I note that the proposed agreement makes provision for the renegotiation of the agreement at the end of its term, and that can be found at clause 9 of the proposed agreement. Secondly, the proposed agreement identifies the Chief Executive, Department of Premier and Cabinet, as the declared public employer pursuant to regulation 4 of the Fair Work Act 1994, and the Chief Executive, SA Health. Clause 2.1.1 deals with that, outlines that.

15 Thirdly, the proposed agreement identifies the group of employees to which the proposed agreement relates, and that can be found, as you will find, at clauses 2.1.2 and 2.2. The proposed agreement also provides procedures for preventing and settling industrial disputes, and that can be found at clause 8. And also, finally, the proposed agreement provides that sick leave is available for use because of the sickness of a family member, and that can be found at clause 24 of the proposed agreement.

20 In relation to the requirements under section 79 of the Fair Work Act, I note the following. SA Ambulance Service distributed a rapid newsletter to relevant employees advising that copy of the proposed agreement was available on the SAAS intranet site, and that operational employees who were not members of the AEA could provide confidential response indicating a view about the proposed agreement.

25 I have also referred, my friend will talk about that later I'm sure, but I have referred to the affidavit of Mr Palmer, dated 18 January 2012, attached to the application, and that affidavit sets out the mechanisms that the AEA used to inform its members about the content of the agreement during September 2011 and January 2012, and how it undertook the employee approval process.

30 I note that following the AEAs special general meeting on 11 January 2012, the AEA Secretary, Mr Palmer, advised PSWR via email, on 11 January 2012 at 11:44 am, that the AEA special general meeting unanimously endorsed acceptance of the offer and that this was the AEAs formal advice of acceptance of the proposed agreement on offer.

35 Now I draw your attention again, Commissioner, to statutory declaration exhibit DPC1 from Ms Saphron Kennedy. I think it is paragraph 3 that sets out the response from other employees, not members of the AEA, in terms of the response to the proposed offer of agreement.

40 I'd now like to deal with some other important matters, just as part of the proposed offer and agreement. Firstly I deal with the operative date. In

terms of the operative date of the proposed agreement, the employer submits that if the commission is satisfied that the requirements of the act have been met, then the operative date should be on and from today's date. That's the date of approval. Unless otherwise indicated, the proposed agreement
5 provides for a number of provisions to be operative on and from the date of approval, including regional incentive payments in schedule 3, and also special on-call payments, schedule 3, and also paid maternity leave and adoption leave provisions in clause 29.

10 I deal now with clause 22, payment involving rate during long service leave. As you are aware commissioner, the AEA's claim for the payment of rolled-in rate allowance during long service leave was the subject of extensive discussion between the parties, and at the commission. The agreed clause, clause 22, provides for the payment of the rolled-in rate on prospective long
15 service leave accrual; that is, long service leave that is accrued after the operative date. Now the operative date for the purposes of this clause will be the first full pay period on or after 11 January 2012, which arises from the terms of the letter of offer that the operative date for the rolled-in rate will be the first full pay period after the date that the AEA provides written
20 acceptance to PSWR that AEA members accept the package, including the terms specified in clause 22.3 of the proposed SAAS Enterprise Agreement.

In particular, the terms in the letter of offer require the AEA to agree to other matters, subjects of discussion. They being lifting industrial bans, the subject
25 of these enterprise bargaining negotiations, and, secondly, agree to SAASs implementation of the crib break provision provided at clause 26 of the proposed agreement. SA Health, SAAS, has confirmed that the AEA has lifted all industrial bans, the subject of these enterprise bargaining negotiations, and also SAAS has advised that, following agreement from the
30 AEA, it introduced new crib break provisions on 23 January 2012, so I'm advised, and I request at that point to table the SAAS Rapid dated 20 January, and SAASs attached crib break policy procedure as an exhibit, if that is okay.

35 **EXHIBIT #DPC2 - RAPID COMMUNICATION NOTICE FROM SA AMBULANCE SERVICE DATED 20/01/2012 AND ATTACHED CRIB BREAK PROCEDURE DOCUMENT**

COMMISSIONER: Thanks, Mr Duffy.

