

**IN THE TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

- |                    |  |
|--------------------|--|
| T No. 2399 of 1990 | <b>IN THE MATTER OF</b> an application by the Tasmanian Public Service Association to vary nominated public sector awards  |
| T No. 2511 of 1990 | <b>IN THE MATTER OF</b> an application by the Federated Engine Drivers' and Firemen's Association of Australasia, Tasmanian Branch to vary the Boiler Attendants Award           |
| T No. 2473 of 1990 | <b>IN THE MATTER OF</b> an application by the Tasmanian Public Service Association to vary the Prison Officers Award   |
| T No. 2587 of 1990 | <b>IN THE MATTER OF</b> an application by the Tasmanian Prison Officers' Association to vary the Prison Officers Award   |
| T No. 2504 of 1990 | <b>IN THE MATTER OF</b> an application by the Association of Professional Engineers, Australia, Tasmanian Branch to vary the North West Regional Water Authority Employees Award |
| T No. 2506 of 1990 | <b>IN THE MATTER OF</b> an application by the Association of Professional Engineers, Australia, Tasmanian Branch to vary the Professional Engineers Award                        |
| T No. 2508 of 1990 | <b>IN THE MATTER OF</b> an application by the Hospital Employees Federation of Australia, Tasmania Branch to vary nominated public sector awards                                 |

T No. 2516 of 1990

**IN THE MATTER OF** an application by  
the Police Association of Tasmania  
to vary the Police Award

T No. 2586 of 1990

**IN THE MATTER OF** an application  
by the Ambulance Employees'  
Association of Tasmania to vary  
the Tasmanian Ambulance Service  
Award

T No. 2594 of 1990

**IN THE MATTER OF** an application by  
the United Firefighters Union,  
Tasmanian Branch to vary the Fire  
Brigades Award

T No. 2605 of 1990

**IN THE MATTER OF** an application by  
the Federated Miscellaneous  
Workers Union of Australia,  
Tasmanian Branch to vary the  
Miscellaneous Workers (Public  
Sector) Award

re structural efficiency  
principle

**FULL BENCH**

PRESIDENT  
COMMISSIONER GOZZI  
COMMISSIONER WATLING

Hobart 21 May, 1991  
Continued from 20/2/91

**TRANSCRIPT OF PROCEEDINGS**

unedited

PRESIDENT: Can I have any changes in appearances please or shall we go through a fresh call?

MR K. O'BRIEN: Well I'm not sure -

PRESIDENT: Changes we'll take.

MR K. O'BRIEN: Well I'm not sure if I was here on the last occasion but I'm appearing today on behalf of the Trades and Labor Council as well as the Federated Miscellaneous Workers' Union if it please the Commission.

PRESIDENT: Yes, thank you, Mr O'Brien.

MR D. HOLDEN: Like Mr O'Brien, I'm not sure if I was here on the last occasion. I appear for the Tasmanian Technical Colleges Staff Society - HOLDEN D.

PRESIDENT: Thank you, Mr Holden.

MR M. CLIFFORD: If the Commission pleases, MARTIN CLIFFORD appearing on behalf of the Building Workers', the Operative Plasterers', the Federated Engine Drivers' and the Builders Labourers'.

PRESIDENT: Thank you, Mr Clifford.

MR M. KADZIOLKA: If the Commission pleases, MARK KADZIOLKA appearing on behalf of the Police Association of Tasmania.

PRESIDENT: Yes, thank you, Mr Kadziolka.

MR A.J. GRUBB: If the Commission pleases, GRUBB, A.J., on behalf of the Amalgamated Society of Carpenters and Joiners, Tasmanian branch.

PRESIDENT: Thanks, Mr Grubb.

MR R.S. RANDALL: If the Commission pleases, RANDALL, RICKY STEVEN, I appear on behalf of the Plumbers & Gasfitters Employees' Union.

PRESIDENT: Thank you, Mr Randall.

MR G. VINES: If the Commission pleases, GREG VINES appearing for the Tasmanian Public Service Association.

PRESIDENT: Yes, thank you, Mr Vines.

MR D. PYRKE: If the Commission pleases, no change in the appearance for the Association of Professional Engineers.

PRESIDENT: Thank you.



**MR R. WARWICK:** It appears that it's a fresh list, sir. RICHARD WARWICK for the Hospital Employees' Federation.

**PRESIDENT:** Thank you, Mr Warwick.

**COMMISSIONER WATLING:** Let off the hook.

**MR P.L. NIELSEN:** If the Commission pleases, NEILSEN, P.L., appearing on behalf of the Ambulance Employees' Association.

**PRESIDENT:** Mr Nielsen.

**MR C. HUGHES:** If the Commission pleases, CRAIG HUGHES for the Prison Officers Association.

**PRESIDENT:** Well done, Mr Hughes. Did that come through on your recorder? Thank you. Got it. Well this -

**MR HOLDEN:** What an array of talent.

**PRESIDENT:** - this matter commences - Mr Hanlon -

**MR D. HANLON:** Mr President, I hadn't noticed it had got to me - HANLON D.P. with **MR T. PEARCE**, for the Minister administering the State Service.

**PRESIDENT:** Yes, thank you, Mr Hanlon. Well this hearing is fundamentally a hearing to program events to follow. Are there any preliminary submissions?

**MR O'BRIEN:** Well we need something on the record in relation to your - your directions, Mr President members of the Commission. One of the directions related to agency agenda and we were to supply both the government with a response to that document and you with a copy by the 17th of May. We've not done so. We have an item of correspondence which was forwarded to the government on that day and it should have been forwarded to the Commission.

**PRESIDENT:** Yes, I believe I received a fax of that.

**MR O'BRIEN:** You have got a copy of it? I was proposing to tender it to make sure.

**PRESIDENT:** But I have - I have been dilatory in that I haven't handed it to my colleagues on the bench. Yes, thanks, Mr O'Brien. We won't mark this as an exhibit.

**MR O'BRIEN:** The first paragraph of the letter relates to that matter and it advised the government that we were unable to respond to the agency specific agenda item as listed in this documentation as there was no detail. Further we noted that the government have not complied with its undertaking of the 13th of May to provide detail on the agency specific items



in the Department of Health and Department of Education and the Arts.

The second paragraph of the matter deals with - of the letter deals with another matter which may arise later in today's hearing but otherwise we remain prepared to, on the supply of that information, respond to agenda items that we properly understand.

.... with the very, very limited detail in the Government's document on Agency Agenda that we're being asked to respond to a subject without understanding what the agenda really was. If the agenda was, for example - I just take the Commission briefly to, for example, the words, 'Application of more than one Agency' on - it's not a numbered page in the government's documentation - 'Public Holidays' is a phrase. We were required to respond on the number, what days they are observed upon, whether they should be standardised. There is a whole range of issues there which we thought we would have been told more information on before we gave a considered response, and perhaps that should have been done earlier in the process. Nevertheless, that is our position today.

In relation to the matter of programming, I guess it is our view that matters have proceeded to the point where the various issues ought to be listed for hearing. We have some proposals in relation to how that ought to take place. If Mr Hanlon has a preliminary matter he wishes to raise, and I am not sure that I caught out of my eye a movement on that point - if you raise it now?

PRESIDENT: You got the nod, so you are first up, Mr O'Brien.

MR O'BRIEN: Thank you.

PRESIDENT: Mr Hanlon?

MR HANLON: Yes, Mr President, there is a threshold matter and that goes to the TTLC's submission to us which embraces in Schedule A a list of organisations that it says it consulted and participated in the process of their submission, one of which happens to be the Police Association of Tasmania, and we would like to know what their status is on two grounds: as an organisation itself, and as an issue for the Tasmanian Trades and Labor Council in terms of its extra claim it has lodged against the government, and the imposition of bans.

PRESIDENT: Yes. Are there any other concerns about other matters; extraneous matters to this hearing?

MR HANLON: Well, that's the only issue that we have as a threshold one, Mr President, at this point.

PRESIDENT: Yes, thank you. Yes, Mr Kadziolka, would you like to endeavour to respond to the point that Mr Hanlon has raised?

MR KADZIOLKA: Thank you, Mr President. To date the association has met with the government representatives on two occasions, and there has not been any progress in negotiations. Even though this is the case, the process of seeking a solution has not ceased. Tomorrow the Executive meet with the Premier at 9.00 a.m.

As a result of this meeting we believe the situation is still fluid, and that we cannot say where we are at at this stage, but the association foreshadows the possibility of requesting private conferences before the Commission at a later date.

PRESIDENT: Are you suggesting then that the Police Association matter ought to be deferred?

MR KADZIOLKA: I think that would be appropriate, Mr President, at this point in time.

COMMISSIONER GOZZI: Mr Kadziolka, given that there is no application into the Commission, what would be the purpose of deferring it?

MR KADZIOLKA: Really the situation depends on our meeting with the Premier tomorrow. We're putting a proposition - we intend to put a proposition to government, and depending on the response our further processing of the special case will depend on the response of the government tomorrow. That's all I can say at this point in time.

COMMISSIONER GOZZI: So, when you foreshadow conferences with the Commission it's not against any claim, as such? I mean, the circumstances are, aren't they, that you have - the Police Association have got special case status - but there is no application?

MR KADZIOLKA: That's correct. There is no application at this point in time because we are still seeking to negotiate issues, when following tomorrow, we believe our position will be clearer.

PRESIDENT: Mr Hanlon?

MR HANLON: There are two parts to the question, Mr President, and that was what their role was and what the TTLC's role is in speaking for either its affiliates. That's the Police Association's comment.

PRESIDENT: Do you want to respond to that, Mr O'Brien?



MR O'BRIEN: Well, I don't know what we can respond to. The position of the TTLC is that it is coordinating claims, not making them. And in relation to the position that I put, it's that which has been adopted by the collective decision of organisations at meetings called.

In relation to the Police Association matter, I think they've indicated agreement with a proposition that that aspect of this matter if it is before the Commission ought not be proceeded with in terms of any programming today. We would concur with that, and we would be seeking to progress the other matters which are properly before this Commission in the appropriate way.

PRESIDENT: Thank you. Mr Hanlon?

MR HANLON: I don't know whether it is quite as simple as that, Mr President, because the direction of the bench from April 30th was that we should meet and discuss with the TTLC and its affiliates the four streams and the custodial and emergency services group.

We met with the police. There has been no suggestion by the government that those discussions had ceased or had come to an end. There was just a simple matter, as one of my colleagues described it, a demand for money with menace. That either we paid the 5 per cent, supported their case, or other action would resolve.

Now, it is their choice that they seek not to meet with us. The TTLC supported their position, the ACTU supported their position, and we are here on the basis of no extra claims, 6 per cent paid in terms of good faith, and we're subject to duress.

It - the least we should have, it is not that they should be granted a deferment of their matter, it's that we should no longer have to meet the obligation of the bench to either confer with that group of people.

What the Bench acts from then on we'll be guided by, but it isn't for the Police Association to be granted a deferment for it to talk to the Premier. We are seeking that we do not have to comply with any requirement to confer with the Police Association under the instructions of the bench of the 22nd February, and -

PRESIDENT: You're not suggesting that the Premier not meet with the association?

MR HANLON: I certainly don't direct the Premier as to who he -

PRESIDENT: No.



MR HANLON: - is going to meet with or not. That's not something that I am aware of, other than I have read in the paper.

PRESIDENT: No. So, you're simply seeking the protection of this bench from being required to continue negotiations until such time as bans are lifted?

MR HANLON: That's right, Mr President.

PRESIDENT: Yes. Well, Mr Hanlon, your request as I summarised just a moment ago has the approval of the bench. And you should take that to your members, Mr Kadziolka.

MR KADZIOLKA: Yes, I will, Mr President.

PRESIDENT: I take it it means that you will have to work very hard to ensure that negotiations continue.

