

DEPUTY PRESIDENT: I'll take the appearances, please.

**MS A. WATT:** If the commission please, ANITA WATT, appearing on behalf of the Minister for Public Sector Administration.

DEPUTY PRESIDENT: Thank you, Ms Watt.

5 **MR R. CLEGG:** CLEGG, RON, for the Community and Public Sector Union (State Public Sector Federation Tasmania).

DEPUTY PRESIDENT: Thank you, Mr Clegg. Ms Watt, my associate, Mrs Gillie, has informed me that there are a range of difficulties with your current applications. I don't suggest they're serious but they are  
10 inconvenient, to say the least. You will recall, before Christmas when these applications were filed, I asked Mrs Gillie to make it plain to you that I thought dealing with the applications prior to the full bench decision in the wider range of matters was premature and inappropriate.

15 I think, on that occasion, you evinced some irritation with the view that I put forward but as it turns out now, since I listed the matters following the full bench decision, that it appears that we might still be premature in the sense of, at least, me doing something that ends up being contrary to what Commissioner Imlach might be doing at the  
20 drafting conferences regarding the full bench matter or alternatively, he being embarrassed to find that I've done something in these matters which cuts across what he may be asked to do in the conference proceedings.

25 Added to that, I understand that you have further amendments to make to one or both of these applications and in addition Mrs Gillie informs me that you're not really prepared at all for this, Mr Clegg?

MR CLEGG: Well, I've just been asked to come up here and appear in the matter. Seeing it's the employer's application - I don't have any problems with the application, after having a look at it.

30 DEPUTY PRESIDENT: Thank you, Mr Clegg. Ms Watt, I'm of a mind to really think that perhaps I ought to adjourn these proceedings for a fortnight or until the conferences before Commissioner Imlach are finished and then you, as the applicant, on behalf of the minister will be able to deal with any further amendments and I suspect there  
35 might be some that arise out of that drafting conference that will apply to at least one of these applications, perhaps the Inland Fisheries Commission application.

I understood that you suggested to Mrs Gillie that these matters might be referred by me to Commissioner Imlach's conference. I'm not sure  
40 about the efficacy of that. I think the matters can be dealt with quite satisfactorily once we know what the outcome of the drafting conference is. Would you like to comment on all those matters?

MS WATT: Firstly, if I may say, the amended applications are only minor and the reason for those amendments is because we believed the Professional Employees Award would be in force by this date. As it is not, we have had to amend our applications. The translation table  
5 for all employees that are translated to the scientific stream will be attached to the Professional Employees Award once that award is in effect.

DEPUTY PRESIDENT: That was the explanation that Mrs Gillie offered me and I understand that and I don't have a problem with that.  
10 It just seems to me that it complicates matters if there's going to be that amendment and then following the conferences before Commission Imlach, further amendments to the applications, which seems to me to make them unnecessarily complicated.

MS WATT: Yes, Mr Deputy President, I understand your concerns.  
15 All that I would say to that is, this application is to give effect to the operational translation for employees employed under the Inland Fisheries Commission Award. Those employees have been awaiting that translation to take place.

Whilst I would not be overly distressed if the matter is deferred for a  
20 period, I believe that Mr Clegg would be more distressed than I, as his employees have been waiting for their translation to occur back-dated to 7 March. So, I guess I would ask Mr Clegg's opinion in respect of that.

DEPUTY PRESIDENT: Thank you, Ms Watt. Mr Clegg?

MR CLEGG: I'd like the operational stream to be translated as  
25 quickly as possible and if it can be done without any undue inconvenience, I think we should be proceeding with that as soon as possible - just the translation tables, if that's all we can do today, that'll be very much appreciated.

MS WATT: If I may, Mr Deputy President, it would not be possible  
30 just to proceed with the translation tables as the variations to the Inland Fisheries Commission Award go hand in hand with the attachment of that translation table to the Operational Employees Award, as the employees will be translating in accordance with the  
35 translation table attached to the Operational Employees Award and then will derive their salaries from clause 8 of that award.

