

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 3111 of 1991

**IN THE MATTER OF** an application by  
the Australian Workers Union,  
Tasmanian Branch for the making of  
the Plant Nurseries Award

COMMISSIONER WATTLING

HOBART, 4 June 1992  
continued from 8/8/91

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: I'll take appearances please?

**MR G. COOPER:** If the commission pleases, I appear on behalf of the Australian Workers' Union, Tasmanian Branch, COOPER, G.

COMMISSIONER WATLING: Good. Thank you.

**MR W. FITZGERALD:** If it pleases, I appear on behalf of the Tasmanian Confederation of Industries, FITZGERALD, W.J.

COMMISSIONER WATLING: Good. Thank you. Right. Well, today is the day when we're going to move to finalise this award. Mr Cooper?

MR COOPER: Commissioner, with respect to our application for the making of this award, to finalise the contents, I understand you may be aware of a facsimile that's been forwarded by to myself as a representative of the AWU and to yourself as a representative of the commission with respect to TCI position that was stated on the 3rd of June 1992. If you don't have a copy of that I can certainly hand you one as an exhibit.

COMMISSIONER WATLING: Yes. No, I've sighted it now.

MR COOPER: Do you want one, Bill?

MR FITZGERALD: No, no, I have it.

COMMISSIONER WATLING: Yes. But you're the applicant though, aren't you? It's your application.

MR COOPER: Yes, commissioner. I just would like to explain some things with respect to that.

COMMISSIONER WATLING: Righto.

MR COOPER: And it will go further in that on the 27th of May we did tender to the TCI -

COMMISSIONER WATLING: We'll mark this Exhibit - this facsimile as AWU.1, is it? It must be 1 - yes. Good. Thank you.

MR COOPER: Now I think it would be important, commissioner, with respect to having tendered that document to tender a number of others. This one is a facsimile from the TCI dated the 26th of May, re the Plant Nurseries Award.

COMMISSIONER WATLING: Good. Thank you very much. We'll mark this AWU.2.

MR FITZGERALD: I've got all these.

MR COOPER: The third one is correspondence from the AWU to the TCI with respect to provision of the draft.

COMMISSIONER WATLING: Right. We'll mark this AWU.3.

MR COOPER: And the fourth is a handwritten facsimile note that was sent to the TCI from the AWU.

COMMISSIONER WATLING: We'll mark this AWU.4.

MR FITZGERALD: Have you got a copy of that?

MR COOPER: And the reason I've tendered them, commissioner, is to allow for an overview of our attempts to actually secure the draft, and there is one final document that I would like to tender and it is our response to Mr Fitzgerald's facsimile - that has been copied to yourself.

COMMISSIONER WATLING: Righto. We'll mark this AWU.5.

MR COOPER: With respect to those documents, commissioner, if you remember that in the informal proceedings following a matter that was before you some time ago, the parties did suggest that we could proceed with this matter this morning and I'd just like to tender those documents to indicate that in fact, with respect to AWU.1, which is the final document that we received from the TCI, that in AWU.2, it's quite clearly a commitment given by the TCI in the last paragraph - it's a little bit difficult to read - but I understand, for the record, it says:

I'm of the view that the timetable is unrealistic, however, we are prepared to expedite this matter so long as we receive the draft document in the next day.

If we go to AWU.3, that confirms that a document was tendered in the next day in accordance with the request by the TCI, as outlined in AWU.2.

MR FITZGERALD: Day after.

MR COOPER: We then go to the position that was put to the commission by the TCI with respect to their facsimile saying that insufficient time is available. There are a number of points - five points in all contained in that facsimile - which is AWU.1 - point (b) - that require further discussion. Now obviously our response indicates the commitment we gave to you was in good faith - that was in AWU.5 - and we wanted to proceed with the making of the awards on the basis of that commitment.

However, commissioner, it is difficult for us because of the points raised in Mr Fitzgerald's correspondence because we



haven't had any discussions with anybody on those points, being as though they were only made available to us at 4.30 - or close to 4.30 yesterday evening. Notwithstanding that, commissioner, we have a number of documents here in respect to the position that we have put to the TCI and it was our understanding that we would proceed through that document this morning with yourself, possibly informally, off the record, as we have done in all other proceedings and any problems that we have we could address and I'd undertake to address them as quickly as are possible.

