

HEARING COMMENCED 10.30am

PRESIDENT: Could I have appearances please.

MR R. FLANAGAN: If it pleases the commission, FLANAGAN, R., for the Australian Workers' Union, Tasmania Branch.

5 PRESIDENT: Very good. Thanks, Mr Flanagan.

MR K.J. RICE: If it please the commission, RICE, K.J. I appear on behalf of the Tasmanian Farmers and Graziers Employers Association, sir.

PRESIDENT: Very good. Thanks, Mr Rice.

10 **MR D. DILGER:** If the commission pleases, DILGER, D., for the Tasmanian Chamber of Commerce and Industry Limited.

PRESIDENT: Thank you, Mr Dilger. Well, Mr Flanagan?

15 MR FLANAGAN: Thank you, Mr President. Mr President, this application seeks to regulate rates of pay and conditions of employment for employees engaged in silviculture and afforestation who are not presently regulated by instruments of either the federal or state industrial tribunals.

20 There appears to have been some uncertainty about what the union has meant by the terms 'silviculture' and 'afforestation' and some concerns were expressed by the TFGA and the TCCI about the relationship of this proposed scope to awards of this commission which are already in place, particularly the Farming and Fruit Growing Award, the Plant Nurseries Award and the union identified that there might possibly be some confusion as it relates to the Civil Construction and Maintenance Award.

25 PRESIDENT: Excuse me for sounding very vague and not being aware of my own awards, but Civil Construction and Maintenance?

MR FLANAGAN: That's the new title for the Road Makers Award, Mr President.

30 PRESIDENT: Oh, is it.

MR FLANAGAN: It was only very recently varied.

PRESIDENT: All right. Good. Civil Construction and Maintenance.

35 MR FLANAGAN: That's right. What the union had proposed to overcome the concerns was to vary the proposed scope clause contained within the application to exclude persons covered by the Farming and Fruit Growing Award, the Plant Nurseries Award or the Civil Construction and Maintenance Award and indeed, I understand

that from the discussions I had with the TFGA yesterday, they would be prepared to consent to the application with words to that effect as an amendment to the application. So that overcame the concerns that the TFGA had.

- 5 However, in subsequent discussions with the TCCI, I understand that that did not satisfy the concerns that they have about the application. as I understand it, the position of the TCCI is that they would not see or like to see an unnecessary proliferation of awards in the state jurisdiction. They are of the view that the Plant Nurseries Award could
10 be amended to adequately pick up the work which is envisaged by this application.

They are also concerned that there is not a significant amount of work, or there is not a significant industry out there which requires regulation. For its part the union does not accept the proposition that
15 varying the Plant Nurseries Award would be an appropriate way forward. In fact, we have proposed to the employers that perhaps we can vary the Civil Construction and Maintenance Award to pick it up.

Clearly, a variation to an award which regulates employment in another industry is not the appropriate way forward in trying to regulate the conditions of employment for people that are working in silviculture and afforestation where those persons are not presently catered for by an existing award. We want to cover forest workers and people engaged in establishing forests who are not presently regulated and we don't see it as appropriate or in the best interests of employers
25 or employees in the industry, that some other industry award should be varied.

What we have agreed with TCCI is that if we are able to demonstrate to them that there is a significant industry out there that requires regulation, then in those circumstances, TCCI would be prepared to look at appropriate wording to give effect to the scope of the work that
30 we are seeking to cover.

Now, we believe in fact that that may be the most expeditious way forward rather than entering into some formal arbitration on the matter which could prolong this application. We are prepared to have
35 those discussions with TCCI. We are working on a timetable of providing to the TCCI a list of persons in the industry who we believe to be engaging labour in silviculture and afforestation who are not presently regulated by an award of this commission or the federal commission.

40 We expect to do that by close of business this week. We would then be looking to have discussions with them early next week to overcome their concern. There is a significant amount of employment in these areas which are unregulated and which we are deeply concerned about and it is due to that concern that we see this process as one that ought to move faster rather than slower.
45

- We have identified situations where employees have been engaged on piecework rates which have seen them earning as little as \$6 or \$7 an hour, who are paying for their own transport to the job and whose incomes from the work that they are performing fall well below even
- 5 the most unattended to award of this commission. Of course, they're not AWU awards, but some organisations haven't followed through with their awards but they are very modest levels of income that these people are receiving and there are no generally accepted standards of the industrial tribunals which are being applied to this employment.
- 10 We are very concerned about that and in those circumstances we propose to move forward as quickly as possible but to assist the commission and indeed the parties, I'd like to tender an extract from the Macquarie Dictionary.