MR KADZIOLKA: Thank you, Mr President.

COMMISSIONER GOZZI: Mr Kadziolka, if I could just add to that. I certainly see it the same way. I mean, you have come to the Commission through the Anomalies Conference proceedings where the Police Association and with the support of other core members were granted special case status. Now - and also the association has been part of the proceedings which has seen an across-the-board 6 per cent flow into the award - the second instalment has been granted as well.

It seems to me that the association has a difficulty walking away from its obligations under the system, and if it wishes to pursue the claims in the manner it is doing currently, then I as one member of the bench will take a fairly dim view of that.

I mean, even within the system you're without it. And it seems to me that you started off within the system, you got the green light within the system, but like some other organisations in other proceedings, to this day we, as a Commission, haven't seen the application, what it is that the Commission - what the association is seeking.

Now as a minimum I would urge you to convey to the association that they should put in an application specifying what it is that they want and have that matter sought to be dealt with in accordance with the special case status which the Police Association has, in fact, been granted. It seems to me that is the orderly process to be adopted.

MR KADZIOLKA: I'll take the comments of the Bench back to the organisation and - thank you.

PRESIDENT: Yes, thanks, Mr Kadziolka. Was that one - that was your threshold point?

MR HANLON: Yes, Mr President. And I should indicate that the position of the government is that where any bans are in place, then when matters concerning organisations are brought on then we will take the necessary action to seek the assistance of the bench in not having to proceed under duress.

PRESIDENT: Well, before we proceed further, I want, if I may, to ask Mr Vines to address the bench on the article which appears on the front page of the 'Mercury' and I heard it on television -

MR VINES: It's also on the front -

PRESIDENT: - and on radio -

MR VINES: It's also on the front page of today's edition of 'Service', Mr Commissioner - Mr President.

PRESIDENT: Yes, Mr Vines.

COMMISSIONER GOZZI: I like to wake up to something different than hearing you at 6.30 in the morning carrying on about -

MR VINES: That's what my wife says, sir.

COMMISSIONER GOZZI: You could have waited another day, at least.

PRESIDENT: You, I take it, have lodged, what may be termed, an extra claim on the government?

MR VINES: No, I don't think it would be termed as an extra claim, Mr Commissioner, it's the - Mr President, sorry, it's the normal course of events that we follow when it comes time for a state wage case or a national wage case or a general wages movement.

Indeed, in the past when we've come before this bench without first going to the employer we've been criticised for not going to the employer. On this occasion what we have done, as we have done in probably 90 per cent of occasions, is put our claim to our employer for negotiation and from what I understand that's the normal course that's followed. Be it for a general wages movement or a specific case where the claim is -

PRESIDENT: Even -

MR VINES: - put on the employer before an application is lodged with the commission.



PRESIDENT: Even though it's a retrospective claim?

MR VINES: It wasn't retrospective when we lodged it, sir. We lodged it on 15 May to be operative from the 16th.

PRESIDENT: And you're still seeking it to be retrospective now though because it's - we're beyond May 16.

MR VINES: Oh, yes, that's right. But it's -

PRESIDENT: And a national wage - the consideration of a national wage - of the national wage principles set down for 29, 30 and 31 May.

MR VINES: As they relate to the private sector, from what I understand.

PRESIDENT: The application is in relation to varying private sector awards, but the application seeks a review of the national wage principles or wage fixing principles.

MR VINES: Yes. But the application is only in relation to the private sector, Mr President. None of our awards are in the private sector, all of ours are public sector awards.

PRESIDENT: You don't believe that public sector awards would be covered by wage fixing principles and - or do you believe that we should have to set some wage fixing principles?

MR VINES: Oh, I don't have a view on that, Mr President. All my - the only view I have is that at the moment there is nothing before the Commission in relation to public sector awards, either from employee applicants or from employer applicants.

PRESIDENT: So we're still under the old principles?

MR VINES: Precisely. It would be my understanding.

PRESIDENT: Which have a no extra claims commitment in them.

MR VINES: Yes, they do. But that - but every time that we come with a state wage case or a general wages movement, the - you have to be able to put one in before it can be considered.

PRESIDENT: Are you lodging one?

MR VINES: Oh, we haven't determined that as yet, Mr President. We may well find that the government says to us: Look, there's no hope at all. The state's absolutely broke. So we'll say: Well, we won't pursue it. So I can't give a commitment that we will be lodging the application in this commission or that we'll be taking it any further with government. I would like to think that, yes, we get agreement



from government to our claim and then bring that to the commission on a consent basis.

Because, in our view it's an extremely responsible claim. It seeks to - as you will read when you get your copy of Service delivered - it seeks to specifically maintain a centralised wage fixing system. It seeks to continue the implementation of award restructuring and, in our view, is an extremely sensible and justified claim. So we hope that we will get agreement from government at a very early time and then we would look forward to bringing it to the commission for ratification.

COMMISSIONER GOZZI: I'd didn't go to Silvers Magic Circus, but this is a bit of magic on its own. I mean, we've got a current set of wage fixing principles in place -

MR VINES: Yes.

COMMISSIONER GOZZI: - which you acknowledge continue to operate.

MR VINES: Correct.

COMMISSIONER GOZZI: You've also indicated that you've made a claim on the employer - on the government.

MR VINES: Yes. Last -

COMMISSIONER GOZZI: I'm not quite sure -

MR VINES: Well -

COMMISSIONER GOZZI: - how to proceed from there because if you can see that we operate within the current wage fixing principles which encompasses a no extra claims provision, and on the other hand you say you have made a claim -

MR VINES: Well could I ask the -

COMMISSIONER GOZZI: - I'm not sure how that works.

MR VINES: Well, how do we ever make a state wage case claim?

COMMISSIONER GOZZI: Well the difference, Mr Vines, is that this is not - as I understand it, and you've replied .... the present, you don't intend to make an application for that -

MR VINES: No, that's not what I said, sir.

COMMISSIONER GOZZI: - for the application of - an application for review of the wage fixing principles along the lines of the claim that has been publicised. That's what I understood you to say.

MR VINES: No, we don't have a claim in for a review of the wage fixing principles. We have a claim in for -

COMMISSIONER GOZZI: But that's what you're talking about.

MR VINES: - a range of wage - a range of salary increases, but that is exactly the same as what we do every other time there is a national wage case. If the commission wants to look back at its files, the -

COMMISSIONER GOZZI: But you're not linking this to a national wage case or a state wage case.

MR VINES: But we never do. We always, on every occasion that we've put in a national wage - state wage case flow on, we have always made the application along the lines of what the original claim was - I think with the exception of the last time - because we have always come along here, as the commission is well aware, trying to convince this commission not to adopt 100 per cent what the Federal Commission has done.

COMMISSIONER GOZZI: All right, I can understand that. If there was an application -

MR VINES: And we've always done that whilst there's been a no extra claims clause because - or else the system would come to a halt.

COMMISSIONER GOZZI: I acknowledge, Mr Vines, the right of any organisation to make an application to review the wage fixing principles in terms that it seeks fit, but not only have you not got an application to do that, you say that you don't - you probably won't be making one.

MR VINES: No, I didn't say that, Mr Commissioner.

COMMISSIONER GOZZI: Well, when are you going to make an application to review the wage fixing principles -

MR VINES: What -

COMMISSIONER GOZZI: - in the context of the claim that is currently before the employer?

MR VINES: What I have indicated is that we have lodged a claim with the employer for a salary increase and for some other things; we will be sitting down to negotiate with the employer, hopefully over the next couple of days so we can get an early agreement on it, and once we have got agreement we then, I would imagine, endeavour to bring it before the commission for ratification.



COMMISSIONER GOZZI: Why -

MR VINES: In the event that we can't get agreement and there is no point discussing it, we will have to review our position as to whether we come here for arbitration or whether we drop off the claim.

COMMISSIONER GOZZI: Why shouldn't this commission view that as a breach of the no extra claims commitment.

MR VINES: Ah, well I'm quite sure that it - it could if it wanted to, but I would come back to it and say: how then do we kick-start a state wage case?

COMMISSIONER GOZZI: Same way as you normally do it.

MR VINES: That's exactly right, by serving a log of claims on the employer. You have to make a claim to get here -

COMMISSIONER GOZZI: Well, look -

MR VINES: - so the no extra claims clause is -

COMMISSIONER GOZZI: - it's normally done, Mr Vines, as you well know, that an application is made by the private - on behalf of the private and public sector awards to flow on the national wage case. In all the time that this commission has been operating, that's how state wage cases commenced.

MR VINES: Yes. But, sir -

COMMISSIONER GOZZI: Now, I'm not saying it has to do that all the time, but the fact of the matter is that at this stage we have a wage fixing system and that wage fixing system contemplates - till the rules are changed - no extra claims, and we are progressing matters before the bench under those wage fixing principles.

MR VINES: Well, I would dispute you in relation to the facts of the matter, Mr Commissioner, because, in fact, on each other occasion we have lodged a claim with the government before we have come to the commission. We do it as a normal course of events because in the past we have come here and been criticised because the first thing a government knows of a claim is when we lodge it with you. The four streams is a perfect example. That went to the government long before it came here.

COMMISSIONER GOZZI: Four streams was contemplated, Mr Vines, under the structural efficiency -

MR VINES: But - well, all right, I use that as an example. The other state wage cases are the same.



COMMISSIONER GOZZI: - under the structural efficiency principle. I mean, I don't see -

MR VINES: I mean, it's - how -

COMMISSIONER GOZZI: I just have difficulty understanding how these latest developments fit with the package that's before us.

MR VINES: They don't fit with the package that's before us, not at all - not at all. What it is seeking to do - back last year, the ACTU lodged a claim together with the Federal Government, in accordance with Accord Mark VI. All right, the reason they lodged it with the Federal Government was - in the first instance, it was lodged on the Federal Government as an employer and discussions took place and all the rest of it. We're just doing exactly the same.

And then once it progresses, we determine whether it's something that is worth bringing to the commission because there's no point in bringing it here if we're not going to win it. If the government's totally opposed to it, we may as well back off and try something different. If, however, we can reach agreement or a substantial amount of agreement, or alternatively we believe it is worth bringing to arbitration, we will. But there is nothing that says, and indeed it has never been the practice, that every claim we prepare we bring it to the commission before we take it to the employer. I don't believe that's the role of the commission. The commission is there to consider those applications once the parties have at least had initial discussion.

COMMISSIONER GOZZI: How is that application different - or that claim different to what the Police Association is pursuing?

MR VINES: I don't know - I don't know what the - in detail what the Police Association claim is, but I understand their application is in relation to a special case process, but I mean I'm not qualified to comment on the Police Association claim.

PRESIDENT: Well - yes, thank you for -

MR VINES: Thank you, sir.

PRESIDENT: - Mr Vines. This - as I've said earlier this hearing is basically to endeavour to proceed with establishing a mechanism for dealing with the host of public sector matters that have been held over for some time. I'm sure the questions that have come from Commissioner Gozzi and myself will be raised again at other hearings. We'll put you on notice - all the parties on notice that those questions are

likely to come forward when we've - when we get into the individual matters. Mr O'Brien?

MR O'BRIEN: Thank you, Mr President. As I indicated, we believe that now is the time to program hearings of the various matters. Although a small amount of progress has been made it's not enough to indicate that there should be any delay in our view in proceeding to arbitrate in these various matters before the commission.

In relation to the procedure for achieving the aims of the Act in terms of just and equitable proceedings and bearing in mind the - the substance of the matters before the commission and the complexity of the matters and the time that the matters will take, it's our view that pursuant to section 21(n) of the Act - 21(2)(n) of the Act that the commission ought to use its powers and delegate to members of the commission parts of the application for hearing and report to the full bench as a means of expediting proceedings.