40 MR DUFFY: Thank you. Given the extensive discussion in relation to new crib break provisions, the parties agreed to a specific dispute resolution process to be used only in the event there is a significant problem arising from the implementation of the crib break procedure. A couple of other
45 things I would just like to draw your attention to, Commissioner. Firstly is the correction to schedule 4 of the proposed agreement, which deals with the rolled-in rates. On 17 January 2012, PSWR was notified formally by the Chief Executive, SA Health, that there were errors in a number of rolled-in

5 rates listed in schedule 4 of the draft proposed agreement, that had been
provided to the AEA and the employees. Subsequent discussion between the
employer and the AEA representatives acknowledged that calculations, in
some locations, did not reflect the shift patterns; and, consequently, there was
agreement reached to revise schedule 4 rolled-in rates, which is marked as
attachment 6 to the application for approval. Now, as you are aware, there
have been further discussions, the AEA with its members this week, but I put
forward just for the record, seek to table as an exhibit, from those
discussions, and I think it points out where the parties went, is the AEA's
10 bulletin dated 23 January in relation to the rolled-in rate variation, just so we
have a record here.

15 COMMISSIONER: Thank you. The AEA bulletin dated - is there a date on
it?

MR DUFFY: I think on the second page you'll see it's signed 23 January
2012, have you got that?

20 COMMISSIONER: Mine doesn't have a second page.

MR DUFFY: Sorry about that.

25 **EXHIBIT #DPC3 - AEA BULLETIN DATED 23/01/2012 HEADED EB
OFFER ROLLED-IN RATE VARIATION**

MR DUFFY: Now, my friend will speak, I guess, as you know, from the
adjournment, the initial hearing earlier this week, from their discussions with
relevant members in relation to this particular matter, I'm sure he will allude
to that later on. But from the employer's submission, employer's point of
30 view, this is our submission, that this revised schedule 4 be inserted into the
proposed agreement and that it replace the original schedule 4.

COMMISSIONER: Do you have a new ---

35 MR DUFFY: I do, and as I've said, it is attached, it is attachment 6 to the
initial application, but I'm happy to provide, for the record, for the purposes
of today's proceedings, that schedule 4 which is the attachment 6 of the
application for approval.

40 COMMISSIONER: That would be good.

MR DUFFY: Okay.

45 COMMISSIONER: How do you propose to deal with this particular
document? As an exhibit or as a ---

MR DUFFY: Well look, I guess just for the record, I mean, we can note it as an exhibit, it could be dealt with as an exhibit, on the basis that it will be, if the parties agree, it will be inserted into the proposed agreement and then, obviously, if the agreement is approved, we can forward the revised Word version of the proposed agreement, which we have to do anyway, to the commission.

COMMISSIONER: All right. Now, Mr Palmer, are you happy for this to form an exhibit, the purpose of which is to replace attachment 6 in the original application?

MR PALMER: Yes, Commissioner. It's already on, as I understand it, if my memory serves, it is already on the revised enterprise agreement as a package anyway. So, yes, we concur.

MR DUFFY: Just the version which was lodged with the commission, in the application, is the original offer which was put forward to ---

COMMISSIONER: Does that vary at all?

MR DUFFY: Yes, there are changes in the ---

COMMISSIONER: There are changes in what you have just handed up as opposed to ---

MR DUFFY: No.

COMMISSIONER: There isn't?

MR DUFFY: No, no. The application which you originally have, which includes the original proposed agreement, the schedule there is incorrect, but I attached to part of that application a revised schedule 4, and that is what you've got in front of you now.

COMMISSIONER: I see.

MR DUFFY: I am just providing it to you again. You have already got it in your application, marked as attachment 6 to the application for approval.

COMMISSIONER: I think we will leave it alone.

MR PALMER: Could I suggest, to avoid any more confusion, and there has been a fair bit about this, that that actually form part of the agreement, so that when members refer to it in the future it's actually got the DPC4 figures embedded in the agreement, as opposed to those.

COMMISSIONER: I will deal with that when I approve it, Mr Palmer. I agree with that, but I won't give it an exhibit number just to avoid further confusion, if that is possible.

5 MR DUFFY: Now I note that during the life of the enterprise agreement, the rolled-in rates may change if there are changes to shift patterns, roster configurations, on-call arrangements, and any other items that are inputted into the rolled-in rate calculator agreed to between SAAS and the AEA. So I just make note in relation to ---

10

COMMISSIONER: That is a provision in the award anyway, isn't it?

MR DUFFY: There is provision for varying, yes, but I just bring that to your attention.

15

COMMISSIONER: Yes.

