

**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. 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. 2605 of 1990	<b>IN THE MATTER OF</b> an application by the Federated Miscellaneous Workers Union of Australia, Tasmanian Branch to vary the Miscellaneous Workers (Public Sector) Award
	re structural efficiency principle

T Nos. 2467, 2469, 2470  
2471, 2472, 2474, 2475,  
2476, 2477, 2478, 2479,  
2480 and 2481 of 1990

**IN THE MATTER OF** applications by  
the Tasmanian Public Service  
Association to vary nominated  
Public Sector Awards

T No. 2653 of 1990

**IN THE MATTER OF** an application by  
the Health Services Union of  
Australia to vary the Hospital  
Employees (Public Hospitals) Award  
  
re Ward Clerks

T No. 2655 of 1990

**IN THE MATTER OF** an application by  
the Health Services Union of  
Australia to vary the Hospital  
Employees (Public Hospitals) Award  
  
re Maintenance Staff

T No. 2656 of 1990

**IN THE MATTER OF** an application by  
the Health Services Union of  
Australia to vary the Hospital  
Employees (Public Hospitals) Award  
  
re Trade Instructors

T No. 2654 of 1990

**IN THE MATTER OF** an application by  
the Health Services Union of  
Australia to vary the Hospital  
Employees (Public Hospitals) Award  
  
re Laundry Machine Operators

T No. 2657 of 1990

**IN THE MATTER OF** an application by  
the Health Services Union of  
Australia to vary the Hospital  
Employees (Public Hospitals) Award  
  
re Attendants

T No. 1844 of 1989

**IN THE MATTER OF** an application by  
the Tasmanian Teachers Federation  
to vary the Teaching Service  
(Teaching Staff) Award  
  
re recreation leave allowance

T No. 2264 of 1989

**IN THE MATTER OF** an application by  
the Secondary Colleges Staff  
Society to vary the Teaching  
Service (Teaching Staff) Award

re recreation leave allowance

T No. 3200 of 1991

**IN THE MATTER OF** an application by  
the Tasmanian Public Service  
Association to vary the Inland  
Fisheries Commission Staff Award

re Coxswain's                      Certificate  
Allowance

**FULL BENCH**

PRESIDENT  
COMMISSIONER GOZZI  
COMMISSIONER WATLING

Hobart 14 May 1992  
Continued from 30/4/92

**TRANSCRIPT OF PROCEEDINGS**

unedited

PRESIDENT: Are there any changes in appearances?

MR R. WARWICK: If the commission pleases, I have with me MR DAVID REES replacing Mr Mick Hall today.

PRESIDENT: Thank you, Mr Warwick.

This hearing was set aside for today to hear from the parties as to their commitment to the objectives of the decision of the 29th of November 1991. Who would like to address us first?

MR O'BRIEN: We understood Mr Hanlon had some problems with the order so we thought he might want to go first today.

PRESIDENT: Well -

MR .... : ....

MR HANLON: Let's be clear, Mr President, I don't have any difficulty at all about the procedure that has applied from day one in these matters, that the unions have proceeded to report to the commission. My only objection ever was that the formula in which the reporting process took, not as to who should lead. Having had the honour to date I think they should carry it through to wherever they intend to take it.

PRESIDENT: So, you don't want to go first on this occasion, Mr Hanlon?

MR HANLON: Certainly not ....

COMMISSIONER GOZZI: Why not?

MR HANLON: ....

PRESIDENT: Well, if you can't work it out between yourselves, would you care to start off, Mr O'Brien?

MR O'BRIEN: Oh, Mr President, I guess when it comes to facing the hard decisions the trade union movement has always got a foot forward first and the others followed along.

If the commission pleases, the unions that are party to these proceedings have considered the statement of the commission and have agreed to a common position, which we have reduced to writing and which I will tender for the assistance of the commission.

PRESIDENT: Now, what exhibit -

MR O'BRIEN: And if I may read it onto the record books.

PRESIDENT: Just a - I'll give it - this an exhibit number,



TTLc.9.

MR O'BRIEN: We're definitely not in the 20s. Mr President. And if I may read it onto the record for completeness, the commitment is:

The unions are prepared to give a commitment to achieving the objectives of the November 1991 decision and seeking to work through any difficulties that may arise.

And that is the position that I'm instructed to put before the commission. If the commission pleases.

PRESIDENT: Does anybody else - do you have a comment to make as to party, Mr Hanlon?

MR HANLON: I certainly do, Mr President. I just wonder, given their submissions that were put on the last occasion and that have been expressed on occasion before that and the comments that went to those commitments, the comments that were made about the November decision, and the bench asked that there be an unequivocal commitment to the process. And in the words of Exhibit 9, it says: A commitment to achieving the objectives of the November 1991 decision and seeking to work through any difficulties that may arise.

Well, we've been engaged in that process since 1988, it's the conduct of various unions since that date that have made the situation where the bench raised the issue on the last occasion as to when it was going to stop and when the parties would address or commence to address those critical factors. Now, I see nothing in Exhibit 9 that in any way addresses the dissatisfaction which the commission drew attention to in its comments and arising out of the last report-back process, and the correspondence which has been put before the commission, the questions, the clarifications.

And from our position we see nothing in the commitment as set out in Exhibit 9, so that we believe that that doesn't address the issue which the bench asked it to address. I just say that in comment to Exhibit 9, that's the TTLc's comment.

PRESIDENT: Yes.