We believe that proceedings will be necessarily lengthy and it would, in the context of the size of the commission, be unjust not only to the parties to this matter but to other organisations, for example, in the private sector seeking hearings if this bench, as currently constituted, were tied up for the time that each of the matters would take to be concluded.

I am uncertain as to whether it would be appropriate to - to involve other members of the commission in that reporting process or whether that would be allowable in the circumstances and would leave that matter to the commission. Section 21(2)(n) is a fairly broad provision within the Act giving the commission wide discretion as to how matters are heard, but we believe that having regard to the obvious complexity of the matters that the matters in totality, perhaps stream by stream, ought to be divided and dealt with for full report on the career structures translation, salaries in relation to the occupation, the classification streams and in relation to those matters which need to be canvassed in relation to the conditions of service as separate entities.

In relation to conditions of service, the document I tendered earlier touched upon that question and it must be clear from that document that a certain process for dealing with conditions of service was the subject of - of discussion between the parties. I should advise that that process was not agreed. I can't really comment any further on that except to say that it must be obvious from the correspondence that there were certain points of difference between us which were not resolved.

In relation to the timing of hearings, I think it's fair to say that this matter has been awaiting resolution since last



year or - August last year and we would be anxious for matters to be proceeded with as speedily as possible and I can indicate, knowing the commission has many matters before it, that we understand that tomorrow may not be available but as soon thereafter as possible would be appreciated. It the Commission pleases.

PRESIDENT: Thanks, Mr O'Brien.

COMMISSIONER GOZZI: Mr O'Brien, just one thought that crosses my mind. I mean, I think we would all like to think that we are realists, and let's just say that we program further down the track with these hearings - and I have heard what Mr Vines had to say - but, quite clearly, the bench dealing with the application from the TCI in respect of reviewing the principles will determine whatever will be determined there. But let's just for one moment speculate and say that at the end of the day the likelihood of having separate guidelines, wage fixing guidelines, for the private and public sector may not be the outcome, it may be that the package continues.

Now, quite clearly, the way I see it - and I have great respect for what's been said to me - at the moment the wage fixing principles and the awards in question provide for no extra claims. Now, if we go merrily along in this exercise, aren't we going to run into this very problem at some stage or another?

I mean, in my view we have run into it today, quite honestly, and I would like to know what the view of the TTLC is in respect of the application - not the application but the claim by the association and the implications as far as the future is concerned, because it seems to me we have started a very huge exercise which has the potential of streamlining even further the public sector and bringing a lot of benefits, but those benefits accrue under the current package.

Now, if the ball game changes and impediments are put in place, ie. the Police Association and, in my view, the claim by the TPSA, then it has the potential to derail the exercises right across the board. Now, that's the way I see the reality, and we can speak around that and we can shadow around that, but that's the bottom line the way I see it. Now, people need to be aware of where they are heading and what they are doing.

MR O'BRIEN: Well, I think that if I can -

COMMISSIONER GOZZI: And this commission has a role in all of this.

MR O'BRIEN: Sure. I think if I can respond to that point generally. The position that the trade union movement adopted



when the current principles were accepted was that the no extra claims commitment was ....., bearing in mind that there would be a process by which after a certain date claims would need to be lodged with a view to kick-starting another set of principles somewhere along the line.

Now, we all know that that process commenced nationally and has been, one might optimistically say, temporarily derailed. But, nevertheless, the process is equally capable of pursuit in that fashion here as it was nationally. Now, I think that's what Mr Vines was attempting to put to you. So, it is a Catch 22 situation for organisations on our side of the fence in terms of pursuing that.

In relation to the question of lodging claims, and whether the decision which has to be taken about lodging claims needs necessarily be taken in terms of proceeding to seek a variation of the principles and to formalise the claims by application to the commission at this stage, is a matter, I guess, that warrants consideration, but I think the Commission would be aware that the Trades and Labor Council at this stage resolved not to lodge such an application.

So, the first point is, that when we gave the no extra claims commitment it was qualified to the extent that we were saying that that commitment which we gave was one which had a limited life. However, in relation to these proceedings and the continuation of them, it is fair to say that they are proceedings which encompass a wide range of issues and important considerations for the restructure of the public sector in this state.

The trade union movement does not walk away from its commitment given to proceed down that path. We've been anxious to proceed to negotiations. No doubt the government may perceive our objectives as different from their's, and in some respects they are, but nevertheless, there is a merging of the objectives of the parties in terms of new structures in the public sector, and to rationalise conditions of service, and we've given our commitment to proceeding down that path. And there are degrees of commitment, I guess, and agreements as to where the variations will take us, and we diverge on those points, so we are seeking the assistance of the commission.

Now, there is no need, in our view, to perhaps not throw the baby out with the bath water, but to throw the whole process out because there is a discussion of a claim. I can, perhaps, accept that, as the police have, the position about their claim is different, but at this stage if the parties are talking about something which has very wide ramifications and systematic ramifications, if I can put it that way, then that - because of the level those discussions are taking place at, ought not be seen as a fundamental flaw to the ability to

proceed in this matter. To take that view would be to say: Well, the process for reform is frustrated even though the parties don't wish it to be so. Now, I can understand what you are saying -

COMMISSIONER GOZZI: Yes. Look, I -

MR O'BRIEN: - Mr Commissioner, but I think that what we need to do is to understand that there is a commitment to proceed down this path. If other matters develop no doubt the commission will be calling the parties before it to discuss those matters.

But at this stage I would have to say that there are no reasons, in my view, why these matters ought not to proceed and I would hope that they can proceed to their appropriate conclusion. That's in the hands of the commission.

COMMISSIONER GOZZI: Mr O'Brien, I can agree with a lot of what you're saying and I think the bench, in particular, has endeavoured to facilitate the restructuring process. We have endeavoured to nudge it, kick it, steer it, bring it to finality. We've given directions and tried to bring things to a pinnacle so they can be either determined or resolved between the parties. So I think the commitment of this bench to try and get the restructuring process finalised can't be questioned.

One of the fundamental differences, I guess, that emerge is that, why wouldn't this bench adopt a similar approach to the Federal Commission where, fair enough, Accord Mark VI was the claim that was before it, to kick start the review of the new system, but those unions who pursued Accord Mark VI out in the field prior to the handing down of the decision were in fact precluded from the national wage case proceedings.

Now, the way I see it, that was a legitimate option, a legitimate thing for the Federal Commission to do, because they were operating under the current wage fixing principles and the no claims commitment. Now, specifically, it may not have only been for Accord Mark VI, but if you look at the meat industry as an example, where -

MR O'BRIEN: Sorry, the meat or the metal?

COMMISSIONER GOZZI: Well, meat is the one I'm referring to.

MR O'BRIEN: Sorry, I didn't quite hear you.

COMMISSIONER GOZZI: Yes. Yes. Where Accord Mark VI was pursued and there were - there was a lot of industrial action, well, that union was ultimately precluded from the national wage case. Now, there is a difference, in my opinion, between the legitimate placing of a claim to review the system which



might encompass Accord Mark VI as opposed to pursuing Accord Mark VI out in the field in the context of a current set of wage fixing principles which precludes that action.

And I have great difficulty in my mind separating out the legitimate tactic of making an application to review the system in light of Accord Mark VI as opposed to serving a claim when the current package is going. And that's a difficulty that I personally have. Because I don't think that's playing by the rules.

MR O'BRIEN: Well, I understand that comment. I would say that there were a great many discussions leading up to the last national wage case and there were a number of agreements reached before that case was substantially presented. I'm not able to say that I followed the meat workers matter in fine detail and I think that might have something to do with the way in which the campaign was proceeded with at that time. But that's a -

COMMISSIONER GOZZI: Yes, there are all sorts of elements.

MR O'BRIEN: - that's a judgment that the commission will have to make at the appropriate time, and I don't really want to pre-empt submissions that the TTLC might want to make on the 29th or thereafter in a state wage case.

I can only say that we - we take note of what you say, Mr Commissioner, and that may be something the TTLC will address in its submission or be asked to address, if it doesn't, by the commission in that time and I assume that Mr Bacon will be doing that so I can hand that responsibility back to him.

In relation to what happens for the future I think I've said enough about that. But if the commission decided to do something about principles and make a package available under principles it can also decide at that stage who it applies to and who it doesn't apply to and that's within the commission's power, as I understand it, so I guess I really wouldn't want to enter too much into that debate at this stage.

COMMISSIONER GOZZI: All right, thank you, Mr O'Brien.

PRESIDENT: Just in order - no, thank you - in order to endeavour to clear the air as it were on that issue, Mr Hanlon, do you have a comment from the government's perspective?

MR HANLON: I take it the issue we're talking about was the -

PRESIDENT: The question of whether or not the no claims commitment has been transgressed.

MR HANLON: Well, there have been many infringements of that during the - since September, a number of which have been resolved in that period - some more satisfactory than others. We regard the process of the current system as being under way and that the parties have an obligation to process this matter. The issue that we're really talking - and it goes partly to the submission of Mr O'Brien in terms of section 21(n) - but it really comes back to that submission and the matter we're talking about, one, the application by the Tasmanian Confederation of Industry and whether or not there may be some application from some other union or the TTLIC into the future.

I think section 35 is very clear that there are certain matters which must be dealt with by a full bench, certain matters which extend to more than five awards, certain matters which go to wages that have nothing to do with whether the matter is a private award or a public award. We're talking to that section of the Act that goes to principles, so that the application for the transferring of certain matters that are currently before this bench to individual commissioners has to be addressed in the light of section 35, not section 21. And in regard to the application by the Tasmanian Confederation of Industry that's an application in - under section 35 and that raises a number of issues as to -

PRESIDENT: So the government - the government doesn't feel as though it's being imposed on in terms of the current wage fixing principles.

MR HANLON: Well, it only has a letter from the Tasmanian Public Service Association which we received on 17 May. It has a date on the bottom, 15 May, and within the text of the letter it says: the union will seek to have adjustments resulting from the claim reflected in awards at an appropriate time in the future.

Now, on the strength of that one could say this is a claim that will surface in the commission at some point in the future. It is addressed to the Premier and it does draw attention to the national wage case handed down on 16 April and the TPSA believes that it is unjust, flawed and unworkable and is not capable of being accepted. It sought from the government a confirmation to Accord Mark VI and the achievement of wages outcome consistent with that accord.

PRESIDENT: So yes, I think I'm getting the drift - the actual claim isn't as direct and specific as the publicity surrounding it.

MR HANLON: Oh, it's very direct in terms of what it's after, Mr President. I think all that's happened this morning is by the series of questions from the bench we took - or certainly



on the first reading of the matter that this is a foreshadowed claim that was landed on our desks in terms of the ordinary log seeking something. Of course the accompanying publicity suggests something different and that the bench may be right in its assessment that this in actual fact a demand for a deal to be done on the side and then to come back to be ratified before you. But I suppose it's open to the bench to draw that conclusion from the letter - we saw it was an ambit claim. There was one more interesting thing, given this morning's proceedings, in the claim.

In paragraph (iii) it says:

They were seeking the phased implementation of the SEPSF national wage structure in each State Public Service.

Well, the claim before you today is for you to arbitrate on structures. One can only assume that this is going to be the second bite of the cherry if this current claim fails to have their streams adopted.

We do not have a claim from the Tasmanian Trades and Labor Council, so I don't know whether that claim for the SPF claims sits with other organisations, and where that sits with today's application, but, clearly, the proposal on the TPSA on the surface does not suggest that there is an element of back pay, or that the claim should be considered from the date, because they do not seek to do anything from some date into the future.

But, if the questioning suggests that now we are faced with a claim as of 16 May, then it may breach the guidelines, but I certainly haven't had instruction on that matter. I'll certainly look into it.