Now I would say, commissioner, with respect to our original off-the-record talks about the preparation of a draft, on going back to the office our computer was unavailable. It was then I secured services of another computer. I actually physically typed this draft myself from scratch because the draft I thought was on the computer was not there, so we started from page 1. There was nothing. Prepared the draft as quickly as we could and forwarded that to the TCI, and I do accept there was some delay in the preparation of that and I will take the blame for that because I was of the understanding that this draft was on our computer and it was not, so we started from scratch and prepared that. So with respect to that, commissioner, we do accept some blame for the delay in forwarding the draft to the TCI.

However, it was our intention to meet with them following the preparation of this draft and talk about all the matters contained in therein.

Now there is one other point, commissioner, that I think is important to raise and that is with respect to a dispute that's going on in the northern part of Tasmania, and that is the APPM dispute, and the reason that I raise that in this context is that there's a very important meeting being convened by the ACTU this afternoon at 2 o'clock and at which my presence was requested. I declined that on the basis of the hearing that we have before you thinking that it would proceed for the full day. Now that - on the basis of the commitment that we gave - that has required our general secretary to fly from Sydney to Melbourne this morning for a 9.30 meeting with another official from our branch in Western Australia who will meet with him. The West Australian delegate will then be briefed by our general secretary and attend the meeting at 2 o'clock this afternoon. If I had known that these proceedings were not going to go ahead -

COMMISSIONER WATLING: Well they still might.

MR COOPER: Well I'm just - I'm putting for the record, commissioner, it would have been a lot more easier for our branch, and in fact, given the understanding I have with the dispute, for me to attend that 2 o'clock meeting this afternoon and put our position. So I'm a little bit concerned

with respect the length that we've gone to to expedite this matter today on the basis of the commitment we have given, but I do understand there is a need to further discuss issues that are raised by Mr Fitzgerald and I indicated to him yesterday and the day before that I'm prepared to meet any time that he so wishes to organise a meeting for the purpose of discussing the draft.

So having advised the commission of those processes, it may be appropriate for some comment from Mr Fitzgerald. That's up - I'm in the hands of the commission.

COMMISSIONER WATLING: Mr Fitzgerald?

MR FITZGERALD: Thank you, commissioner. I'm happy to comment. I'm quite staggered by Mr Cooper's submissions and difficulties that he has in his own branch are those which he should face, not bring to the attention of the commission in respect of these matters.

COMMISSIONER WATLING: I'm quite staggered with your fax actually, so we're both staggered.

MR FITZGERALD: Well I haven't put my submission yet, commissioner, so -

COMMISSIONER WATLING: Well I - you sent me the fax.

MR FITZGERALD: Yes, yes, I haven't put my submission yet.

COMMISSIONER WATLING: Well I just said, I'm quite staggered by your fax.

MR FITZGERALD: Yes, I'm - well I'm -

COMMISSIONER WATLING: You sent it to me prior to - and I do have eyes and I do read and I've read them beforehand.

MR FITZGERALD: Yes.

COMMISSIONER WATLING: I'm staggered with your fax.

MR FITZGERALD: Well I'm simply making a submission in response to Mr Cooper's submission about the time frame.

COMMISSIONER WATLING: Yes. Well I'm also pointing out that we can all be staggered by -

MR FITZGERALD: Well we may be but I'm not certain why you are staggered about my fax.

COMMISSIONER WATLING: Well - because I'm staggered that you, once again, have - are requesting an adjournment.

MR FITZGERALD: Well I think in the circumstances, commissioner, I have to be able to put it in the submissions in terms of the circumstances relating to this matter.

COMMISSIONER WATLING: Well you'll get ample opportunity, but I'm making the point about your fax which you sent me, right?

MR FITZGERALD: Yes.

COMMISSIONER WATLING: Now if you don't want me to acknowledge that you've sent me a fax, well we'll forget it -

MR FITZGERALD: Well, no, that's fine. I did send it to you -

COMMISSIONER WATLING: - and from here on in I'll say that you never sent me any acknowledgement, if that's what you want me to say.

MR FITZGERALD: I'm sorry?

COMMISSIONER WATLING: From here on in, if you don't want me to acknowledge your fax -

MR FITZGERALD: No -

COMMISSIONER WATLING: - I'm prepared to say, for the record, that you didn't send me a fax.