MR HANLON: Organisations were asked for it. I mean, the next question that flows from that is, is this all organisations? Is this the organisations that are represented in the April 1991 submission in Appendix A, which sets out a number of organisations? And - because there are various organisations who have indicated in discussions and certainly applied to the bench that they believe they're outside. Now, we would want some clarification about the extent of the commitment.

MR VINES: Where's your commitment?

MR HANLON: Well -

MR O'BRIEN: I was going to make the statement, Mr President, that the - your statement required something from the parties and I would have thought that the government has a position to put as well.

PRESIDENT: Yes, well I -

MR O'BRIEN: And we're quite prepared to consider the comments Mr Hanlon makes, but I think we're entitled to hear what his commitment is.

PRESIDENT: Yes. I was about to ask you what the position of the minister was, Mr Hanlon.

MR HANLON: I don't have any difficulty at, Mr President, in saying what our commitment is, given we've seen the calibre of the commitment given by the TTLC this morning. And it fair to say that that commitment was being sought as a result not of which arising from the government's action as a party to these proceedings, but from a persistent view being put to the commission that there are more than one organisation and more than one of the occupational streams in which there are significant differences of view as to the level of satisfaction of those organisations to the decision of November.

And that also needs to be seen in the light that it isn't just their dissatisfaction as those organisations since November, there have been dissatisfaction wit organisations preceding November. And not all organisations were committed to a negotiated process, some sought an arbitral process almost from day one. Giving that as one end of the spectrum, and the other that organisations wish to withdraw, then very clearly the commitment is not a commitment which one would say that at this point in time would give any faith for the government that the process between now and December is going to be carried out with good faith.

PRESIDENT: But we'll have to make that judgment, Mr Hanlon.

MR HANLON: Well, the commission is certainly entitled to form a judgment, the government is entitled to form a judgment -

PRESIDENT: Quite.

MR HANLON: - based on its involvement to date.

PRESIDENT: Yes, yes.



MR HANLON: And it's that judgment -

PRESIDENT: We understand the level of dissatisfaction between the parties, what we're trying to do is sort out the dissatisfaction between the parties and the commission.

MR HANLON: I think the -

PRESIDENT: So that we can then properly order the conclusion of this - all these matters.

MR HANLON: I think the level of dissatisfaction is to the outcomes that appear to be likely to occur, whether they be positive or negative depending where one stands in the matter. And the decision in November made it very clear that there was to be a process where the parties should confer. Now, it's the government's experience with that process and leading up to that process that enabled it to form an opinion that the dissatisfaction expressed, and it's also expressed to various levels of government, is a real one. It is not something which can be glossed over by two lines on a piece of paper before this commission this morning, that then say, the dissatisfaction is in some way something which will go away today.

And then it is sufficient that the representatives of those organisations can sit down with the necessary good will and trust to go through what is a very involved and extended process. And the commitment that was required was to be an unequivocal commitment - unequivocal. And that means that there should be no restraints, that there is the commitment to work through it. We have a commitment. We don't have a unequivocal commitment.

And give that we already have a series of commitments that went to the 4%, the two lots of 3% and the 2.5. The test to be made is what is the likelihood, given that level of dissatisfaction, that we can work through the process? And it's in that context that the government is not prepared to give an unequivocal commitment, and it's not prepared to give that commitment because the view is that the award restructuring process seems to - destined to result in outcomes which do not satisfy the best interests as perceived by a range of parties and which clearly have been put to this commission.

PRESIDENT: What about the minister?

MR HANLON: The minister administering the state service?

PRESIDENT: Leaving aside, you say, the range of parties -

MR HANLON: Yes.

PRESIDENT: - does that include the minister?

MR HANLON: It certainly does.

PRESIDENT: So, the minister is of the opinion that it doesn't serve the best interests of his position?

MR HANLON: Not only his position.

PRESIDENT: No, but you can only really speak for the minister.

MR HANLON: Yes, the minister is entitled to form a view about what they believe is in the best interests of the community. And they're also entitled to form a view as to what is the likely end outcome and, at the end of that process are they likely to achieve what the purpose of the whole exercise was to be. And it's very clearly to state - it's very easy to state what the objectives are. The important test to be made is: Are the parties genuinely working towards them and will they continue to do so?

PRESIDENT: Yes.

MR HANLON: And it's in that context that in its role as employer, whether it can perceive that that objective can be met.

PRESIDENT: Yes.

MR HANLON: And it's that view, and given the reason for the matter being on this morning, is that it is the views expressed by the unions as to their level of dissatisfaction, their level of cooperation which bring the issue before this commission this morning.

PRESIDENT: Yes.

MR HANLON: And that question -

PRESIDENT: Would you say that the minister is committed to achieving the objectives of the '91 decision?

MR HANLON: You could - the minister could only -

PRESIDENT: And -

MR HANLON: - achieve that in these - in the process that arises out of the November decision while the parties are committed to the process. And it's in forming that judgment that the parties are not.



PRESIDENT: I assumed the words 'seeking to work through any difficulties that may arise' implied through that process that you're talking about.

MR HANLON: When we say 'the difficulties that may arise' that's what it states in Exhibit 9. The government's endeavoured since December to get a process in place to discuss the November decision - to discuss it. And when one examines that in some detail -

PRESIDENT: Yes, well -

MR HANLON: - you can only arrive at the point where we were last - on the 30th, where the proposition put by the TTLC as to how that process should be put was not a process that we discussed anywhere between December and March as the parties. Now, if the parties are not in a position to even be close and then come to this commission to seek an alternative, then at that hearing when the parties then raised real dissatisfactions it provides some understanding as to why there cannot be a uniform position put and uniform agreement as to process.