PRESIDENT: Yes, thanks, Mr Hanlon. Well, I'll simply repeat what I said before; this matter may rear its head at some time in the future. For the moment we'll proceed with the original purpose of the hearing, and you addressing us, Mr O'Brien, on certain proposals.

MR O'BRIEN: Well, I think I have outlined those proposals. Mr Hanlon suggests that's not possible, as he understands it, and I think his submission is referring to section 35 of the Act. I will just clarify in my mind as to whether we are proceeding under section 25 or 35 on these matters, because I had some doubt about that. If the Commission pleases.

PRESIDENT: Well, I don't think it matters what section of the Act we do it under, does it?

MR O'BRIEN: Well, Mr Hanlon seems to think it does.

PRESIDENT: So long as we can all properly organise it. I'm attracted to the proposition, speaking for myself.

COMMISSIONER WATLING: Actually your suggestion, Mr O'Brien, is that it be allocated to various members of the commission and to report back to this bench, wasn't it?

MR O'BRIEN: That's right, yes. Not to be determined, but -

COMMISSIONER WATLING: Not to be determined, but to report back to the bench.

MR O'BRIEN: Yes.

COMMISSIONER WATLING: So, I suppose the bench can determine its own process because it is coming back to the bench.

MR O'BRIEN: Yes, yes, that's - there are more specific enabling provisions in the federal .... than there are here, but I would have taken section 21(2)(ii) contain powers particularly in subparagraph (n) to allow that to happen here.

PRESIDENT: Yes. We'll organise that, but if we finally determine that things should be referred to single commissioners for report, has anybody developed any sort of program?

MR HANLON: Before we get to the programs, Mr President, not knowing which way the proceedings were going to, the direction of -

PRESIDENT: That makes two of us.

MR HANLON: - the direction of - the commission as of 22 February made a couple of points as to - about what this hearing was to address, of which programming was only one, and before we launched on to a discussion of programming one would have expected to have heard some argument as to why and what matters should be capable of being dealt with, and what the purpose of that exercise was about, because under paragraph 6 at page 33 of the decision of the 22nd the commission does say it is prepared to arbitrate any unresolved matters, and they would reconvene on the 29th.

PRESIDENT: But, haven't we heard from Mr O'Brien to the effect that there are no agreed matters?

MR HANLON: I understood that that was the union movement's position. I think maybe I'll sit and we can certainly clear up whether that is the submission of the union movement. One, that it wants all matters allocated to single commissioners,



and that that's the way it wishes to go. There are a number of specific headings in the recommendations, and I suppose for clarity we should hear from each of them as to where they are to go, and then I'll respond.

MR O'BRIEN: In relation to what I said earlier, I said that there were some minor agreements, that the document - the documents themselves can be compared to show there are similarities in approach, but there are substantial differences between us. The process that I suggest will enable that matter to be clarified in a meaningful way rather than trying to run through a document. I know Mr Hanlon's prepared a document which sets out the differences between the parties and that, as I understand it, was as at the exchange of documents.

I would have to say that that document substantially reflects the differences between the parties - that is the differences between the two documents - and certainly I believe from the notification I saw that today was listed for programming. There being in our view no substantial progress we see no choice but to proceed to seek the matter to be determined in arbitral proceedings.

PRESIDENT: Have you got any sort of list of what the matters are agreed?

MR O'BRIEN: Well, I haven't got an exhibit bearing in mind that negotiations basically concluded yesterday although there were meetings all - most of last week to talk about the various occupational streams.

PRESIDENT: Well, is that agreed? Are the streams agreed?

MR O'BRIEN: The streams are not agreed although in totality there are elements of agreement in some. I have to say that we are relatively close in terms of the operational services stream but nowhere near as close in any of the others as I understand the position. In relation to -

PRESIDENT: But it is agreed there shall be the four streams?

MR O'BRIEN: That's not been contested. I guess the direction was that there would be responses on each of those streams and you'll see from the documentation there has been. It's not been suggested that we ought not have any of the streams, to my knowledge, in any of the negotiations.

PRESIDENT: Is it - is it possible that each of the streams can be allocated?

MR O'BRIEN: Yes. Yes, in our view because of the way that they've been drawn up they can be - they can be allocated and

the drawing together of a composite structure could well be dealt with by the reconvened full bench receiving reports from the individual members of the commission delegated to report back on particular streams or conditions of service.

PRESIDENT: Yes.

MR O'BRIEN: But we can undertake to supply something -

PRESIDENT: Well, I think that the first part really - and I speak for myself only - is that the streams should be put to either a single member or a full bench, or whatever is finally determined, independently and they should be progressed and then dealt with finally in a composite manner by this bench -

MR O'BRIEN: Yes.

PRESIDENT: - which I - and I would see that it as taking possibly six different strands.

MR O'BRIEN: Yes. There may be different timetables as well depending on how long the individual matters take.

PRESIDENT: I'm sure the timetables would be different.

MR VINES: Mr President, just to give an indication, I agree with what Mr O'Brien has put and that by far that's going to be the most expeditious way to deal with it. The three areas that the PSA would be having principal carriage of are with the admin. and clerical stream, the technical stream and the professional stream. Our estimation in terms of times for those is that we would want just for our own submissions probably 3 days on each of those streams - 3 days for each.

MR HANLON: Mr President, I hate to interrupt but I - before we got to talking about the mundane details of dates, I wanted to address the principles of the reporting back process in terms of what was resolved or not in terms of each of the items that we were directed to submit and confer on and then when the bench was in a position to know that it may then be in a position to decide what might be an appropriate action.

The current process of people asking for matters to be referred on the strength of this is the only way and then proceeding to make dates or suggest dates seems to me to be inappropriate. I'm quite happy that all of the parties put their position and then we'll respond. I think we ought to have it segmented into the information process, then if the bench is in possession of everybody's point of view and then it can make a decision about the appropriate course of action.

PRESIDENT: Yes, thank you. Well - you're not suggesting that Mr Vines should stop in his tracks now or - and you put your version of the process first?



MR HANLON: Well, I think what we're talking about is how many days we're going to take for each segment. I mean it seems to me it's the cart before the horse.

PRESIDENT: Well - well we'll - I think we can hear from Mr Vines as to the way he thinks it could go and then you could tell us what -

MR HANLON: I'm in your hands, Mr President.

PRESIDENT: Yes, thank you, Mr Hanlon.

MR VINES: I wasn't seeking to -

PRESIDENT: I think it'll - we will go for far too long unless it's done -

MR VINES: I was just seeking to give the bench an indication of the length of time we thought it would take rather than asking for specific dates at this stage. But in relation to the sorts of things Mr Hanlon has put, again - and I think this is the third time we've been before the bench in saying it - in our view in the areas that we're involved there is no option but arbitration and so any other process that he may wish to come up with won't be acceptable to us because we've been coming to this commission now for 12 months asking for strong intervention of the commission and our position hasn't changed at all.

We would be seeking probably three days for our submissions on each of the three streams. We would also like the commission to consider in fact holding some proceedings in South Australia. The South Australian Commission has, as recently as last week, endorsed a consent agreement which accepts almost in full the PSA 4-stream proposal including the classification guideline, structures and salaries and we would be seeking -

PRESIDENT: Which - which - what is that? The -

MR VINES: The South Australian Industrial Commission.

PRESIDENT: Yes, what was the matter that they've determined?

MR VINES: The 4-stream -

PRESIDENT: Four streams?

MR VINES: - proposal in terms of structure, salary and classification guidelines in accordance - or virtually in accordance with the PSA claim and we would be seeking to give the commission evidence from the South Australian experience

and there may well indeed be some merit in the commission convening in South Australia.

In relation to the special cases from - again from the PSA's point of view, we have 13 of those special cases. Our submissions, inspections and evidence we believe would be - we would be looking for five days on each of those cases, so the commission can see that there is a significant number of days. I think in total that adds up to about 80 already and that's just the PSA talking. What we would -

PRESIDENT: I'm - you're galloping ahead of me. What are the five days for?

MR VINES: For us to put our work-value arguments on special cases.

PRESIDENT: On each of the special cases?

MR VINES: That's correct. What we would be suggesting is that as has been put to the bench that the various cases be allocated to individual commissioners reporting back and there may well be merit in putting the special cases to the commissioner who's hearing that stream. For example, all of the special ones be heard by the commissioner who is hearing the professional special case - the professional -

PRESIDENT: I don't think we've got time to go to South Australia.

MR VINES: Planes are quick these days, sir. Well, I mean I can hear what the commission is saying. I've been saying we've had time for the last 12 months. The PSA remains 100 per cent committed to this award restructuring and we are going to get it regardless of how long it takes, in our view. These special cases similarly we've now had on the boil for some 12 months - they've been delayed and the process has changed the whole way through. We've a commitment to those members who are affected that they can come and they can put their case to the commission. They have a right to do that and we'll be looking for that right to be exercised. I mean none of this is as far as we're concerned is a joke - it's well beyond a joke.

PRESIDENT: Well we're not - sorry - we're not denying you the opportunity to do it.

MR VINES: Well, we have been up until now and what we'll be looking for is these hearings to commence as quickly as possible so that we can start to argue the case. We have literally wasted years and hundreds of thousands of dollars on mucking around in this process and we are not prepared to waste another cent or another day on it. We want to get to it; we want to start getting some decisions out of the



commission and we want to start making the government accountable for making changes - or force the government to a position that it has to make changes; it has to become responsible.

PRESIDENT: Well, you know it is perhaps a noteworthy point that the first applications virtually on all these were lodged last year even though you've been waiting for years to get them resolved.

MR VINES: I don't know that that's correct, sir. In relation to some of the professional areas they've been around longer than that.

PRESIDENT: I think you'll - I think you'll find the bulk of them would fall in that category.

MR VINES: So in terms of days, Mr President, that's the sort of time we'd be looking for and we would wholeheartedly agree with the TTLC position that there would be a need clearly to allocate those to individual commissioners. If the commission pleases.

PRESIDENT: So that would be your only involvement - the three streams and the special cases?

MR VINES: Oh no. No, sorry, sir, that's why I indicated we would have this specific carriage on. We would, of course, also be involved in the operational services and the conditions of employment but we're not here to set the agenda on those ones. There's a large number of other unions involved in those, clearly.

PRESIDENT: Yes, okay, thank you. Has anybody else got a bid?

MR WARWICK: Mr President -

PRESIDENT: Mr Warwick -

MR WARWICK: - members of the Bench, there's just one point I would like to make, I guess, which goes to refining. Mr O'Brien said about individual commissioners hearing the individual streams. It would be preferable, from my organisation's point of view, if it could be the case that when individual commissioners are hearing individual streams that they do so on different days rather than on the same day. We simply don't have the resources to attend three different hearings on related matters on the same day.

For example, Commissioner Gozzi hearing professional rates and structures, yourself, Mr President, hearing clerical structures and Commissioner Watling hearing, for example, operational streams on the same day. We simply wouldn't be

able to get to those hearings. So we would prefer that the work of the commission be organised in a way - such that we would be able to attend all those hearings on different days. It is simply that -

PRESIDENT: It's sort of a catch 22, isn't it?

MR WARWICK: It is difficult. It's a difficult problem, but we would ask the commission to consider that difficulty.

PRESIDENT: Yes, thank you. Mr Nielsen?

MR NIELSEN: Thank you, Mr President. ....

PRESIDENT: We can't hear you, Mr Nielsen.

MR NIELSEN: Mr President, on behalf of the ambulance agency, I only wanted to report that a document, as of yesterday, was signed on behalf of the Ambulance Employees' Association relating to two pages of matters agreed under award restructuring and two pages of matters to be arbitrated. This is between the employer or the Tasmanian Ambulance Service, actually Mr Haines who is now the acting secretary of the Department of Police and Emergency Services, he signed it on behalf of the employers.