MR DUFFY: Now the other issue which we noted as a correction. In clause 20 33 there is a typo, the proposed agreement. It refers to "centure", instead of "centre". Again, in the revised Word version I send through to the commission I will correct that. It is just in the heading, "Review of Emergency Operations Centure".

25 COMMISSIONER: If you provide the correction, we'll make sure that goes through to the registrar, without further ado.

MR DUFFY: I think that covers most things. I guess the conclusion, from the employer's perspective, I would like to take the opportunity to thank you, Commissioner, and the commission for your assistance in this matter, and for 30 making yourself available for the parties on numerous occasions, and at short notice, to assist the process. So, subject to any questions, Commissioner, I submit that the proposed agreement meets the tests established under the act, and seek the commission's approval of the proposed agreement.

35 COMMISSIONER: I have no further questions. I am reasonably familiar with it all now. Thank you, Mr Duffy. Mr Palmer?

MR PALMER: Thank you, Commissioner. I will get round to stating our endorsement and recommendation that the approval be given, however, I 40 would like to take the opportunity just to put a few issues on the record which may come back to bite us at some time, possibly in the near future. If I can refer to the new crib break arrangements, because this is the one that was quite difficult to get through, and was potentially the most contentious; although ended up being less contentious than the rolled-in rate adjustments, 45 as it turned out.

As my friend said, that the new crib break provision was introduced on 23 January, not quite two weeks, so it is early days; but the early signs have not been good, and SAASs own data, and certainly from our members' voluminous anecdotal responses, the crib break performance has not improved at all, and in fact there's a strong view that it has got worse in the last two weeks. Now that may be teething problems, that remains to be seen. We are concerned about the way the change was introduced. Someone hasn't read change 101, and the only information that went out was the DPC2, and not a lot of training has gone out to - or a rollout has gone out in association with this.

So there is a lot of confusion on the road, and there is a lot of confusion in the emergency operation centre too. I'm getting a lot of complaints from coordinators, dispatchers, that they are being just left to work it out for themselves. It has lead to disputes between on-road officers and the EOC staff over the actual application of it. So that is one thing; it has been a bit, perhaps introduced in haste, for whatever reason, or whether it was under pressure from Health, PSWR, or SAASs own desire to be in a hurry, I don't know. But the implications need to be spelt out, I think, for the record; and that is that, we got the clear impression from the ambulance service that Department of Health expected there to be no resource implications arising out of these crib break arrangements. We're not certain that giving that many crews an extra 10 minutes, or even an extra 20 minutes a day, if there's two crib breaks in their shift, taking those people off-line for that time could not have resource implications, but anyway.

What is turning out so far, and what we hope doesn't happen in the future but which we fear might, is that despite the flexibility that we have given, that was sought and that we have given, that SAAS will not be able to deliver a better crib performance, and that we will be back in here invoking clause 26.8 of the agreement quite early. It might even be before I get back from leave, which is not until March, from my point of view. But we are normally optimistic, but the last two weeks has pushed that optimism back into pessimism again. Our view would be that Department of Health can't take the view that it won't have resource implications, because having given the flexibility to the ambulance service, if that doesn't achieve the goal, it is a clear indicator, in the AEAs view, that there are not enough crews to do the job. Because what will impede the ability of ambulance crews to get their crib at a reasonable time, is the high acuity workload, the priority one and priority two, because those jobs have to be done regardless, and cribs are broken and delayed because of those.

If that is happening, as is happening at the moment, and we have got graphs - we won't tender them as evidence - but SAASs stats show jags in every crib break performance right across the metropolitan area, and up to, in some cases, over 60 per cent late cribs on day shifts. So far, so bad.

Which brings me to another issue, which is a little bit outside the EB but connected to it, and this is staffing projects, because the crib break performance is associated with the staff performance. We would expect, if we are going to avoid a lot of commission hearings this year, that the
5 ambulance service and Department of Health will continue with the resourcing projects as promised, and we will be looking for, in the metropolitan area, that make sure all levels are resourced properly.

We will be looking, in the country, for SAAS to deliver on its promise to
10 eradicate on-call, because that became an issue because of the rolled-in rate change at the last minute. It became clear to us that members do not like working on call, they are finding it more and more onerous. There is more, it is a much higher workload than was ever envisaged for on-call, and they are now saying it has become so minimal in reward that they would rather work
15 shifts and take a bigger pay drop and get their lives back. So I just flag that.