PRESIDENT: Are you saying that H.27 doesn't give you that process?

MR HANLON: We've been advocating H.27 since December. Now -

PRESIDENT: Yes, but having got H.27, are you saying that that won't achieve the objectives?

MR HANLON: Oh, I think what you're suggesting to us, Mr President, is having got the commission's support for H.27. Our situation is not whether the commission supports the process it's whether or not the parties will agree to work through what is essentially a negotiated process, a defining of differences and the resolution of them. And the government's position from day one is the benefit of that is, one arrives at a position where one looks at the costs and the benefits and is in a position then to make the judgment.

Now we already know from very clear statements that there is opposition to the government exercising that principle. There's not an acceptance that the government has, (1) by statute and, (2) by procedure and under the national wage guidance lines to argue that a capacity to pay. Now that's not an accepted position and it's certainly not an accepted position that process would be negotiated and it's certainly not a unanimous position that - from unions that there is a single process.

Now we have on a number of occasions endeavoured to -

PRESIDENT: What do you need done to H.27 to provide that?

MR HANLON: Well H.27 is the draft of the minister. Nothing in H.27 can produce the necessary goodwill. .... we're talking about producing the goodwill having paid the 6% up front, we're really talking about the reform and that's the reform of the workplace that will produce the benefits. The fact that people may at the end have an increase, a decrease or the maintenance of earnings, still requires that that reform be justifiable in economic terms. If there is no justifiable return there is no point in engaging in the exercise. And to engage in the exercise requires there be a commitment to that reform process. And to date we have not seen that commitment.

And I'd just take you to the conditions of service which we've met on some 14 occasions since last September -

PRESIDENT: Haven't we resolved how the conditions of service issues are to be processed?

MR HANLON: The parties - the bench has directed we should confer -

PRESIDENT: At the set dates -

MR HANLON: Yes.

PRESIDENT: - and you've agreed when - that you'll provide a draft by a certain date and a final draft by a certain date. Isn't that - isn't that the way it should go?

MR HANLON: No that's - that's not - that's the way in which we're proposing it. The question that we would raise is there is no - despite the rhetoric that's been put on a number of occasions to the commission - at no time have we not turned up to meetings; at no time have we not been at meetings with an agreed agenda and agreed to process it. The issue is what are the chances when that draft is produced of having the parties work through it, or will they then say to us exactly as they did in October 1990 after only 1 month's effort - we now wish to have the matter arbitrated.

Now nothing has altered about that. The TPSA's made it very clear.

PRESIDENT: Well given the - I mean unfortunately time has blown out - lots of months have been wasted and the 1st December is a date that's been well and truly established. We've got to get the process moving fairly quickly, and if you can't reach agreement by a certain date then the matters will be arbitrated.

MR HANLON: Well that's open to any party at any time, Mr President.



PRESIDENT: Yes.

MR HANLON: The issue for us is that having entered into agreement, having paid two lots of 3% as part of the process prior to the reform occurring, it isn't any longer an issue of the process alone, it's - is there the intention still remaining of those persons who were party to the agreement. Now we've reached the situation that nothing has occurred since December, the bench - and we're talking now about both parties conduct in the matter - we wrote to the TLC in August seeking a meeting of the conditions of service only after a submission was put to the 2.5% wage bench, that the flexibility clause should be dealt with in that forum.

We set a date for the meeting, we met on the 16th and it's important - now that - the TTLC had known since April that the bench had directed it to confer. At that meeting the TTLC delegation could not agree whether they represented themselves or the TTLC. There was a further 1 month delay and at the next meeting a different group of representatives had the same debate. A major issue at their request to be at that - at those conditions of service was the flexibility clause. We then have an argument about what was meant by the flexibility clause.

Now if you then look at the 14 meetings and look at the issues that were raised by the government for discussion, then most meetings were taken up either on procedure - who was representing who. Certainly we dealt with 14 items in one form or another on conditions of service. But since December almost all matters have been taken up on issues that we raised that went to the establishment of training committees and we have no response to that yet other than a training committee made up of a person representing each occupational group, that's the four main streams, emergency service, education and two at large - was then said to be too large. Other than that comment we've had no response.

In regard to the need to progress matters swiftly, the establishment of subcommittees again has got nowhere. The facilitative clause: despite the government's submission for what is virtually a very similar clause to what the TIC has been - the Confederation of Industries has been putting forward - what has been agreed in Transport and Metro, very similar terms to nursing, we've got nowhere to finalise in that matter. And of course our view on that could be coloured by the fact that we even received a comment: Well having got the money why should we worry?

Now, we also raised the question on four or five occasions of the implementation process. The TTLC failed to circulate the government's proposal in writing which was given to them at their request. We then sought to meet all through January. It



clashed with the holiday period. We then didn't meet only on one occasion in February because of the political agenda of the TTLC.

MR VINES: The TTLC called the election, did they, Des?

MR HANLON: But you chose not to attend either because you didn't think we had instructions or you wanted an undertaking given before you would discuss matters on the agenda.

COMMISSIONER GOZZI: Well, Mr Hanlon, just on that point, it's no secret that during February the government on many occasions approached the bench as variously constituted to say, look, till things settle down, the issue shouldn't proceed because instructions were not able to be given. And I think that's - that was understood by everybody and accepted by everybody. Certainly it was put - it was put on many occasions.

MR HANLON: .... no misunderstanding, Mr Commissioner, the first request for an agenda wasn't put to us - although we mightn't have instructions - it was put to us on - we want your agreement to these points.