So I suppose, Mr President, with respect, we're in a position to proceed if the commission so desires to allocate a commissioner to our particular agency's -

PRESIDENT: Do you see your award being dealt with separately -

MR NIELSEN: Yes, Mr Commissioner.

PRESIDENT: - or in - in the general - the originally perceived custodial and emergency services train?

MR NIELSEN: Oh well, with respect, Mr President, that area where - had been approach on the four services, the prisons, the police did participate for a while and the fires and the ambulance, but - and under the guidance of the Trades and Labor Council, but it was always our express purposes, as I understand the individual agencies, that we desire to proceed with our own awards. And we've been having discussions and consultations with the employers of the ambulance, oh, I suppose, for the last year - for the last 6-8 months. I just want to report progress, Mr President.

PRESIDENT: Yes, thanks very much for that, Mr Nielsen. Do you want to respond to that at this point, Mr Hanlon?

MR HANLON: Yes. Mr Nielsen's position in regard to the custodial .... is correct in the sense of united purpose, the



wheels fell off that last December. A number of the groups were meeting, both collectively and separately, and the ambulance officers and the Health Department reached the point where those matters that were agreed between them and those matters that deferred, so that in the recommendations arising out of February 22 they conferred and the government saw no reason that those sections of the custodial and emergency who didn't wish to confer or wanted to confer other than collectively shouldn't be disadvantaged.

So that we are in agreement that those outstanding matters should come to the commission. We would be looking for a date towards the end of June for that matter.

PRESIDENT: Does the same position apply in respect of the other segments, leaving aside the Police Award?

MR HANLON: Oh, the - there has been no - each of the organisations has taken a particular position, either of wanting to process it or not. I mean I don't have a view about an organisation that says: Well, here's our position, don't knock our door we'll knock yours. At this point, given the amount of negotiations that has to occur in the month of May, we had as much as we could handle anyway, and they are small segments.

PRESIDENT: Yes, but it's -

MR HANLON: And I'm confining those comments to prisons and the fire service, not the police.

PRESIDENT: Yes. Yes, I understand that. So it is likely that there will be distinct awards in that stream.

MR HANLON: Well, there is now. I don't really wish to comment on what some outcome at the end of the process would be.

PRESIDENT: But for the time being the government is happy for those four -

MR HANLON: To be processed and be proceeded -

PRESIDENT: - those three awards to be processed independently.

MR HANLON: Is it - is it three counting the ambulance, is it?

PRESIDENT: Sorry, no. Ambulance, fire service and prisons.

MR HANLON: No, no. The ambulance is the only group that have reached a point of agreement and matters disagreed, and

therefore both sides are prepared to proceed to the commission to have those unresolved matters -

PRESIDENT: Right.

MR HANLON: The other groups in the custodial are not in that position for a variety of reasons.

PRESIDENT: Right, thank you. Mr Hughes, you might care to comment at this point.

MR HUGHES: Thank you, Mr President members of the Bench, I listened with great intent to Mr Hanlon's comments. I refer the commission back to - members of the bench, back to your decision of 22 February, and on page 2 the third point, where it - the employers were directed to provide structures, including rates of pay, to the employee organisations and the commission by 30 April.

On 30 April we did receive the documents, the government's proposal, and there is no mention in there of prison officers at all, except in the third back page in regards to the agency specific agendas, but there are no rates of pay, there are no structures, no definitions of those structures. When we asked our management in regards to where was the information, they had no idea. We left it with them and told them we weren't happy, that we required it as soon as possible.

On 15 May, after about 14 days, we had still not received any information. We then seconded the TTLC to take up our case and pursue the Office of Industrial Relations for the documentation, which we received on Friday, and which consists of a one-page document with 23 words on it, but which tells us nothing. It gives a rank structure that is neither acceptable to ourselves or management. They saw it when we showed it to them.

The rates of pay are no different to what they are at the moment. And my members have been a bit disillusioned by this process; why I've gone back to them from this commission on February 22 and informed them that by the 29th when we were to come back here we would have some genuine items for discussion, and we would have the proper proposals from the government and that we would be able to forward - go forward from there.

We have had meetings in regards to the agency specific agenda items, of which we have 20 agreed items, that we have sat down and discussed, and they are well on the way to being processed. But as - when it comes to the actual rates of pay and the structure for our award we have, as I said, a document of one page with 23 words on it; and that is it.



Now, with the TTLC being involved in the process of this document, which you're aware of, and it is wide ranging in regards to the Prison Officers Award, but we don't see that the government has had a genuine commitment, whether we are a small organisation or what, in regards to putting some firm documentation down. And my members aren't happy and they see this process as only a slow down process by the government.

PRESIDENT: So you'd be seeking to have your case arbitrated as quickly as possible?

MR HUGHES: Yes, sir. We're unable to meet with our management to discuss it because they don't have any documentation either.

PRESIDENT: Yes.

MR HUGHES: If the commission pleases.

PRESIDENT: Yes, thanks, Mr Hughes. Mr Pyrke?

MR PYRKE: Thank you, Mr President. Sir, we're here today, as I understand it, to schedule the hearing of the streams which were in document W.2, that was the document tabled on 20 July last year.

If you might recall from that document, it mentioned 6.3 and it also mentions a number of substreams in the professional stream. And whereas we've got no problem with the PSA or any other union having carriage of the streams on the construction based, we did have a view on that particular substream. It's an area where we have the majority of professionals and, based on information we have received from the government, we would seek carriage of that particular substream. And I'd like you to bear those comments in mind when you eventually decide where we are going from here today.

PRESIDENT: I missed the particular reference, you're saying to the professional stream?

MR PYRKE: Yes. This document W.2, which was the government document on 20 July last year -

PRESIDENT: Yes.

MR PYRKE: - it mentions six streams -

PRESIDENT: Yes.

MR PYRKE: - and one of those is professional.

PRESIDENT: Yes.

MR PYRKE: And then there there's a number of substreams, and they may be science based, construction based, health professionals, legal, medical and dental.

You have got most of the professional engineers and the State Service would be the construction based substream. And in relation to that particular substream I believe that there are about three occupational groupings which will be picked up. Namely, the professional engineers, the surveyors and the architects. And numerically, on the information that I've got from the government, the professional engineers would be the majority in that particular area.

So based on the principle that the TPSA is handed carriage of the operational stream elsewhere, I'd seek that - or I put the view that we should have carriage of that construction based substream.

PRESIDENT: Yes. I'm not certain how - whether we have agreed that there will be that sort of substreaming at this point, but I understand the engineers claim in respect of the members that they represent -

MR PYRKE: Yes, sir.

PRESIDENT: - and they will certainly be taken into account.

MR PYRKE: Good. Thank you.

COMMISSIONER WATLING: Under the claims they actually contain the substreams in the professional area.

PRESIDENT: Do you care to respond to that - would you care to respond to that, Mr Hanlon? Sorry to have to make you jump up and down on each of these points, but I think it's the only way we're going to resolve it.

MR HANLON: Well, the process was that the parties submitted their number of levels and their description of those levels in the four streams. The discussions that occurred in the following April, the 30th, occurred with organisations representing their particular group of members at those meetings. Now, the situation in the professional group was that an analysis of the professional engineers structure and levels, an analysis of the TPSA and HEF shows that there are two different themes running through their claims which are not compatible; that the government claim in some respects is - has a relationship to the professional engineers in some areas and not in others.

We don't distinguish between a professional being a professional for the purposes of that structure. There was no suggestion made to the government at any point that we should



break up all of the occupations into occupational groups. The only advantage to the government in dealing with the structures in terms of four streams was there was some ability to deal with recognisable segments which reflected the nature of the activity carried on in the State Service.

If the proposition now is that every little group can now stand and say: Well look, we would like a commissioner to deal with our little occupational group, and we can best give carriage to all of these subgroups, well that's what we were accused of suggesting in February. And it was out of that proposition which the union movement was successful in persuading the bench that the six streams, or the custodial plus the other four, was the appropriate way to move.

Well, having gone down that one the submission by the APEA to go back to where we were in January seems to negate the purpose of the exercise. And we would be saying there are four structures, leaving aside the prisons, the police and the firefighters, who are distinct groups, then the appropriate way is to deal with them as we've been dealing with them since February.

PRESIDENT: Yes. I think that's probably fair comment. Mr Pyrke, do you want to -

MR PYRKE: Sir, I guess I would comment -

PRESIDENT: - pursue that?

MR PYRKE: - I would comment to you just on the nature of trying to clarify what's intended. It seems to me - I can't see the purpose in identifying these substreams if it wasn't intentional in the first place to - if it wasn't recognition in the first place that each type of professional or each stream or substream had it's own inherently different characteristics. And -

COMMISSIONER WATLING: But haven't they been overtaken now by the decision of the bench to say that the unions and the employers have to exchange claims. Now the claims have been exchanged, so it's at - this is the ball game now. These two - these two things.

MR PYRKE: Oh, sir, I understand that the professional stream is the ball game, but I ....., if you like, the application of what's intended by the professional stream.

COMMISSIONER WATLING: Well, I think W.2 has been left behind.

MR PYRKE: Okay. Well, if that's the case, sir, I - what claim.

COMMISSIONER WATLING: Well, these are the claims that I'm sure now the bench will be dealing on and dealing with.

MR PYRKE: Yes. Well, if that's the qualification they're seeking. That was my reading of the system, it's - there is separate substreams. If that's not right, well, that's not right.

COMMISSIONER WATLING: Well, I think one of the problems the bench had in earlier stages was identifying the claim. Now we have the claims before us it's up to people to argue during the course of the case if it goes to arbitration, I suppose.

MR PYRKE: Okay. I take on board your comments and, yes, I understand.

PRESIDENT: Yes, thank you. Mr Hanlon, it's probably your turn again.

MR HANLON: At page 3 of your decision, in paragraph 6, the Bench said:

Accordingly we will reconvene on 29 May to be informed of developments which might have occurred during negotiations between the parties subsequent to the exchange of documents. We make it clear that we should expect negotiations to take place.

And one would have expected that the parties before you today would have addressed that matter. For some reason there's a certain coyness from the unions applicants to this party to address what it is we talked about and where we reached and for what reasons we may not have reached agreement, which may have allowed the bench to arrive at a position that understanding what are the differences.

The first meeting that occurred between the parties occurred on 10 May. There may have been reasons as to why the union movement was not in a position to meet us but the government was available to meet and met on 10 May. At that meeting we put forward a series of suggestions for the processing of negotiations and given the full bench's hearing listed for today of being the 21st, there were a program of negotiations based on each of the occupational streams and the conditions of service set down for each day with a report-back meeting listed between the PEAK group which met on 10 May and met again on the - yesterday.

Now, within that timeframe that was about the most that could be achieved in terms of the parties meeting and clarifying matters that were between them. The situation was that in regard to the prison officers was that the TTLC was .... and said we would not be including the prison officers because we



weren't able to obtain the matter from the Department of Community Services, which is the agency, despite the suggestion made by the union this morning it is the agency that submits to us what its requirements are. And we received a copy of that and having received it were not aware that a copy had not gone to anyone else. When the letter came from the TTLC on 15 May we then forwarded it to the TTLC - a copy of that structure - and I tender a copy of that structure.

PRESIDENT: Should we mark this as an addendum to your document?

MR HANLON: Yes, Mr President.

PRESIDENT: Yes.

MR HANLON: It sets out the number of levels and the salary level next to it. It simply - in the period when we were complying with the process, it was one that - not because that it was a small number but had a lower priority and then could not be concluded within the time - there was certainly no effort meant to exclude the prison officers or for them to read anything into that matter. By the same token the united firefighters chose not to make a submission. We also choose not to have a view whether they should or shouldn't.