PRESIDENT: **EXHIBIT F.1.**

- 15 MR FLANAGAN: If I can take the commission to the third page of exhibit F.1, to the definition of a forest and afforestation is the term that's used, which is the noun to a forest and it is:

...to convert (bare or cultivated land) into forest, originally for the purpose of providing hunting grounds.

- 20 This is not for the purpose of providing hunting grounds but it is for the purpose of the harvesting of that timber for the production and processing of timber products. It's the cultivation of the forest that we're dealing with here and if I could take you to the following page, silviculture, and indeed the definition of silviculture is:

- 25 ..*the cultivation of forest trees; forestry.*

- That's the work that we're focused on here. We're not interested in persons within the scope of the Farming and Fruit Growing Award, we're not interested in persons with the scope of Plant Nurseries, we're not interested in persons within the scope of the Civil Construction and Maintenance Award. We are interested in those persons that are engaged in establishing and cultivating forests and there is significant employment out there.

- 30
35 As a consequence of the regional forests agreement between the parties within the industry and both the state and federal government, there is a significant amount of activity which is presently taking place for the timber industry in Tasmania to remain viable within the world economic context. There is a necessity for the industry to double its present size within the next 10 to 15 years and that in turn has led to a significant amount of unregulated employment out there occurring at the moment which we seek for this commission to regulate.

40 In those circumstances, Mr President, what we'd be seeking is that the application which is before you this morning be adjourned. That

following the meeting with TCCI early next week, the union would contact you with a view to having the matter brought back on at a time convenient to the commission. If it pleases the commission.

PRESIDENT: Yes. Do you see the commission being involved at all in
5 any further examination of the potential areas of coverage? I make that comment, or ask that question, simply because of the prospect of any doubling up of the work that you and the employers might have to do in order to establish just what exists and what doesn't exist.

MR FLANAGAN: I would hope that TCCI, on this occasion, would
10 adopt a balanced approach to the issues which are to be discussed. However, if that process fails then certainly we would be seeking the assistance of the commission. We are anxious, given that we see this as a matter which needs to be dealt with expeditiously, to avoid inspections in order to establish the scope. However, if that's
15 necessary we can look at that but it may be that prior to that, if we are unable to reach agreement, we would be seeking the assistance of the commission by way of conference. If it pleases the commission.

PRESIDENT: Yes. All right. Thanks, Mr Flanagan. Mr Rice?

MR RICE: Thank you, Mr President. Sir, in essence, what Mr Flanagan has reported to the commission in respect of the Farming and Fruit Growing Award at least, there is a clear reflection of our discussions. We do hold some concerns regarding the term, silviculture, which appears in the Farming and Fruit Growing Award.
20

It does have some governing provisions or overriding provisions at
25 clause 2(d) - it speaks about seed farming and/or silviculture where such work is performed in conjunction with the activities specified in subclauses [a], [b] and [c] of this clause which means, as we read it, that a farmer would need to be, not exclusively in forest operations, that he was in general farming and then he may well have a bush that he wants to establish a forest or knock one down and put another one
30 up or grow another one out on that land. We would want to see, of course, the new provisions, the new scope, before we went into any - agreed to it but in essence, we are in agreement with what's being proposed for the Farming and Fruit Growing Award, sir.

35 PRESIDENT: And that's the only area of concern for you?

MR RICE: Yes, sir. If it please the commission.

PRESIDENT: Yes, thanks, Mr Rice. Mr Dilger?

MR DILGER: Thanks, Mr President. I agree with what Mr Flanagan put forward and that is also an adequate reflection of the discussions
40 we've had thus far in relation to those matters pertaining to the TCCI. Sir, we'd also join in making application for an adjournment to take place so that Mr Flanagan and the AWU can provide us the

information that the discussions regarding the industry and once we have a look at that information, consult with our members and other employers who are likely to be covered by this, then we'll be in a position to conduct meaningful discussions with Mr Flanagan and 5 should those discussions be fruitful, we'd be in a position then to proceed in this matter by consent.

So it's just a matter of time of getting the information and then having the discussions and I can assure you that they will be reasonable discussions, as always, Mr President.

10 PRESIDENT: So reassuring, Mr Dilger. How long then? I note you said you'd need to be able to get back to your members?

15 MR DILGER: I think Mr Flanagan is going to provide me with a list by the end of the week and then I would write immediately to all those members seeking their response back. As these things generally go, I reckon two weeks after the end of this week would be, at the minimum, the level we could expect.