COMMISSIONER GOZZI: I'm just simply - I'm just simply commenting about the political side of it which I don't think -

MR HANLON: I don't have any difficulty -

COMMISSIONER GOZZI: - anybody disagrees with that that's what happened.

MR REES: .... commissioner - we'll here all night.

MR HANLON: I don't have any difficulty if it was put to us in the terms you're putting, Mr Commissioner, that was not the first request.

COMMISSIONER GOZZI: Well it was put to us in that way.

MR HANLON: Well in formal hearings there is no difficulty at all about that.

COMMISSIONER GOZZI: Well I'm pleased at least as far as that goes we can all agree.

MR HANLON: With an agreed agendas - agenda - since April on something as specific as conditions of service and the size of the task and whether or not you have subcommittees or not, I don't think we're really talking about the same issues that

were confronting various special cases in that parties to that were entitled to clearly know what the government's position were, and it should be said that within the interest of a number of organisations that they were not ill-disposed to the fact that there may be other instructions arising out of the election process. That's not the situation that the conditions of service mean.

COMMISSIONER GOZZI: I thought you were talking about the commission.

MR HANLON: Well the commission - I'm really responding to the fact that the commission is directed to do - to engage in the conditions of service process. We've endeavoured to do so and I'm trying to illustrate that the commission can direct. The reality is this is then what goes on -

PRESIDENT: We understand the reality, Mr Hanlon.

MR HANLON: Well I think then, Mr President, the situation is that the process that the parties entered into -

PRESIDENT: That's why - that's why the arbitral situation is available at the end of the reasonable period of negotiation, however - however poorly conducted it might be.

MR HANLON: Well then that's true, the parties then make it, but in terms of the terms that the process was established, one then goes to the terms of that agreement, and in fairness to both parties, it's the conduct of every party that needs to be judged and it was very clear since November 1990 that a significant party - the TPSA - wanted arbitration of all matters.

Now arbitration of all matters is quite limited in terms of what this commission has the power to do given the fact that we're talking about a range of workplace matters that go to not just award coverage, union interest, state and federal coverage and a range of matters which, without the cooperation of every organisation doesn't work. And if the process of arbitration produces the same warm inner glow that the November decision has produced, then the opportunities -

PRESIDENT: Everyone - everyone will be really happy, Mr Hanlon, won't they?

MR HANLON: Well there weren't too many smiling on the 30th, Mr Commissioner - Mr President, and I see nothing about the 14th May -

PRESIDENT: That's why we hope by giving you these dates people might start working towards achieving a reasonable negotiated arrangement.



MR HANLON: It's very clear, Mr President, that our hopes - and our hopes have been there in pre the November decision - and it should be borne in mind that we said in our submissions earlier that if the dollars were dangled in front of the eyes of the parties then people would lose sight of the main objective, and nothing has persuaded the minister since that it is the dollars and not the reform. And it isn't enough just to say, well, we will arbitrate. The question is, having entered into the process, what is one side entitled now to do. Because for the arbitral process to proceed, one party has to exercise the right for that to occur. And very clearly there are almost no items on the union's list that they will bring to this commission that go to agency reforms. And if they're the applicant and they're the party that seeks the arbitration then will be the application for the reforms that will produce the savings that justify the benefits?

PRESIDENT: Will the minister make those applications?

MR HANLON: In what context?

PRESIDENT: I thought it would be more in - in respect of agency reform.

MR HANLON: Why is it - we are not the person who seeks to do it.

PRESIDENT: You're the one who is talking about benefiting the minister's interests and the public interest.

MR HANLON: The minister's - they would benefit at the beginning, Mr President, that on the basis of having paid the funds the reform would follow.

PRESIDENT: And if you are unable to negotiate it you have the right to make applications to achieve what you need.

MR HANLON: And certainly if we thought there was a benefit -

PRESIDENT: And I just asked the question - is the minister going to make those -

MR HANLON: Well I have no instructions to say that. I mean the purpose of today's submission was to given an unequivocal commitment. The government is addressing that in the terms which the bench sought and having -

PRESIDENT: And you've said the minister can't give that.

MR HANLON: He can't - not - no - simply because our experience with the matter shows that the other party is not



in a position to negotiate in a uniform consistent manner which will enable us to achieve the reforms and we certainly do not see the alternative as that being arbitration. It is not - it is two different things to say an organisation is free to make an application to arbitrate and then sets out to make its case -

COMMISSIONER GOZZI: Mr Hanlon - Mr Hanlon, the whole package was predicated on the basis that if conditions couldn't be resolved and if agency-specific matters couldn't be resolved that this commission would intervene and arbitrate, and all that is required finally if the timetable that we have endorsed in H.27 isn't met, is for the minister to draw its claim, submit it to the commission, advise the commission that it has been able to secure any agreement on these issues and arbitrate them. Pure and simple.

MR HANLON: No, that's not the option at all, Mr President.

COMMISSIONER GOZZI: Well it is - well just comprehend it in what we said, and that is clearly - it is clearly the option.

MR HANLON: Well I think to be - no, it's clearly not, the same way -

COMMISSIONER GOZZI: Well it is - it is.

MR HANLON: Well with respect -

COMMISSIONER GOZZI: Well with respect to you, Mr Hanlon, the option for arbitration is always there. We have said from our point of view it would be advantageous if the parties would negotiate on agency-specific matters and conditions of service matters. If, as you say, that can't happen for whatever reason, then that doesn't mean that this commission shouldn't intervene subsequent to the date in H.27 and arbitrate the claims that the minister may want to pursue. I mean that option is there. It was there with respect to the - with the streams. At the end of the day when we were talking about the four-stream proposals, we requested from the TTLC and from the minister documentation in respect of their respective positions. We then were addressed in respect to those positions and came up with an arbitrated decision.