We accept that that organisation has chosen not to process its position at this time. We will, when it's necessary - if we haven't conferred, and process the firefighters, we will then come back to the commission if there's some reason we that can't process it. But we are - given the great bulk of the 25,000 public servants that are being dealt with, they do represent a small group which - someone has to be last and someone has to be first.

PRESIDENT: So they should be scheduled whatever -

MR HANLON: Yes.

PRESIDENT: - whatever happens?

MR HANLON: But, the government submission sought to do a number of things, to establish salary rates and we submitted a schedule of salary rates in our submission which, in actual fact, went to rates of pay alongside the number of levels that we require in each of the structures. In the operational area that represented a number of difficulties because we are dealing with a large number of awards. We are dealing with minimum rates awards and supplementary payments and a number of paid rates awards and, therefore, a number of questions need to be addressed which range from youth rates of pay, what is the adult rate of pay between minimum rates award with no juniors and the paid rates award with juniors and adults scale starting at 21 in some awards and others at 18, 19 and so on.

Therefore that is a critical area that needs to be discussed. The rates then were inserted in there at minimum levels to allow the parties to confer on the great range of rates that are paid for similar occupations across the operational stream.

The purpose of that was simply to enable the part - the government to address all matters without in any way creating levels of pay in excess of the actual job function outcome. And they are the existing rates and that applies in the other grades. And for some reason it's been suggested that - or implied to the government that it, in some way, has deceived unions party to it to have sought to put in place rates of pay in excess of current rates of pay. Which the government has assumed was part of the exercise to establish whether or not there was increases being sought in excess of the current standards and whether or not they would then be appropriate for translation.

And clearly the submission of the TTLC, when compared to the government's, in terms of salaries does show a differential of which, depending which group you look at and what level, that there are increases in excess of the current levels. So that when we were dealing with the salaries that was an issue. And certainly the government was not going to negotiate salaries for no other reason than one sum was higher than another and therefore was perceived to have been of some benefit to employees employed in the state. That was not the purpose of award restructuring.

When we came to the structures - and very clearly that there are significant differences between the parties - it needs to be understood that the process that the government has engaged in since last September was to discuss with its agencies exactly what structures they wanted, what were the number of levels and what work they required to be carried out at a level - at a particular level. Now, that exercise has been a constant ongoing one. So that the submissions put by the government to the TTLC on April 30, dealing with the number of levels and structures, is the government's position as perceived by agencies as to their needs.

It isn't something that has just been dreamt up and therefore becomes negotiable. And so that when the parties met in each of the stream meetings - it is very difficult to believe that one can negotiate between the party that wants 12 structures and the party that wants seven, and assume that you can come to a settlement of nine. The levels are actual levels at which certain types of work are to be performed at certain levels of responsibility.

So the issue of structures is that - between us is we have a structure which the government, as the employer, seeks to put in place. We are not seeking to tell the South Australian



Government what number of levels and work it has performed at what level, we are seeking to put in place a process that suits agencies under the Tasmanian Government employing persons.

So that we have not been able to reach agreement on two areas, that is, the number of levels and the word descriptions. There are some streams where it is possible to identify matters which one can see common points. In others there is no common point. So that we're looking at both words and descriptions and the number of levels. So that isn't something which is possible to negotiate on.

So that issue that will come before you is one of structures and levels and is a decision process. The question of how the bench is then a position to judge which work should be done at what level is not an easy one that will confront the bench. And as part of the exercise, as Mr O'Brien drew attention to, the government does have an exhibit which seeks to provide a comparison between the various structures to enable us to identify what was in common. And I tender a copy of that.

PRESIDENT: Can you recall what you're last exhibit was?

MR HANLON: I certainly can't, Mr President.

COMMISSIONER WATLING: It would be H.9. This will be H.10, I think.

PRESIDENT: H.10, I think we'll -

MR HANLON: Because not all parties are interested in all aspects of it, I've made up a number of separate exhibits that go to operational, professional and technical or other parties to the commission. There isn't anything in this exhibit that isn't the government's or the TTLC's. It seeks - this exhibit seeks to draw attention to provide in two parallel columns the Tasmanian Government's position on the left and the TTLC's on the right. And we have realigned the sentences in the operational group so that they align themselves between the two submissions.

The general principle in the operational group was to use the Commonwealth standards, and the parties have discussed various standards set by the Commonwealth - and that's the Commonwealth in conjunction with all of the various organisations.

And if I can show you on page 1 the sort of differences - and this is the closest group that the parties are - and there is no agreement between the words for Level 1, but there it is clearly talking about the same group of people in terms of description.

At Level 2 where the parties differ there is that - and this difference is maintained throughout these two examples - is that we have not used the phrase 'a person at this level' in the right-hand column at the beginning, and that phrase is used throughout the 11 levels submitted by the TTLC. The last dot point beginning with the word 'or' has completed the relevant training in Level 2. That paragraph is also repeated in each of the levels.

The government's view as to that paragraph is, it is not a suitable paragraph for a generic description, it is more related to the function which should be included in a particular job description. If you then turn to page 2 you will see in the right-hand column at the first dot point, in italics, which shows you that paragraph is not representative of the government's position.

In the second-last dot point in Level 3 you will see the words 'is responsible', again in italics, showing that that line is not included in the government's - equally in the government's line there is a description that says, 'this is the first level within some industry streams at which a person may be expected to take charge of staff', and then there is that next paragraph which I have said occurs throughout.

On page 3, again you can see there are two in the right-hand column and one in the left-hand column. On page 4 there is the term in the right-hand column at the top, 'for performance of a variety of tasks', and the government's position is that is an inappropriate description for an occupation at the same standard as a trades qualification person, and that it adds nothing to the situation. In the next paragraph the only difference is the word 'large' in the left-hand column, as against the words 'number' in the right-hand column.

PRESIDENT: So, do you see these matters as being capable of resolution in the process of consideration by a single -

MR HANLON: Certainly not, Mr Commissioner, at this point. It isn't as though there's a conciliation process. Those word point changes that I pointed to are relatively minor. We have followed the Commonwealth's position quite closely, and have added nothing to their descriptions, so that most of the points that I am referring to in the right-hand column are additions.

When you come to Level 8 the parties are in agreement, with the exception of the last paragraph on each side, so that in our view it clearly shows that there is agreement as to the general level of work performed at Level 8. It is from Level 8 that the parties then differ, and the TTLC seeks to have a 9, 10, and 11, the government seeks to have a 10 and a 11, and it is possible to see that our 10 and the TTLC's level are



almost word for word. What differs is the salary level, and the fact that their 10 is a combination of our 10 and 9.

So that the matter that would come to the commission to be determined is whether or not there should be 10 or 11 levels, and there be some argument as to why there should be one or the other. Now, in this particular stream, that is the difference.

Now, I fail to see how a reporting process resolves that. From the government's point of view we are committed to a 10 level structure in operation, and with the identifying descriptions that go with each level. And, so the difference is, whether or not there is an additional level, and what are the reasons for it.

PRESIDENT: Well, how do you see this being resolved?

MR HANLON: Well, I think it is just a question of argument going as to either it's 10 or 11.

PRESIDENT: In what forum?

MR HANLON: Before this forum. I don't see that a commissioner sitting alone talking to the parties, making a report to this commission who is then still left with a decision has to - is 11 appropriate or is it 10. The minor wording is not an issue in my view - it's -

COMMISSIONER WATLING: So what if the individual streams were referred to commissioners for finalisation?

MR HANLON: Well, it's when we come to the next groups of people and where groups that are currently in technical awards, say, or in administrative, who should appropriately be in operational, or groups that are in operational that ought to be in technical, then - and what is the professional entry point? There needs to be some consistency because one would want levels determined and descriptions so that one didn't set softer levels for professionals when compared with levels for technical officers or for persons exercising supervision in operational.

Now, we are talking about a variety of interrelated because at the supervisory in operational you're also talking about team leaders in technical and practitioners who are professionals.

Now, it's the government's belief that they ought to have been handled by this bench. The suggestion of handling it individually - that certainly was not put to us as a possible process. But from a logical point I think when we go through these streams you will see that there are substantial differences in the others and we will still be caught by

issues of principle and not issues that somebody acting in a conciliatory role could determine.

PRESIDENT: Well, I would have thought that it would be possible for all those problems to be identified in the manner which could come back to a bench for decision.

MR HANLON: Well, with respect, Mr President, there's not much more to identify in the operational than I've identified.

PRESIDENT: That's what I think too.

MR HANLON: The significant ones are where we go to the administrative and clerical. We're - we are talking about significant differences in levels and there are a number of levels which in the government's submission are the same.

PRESIDENT: Pages - what?

MR HANLON: If you turn to B.1 which sets out the government's levels and we believe that the government's level 3 equates with the TLC level 2, that level 7 equates with 5, 8 with 6, level 5 and 6 with 4, and level 4 is close to 3. The situation is - the TTLC's position is that they want eight levels. Now, the government clearly believes that as a result of its process of surveying the agencies as to its needs then the question of how one resolves 12 to 8 is a matter of principle, it's not a matter of negotiation. That issue was between the parties and known to them up until February the 31st when the last position was put by the government -

MR VINES: February the 31st - that's a new one, Des.

MR HANLON: January - to February the 1st to the TPSA at the clerical stream meeting we have resubmitted our position and that's the situation between us. We have - there are a number of words that are similar in meaning but do not have the same exact comparison as occurs in occupational. For instance, in level 1 we have the trainee level concerned in basic clerical work, whereas in the TTLC's it's simple basic work. The terms used in level 2 are established guidelines instructions. In the TTLC documents it's established techniques and practices and under routine direction, so that different phrases are used but one can look at that sort of - in most paragraphs and see that we are talking similar levels even though there are different forms of words.

PRESIDENT: Yes.

MR HANLON: But the critical thing in this is not the form of words, it is again the levels.

PRESIDENT: Again the levels - the levels and the rates.



MR HANLON: We have the existing rates that we would pay within those levels. One then turns to the professional stream, C.1. We have set out there in a diagram form - because there is significant differences between the professionals - that on the left-hand column you will see that the government's position is across the top from left to right, then the TTLT's position - represented by the APA in the middle level - and the TPSA, HEF in the last levels, and because the differences are so great in terms of wording and between the two union claims the best way to look at that and describe it to you is to show that in a series of boxes, so that Level 1 for the government practitioner, or the 4-year graduate at \$24,780 in a series of salary points through to 36,953, and that a number of those points are based on acquired skill - if I can use that term.

When one looks at the APA Level 1, which is a series of salary points starting at 28,290, a differential of some 4,000, going through to 38,000. And when one comes to the TPSA, their Level 1 starting at 28 going through to 38, and then their Level 2 going from 40 to 44, so that the difference is between a practitioner commencing at Level 1 at 28 and proceeding through to 44,000 by a series of increments, and the government's position is that you cannot pass beyond a level in the \$24,000 scale without the acquisition of certain defined skills. The professional engineers go through to 38 on an ordinary progression.

Now, just one change, if I could - under Level 3 under the government that figure should be 49 not 39. So, where it says 43,604 stroke - 44 - is it - 44 - that should be 44,735 -

PRESIDENT: Sorry, this is -

MR HANLON: Under L.3 -

PRESIDENT: Yes.

MR HANLON: It should be the - where the figures says 4 -

PRESIDENT: What should - how should the figures read?

MR HANLON: 44,735 on the lower line.

PRESIDENT: At Grade 2?

MR HANLON: Yes, it should be 44,527.

PRESIDENT: This is Grade 2?

COMMISSIONER GOZZI: Grade 1.

PRESIDENT: You said lower line. You mean Grade 1 -

MR HANLON: The Level 3 -

PRESIDENT: Yes. Grade 1 -

MR HANLON: Grade 1. This bottom line should read 44 -

PRESIDENT: The bottom line or the first figure?

MR HANLON: The bottom line, the bottom line. Well, the first line is 44,604.