Perhaps if it is appropriate, if the award remains as it is until such  
time that the orders are issued from the full bench's decision and then  
perhaps if it is up to us to make application, or whether it is up to the  
40 commission to exercise their discretion in how awards are worded consistently. I'm not sure exactly how that works. On my experience -

DEPUTY PRESIDENT: Forgive me for interrupting. The primary  
importance that the president attaches to the purpose of the drafting

conferences is indeed that question, to ensure consistency across the various public sector awards and that's what of course is the origin of my concerns, that I see nothing inappropriate or incorrect or wrong in terms of either of the applications that are currently before me. It's simply not a question of that at all, Mr Clegg. It's a question of ensuring consistency across the awards of the public sector in terms of this commission that we have identical variations that can be perceived to be operating in an identical way.

I think you informed Mrs Gillie of when the drafting conference is?

MS WATT: This Thursday. Two o'clock, I believe. As you are aware, Mr Deputy President, the Inland Fisheries Commission Award is currently inconsistent with the applications that have been put to the full bench, in so far as wording in respect of the 'shalls', 'is to bes' and 'are to bes' that we did put to the full bench. Whether an application needs to be made at a later date as we have already put to the commission in T6482 of 1996, to try to change that wording, which is now being adopted by the full bench - if that is the more appropriate way to proceed, perhaps -

DEPUTY PRESIDENT: Well, I don't know that there's a need for you to file a separate application, is there? If the drafting conference on Thursday settles the form of the order in that context and this is what I was referring to earlier, wouldn't you then be in a position to seek the union's consent to not opposing an amendment to the application, to include those changes to the Inland Fisheries Commission Award?

MS WATT: Yes. My understanding of the drafting conference is that there are only going to be very minor variations anyway and the ones that have been discussed to date are only very slight grammatical changes.

DEPUTY PRESIDENT: Yes. But in terms of consistency, you don't know yet what those changes will be?

MS WATT: Not one hundred per cent, no, Mr Deputy President.

DEPUTY PRESIDENT: There isn't any reason why you couldn't deal with those matters by amendment to this application, is there?

MS WATT: No.

DEPUTY PRESIDENT: In due course?

MS WATT: Yes, we would need to seek leave to amend it, as we have said, to delete superfluous provisions but we didn't say to reword the award. So, yes, I guess we would need to amend it.

DEPUTY PRESIDENT: Mr Clegg, I understand your concern and the matters that I've been discussing concerning these applications,

regrettably perhaps in terms of your members, go to the procedures of this commission rather than the merit of the applications, with which I have no personal objection.

5 It seems to me that I ought to act with some caution and to put these matters on, say, in a fortnight because I'm committed next week, most of the week, and to invite, as I have done, the minister to seek to amend the application following that conference to deal with the wording and to clean all of the matters up.

10 I'm not necessarily putting any pressure on you to consent to that but that's the mind that I have at the moment and perhaps you would like to comment on that?

15 MR CLEGG: Well, I can understand what you're saying, sir, and given that so much time has elapsed now since the decision was handed down on 7 March and to ensure that everything's done and we don't have to come back again, I would agree to the fortnight's delay to ensure consistency across the awards.

DEPUTY PRESIDENT: Thank you, Mr Clegg. Is Tuesday the 28th suitable?

20 MS WATT: I believe so, Mr Deputy President. I don't have my diary with me at the moment.

MR CLEGG: Yes, that's all right for me.

25 DEPUTY PRESIDENT: Having discussed the procedural difficulties that fall upon this commission in relationship to these otherwise seemingly inoffensive applications, it is my view that I should act with caution and defer the hearing and determination of these matters until 9.30am on Tuesday, 28 January, for purposes of ensuring that there is consistency across the public sector awards with variations arising out of and related to the decision of the recent full bench in T6502 and numerous other applications regarding the full bench decision of this matter published on 7 January of this year.

30 In making that adjournment, I formally direct, without it being offensive, Ms Watt, that the minister be prepared to amend the application or applications in such manner as the minister sees fit in relation to not only the amendment that you mentioned to me today but in relation to any forms of variations to award clauses that arise out of the full bench decision and that are settled before the drafting conferences before Commissioner Imlach later this week.

35 There is nothing in the circumstances of either of these applications arising out of the commission's adjournment to these proceedings that deals with any question of operative date. I think that remains unchanged, Ms Watt, doesn't it?

MS WATT: Yes, Mr Deputy President, 7 March 1996.

DEPUTY PRESIDENT: Yes. In those circumstances I formally adjourn these proceedings until the time and date that I mentioned earlier.

5 **HEARING ADJOURNED**