Now surely in the event that the conditions and agency-specific matters can't be resolved then there would be nothing stopping either the minister or the TTLC or indeed both parties from putting to this commission their respective positions in respect to those issues for us to arbitrate. In fact that is what we intend to do if the parties can't agree.

I don't see that there's a great difficulty in that process at all - it's quite simple.

MR HANLON: There is a difficulty, Mr Commissioner. I think you missed the point I am making. The question is, having - that is a good indication, Mr President, about the seriousness of today - what is at stake, and the views that were put on the last occasion - supposedly representing an organisation - being their positions and the position trying to be put to you today, and then what has gone on over these various negotiations in the various forums; because it isn't enough to say, well then, arbitration is available, because that suits the narrowness of the issues that are between the parties because this commission cannot deal with a range of matters that certainly go to reform of the public sector.

COMMISSIONER GOZZI: Well, I don't know about that.

MR HANLON: Well, I -

COMMISSIONER GOZZI: I mean, you say that in a general way, and I understand what you mean by it, Mr Hanlon. I understand that some issues that you might want to address on behalf of the government may not be regarded as industrial matters in the context of being able to be dealt with in this commission. I understand that. But I don't think it is a narrow point of view to say to you that at the end of the day that the issues that are industrial matters, and there are a great many of them, could not be dealt with in an arbitral way. In fact, that would be the logical outcome in the event that the processes that we have endorsed in your exhibit, the Minister's exhibit, the last time round failed to produce an outcome.

So, the -

MR HANLON: The exhibit didn't fail. I think we should get that clear.

COMMISSIONER GOZZI: No, I said if the processes contained in the exhibit failed to produce the desired outcome, then there is recourse to this commission. I don't see that there is a difficulty.

MR HANLON: But the difficulty is if various parties objective is to get an arbitrated decision and not engage in an opportunity for across-the-table discussion about matters that affect the public service in the sense of the way in which it operates and the day to day activities. They are not matters -

COMMISSIONER GOZZI: Look, I hear what you say, Mr Hanlon, in the context that you are claiming that the TTLC and other union parties aren't showing good faith in the negotiations. That you are saying to us that they are failing to address the issues that you see as fundamental to the reform of the state service; and I am simply saying to you we can't - we are not



party to those negotiations. What we have done, I think quite logically, is to endorse your proposition, the Minister's proposition, that certain things should happen by the 1st of September.

Now what we have also I think said by way of implication here is that if the processes that you have outlined in H.27 fail to produce a reasonable result in the context of conditions of service and agency specific matters, then the residue issues should be brought to this commission.

Now in terms of process I think that's clear, unequivocal, and I don't see why we shouldn't just simply say, now look, it's up to this bench to consider TTLC.9 in respect of the statement we issued last time round, come to a view about that, and the process continue.

You could stand here subsequent to the 1st of September and say, 'Look, we haven't been able to achieve these particular outcomes, here they are, would you please determine them?', and we will.

So, to me, a complicated process, an involved process, can be made fairly simply by abiding by the structures that we have followed all the way through in this case, right from day one.

MR HANLON: Well, I am not suggesting in any way that the commission hasn't. We are talking about the parties came to this commission and then set down a series of procedures to be followed, and having done it, the Minister is -

PRESIDENT: But we can't make people negotiate if they don't want to negotiate.

MR HANLON: The alternative is not then to say to those parties who having entered into that we will now take on board those matters to which we have the power and are referred to us. The issue is one of, because there are a couple of matters to which the whole process is predicated on, and from our position is that there were to be benefits.

Now if we are talking - and we have managed to mask very successfully from getting it out into the cold the operational group - and we are talking about persuading people to change, to accept changes in their conditions, changes in the way in which work is done, and we're going to impose it.

Now it isn't just enough to say that we could organise a decision. There is no doubt that we could organise a decision, but the detail and the things that flow from it still require cooperation of parties who at this point are not all united that the matter should be arbitrated.



And so it isn't just a question of the commission just saying, well, we will arbitrate it, the issue today is, what was the state of the commitment if there is another approach, then the parties should be asked to address it.

On the last occasion we were here we were still operating under the assumption of the November implementation. The situation was then the matter was then asked that it be reopened, and one assumes that that was a genuine submission, and the commission said unless there was an unequivocal commitment then the process may be abandoned.

Now in that context the Minister is entitled to have a look at who is saying what to the commission, why, what groups they represent, what has been their behaviour, and what's our expectations.

PRESIDENT: Well, you can do that. You can certainly do that, Mr Hanlon.

MR HANLON: Well, I am endeavouring to, Mr President.

PRESIDENT: And I am sure you will be able to, but we can't help you with that at this point. We hear what you're saying, and I don't know, you have probably got some more things to put to us, and then we'll invite the other side to respond.

MR HANLON: Well, I don't know whether the other side -

PRESIDENT: Well, you go as far as you have to go, Mr Hanlon, and we'll take it from there.

MR HANLON: The situation is that without the goodwill, and it has to be said that there hasn't been any, and one assumes that the duress that continues will do, and that duress takes a number of forms. Whether they are matters that are brought to this commission or whether they are bans, or whether they are limitations or whether they are refusals to discuss matters unless certain matter have been agreed, and certainly the Minister has experienced all of them.