PRESIDENT: Well, that's what I was contemplating.

20 MR FLANAGAN: Well, we'd have a difficulty with that. Quite frankly, the list that we will provide to the TCCI is unlikely to have within it any existing members of the TCCI. However, the application has been on foot now for some time, it's not new. The union corresponded with TCCI in relation to this going back to 16 September. So, it's been now in excess of five weeks. TCCI have had the opportunity to talk to their 25 people about it. I understand what their concerns are and I think that in the discussions that we have early next week we can work through those concerns.

30 The reason that we have suggested - rather than identifying a date today to bring it back on, that in the alternative that it be stood over and the opportunity for the parties to have it relisted following those discussions is that, if a balanced approach is taken to those discussions, I'd like to see the matter listed towards the end of next week. However, if there's some sort of delaying approach embarked upon by the TCCI, well that may mean that it won't be able to come on 35 next week but we are anxious to see this matter move forward expeditiously.

We're suggesting that the matter should be stood over with leave for either party to contact the commission to have the matter brought on with short notice.

PRESIDENT: Yes.

40 MR FLANAGAN: So that deals with our view of the general way forward but I would like to respond to the concerns that Mr Rice has raised, given that he has had to travel some distance to attend the

proceedings this morning, and I'm hoping to overcome the necessity for him to have further involvement through this process. Perhaps if I can deal with the Farming and Fruit Growing Award -

5 PRESIDENT: Before you do get onto that, I'm just trying to clear up the previous matter. How can you be so certain that the employers that you'll be able to identify won't be members of the TCCI?

10 MR FLANAGAN: If they were, Mr President, we'd have serious doubts that they would have sought - if they were members of the TCCI, they wouldn't be employing their people in the manner that they are. That suggests to us that the employers that are in the industry are inexperienced in employment relations and until we provide the list to the TCCI, which we intend to provide, they may not even be aware of the role of industrial organisations or employers.

15 PRESIDENT: Yes. I accept that's a distinct possibility. They may well still be members of the TCCI and I don't think we can write that off at this point in time. Yes, Mr Dilger?

20 MR DILGER: I was just thinking, while they may not be direct members, they may be members of other members of our, in particular, the Forest Industry Association, and that's where the difficulty lays, Mr President. Mr Flanagan's talked about providing information to us at the end of the week, now I imagine that's Friday. For us then to get information out, would probably start Monday, and he's talked about a reasonable approach. I don't think it's reasonable to reach people in the north and the north west and east of the state by, say, for example, Wednesday and then have meaningful discussions and get back to Mr Flanagan and have meaningful discussions again.

25 I think the time frame has got to be reasonable. We'll fall into line with that but setting parameters towards the end of a week for us to get our discussions, or our house in order, I think is unreasonable. So, we just proceed along those lines.

PRESIDENT: So you think you'll need at least another week?

30 MR DILGER: Well, another week after we'd received information from Mr Flanagan. The discussions so far, I believe, have been quite fruitful and we enjoy a good relationship with Mr Flanagan and the discussions have been good up until now.

PRESIDENT: All right.

35 MR FLANAGAN: Look, I'd certainly confirm that the discussions up to date have been in good faith. There is no doubt about that and we are anxious for that to continue to be the case.

In terms of providing information, the information has already been provided. The information was provided at the time we made the application, and that information is that we seek to regulate silviculture and afforestation. Now, if there are one or two members of
5 the TCCI, existing members of the TCCI, that are on that list that they have not already communicated with, then we all have telephones. It doesn't take two weeks to ring people up, even in the north or the north west. We are concerned that the substantial amount of afforestation activity is conducted in the summer months and summer is upon us
10 and we have a significant number of employees out there that are presently unregulated, that are subject to employment practices which are not endorsed by industrial tribunals.

PRESIDENT: Yes, I understand that. Mr Dilger?

MR DILGER: I don't mean to, to and fro you through this process
15 but -

PRESIDENT: Well, I think it's the best way to go.

MR DILGER: The adjournment was clearly sought. We don't disagree with what Mr Flanagan's trying to do.

PRESIDENT: Yes. It's a question of how long.

20 MR DILGER: The reason for the adjournment was that Mr Flanagan was going to provide us with that list. Now, that's a list that wasn't provided to us earlier. He certainly provided us with all the other information but that's the reason for this adjournment. So, we're talking about information that actually hasn't been provided to us.

25 PRESIDENT: Can I interrupt?

MR DILGER: Yes, Mr President.