PRESIDENT: Yes.

MR HANLON: The next line should read 44,527.

PRESIDENT: Yes, it does.

MR HANLON: Oh, sorry, on mine it doesn't, Mr President, I -

PRESIDENT: I'm sorry, I was reading from the figures on page C.7, you're talking about C.1.

MR HANLON: Yes. So that if one proceeds across looking at each of the levels so that the Level 2 Grade 1 and 2 match Level 2 for the professional engineers, and Level 3 for the TPSA-HEF.

Now, because the words don't exactly match, that's our summation of what their descriptions and job functions mean in line with the government's, so that you will see there are differences between the APA and differences between the TPSA and differences with both of them to the government.

Now, it's clear from that outline that the issue of the entry point, the practitioner, the specialist practitioner, and the managerial level are not capable of being broken up into groups. They cover the same principle, but there are significant differences between the parties with this matter.

If we go through to the technical stream, again we set out in a diagrammatical form on D.1 the number of levels and the salary rates, and you will see that the government requires five levels, including a trainee, and the TTLC's position is for six levels. That at the base we have a junior/adult on 2,407 and the TPSA's on 26,009, and we do agree with a rate at the top end of the scale in Level 1 of 28,495 and Level 2 of 28,495, but there is no similarity within the middle.

Again, there is a difference between Level 2 and the government and Levels 3 and 4, both in salary and in the way in which the increment works, and we certainly have a difference between Level 5 and Level 6. We do not envisage having a position of Level 6. So that the differences there are - the government's position is that it does not need a



manager technical officer at that level, and the TTLc's position is that it does.

So that there are no agreements with the words, and in brief, the parties met and discussed the differences in their structures, and it was obvious that we were talking about the principles, and they were fundamental. And, in essence, it comes down to whether the management determines the number of levels that it requires and what work it wants performed, or whether the TTLc does, and that's the situation that will be put to the Bench. And we think the structures are matters that ought to be dealt with in total and in a way which brings consistency to those common points where the interaction between supervision, the practising technical officer, the team leader in the technical stream, the professional practitioner, and the difference between the specialist practitioner and the professional manager, and they are matters which go to the administrative stream, and how that goes to the professional stream, the technical, and the operational, and they are matters which we believe are rightly before the bench, and dates should be set for their determination.

In regard to the conditions of service, the government put a proposition that there ought to be a process of moving through the conditions of service in a way which enabled all parties to know what matters were being discussed, in what order, and to do it in a way which enabled each of the organisation's parties to different awards to know how their award would differ from the four key awards which cover the great bulk of people in either the operational, the administrative, professional, or under the regulations. And we suggested a format for the award, we suggested a series of clauses, and identified those clauses that we thought were ones that we could commence the process.

The TTLc on the meeting of 20 May put to us that they weren't in a situation to respond to our proposal on that day - sorry, on the 12th. We then met again on the 20th where we were advised by letter on 17 May that the unions were prepared to accept the government's proposal subject to certain conditions.

Now, the government's position is this: that there are no conditions that it's prepared to meet before it's prepared to meet with something that has already been agreed and outlined by the bench in its decision. The bench in its decision of last year said that there would be a reform of the conditions of service in awards in the public sector.

We have sought to process that by suggesting a process. The union movement's response is to say to us that the Exhibit 3 matters, which were those matters presented to the bench, as - excuse me for a moment - which was known as Exhibit 3, dated

16.7.90. that set out a series of statement of principles, and then went to eight items: allowances, employment conditions, hours of duty, holidays, leave, salary and overtime, redundancy, and other conditions, and the TTLC in its submission to us on the 30th outlined its position.

We had no quarrel with that, that it may differ from the agreed position set out in Exhibit 3. When I say 'agreed' I am talking about the words that are set out on the paper, as distinct from the words set out in the TTLC exhibit, and the government's position was that it didn't wish to then have to agree to - and I am reading from 17 May, the TTLC letter to the Department of Premier & Cabinet:

The unions will accept the government's proposal for a process of dealing with conditions of service, subject to agreement that -

(i) Exhibit 3 matters will be dealt with as a priority, and that the agreed matters in Exhibit 3 will be processed first.

When one examines Exhibit 3, the wording of it, and then examines the TTLC's document to us which is in section 8, page 47, there is substantial difference, and we don't disagree that those matters can be rediscussed, it is the differences that then say we will agree to process those first before we will deal with the government's proposal for the conditions of service. Now, we see that as a precondition that is not open to be put onto the government. I am conscious of the time. I have marked the exhibit - the words and the differences - I'm in your hands as to what we're doing this morning, Mr President.

PRESIDENT: Well I've got - how much longer would you need to go to put your -

MR HANLON: Well, I can give the flavour of it very quickly. I'll tender a copy so the bench has got a copy before it. Some of them have already helped themselves to both the commission's copies and the TTLCs. I did ask a person who sat behind me would they allow the government representative to sit there and monitor my exhibits. They told me they were in good hands so I just indicate what those views are worth and the TTLC will have to recover its exhibits from its affiliates.

PRESIDENT: I understand your problem, Mr Hanlon.

MR HANLON: If I take you to page 1 -

PRESIDENT: These - this was tendered as Exhibit 3 in the earlier proceedings.



MR HANLON: Proceedings - that Exhibit 1.3 says:

That where proposals deal with conditions of service for employees in the Tasmanian public sector, those proposals be consistent with a process of broader rationalisation and standardisation of conditions of service within the Service. Rationalisation and standardisation of these conditions will provide fairer and more equitable conditions for all employees which result in administrative ...

PRESIDENT: These were agreed?

MR HANLON: Yes.

PRESIDENT: Agreed matters?

MR HANLON: But it's - that proposition clearly sets out that there will be a process of standardisation of conditions and that that process is not then dependent on the renegotiation of the agreed matters that are contained in here. And there is an attachment which says what the - at the base - which says what the attachment -:

The attached conditions of service are put forward in line with the statement of principles to reduce or eliminate conditions which discriminate in favour of certain sectors; are out of kilter with accepted standards; no longer have a relevant basis or have the potential to be abused or disadvantage employees.

Now, very clearly that sets the tone on the process. When one turns to allowances in the TTLC's document at page 47, in paragraph 1 - Allowances, it says:

The issue of HDA and MFA will need to be addressed in detail once stream structures and salary rates are determined. Notwithstanding this public sector unions accept that -

When one looks at the original agreement it says under - in the exhibit of the 16th of the 7th, paragraph 1:

Agree to address the issue of HDA and MFA within any award restructuring.

There aren't any limits. The appropriate time is the appropriate time that the parties agree it should be processed. Not that the structures have got to be agreed to; not that the rates of pay are determined and not that they must be determined as an issue of priority before any other condition. Now one can then go through and look at -

PRESIDENT: If conditions of service, though, were in some way hived off for attention either by a full bench or by a single commissioner these matters would be addressed and determined wouldn't they?

MR HANLON: Well - but Mr President, the TTLC is happy to address them providing we deal with the agreed matters of Exhibit -

PRESIDENT: But I take it that this to be part of the negotiation process which the bench requested the parties to carry out. That negotiation process seems to have come to a bit of a dead end on some aspects and it could be resolved by the commission in due course.

MR HANLON: Well, it could be resolved but in actual fact all it requires is the commission to say that these additional conditions are not suitable in - and in terms that they are a restraint on the orderly processing of the conditions of service, because the government's proposal is acceptable -

PRESIDENT: Yes.

MR HANLON: - subject to us making another commitment. And if you just turn to employment conditions, which is paragraph 2 on the next page - and this says:

It is agreed to introduce the standardised conditions, apply consistent mechanisms and rights for all employees which shall be balanced against benefits.

This is conditional upon agreement that other conditions will be negotiated on an acceptable mean across the TSS.

In the TLC's submission now in its - it has added the words, 'subject to there being no reduction in conditions'.

Now, if we set out and agreed with Exhibit 3 matters, and don't agree with that word, and don't get their agreement, then we can't go on and deal with the conditions as set forth in our proposal. Now, I can repeat that exercise on the range of matters right throughout this exhibit and all I am saying is, in regard to the conditions we believe that the bench should rule that there can be no conditions, and if the TTLC is prepared to sit down and negotiate according to the process, then it should do so.

We also saw that the agencies specific items rather than dealing with them as a one-off should be dealt with as part of the conditions of service, and when we're dealing with annual



leave those matters that went to annual leave would be dealt with, and those matters that went to the administration of the annual leave clause peculiar to an agency would be dealt with at an agency point - at a later point. Now, there was no further information provided with the agency matters simply because we thought that was a logical way to go.

It became apparent to the government that, given it didn't get the response on our process to this 20 May with the preconditions, then the agency matters and how we ought to deal with them were never really going to be addressed as acceptable because it was conditional on the other deal coming one week later.

The letter of 17 May also sought three other items, which two of them of themselves did not cause the government any concern, and 1(ii) was that SIPS would be excluded from the conditions of service matter and dealt with as part of wage negotiations. It did appear both as an agency matter, and it is a matter which appears under wages.

The government is happy to deal with the matter once rather than twice.

In (iii), was that:

The government guarantees the process will not be used to delay on condition matters.

MR VINES: Non-condition.

MR HANLON:

non-conditions matters

Well, we don't require guarantees from affiliates, we just expect them to stand by their word, and the government sees no need to give a guarantee as to its bona fides.

And the fourth point, 'that .9 in the proposal be excluded'. Now, that's point 9 in the government's conditions of service proposal which set out a suggested process for - and at page 2 of the conditions of service item 9 says this:

Issues going to the number of awards, the application of awards to agencies, and award resupply, will be determined following completion of structures, rates of pay, conditions of employment issues.

Now, they have asked us to withdraw that, to be excluded. And the government's position is that we agreed to that then one of the major planks in reform would become an argument at the

end of the process. That is, there will be less than 110 awards and agreements, and there will be a reduced number, and the government's position is it doesn't have a preferred outcome at this point. It believes that at the end of the process there will be an opportunity to see what is the appropriate coverage. Until that point in time we don't have a view.

If the government was forced to withdraw that position, and then at the end of the process sought to change the number of awards, then we would be said to have reneged on the agreement that we have made because we have now excluded it. Now, we believe that's a fundamental issue. That's clearly contained in page 11 of the national wage decision principles, that award responsiveness was to be a matter, and it is very clear from an analysis the government has done that it is an essential part of the process.

And if we have eight or nine unions respondent to different awards in agencies who, for some reason, do not agree at the end of the process, what will have been the purpose of the exercise? So that in the Department of Health we have got 25 awards covering 12,634 people. The smallest we have got, excluding the head of agency, is the librarians with four.

In education we've got 17 awards covering 8,000 staff; and the smallest is the engineers with one; and the next is the architects with one. Department of construction, we have 23 awards covering 1,700 staff; the smallest librarians; the next, the scientific officers with one. Clearly it is not within the scope of award restructuring that those matters not be addressed.

And from the TTLC's letter, to put that on as an exclusion, as a precondition to enter into the conditions of service, again, is not something which the government could agree and should not now be allowed to come to the commission and say: Look, please arbitrate on this matter, we couldn't agree and the government wouldn't negotiate.

PRESIDENT: It's going to have to be arbitrated though, isn't it?

MR HANLON: Well, if the TTLC's letter ought to be the first point of arbitration, that those conditions ought to be on it.

PRESIDENT: Well, we did say in our - and I thought our decision was fairly clear, that anything that couldn't be agreed as a - following the process which we established on 22 February would be arbitrated.

MR HANLON: Well, Mr President, if you're suggesting to me that to force the - a union to arbitration we would put a



condition on there that was not part of the original Exhibit 3, and then say to us: Well, if you don't agree with that you're going to have to go to arbitration. Because that, in effect, is what the TTLC has done to us.