MR FITZGERALD: No, I did send it to you to keep you in the picture, commissioner, but I'm not certain why you are staggered about it.

COMMISSIONER WATLING: I'm staggered about it because of the program that we set down on the previous occasion.

MR FITZGERALD: Right. Well, certainly, commissioner, I think I need to be able to put my full submission in that regard. What we're talking about, commissioner -

COMMISSIONER WATLING: You'll get ample opportunity to put your full submission, but it doesn't make any difference to the point that I make about that I'm staggered in relation to your fax and I'm staggered because we did set down a program.

MR FITZGERALD: I understand that, but in terms of being able to meet that program with a realistic time frame, that was not met by the AWU. Now we're talking about essentially four working days. Now the last hearing of this matter -

COMMISSIONER WATLING: What about since 1989?

MR FITZGERALD: I understand that, commissioner, yes, but this is a completely new document with a new structure which



we need to have some instructions on. We had four working days in which to get those instructions.

COMMISSIONER WATLING: You would have had instructions, surely, since 1989, Mr -

MR FITZGERALD: Not on this document, commissioner.

COMMISSIONER WATLING: Not on this document, but in relation to restructuring.

MR FITZGERALD: In respect to restructuring, but we have a new document with a new 6-level structure proposed - first - the first time that's been proposed - a number of new clauses which we haven't had ample opportunity to discuss - we have four working days. Now if I could go back through those submissions, commissioner, to show you that what's been proposed has been completely unrealistic and it's not through want of our trying to expedite this matter.

COMMISSIONER WATLING: Well what have you done since 1989?

MR FITZGERALD: Well I understand that, commissioner, but it takes two to tango and -

COMMISSIONER WATLING: Well I'm just only worried about what you've done. I'll ask Mr Cooper -

MR FITZGERALD: Yes. Well we have responded - my former colleagues as well - in respect to a number of drafts which were put by the union, but the most recent draft which was put to us on Thursday the 28th - Mr Cooper says it was the 27th - the date .... we received it on the 28th, and I'm prepared to sign a statutory declaration to that effect if necessary. As soon as we received that document, I forwarded it to members which is only reasonable. Now if I could present my exhibit, just indicating that the time frame - the completely unrealistic time frame - on which Mr Cooper has presented this matter. Some of these documents will unfortunately be repeated, commissioner, because I have put them in that format. I'll have to get you another copy.

COMMISSIONER WATLING: Right. We'll mark this TCI.2.

MR FITZGERALD: If it pleases. If I could back to the last page, commissioner, in chronological sequence. Now since the last hearing of this matter, which I'm not certain about the date and I could be reminded on that, commissioner.

COMMISSIONER WATLING: Well you tell me what you want to tell me.

MR FITZGERALD: Well I - if I could just seek some information about when that last hearing was.

COMMISSIONER WATLING: Well, it's not up to me to run your case. You pull me up when I sort of acknowledge things.

MR FITZGERALD: Well it's just a matter of - I'm sorry that you feel that way about that document. I was not in any way trying to challenge your acknowledgement of the document. I did send it to you for your information, but I'm not certain why you were staggered with the document itself given that I haven't made any submissions in respect to the circumstances yet. But I'm not certain of the last hearing date, but it's just a matter of question of fact. Mr Cooper may even want to assist, he may not, but whenever the last hearing date was, since that time - we needed a further draft from the union - that was the understanding - to be able to progress the matter. Now I had a number of informal off record discussions with Mr Cooper to seek that draft. That did not arrive, so hence my fax which is the fourth of TCI.2 where - if I could read into transcript:

I refer to recent discussions relating to the above award and note that it's the AWU's intention to make application for a new award to replace the existing Horticulturists Award. We note the matter listed for hearing on Thursday the 4th of June. Please forward the AWU negotiating draft as a matter of urgency.

If I could interpose there, commissioner. In terms of being able to realistically progress this matter, we would have expected from the AWU, as they had undertaken before, a draft well before this date, but it took our fax - this particular fax to seek that document. And if I can continue to read further:

COMMISSIONER WATLING: I'd just like to make the point that this matter was listed today at the request of the parties and the agreement of the parties.