Now, without that process there is no point in us coming to the commission detailing each of these to the commission when we expect to get the cooperation of every organisation.

But it is obvious that as the matters in dispute such as the money and the classification standards have been resolved, then the pluses and minuses as people perceive them, then organisations are going to be less willing at this stage than when they were when the commitment to be given for the 3% was easier to give than the commitment now that the changes that have to be made at the workplace will return the quid pro quo, and there is no doubt the government has made it very clear in every matter that comes before it that it is seeking to have a

cost neutral outcome, it is seeking to have the benefits come to it, not just the rubber stamping of wage increases.

We made that clear in February '91 when the matter was before the commission, and we said this claim that we have been negotiating since August '90 is really a disguised wage increase.

We have spent that time talking about the dollars, and they have been the primary concern. We're now looking down the barrel at getting the returns, and that cooperation is fading away not in dribs but in large groups. And it would be remiss if the government didn't put its position as to how it saw the process going.

COMMISSIONER GOZZI: But, Mr Hanlon, can I interpose just there, and say to you as I have said on many occasions and the bench has - we have all said it - in one way or another, the dollars that may attach to the package will not flow, will not be awarded until such time as the conditions and agency specific matters have been resolved.

Now, in our view, that ought to provide the incentive for the parties to sit down to negotiate on the outstanding issues.

So the government need not be concerned that it is buying something for no return, because the return, as you put it, is to be negotiated, and nothing happens - I don't know how many more times we have to say it - nothing happens until that side of the equation has been completed.

So it behoves all the parties to sit down with goodwill, with proper intentions, to get about the business of meeting the timetables - and the time frames have been set - rather than carrying on the way the parties are carrying on about this particular issue.

The package is far reaching, there are a lot of things that need to be negotiated and resolved, and the mechanisms and the signposts are there, and the government well knows, as does the TTLIC, that nothing operates, the package does not operate one inch unless all elements of that package have been finalised.

MR HANLON: I don't disagree with you, Mr -

COMMISSIONER GOZZI: And we're simply saying - I don't know how many more times we can say it - we are simply saying that we are available to assist that process by conciliation or arbitration, and the first step in that process is for you, the government, the Minister, and the TTLIC to sit down in accordance with H.27 which has a 1st of September deadline on it, and if at that time nothing has been achieved, well you come back and you let us know.



And, in addition to that, in addition to that 1st of September deadline, we have given you other dates to report back so that we can monitor and influence the process.

Now I don't know what more we can get from you except to get an understanding that you are equally committed to the objectives of the decision and that you will go away, all of you, and negotiate in good faith - leaving aside those issues that you can't resolve you'll bring them back and we will deal with them then.

It is not a difficult process.

MR HANLON: Well, Mr Commissioner, I think it ought to be clear, the position you have just put about how it operates is not a position that the bench and I have ever had a disagreement about. But to show - I mean, the comments have been directed to me - I'm putting the government's submission, that was never any misunderstanding about that.

The question that needs to be addressed, is that the absolute position that every organisation believes to be happening and are they prepared to the date to run beyond September the 1st if they haven't met it. Because we are also being slated as not being prepared to agree with a target date, and the target date is not our date, and to use the term 'target date' if the benefits are not there, the benefits are not there, then there is not going to be the capacity to pay it.

COMMISSIONER GOZZI: The date - I thought we put that issue to bed last time - at the last hearing. But the operative date of the package is dependent upon the finalisation of agency specific and conditions of employment matters.

MR HANLON: Well then, the issue that we are here discussing today was not why we should stay with the process or what its benefits are, but whether given views expressed to this commission, there was any likelihood of the parties arriving at a position to meet their objectives. Not whether we transfer it to the commission, because the views being expressed - and it was the commission's view that was put - that if these views were solidly held then the process would be abandoned, and it is in that context - and I have no reason to believe that the views expressed on the last occasion are not the real views of significant organisations.

And having reached that conclusion, at which the Minister is entitled to do, then come to the commission and say, well we can't give you that unequivocal commitment because our experience with the process, it is unlikely to deliver. And that is not the process of arbitration, it is not the process of negotiation, it is the process of the parties engaged in the structural reform process as it's now and as it was



envisaged in August 1990. And we're entitled to put it in that context. Not that if an issue was brought to the commission that the commission wouldn't be capable of handling it. The issue -

PRESIDENT: Well we've said before, Mr Hanlon, we can only deal with the matters that we can deal with, and we've got to take certain undertakings at face value.

MR HANLON: Well I think we are entitled to ask -

PRESIDENT: I mean, you may ask, you may ask the questions.

MR HANLON: But not of the bench. The submission put, what is its real meaning, given the commitments we had before, given the statements that have been made to this commission, given the statements that are made to us in the conditions of service, given - and we're talking about organisations, as I have said before.

This commission, (1) that they want an agency approach, then they want a centralised approach, then that the ministers are knocking on their door to settle the matter, then heads of agencies -

PRESIDENT: We've determined that.

MR HANLON: You've not quite determined it, because we have never had a name put on any of these matters, and when it comes -

PRESIDENT: Doesn't H.27 do that?

MR HANLON: Well, H.27, there was an assumption that what we'd done since December to try and implement the decision -

PRESIDENT: No, does H.27 give you the process?

MR HANLON: No, it doesn't, Mr President, because H.27 was a submission put to you on the process that the parties wanted to process the November decision. At the last hearing submissions were put to this bench that parties didn't want to implement the November decision as it was set out. And it's -

PRESIDENT: And that we answered. And we are simply now asking the parties whether they are prepared to continue down the track that we were on before the previous hearing date.