PRESIDENT: The Forest Industry Association which is, you say, an affiliate of yours -

MR DILGER: Yes, Mr President.

30 PRESIDENT: Have they been consulted?

MR DILGER: They have.

PRESIDENT: So, they're aware of all this at the moment?

MR DILGER: Yes, they are.

35 PRESIDENT: They'd have a fair idea. Then the moment they get the list that you get next Friday, they'll be able to identify their members immediately?

MR DILGER: I would envisage that, yes.

PRESIDENT: So once they've done that - that won't take long, will it?

MR DILGER: No, and I imagine they will speak on behalf of all those people as one voice.

5 PRESIDENT: Yes. So it shouldn't delay it too far at all?

MR DILGER: No, I don't think so.

PRESIDENT: Yes. All right. I interrupted you. You were about to say something else.

10 MR DILGER: I've lost my train of thought but it mustn't have been that important, Mr President.

PRESIDENT: Okay. And I interrupted Mr Flanagan too.

MR FLANAGAN: Yes. Should I move forward now onto the -

PRESIDENT: Yes.

15 MR FLANAGAN: Mr President, the Farming and Fruit Growing Award, clause 2 - Scope states:

This award is established in respect of the industry of farming and/or fruit growing and without limiting the generality of the foregoing, shall include:

- 20 (a) *the preparation, sowing, raising, harvesting, preparation for packing, and packing of crops including grains, vegetables, peat moss, fungi, hops, nuts, or other specialised crops grown for the production of essential oils or pharmaceuticals;*
- 25 (b) *livestock farming including the management, breeding, rearing and/or grazing of horses, cattle, sheep, pigs, goats, poultry, deer and/or other livestock and dairy farming;*
- (c) *fruit growing including the management, cultivation, picking, grading, processing for packing, packing and/or forwarding of fresh fruits including grapes;*
- 30 (d) *seed farming and/or silviculture where such work is performed in conjunction with the activities specified in subclauses (a), (b) and (c) of this clause;*

For the record, the union would make it clear that it is not the intention of this application, or any scope words which are developed

through this process, to regulate the employment of employees engaged in seed farming and/or silviculture where such work is performed in conjunction with the activities specified in subclauses [a], [b] and [c] of clause 2 - Scope of the Farming and Fruit Growing Award, and we place that on the record. If it pleases the commission.

5 PRESIDENT: Yes. What's that do for you, Mr Rice? Does that make you feel more comfortable?

10 MR RICE: It makes me feel more comfortable. Probably some more discussions are needed to be had in that regard into just what the
actual intention - I can see a farmer, for instance, being in a situation
where he would have livestock, he would have pastures and grains and
those sorts of things and he may bring in some casual people to help
him on that, he may have one or two full-timers on a property, then he
may seek to put in a shelter belt of forest, he could put in 50 acres of
15 forest or something like that, where he would directly employ some
other people to come in, some casuals, particularly to help work up the
ground and plant those trees. As long as we're of the understanding
that those people are excluded, that those who are in the employ of
that particular property owner, and the property owner is in the
20 business of farming as well as in the business of establishing a tree
farm, and that's becoming quite predominant now in many areas of
the state where farming is quite controversial in some areas where
good farming area has been taken over.

25 PRESIDENT: Yes. I think Mr Flanagan is saying, so long as the
farmer is engaged in any of those other activities, then the farmer is
not going to be bound by these new provisions.

MR RICE: That's as I'm reading it, Mr President, and it's just a
question that comes into my mind. If that could be clarified, please?

30 MR FLANAGAN: I'd seek to clarify that. There are two sets of
circumstances, Mr President. There is the set of circumstances which
Mr Rice has referred to - and this is increasingly a trend which is
developing in Tasmania, where a land holder decides to plant their
own forest, albeit usually fairly modest but in some cases, a little
35 larger than modest. Where a farmer has determined to go down that
path, it is not the intention of this application to regulate the
employment of the persons that are engaged in the activities
associated with that particular type of forest.

40 However, where the farmer has leased his land to a commercial forest
operator, or has entered into some joint venture arrangement with a
commercial forest operator, and persons are engaged specifically for
the purpose of establishing and/or cultivating the forest, then we
would intend this application to cover persons who are engaged in
those circumstances.

PRESIDENT: I understand the distinction and I would think that in the main, that would be fairly easily identified by the actual employer being the partnership, the joint venture or the lessor. I doubt if there'd be many, but there could be some who might seek to avoid those 5 responsibilities by some other arrangement, by perhaps not disclosing a partnership or not disclosing the fact that there is a different employer, but that's something that you might have to contend with at a later date.