MR FITZGERALD: That's correct, commissioner -

COMMISSIONER WATLING: Yes.

MR FITZGERALD: - but in terms of initiating the document, the AWU had undertaken to do that.

COMMISSIONER WATLING: Yes, but -

MR FITZGERALD: Now we hadn't received it and we sought it.

COMMISSIONER WATLING: But you had yours prepared since 1989.

MR FITZGERALD: Well the circumstances have changed. I understand the original document was relating to Plant



Nurseries and Landscape Gardeners. Now, that has - those circumstances have changed. We have now seen a completely - in our view a completely new document, particularly in respect of the structure which proposes a 6-level structure, one which we have had no discussion on and we received that on Thursday the 28th, four working days before this hearing. Now that's the time frame. What occurred previously, commissioner, with respect, I have to say is not relevant to these proceedings today -

COMMISSIONER WATLING: Well -

MR FITZGERALD: - because we now have a completely new document which we've had four days in which to get some instructions on.

COMMISSIONER WATLING: Let's forget the document. Award restructuring is a two-way thing, right?

MR FITZGERALD: I understand that, commissioner.

COMMISSIONER WATLING: Righto. Now given that you understand that it's a two-way thing, your industry would have mapped out, surely, where it was going to head under award restructuring, so you would have already had a plan of where you wanted to head, and therefore it doesn't take from the 28th of May to the 4th of June to establish a plan because this -

MR FITZGERALD: Well -

COMMISSIONER WATLING: - has been going on since 1989 - the plan for restructuring.

MR FITZGERALD: I understand that, commissioner. I haven't been personally involved, nor has Mr Cooper from the AWU in all those - and you have been the only one who's had the continuous involvement, I concede that. But in terms of getting a document we need to be able to get some instructions on it, and I - if I could progress further, commissioner, just to give you the time frame, and it's this document which we're getting instructions on, not some earlier document or on some other earlier award restructuring plan, it's this particular document, and I just set out why we needed that time - that document, and if I could continue on that fax of the 26th of May:

To be able to progress this matter on the 4th of June we would need to have the draft so:

1. We can have initial discussions.
2. A document can be put to our members.

3. Instructions can be sought.
4. Further negotiations can take.
5. Preparation of the final consent document.

Now that's the process which is - I interpose again - which went on with other awards which were dealt with Mr Cooper, the Shellfish in particular, where a number of drafts were presented. Now we have a new draft who - we thought we were going to be in the process where we can get instructions and negotiate that draft with Mr Cooper, but not in four working days. And I continue:

I'm of the view that the timetable is unrealistic, however, we are prepared to expedite this matter so long as we receive a draft document in the next day.

Now following that, commissioner, the document was in fact delivered to us on the 28th which was Thursday the 28th. On that day - and if I can just refer you to the next -

COMMISSIONER WATLING: So we're arguing about a day.

MR FITZGERALD: That - it's not - no, that's not the basis of it, but it is - I just put it for the - and Mr Cooper can indicate one way or another, I can indicate that I received that draft on the 28th, and I'm just showing what I did in terms of responding to it.

COMMISSIONER WATLING: Yes. But it says as long as you got it in the next day. Even if you got it a day after, right, so we're arguing about a day.

MR FITZGERALD: No, I said, we're prepared to expedite it, but I'm just saying that we did receive it - for the purposes of the correctness of the record, we received it on the 28th.

COMMISSIONER WATLING: Right. So the difference is a day. You were prepared to sort of expedite it if you got it the next day but you got it day after so something - so we're arguing about a day.

MR FITZGERALD: Well I don't believe so, commissioner. I indicated -

COMMISSIONER WATLING: What's the point you're trying to make then about the day?

MR FITZGERALD: Well the point is that it just indicates we've only got four working days. Mr Cooper indicated it was the 27th, but if you could just turn over to the next page, please, on the 28th which is a circular to our members who got that. Our's dated the 28th and I quote:

I refer to previous circulars in respect to this proposed award. To date all that has happened is the award title and scope has been created.

(b) The Australian Workers Union, Tasmanian Branch, has been granted an interest in the award. The AWU have now put together a negotiating draft, a copy of which is enclosed.