MR HANLON: Oh, I thought the bench went further than that, Mr President. I thought the bench said very clearly that there was to be no more two bob each way, no more equivocation, that there had to be a commitment and the commitment should be unambiguous, clear to the process, not one of waiting in the wings saying we want arbitration, not

one of saying we want to come back for a second bite, not one of saying we'll put another application in after the process is over.

PRESIDENT: Well arbitration is available and that was never a problem. The second bite was a problem and that's what we have addressed.

MR HANLON: Yes, but -

PRESIDENT: And we made that fairly clear. There are no second bites.

MR HANLON: Well if that belief was a well held one we wouldn't be here discussing it today.

MR .... : Of course we would.

PRESIDENT: Well that was why we did decide to come back today and clarify the position.

MR HANLON: Well then, Mr President, all I can say is, having had the experience for some eighteen months of other commitments, the commitments set out in exhibit 9, in no way would enable any party looking at it to be able to say there is an unequivocal commitment that could be given to the November decision and all the elements that go to it, not just the ones capable of being arbitrated or defined, but would really go to changing the nature of work, who does it, how they do it, and the necessary organisational changes that flow from it.

PRESIDENT: Yes, we understand.

MR HANLON: Well these are not unimportant matters. It isn't just a question of saying, look, we couldn't have an agreement. We are talking about the most significant set of negotiations that have occurred for a very large number of employees with a huge obligation as the decision unfolds on the state's economy, and in looking at that one says, what are the chances? One only needs to look at a letter sent to the premier on 20 January from the TPSA. It says this at the last paragraph: I hasten to point out that the PSA was forced to refer - forced - it's claims to the industrial commission for arbitration. For our part we were willing to accept the eventual decision and our members would be extremely concerned if the government attempted to run a supplementary argument, particularly when the opportunity to do so was not exercised during the prosecution of the government's case.

Now, very clearly, if that's a belief that in some way when awards are being made with a statutory obligation, then what is the chances of the process being where we would argue an incapacity to pay if the benefits are not there. And given



the benefits have never been produced in any award restructuring process without a lot more goodwill than has been shown in the current process, then resort to arbitration is not going to produce that for us. And it's in that context that the minister is not able to give that unequivocal commitment. And it should be said that there is nothing, since the November decision, that the government has not met or endeavoured to bring that about.

The situation is that the other side has not been able to reach a single position, a unified position. And the commitment that they've given certainly would not satisfy any objective party who looked outside and said, well what are their chances of bringing about reform. And it isn't a reflection on the bench, the submission, it is the minister's comment on what has been put to the commission to date, it's experience and what is before it and the size of the task.

PRESIDENT: Good, thank you, Mr Hanlon.

MR REES: He hasn't finished, Mr President.

MR HANLON: Excuse me, Mr President, I'm sorry. I thank Mr Rees for his intervention on my part.

PRESIDENT: Did you say you'd finished?

MR HANLON: I'd just say, Mr President, that the position of the government is clear, so there's no doubt by anybody's part that it's not prepared to give that unequivocal commitment to the decision. It's its view that the award restructuring process seems destined to result in outcomes which do not satisfy the best interests of the Tasmanian community and which will certainly prejudice the ability of the government as the employer to continue to provide the services demanded by the community. And it is the government's clear view that that process should be abandoned.

If there is any other option then we're happy to take on board that option. I certainly have no instructions to consider any other. The hearing was convened for the purposes of responding to those matters raised on the last hearing. And certainly the views expressed at those hearings would lead no-one to believe with any degree of certainty that the necessary elements to proceed with the process were there, whether it by arbitration, by negotiation or a combination. The dissatisfaction was too clear and the experience since November would certainly bring the government to conclude the views in which it has. Thank you, Mr President.

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

MR O'BRIEN: We have put a position, Mr President. I am endeavouring to put a common position and we have no formal



submission to make in response to Mr Hanlon's submission. If there are matters which the commission seeks to raise I would be seeking to obtain instructions to answer them so that they can be done on a common basis, if that's possible. So we have nothing to put further at this stage subject to questions of the commission.

COMMISSIONER WATLING: Mr Hanlon did ask for you to clarify exactly who you were speaking for. Maybe you could elaborate on that point.

MR O'BRIEN: My understanding, Mr Commissioner, is that we speak on behalf of all organisations party to these proceedings, and there are a number of awards listed and matters called at the beginning of these proceedings. In relation to the police association, we don't believe they're involved in these proceedings and don't purport to speak on behalf of that organisation. I am happy to clarify that in relation to organisations who have not taken part in the award restructuring proceedings currently before this bench who may be involved in other proceedings. But certainly in relation to those organisations who have been a part of the award restructuring proceedings in relation to classification standards and wage rates, I would understand that I would be speaking on behalf of all those organisations.

COMMISSIONER GOZZI: Mr O'Brien, the thrust of Mr Hanlon's submissions were that the unions represented in this matter haven't demonstrated goodwill in the negotiations thus far. He has indicated to us that the unions involved have been prepared to pursue, in his words, the dollars attached to the package but have not been prepared to enter into meaningful negotiations to reform the state service.

He has also indicated an understanding, that he has, which coincides with the understanding that the commission has, that the package doesn't operate until all issues have been resolved, particularly agency specific matters and the conditions of service matters. He has left me in no doubt - and I would think my colleagues as well - that the trade union movement do not share the view that the package has to be completed in its entirety before it can operate.

Now can you confirm for me that the TTLC, and the unions that you represent in these proceedings, acknowledge that the package doesn't operate until all of the elements that make up that package have been resolved?