MR FLANAGAN: That particular set of circumstances is not isolated 10 to this application. We have developed techniques, Mr President, to address those.

PRESIDENT: So long as the employer, the farmer, is engaged in the other activities regulated by the Farming and Fruit Growing Award, then it seems to me that you're saying that any afforestation or 15 silviculture activities will be deemed to be outside the terms of this particular award that you're seeking to have made?

MR FLANAGAN: Yes, Mr President. That's what we're saying. If you're a general farmer, and you've got a forest and you've got an employee who is attending to the various activities of the farm, then 20 that person would clearly be excluded from this application.

PRESIDENT: Yes. That's the way I interpreted what you were saying. I thought that was very generous.

MR RICE: I still have a nagging concern there just on the construction of those last few words, Mr President; Mr Flanagan said if 25 there is an employee that's going about the general work of the farm and then he may come in - or that person may come in and do some work on the forest, we're seeing it, particularly if you're establishing a forest, it may well be that the general farm hand and the farmer has cultivated the ground, and then you might bring in three or four 30 casuals to help plant those trees.

PRESIDENT: What do you say to that, Mr Flanagan?

MR FLANAGAN: Yes, look, I'm just trying to think of the circumstance that Mr Rice has -

PRESIDENT: Well, if you bring in some casual, say, even some 35 pruners.

MR FLANAGAN: If it is a general farming operation and not a commercial forest -

PRESIDENT: Well, no, it's a question that I thought you were saying, so long as the farmer is engaged in these other activities covered by 40 Farming and Fruit Growing -

MR FLANAGAN: Yes. What I'm concerned not to do, if North Forest, for example, decided to purchase a dairy down the road then we wouldn't intend that North Forest be excluded from this application.

PRESIDENT: No, because North Forest is not a farmer.

5 MR FLANAGAN: Not at the moment, no, it's a commercial forest operator.

PRESIDENT: Yes.

10 MR FLANAGAN: So, yes, I mean if the family farmer - if I can use that expression - has decided to establish a forest and does bring in designated employees for the purpose of pruning, planting or fertilising that forest that he owns as a part of a complete farming unit envisaging aspects of (a), (b) and (c) of the scope of the Farming and Fruit Growing Award, then that person would be excluded from this application.

15 PRESIDENT: Yes.

20 MR RICE: Those comments, Mr President, do allay our concerns - those concerns that we did have and we wouldn't raise any objections provided - well, it's on the transcript now and if that's the way the commission seeks to deal with this matter we wouldn't raise any further concerns.

25 PRESIDENT: Well, that's the way I understood Mr Flanagan to be putting it originally but I appreciate the fact that there have been these underlying fears on both sides but I'm convinced that you each understand each other now and that Mr Flanagan is not trying to cover farmers as employers, and you're not seeking to protect forest industry companies.

30 MR RICE: No, that's quite correct, Mr President, we're not, and it was just those things that I think the discussion before you on transcript has brought that all out now and so our concerns have been allayed and so we won't raise any further - or we will not be raising any objections to the scope of the award.

PRESIDENT: Yes.

MR RICE: Thank you, sir.

PRESIDENT: Well, that's a good resolution to that part of the matter.

35 Well, I would envisage we ought to be able to get back again within a fortnight or so, so I think it would be a good idea if we put a date down so that I'm available and everybody else is available.

MR RICE: If I may just interrupt, Mr President?

PRESIDENT: Yes.

5 MR RICE: Given that we've proceeded this far today and we're now seeking an adjournment and setting dates, may we be excused from any further proceedings given what's happened and what's transpired today?

PRESIDENT: You're free to depart at any time, Mr Rice.

MR RICE: Meaning not right now, sir, but at the future proceedings?

10 PRESIDENT: I don't want to say to you, to use the classic words 'at your own peril' but -

MR RICE: I understand.

PRESIDENT: - look, as things proceed, it does seem to me as though there is no need for your organisation to be worried although I think you ought to keep abreast of movements.

15 MR RICE: I take those words on board. Thank you very much, sir.

PRESIDENT: Okay. I'll have a look at a date.

OFF RECORD 11.08am

ON RECORD 11.10am

20 PRESIDENT: Well, thank you for that discussion. We've arranged a report back to be held at 10.00am on Friday, 12 November and I think we're adjourned until that time.

MR DILGER: Thank you, Mr President.

PRESIDENT: Very good. We stand adjourned.

HEARING ADJOURNED 11.10am