- that copy is in fact the copy which has been presented - I'm not sure whether it has been presented, but certainly is one which was presented by the AWU to us on that day -

The document was only received today. The matter comes on for hearing in the Tasmanian Industrial Commission on Thursday the 4th of June. I've convened a meeting at short notice at the TCI offices at 30 Burnett Street, North Hobart, parking available, Wednesday the 3rd of June at 2.00 pm to formulate an employer response. I apologise for the inconvenience associated with the notice but trust your organisation can send a representative. Please phone me.

- et cetera. Now that meeting occurred yesterday. Following that meeting was the fax which appears to be offensive, commissioner, which I indicated our response to the document to Mr Cooper and I thought it was courtesy that -

COMMISSIONER WATLING: Well don't put words into my mouth. I didn't say it was offensive at all.

MR FITZGERALD: Well, you did indicate that you were staggered by it, commissioner.

COMMISSIONER WATLING: That's - is that offensive?

MR FITZGERALD: I would have read it that way, commissioner, I'd have to say.

COMMISSIONER WATLING: Is 'staggered' offensive, Mr Fitzgerald?

MR FITZGERALD: Well I would have thought it was indicating a reaction where you thought it was somewhat unfavourable.

COMMISSIONER WATLING: Well don't think about that.



MR FITZGERALD: Well -

COMMISSIONER WATLING: Is the word 'staggered' the same as the word 'offensive'?

MR FITZGERALD: It's not the same, but I would have thought, in the context of this document, commissioner, I thought that had - you saw it as some way unfavourable.

COMMISSIONER WATLING: Well I want to let you know I don't think it's 'offensive'. I want to let you know I was 'staggered'.

MR FITZGERALD: Yes.

COMMISSIONER WATLING: Right.

MR FITZGERALD: Well they are your thoughts, commissioner, and -

COMMISSIONER WATLING: So I want you to make some differentiation between 'staggered' and the word 'offensive'.

MR FITZGERALD: Well -

COMMISSIONER WATLING: I don't see it offensive at all.

MR FITZGERALD: Oh, I'm - fine, I appreciate that, commissioner, -

COMMISSIONER WATLING: There's -

MR FITZGERALD: - but I won't pursue that point any further. But it was one - the reason why we put that fax to Mr Cooper and also we thought a courtesy to you, was just to advise you of our position. Now, as I indicated, I had a meeting with members yesterday and it was at very short notice. We went through the document clause by clause and the response is as it is in this fax and we got that fax to Mr Cooper as soon as possible after the conclusion of that meeting. And we thought again, it was only courtesy that we should copy you in on that fax. That's the only reason why we did that.

COMMISSIONER WATLING: Why did you wait until the 28th of May to send them a letter to advise them that the matter was coming on?

MR FITZGERALD: We have had an earlier - we have indicated earlier - there was an earlier circular which we had indicated that it was on the 4th, but we're talking about this document and that's why we put it in that format, commissioner.

COMMISSIONER WATLING: Surely you would have informed your members that the hearing was coming on on the 4th and there was a need to have a meeting -

MR FITZGERALD: Yes.

COMMISSIONER WATLING: - and -

MR FITZGERALD: But in respect to what, commissioner? We had no document.

COMMISSIONER WATLING: Well; (a) to develop a policy view -

MR FITZGERALD: Yes.

COMMISSIONER WATLING: - if and when you got the document, that would have been the first point.

MR FITZGERALD: Yes.

COMMISSIONER WATLING: So you had a clear understanding if and when you got the document because you knew you were going to get it at short notice because we agreed to have the hearing - this hearing - within a fortnight of the last hearing, so you knew it was going to be short notice.

MR FITZGERALD: Yes, yes.

COMMISSIONER WATLING: And you agreed that it be short notice.

MR FITZGERALD: Yes, but we thought we'd have a document very soon afterwards, commissioner, not a matter of a couple of days beforehand.

COMMISSIONER WATLING: So, did you convene a meeting prior to -

MR FITZGERALD: No, I hadn't, commissioner.

COMMISSIONER WATLING: So you left it to the last hour to convene a meeting.

MR FITZGERALD: Well, I didn't see much point if we didn't have a document from the AWU, and I convened a meeting as soon as we had a document from the AWU.

COMMISSIONER WATLING: Well if you developed a policy you would have - as soon as you got the AWU document you could have had discussions with them straightaway.