We have said that there's an orderly way of working through clauses of a model set of conditions, and they've agreed that there is, but they've then said, 'Well, we now want to talk about Exhibit 3 matters set out in the decision with additions', with additions. And when one looks at the substance of them - I mean, the span of hours is well worth a little exercise to look at, because it sets out such conditions and time lines that if we wanted to alter the span of hours we need to take into account the leisure activities of individuals.

PRESIDENT: Yes. Look, but they can all be dealt with in an orderly process.

MR HANLON: Why should the matter be open to someone to come to arbitration -

PRESIDENT: Because nobody has got anywhere in terms of negotiation for the last 18 months.

MR HANLON: Well, Mr President, if I put a condition that unless you agree we won't talk about something the full bench says we ought to talk about -

PRESIDENT: I'm - what I'm sort of indicating, I think, to you Mr Hanlon, is that everything is on the deck and people can't ask for issues to be excluded if they are there for consideration.

MR HANLON: Well, then if those matters - those conditions can't be put on the negotiations then there is no reason at this point in time for the conditions of service to be referred to arbitration, that there is a process of the parties sitting down working their way through the standard clauses that are essential in all awards.

Now - but the if the commission finds and the unions want to argue that we're going to argue it, well, we'll argue it line by line. But if that then says: When is the outcome? - well, there was a complaint the other day when I suggested that the completion of workplace reform - and I used workplace reform - will have a time limit of at least two years, and that was regarded with outrage.

The process now being suggested by the union movement, just in terms of award restructuring, is going to have that time line. Whereas the government has said it will process the award clauses, it will provide the basic information, it will negotiate in an orderly fashion integrating the agency

matters. And the response is, 'Well okay, but only if you now make further concessions before we will talk about it'.

In regard to special cases, well, we regard special cases as being dealt with next to the determination of structures. And there are a number of key areas of which our primary quest would be that the hospital scientist, the scientific officers and the welfare workers, followed by the pharmacists, physiologists. In the hospital employees area, the operational area, we would prefer the attendants, ward clerks et cetera to be dealt with first before we deal with the tradesperson matter. And in the technical stream we would want the dental therapists dealt with.

PRESIDENT: Yes, thank you, Mr Hanlon.

MR HANLON: So that in summary if I could just say the - we believe the structures should be determined by this bench. That the special case issue then be processed according to stream. Conditions of service, the parties should be directed to confer. And that we should report back on a regular basis to the bench.

PRESIDENT: Yes, thank you. Mr O'Brien?

MR O'BRIEN: If the Commission pleases, I really think that we would have to categorise the position of the government as one which is calculated to delay, not to resolve these matters.

The first thing that we say is that we have come up with a proposal which will allow the matters to be dealt with fairly expeditiously. If you follow the suggestion put by Mr Hanlon then this bench will be sitting interminably, and will be sitting not resolving the matter but dealing with it on a compartmentalised basis in such a way that the timetable of 2 years, which really started to run some time ago, will really blow right out of the water. So, we would categorise the submissions of the government as calculated to delay, not to resolve the matter.

In relation to how this matter would be properly dealt with in the way that we suggested, obviously the final determination of the matter would be by this full bench, but a member of the commission could hear submissions, conduct inspections if need be, and prepare a report for this bench on the various matters put by the parties, and include within that report perhaps recommendations subject to the directions of a full bench going to that commissioner conducting the inquiry.

In relation to - so, Mr Hanlon would not, or whatever other government advocate was conducting the matter - would not be denied the opportunity to have the matter debated, and could at the appropriate point in proceedings debate the



interlocking of the structures, if that were a relevant consideration.

In relation to conditions of service, we didn't think that the proposals that we were putting were unreasonable in terms of how those matters might be processed. I might say, we view the government's position as being one of, this is our position and we cannot move from it. So, in terms of their position on negotiations I don't think they can criticise anyone in terms of how to negotiate particular matters.

The position about those items as enumerated in the letter which was tabled by me this morning is that we felt that those matters which had been announced to the commission specifically as matters on which there was a measure of agreement, ought to be dealt with and processed first as they are of some vintage at this stage in the proceedings, and that was the reason for our wishing those matters be prioritised.

Mr Hanlon I think has fairly dealt with the question of SIPS. That is, that we didn't feel we could deal with two areas at once. Because of the history of this matter we were asking for an assurance that the process wouldn't be used to delay other matters, which we didn't think was an unreasonable thing. Apparently the government believes it is unreasonable to ask for an assurance such as that.

And, on point 9, we have consistently said that the question of rationalisation - there is a paper that the government has prepared on rationalisation of union coverage - is integrally connected with that matter, and we had some difficulty with that. But I think I would have to say that the submission this morning is one of never really letting the facts get in the way of a good argument, because the question of what that meant in terms of whether the issue could be ever discussed was debated at our meeting yesterday. And I must say that although that conclusion was attempted to be drawn yesterday we certainly weren't putting the matter in that vein in our discussions yesterday.

So, I think that's an unfair conclusion being drawn from the proposal, and what we were really saying was that you have to read point 9 with the rest of the document as to how those matters would be determined. We were not saying that the question of awards - that a number of awards couldn't be addressed, we just didn't wish them to be addressed in the process that was before us on other conditions of service matters, that they were more to be dealt with by, for example, other discussions with individual organisations, bearing in mind that there are awards of this commission, awards of the Federal Commission; that not only are we talking about rationalising awards in this jurisdiction, but there is the question of other jurisdictions and how those will intermesh.

So, it isn't a simple proposition. We don't walk away from the question of rationalisation of award coverage, we were rather seeking a qualification of the process and, I guess, some people seeking to protect concerns that they had, understanding that inevitably those issues will be discussed. .... and I don't really think it's fair ....

PRESIDENT: I think you're off the record.

MR O'BRIEN: .... categorise the position of the Trades and Labor Council, and it's one -

PRESIDENT: I think we've just had a workers' compensation claim lodged.

MR O'BRIEN: Yes. I'm glad it wasn't my toe.

So I think, in essence, we believe that, as the commission said this morning, this is the point where arbitration should commence. We propose a process which is fair and equitable. We understand what the commission says about matters being on the table and I just want to make one particular point: that in relation to the point on higher duties and mixed function allowances, that it would seem to me that you really can't deal with that question properly until you know what structures are going to be there because often in new career structures those sorts of things are covered in the structure. So, I think that's the reason that those different words appear in the TLC document on that point.

I take on board what Mr Hanlon says about that, but I think you have to really look a bit beyond what was said in July as to what might be a more reasonable expectation with new career structures in that regard. If the commission pleases.

PRESIDENT: Thank you. Thanks, Mr O'Brien. Oh, Mr Kadziolka?

MR KADZIOLKA: Excuse me, Mr President, for getting up so late. I feel like a glutton for punishment raising my head actually. I would just like to reflect on - on reflection I would just like to comment on a couple of matters raised by Mr Hanlon and the bench in relation to our matter.

Firstly, Mr Hanlon said that the association walked away from negotiations. That is not the case. We have always been interested in and we have always pursued actively negotiations. We've indicated we're prepared to discuss any matter. The request -

PRESIDENT: It seems there's a bit of a difference of opinion as to what represents negotiation.



MR KADZIOLKA: Yes. Well, saying no to everything, in my view, isn't negotiations. But anyway, in relation to Mr Hanlon's request that negotiations cease while the bans are in place, it's obvious to everyone that both parties are entrenched. I would seek that lines of negotiation remain open, because I believe that if anything is to be resolved the door shouldn't be closed. In relation -

COMMISSIONER WATLING: It works both ways though, doesn't it? If you want the commission to be involved in something as well you'd at least think you'd put an application in.

MR KADZIOLKA: Just on that matter as well, that's the third point I was going to raise. You indicated, Commissioner Watling, that all the unions' proposals were squarely on the table. We've put together what we believe would be a good restructuring package, that is in the TTLC proposal. We haven't formalised that through application because of what I indicated earlier, that negotiations are still taking place.

But our - the bone - our proposal is there and I'd just like you to draw - to draw attention to the government's response to our proposal. Mr Hughes felt that his 23 words weren't sufficient. I would indicate that he does about 200 per cent better than we do. The government's proposal on our award is existing structures and rates to apply. So in relation to pursuing restructuring seriously, I think we've made an endeavour.

PRESIDENT: But the claim as set out in the TTLC document doesn't extend to the claim which you actually have on the government at the moment, does it?

MR KADZIOLKA: This is - that - the TTLC claim - I beg your pardon - the claim in the TTLC document or proposal is what we have lodged with the government, yes, sir.

PRESIDENT: Oh, I see.

MR KADZIOLKA: Thanks, Mr President.

PRESIDENT: Thank you.

COMMISSIONER GOZZI: Mr Kadziolka, why wouldn't you put that in an application?

MR KADZIOLKA: We still intend pursuing the matter through negotiation, Mr Commissioner, and we will wait until things are finalised in that area before putting our claim on a formal basis.

PRESIDENT: I think there is a fundamental problem, though, in terms of the general dispute, Mr Kadziolka. If you're

going to engage in industrial action the employer has some entitlement to say: Well, we don't want to talk with you.

PRESIDENT: Mr Warwick?

MR WARWICK: Mr President, I'd just like to raise very briefly the issue of special cases as raised by Mr Hanlon. I'm a little concerned that he's expressing preferences as to how or as to which cases should be run at which time, and I would rather have thought that it would have been appropriate for him to confer with us in the first instance about which of those matters should be programmed. And it would have been more appropriate that - if there could be an agreement reached then we collectively could have approached the commission about those special cases programming and being programmed.

PRESIDENT: You have - you're diametrically opposed to the timetable?

MR WARWICK: No. I would simply submit that the commission should not accept Mr Hanlon's scheme of programming at this time, rather that the commission should direct the parties to have discussions about which cases should be run at which time, and that a program should then be put to the commission.

COMMISSIONER GOZZI: Mr Vines. It's just that brings to mind your comment on special cases. You were thinking of 13 cases by 5 days per case.

MR VINES: That's only for our submissions.

COMMISSIONER GOZZI: So you see that within this process before the full bench that special cases would run, what, as work-value cases?

MR VINES: That's correct, sir. That's the basis for each of our special cases, work-value arguments.

COMMISSIONER GOZZI: Why wouldn't you see it now as before the full bench on the basis of structures being determined and job classifications and standards being worked out?

MR VINES: Sorry, Mr -

COMMISSIONER GOZZI: I mean, why wouldn't you see it on the basis of job classifications and descriptions being agreed and the special cases aspect being taken care of by way of translation when the structures are in place?

MR VINES: Well, because I can't - I don't understand how that can happen, because from what -

COMMISSIONER GOZZI: Well, I'm just asking the question.



MR VINES: No, if I - yes, because if the - no, sorry, how it can be fixed by translation? Because if translation is going to happen without changes to salaries in current awards, our argument is that those current awards don't currently recognise the work value of the 13 special cases that we've got. That there has been significant changes in the work value of those people since September 1981 and we want to be able to put submission to the commission on those changes and have the salaries reflect it. If the commission pleases.

In terms of the priorities, which ones go first, if the Commission agrees to the proposal that's being put that the streams be allocated to individual commissioners and then the special cases in turn be allocated, we would prefer to - once that allocation has taken place, then in consultation with the employer representatives and the commission we work out the process of dealing with them. If the Commission pleases.

COMMISSIONER GOZZI: Yes, thank you.

PRESIDENT: Well, thank you. We'll adjourn. A statement will be forthcoming indicating the - our response to the various issues of principle which have been raised and endeavouring to establish the mechanism for ongoing resolution of these problems. That will include dates of next hearings - not all of them, but at least to get matters under way. And in conclusion I would like to apologise to the waiting parties.

HEARING ADJOURNED