There is another thing, though, that I think I need to put on the record - the AEA sought an allowance, or a payment, for paramedic solo response. The ambulance service did not accept that, and it said it was their clear intention
20 to not use any paramedic in any solo response capacity other than those in the sprint, who work in the sprint system. Now we are troubled by that. We are particularly troubled by that in country stations where you may have a paramedic on station, by themselves, there may be a child drowning around the corner, and the ambulance service is saying no they won't use that
25 paramedic.

Now, I think that what will actually happen is the paramedic will get used, but there is no payment for them. But the point I'm trying to make is that
30 should it come about that the ambulance service do say what they said they would do, and that is not use paramedic solo response, that I don't want anyone in the public thinking the AEA in some way, shape or form has contributed to that. Because we are opposed to that, we believe there are times when paramedics should solo respond and should be rewarded. Let's
35 put that on the record.

While I am going on the staffing issue, I think that unless we get a timely resolution to the chronic staffing shortages in the emergency operations
40 centre, we will be back here in the commission pretty quickly about that too. Just all those for the records.

Whilst we have got a very good deal, and we had to work very hard for it over two years, I would also like to put on the record that government's
45 behaviour towards us - and I know the niceties and the employer is the Chief Executive, Premier and Cabinet, by the way it's worked, we see the employer as cabinet, they are the ones that give the final tick, or not, to agreements. And we believe that we have had some pretty poor treatment from government over the last five years, and that is evidenced by the professional

rates case, the way we were dealt with that, and I won't dwell too much on that, his Honour Judge McCusker made some pertinent comments in the middle of the wage case about that. But that caused some damage between our relationship with the government, and the 2010 state government budget that legislated, what we see as legislated theft of our conditions, only
5 exacerbated that lack of trust. We also say that we believe that the use of the best endeavours principle as a vehicle to rush us into agreement before the police deal came to light stretched our trust even further. And we also say that the treatment of the non-operational staff agreement status also has
10 caused harm. So I just want that for the record. The depth of damage can't be understated. It is our view that the Rann/Foley government just didn't care about our members and this attitude continues in the new regime.

Our attitude to inter-agreement changes and restructures is not likely to be
15 cooperative, unless we see clear benefits for our members. In other words, right at the moment there is a rumour that SAAS are planning another restructure. Well if they are, they can wait till 2015. So I'll just put those things on the record for the future. I see in this that there may be a change of troubled time ahead. EB out of the way, staffing and other issues looming
20 heavily over us.

Having said that though, it has been a hard haul and the outcome is one that the members are pleased with. They are certainly cynical about the crib break, and those cynics who were hammering us before the deal was agreed
25 are contacting us with glee at the moment. Telling us, we told you so. We don't see all is lost though. As I said, that if they can't deliver on cribs, they better deliver on staff. Having said all that, Commissioner, I do recommend that you endorse this agreement today.

30 COMMISSIONER: Thank you, Mr Palmer. Well, I guess that only leaves me to congratulate the parties in achieving a resolution of what has been a very long and most difficult process. My congratulations obviously extended to the key players, Mr Duffy and Mr Palmer, and your respective crews. I certainly appreciated the opportunity to be able to assist you throughout that
35 process, although my role was somewhat limited, but hopefully it was of some assistance in the end.

As required under the Fair Work Act 1994, and the regulations, the
40 commission had applied various tests and remains satisfied that the terms of the act and the regulations have been met in the making of this agreement. As to the content of the agreement, the commission is satisfied that on balance it is in the interests of the employees to be covered by the agreement. The agreement is consistent with the objects, and complies with the act and
45 does not provide for remuneration or other conditions of employment that are inferior, either to the scheduled standards or to the safety net award. The commission makes an order, pursuant to section 79 of the act, approving the agreement between the parties. The agreement shall come into force today,

3 February 2012, and remain in force until 3 February 2015. An order will be drawn up accordingly. Prior to the matter being referred to the registrar, the issues with respect to the status of schedule 4, which is identified in the application as attachment 6, with respect to the rolled-in rates applying state wide, will be attended to; and, likewise, the typographical error in clause 33 will be attended to as well.

So once again, I sincerely congratulate the parties and, despite Mr Palmer's prophet of doom, I hope it does work out well and we'll see how it goes.
Thank you very much.

MATTER ADJOURNED AT 9.48 AM ACCORDINGLY

EXHIBIT LIST

Date: 3/02/2012

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