MR FITZGERALD: Well we could have, commissioner, but given the state of the document and that it did differ from previous documents, particularly in respect to the classification

structure, there was need to seek fresh instructions, so I didn't see much point in talking about a document which hadn't yet arrived.

COMMISSIONER WATLING: So you convened a meeting to develop a view of your own?

MR FITZGERALD: No, I didn't, commissioner. I developed - I organised a meeting so I could seek some instructions.

COMMISSIONER WATLING: Well, award restructuring is a two-way thing and therefore you should have had some view from the employer's perspective of how you wanted the industry restructured.

MR FITZGERALD: Well that is so, but I cannot see how we could respond - have a view in respect of this document which at that time we had no - we hadn't actually received.

COMMISSIONER WATLING: No, well, I'm not disagreeing with that, but nevertheless, when you - if you had a view and if you developed a view with the industry from 1989 until now on how the award - how the industry should be restructured -

MR FITZGERALD: Yes.

COMMISSIONER WATLING: - as soon as you got the document you would have been in a position to meet with Mr Cooper immediately.

MR FITZGERALD: Well I don't agree, commissioner, because I think the document recommends - represents quite a fundamental change. It's a new concept which requires further discussion.

COMMISSIONER WATLING: So it's contrary to the employer's view that was developed earlier in relation to restructuring?

MR FITZGERALD: I understand so, particularly in respect to the scope of the award in terms of including things like retailing operations.

COMMISSIONER WATLING: The scope of the award was a consent matter -

MR FITZGERALD: Yes, I understand so -

COMMISSIONER WATLING: - developed -

MR FITZGERALD: - but in terms of classifications, I understand there was some - I'd - I'm understanding that they would include retailing functions as well within the classification and I understand, commissioner, that there would be a structure based on ones which we've had some understanding on in other awards. Now this represents quite -



a 6-level structure, one - particularly one level above tradesman - we see as totally new and we need some instructions on.

Now in the time frame sought, it was just impossible, but I'm just - the reason why I present these exhibits is to show you that we weren't sitting on our hands trying to deliberately delay it. We were seeking, firstly, the document which the AWU said they were going to give to us which we thought was going to be soon after the hearing. Now whatever reason Mr Cooper had of - with the delay, whether it was his - whether he was personally typing it or not is really not a concern of mine.

COMMISSIONER WATLING: Well where was your document that - sent to Mr Cooper?

MR FITZGERALD: Well I didn't send him a document because the understanding, left at the hearing the last time, was that Mr Cooper would send one to me.

COMMISSIONER WATLING: Yes, but you've developed a policy for industry -

MR FITZGERALD: We have, but -

COMMISSIONER WATLING: - so you sent it to him then?

MR FITZGERALD: No, the -

COMMISSIONER WATLING: Award restructuring's two-way.

MR FITZGERALD: It's a two-way thing, but the understanding at the hearing, commissioner, was that the AWU would send one to us. That was the understanding. Not us sending one to the AWU. I acknowledge it's a two-way thing, but we didn't get that document until the 28th.

Now given the extent of the document, it's only fair and reasonable that we have an opportunity - an adequate opportunity - and I say that in terms of the time frame, that's not an adequate opportunity to seek those instructions. Now there is some suggestion, commissioner, that we have sat on our hands.

COMMISSIONER WATLING: You've sought them now, so we can deal with the matter.

MR FITZGERALD: I don't believe so, commissioner. I think the most expeditious way is as we've dealt with other awards, is for us now to be able to sit down with members of the industry, with Mr Cooper, to sort out what we can agree on - and there obviously matters which are going to be agreed on

and other matters which may need your assistance. That's the process which I think should occur.

COMMISSIONER WATLING: Well you know why the hearing was brought on today -

MR FITZGERALD: I do, yes.

COMMISSIONER WATLING: - and I have to indicate to you that I'm very reluctant to adjourn it.

MR FITZGERALD: Well, that's fine, commissioner, I understand that, but I know that - I know why the hearing was brought on today but it was us seeking that document from the AWU which never came until very late and that was the understanding - Mr Cooper can respond to that whatever he likes, but the understanding was that they would supply a document. It came to us on the 28th, four working days before the hearing. We sought a meeting as soon as we could - at the earliest opportunity, despite the best intentions of the parties - and I knew that it was going to come on today, that's why we, in fact, sought it - the earlier fax.

Now I think in the overall scheme of things, that's totally unreasonable, commissioner, and it would be unreasonable for the commission to proceed today, in my respectful submission. It's simply far too short. The most expeditious way - and as I indicated - I think our - the copy of correspondence which you have indicates our preparedness to proceed in good faith, but I believe the most expeditious way of proceeding would be to allow some further discussions with the parties, with members of the industry, because it affects them vitally - like we have in other awards - agree on matters which we can agree on and then separate matters which may need to come to you for arbitration. We would hope not. In other award areas we haven't required that.

COMMISSIONER WATLING: So you want it adjourned to mid September?

MR FITZGERALD: Well, I understand that's your - I don't particularly want it adjourned to mid September. I indicated to Mr Cooper -

COMMISSIONER WATLING: Well that's the effect of it, isn't it?

MR FITZGERALD: Well I understand that Mr Cooper, commissioner, that - I was prepared to meet the week after next to see whether we could expedite those discussions.

COMMISSIONER WATLING: Yes. So, what - so, it gets fixed up in the middle of September?



MR FITZGERALD: Well if that's your - if that's -

COMMISSIONER WATLING: Well that's why we're on today.

MR FITZGERALD: I understand that, commissioner. I concede that perfectly.

COMMISSIONER WATLING: By agreement.

MR FITZGERALD: Yes, I do, but in our view, in terms of acting in a reasonable manner in getting the document to us, it would have been reasonable that we got that document soon after the last hearing, we could then proceed with some further discussions, but to get it four days before the actual hearing is quite unrealistic in my view, commissioner. We could have been in a position to consent to the matter today if there'd been some reasonable time frame, but that hasn't occurred. If it pleases.

COMMISSIONER WATLING: Well at this stage I'm going to adjourn into conference to go through the document of AWU to see - to examine the areas of agreement and disagreement, and I'll make up my mind at the end of that whether or not we proceed. We'll adjourn into conference.

ADJOURNED INTO CONFERENCE

MR FITZGERALD: I just apologise for my lateness. Unfortunately my car didn't start and I hope the message got to you.

COMMISSIONER WATLING: Yes, I got the call, thanks. Just - we're on the record, yes. Let the record show that I heard submissions this morning from the union side and the employer side in relation to the application before me to finalise the Plant Nurseries Award.

And the record should also show that the parties nominated the day in which we should come back together and the commission has put that day aside.

I've also heard, during the course of off record discussions some of the reasons why matters couldn't be finalised or can't be finalised today. I've also examined a draft award that was presented by the AWU and we've been through the draft award to see what clauses could be or are the subject of some debate and some discussion.

I note that the employers have indicated that they have some queries with some clauses. They also do not go along with some other clauses. They are not happy with the structure and wage rates contained in the draft document presented by the



AWU. I note also, during the course of those private discussions, that they had no alternatives to put forward either and it seems to me that we cannot progress this matter very far today because of the lack of - as the employer's would put it - time to consider it and also because of the lack of response, I suppose, from the employers to the document even during the course of private discussion: 'we have some difficulty in dealing with this issue'.

Now I have, during the course of the luncheon period, considered the matters before and the request by the employers in particular for an adjournment and the request to - for further time to consider the document presented by the AWU.

Now during the luncheon break, I've had cause to rearrange my calendar and I'm going to reconvene this matter on Thursday the 25th of June at 9.30 at which time I would expect the parties to present their response to this document that's been presented by the AWU and if there's no agreement on the issues, then I will proceed to arbitrate the outstanding issues.

Now in saying that, I indicate that it would be open to the parties or one of the parties to alter or put up an alternative position in relation to the document presented by the AWU, but in any case, I think the document presented by the AWU is a good starting point for discussions. I'm going to order the parties into conference to consider this - or consider the clauses that should be contained in the new Plant Nurseries Award so as the matter may be finalised on Thursday the 25th of June. One would hope that we could reach an agreement on a number of matters, if not all, but the outstanding matters I'll be prepared to hear argument on and arbitrate the outstanding issues on that particular day.

So to that extent, the adjournment is granted to the 31st - to the 25th, sorry, of June. This matter now stands adjourned until that day.

HEARING ADJOURNED