MR O'BRIEN: I hesitate to give a personal view. I am prepared to take that matter, if we are allowed a short adjournment, to deal with that and any other matters and come back and respond on that this morning or maybe this afternoon, depending on -

COMMISSIONER GOZZI: Yes. The reason I raise, Mr O'Brien, because it appears that Mr Hanlon is putting forward that issue as one of the impediments to getting on with dealing with conditions of service and agency specific matters. I think the view of the commission - the bench has been made clear about operative date and I think we need to, at least, get an acknowledgement from the TTLC that it's understanding is the same as expressed by the bench and the view held by Mr Hanlon.

MR O'BRIEN: Well I'm happy to utilise an adjournment, if I may, to address that, and if there are any other matters that the commission would want me to address it might be useful to have those at this time.

MR HANLON: Mr President, have you finished with Mr O'Brien?

PRESIDENT: Not - well let's - no, we'll relieve Mr O'Brien for the moment.

MR HANLON: Mr O'Brien, in response said it was those organisations parties to matters to award that are before the commission. Our concern is that our arrangement extended to all organisations with members in the public sector, and the government has said on a number of occasions in this forum and in the federal commission that it deals with - under the same rules in the both tribunals to its employees about the process. That's conditions of service, agency specific matters.

Attachment B to the TTLC documentation on award restructuring in the Tasmanian public sector set down the list of organisations. It isn't enough for us to know that it applies to those who are parties to awards. One needs to know, is there any different than every organisation with an affiliate in the public sector, not whether this commission actually can order them to do something, but as the employer we have been even handed in supporting 3% and 4% in the commissions under the same terms as applied here and, therefore, they bound by it. I just want some clarity on that.

PRESIDENT: I don't know that we can give you any assistance on that one, Mr Hanlon, because we can't issue any directions to anybody in relation to who is not a registered organisation.

MR HANLON: I think that just illustrates, Mr President, the real problem when the TLC says, well we speak for ourselves and whoever that may be on a given day is who we speak for and a bit like Alice in Wonderland.

PRESIDENT: Well we're concerned about the awards before us.



MR HANLON: I understand that. I think that just supports the position the government has put about we're on a bed of quick sand.

COMMISSIONER GOZZI: Well hang on, Mr Hanlon. We're dealing with the awards that are before us. The stream proposals have application to the awards before us and the issues I raised with Mr O'Brien, that we seek clarification on, have application to the awards before us.

MR HANLON: I understand that in a strictly technical sense, Mr Commissioner.

COMMISSIONER GOZZI: Well in a strictly sense - I mean what you negotiate with other parties not involved, that's a matter for you that really we can't influence.

MR HANLON: Okay. I think, Mr Commissioner, then very clearly reform in the Public Service while it has that distinction is suspect from our point of view.

COMMISSIONER GOZZI: But you're not suggesting seriously to us, Mr Hanlon, that we have some role to play in respect of employees who may be covered by federal awards. I mean that's for you to -

MR HANLON: I never even suggested that, Mr President.

COMMISSIONER GOZZI: Well that's for you to raise in the appropriate forum.

MR HANLON: I'm sorry, all I raised in regard to who the commitment stood for was then whether or not that represented those organisations in Attachment B, because some of those organisations in Attachment B are covered by federal awards.

Now there was nothing complicated - I wasn't seeking to get an order from the commission or for the commission to venture it anywhere else - I wanted some idea who the TTLC spoke for. I thought it was a simple matter, but I'm quite happy to leave it to -

PRESIDENT: Well I think you've got the answer.

MR HANLON: Yes, clearly.

PRESIDENT: Mr O'Brien -

MR O'BRIEN: Yes?

PRESIDENT: How long do you need to respond to the question about operative date under your understanding -



MR O'BRIEN: A very brief adjournment - whilst it might be .... we think probably 5 minutes, but if we resumed, say, at ten to, that would allow us ample time I would have thought - if there's somewhere we can go to ....

PRESIDENT: We might have to clear the hearing room for you. We'll adjourn till ten to 12.00.

#### SHORT ADJOURNMENT

PRESIDENT: Mr O'Brien?

MR O'BRIEN: Mr President, members of the commission, the answer to Mr Commissioner Gozzi's answer is simply that we have no different view of meaning of the decision to that which was expressed by Mr Commissioner Gozzi as his and that means the trade union movement is not of a different view on the question of the impact of the operative date in the decision and the impact of the other aspects of the package that's talked about. So -

COMMISSIONER GOZZI: So that means you acknowledge on behalf of the unions you represent, Mr O'Brien, that it can't operate till these other issues are resolved.

MR O'BRIEN: Yes.

COMMISSIONER GOZZI: We're talking about conditions of service and agency-specific matters.

MR O'BRIEN: Well I have no doubt about that in that from my discussions with the organisations they support that view and that's my understanding.

The only other thing we would say is that we would put on the record our concern with regard to the government's response to the commission's request for commitment and the government's call for abandonment of this process. We stand by our commitment in TTLC.9 and I guess we would, subject to the statement that arises from the commission we may be looking at the future of the matter in the light of the events today.

COMMISSIONER GOZZI: Mr O'Brien, it's certainly with some concern that I listen to Mr Hanlon's report-back in respect to the negotiations that have occurred that they haven't been able to reach the sorts of positions that one might have expected given the glowing reports we got earlier on in report-back hearings. You will recall that on the occasion before the last time and the previous two occasions before the last time in fact, we were told by the government - by Mr Hanlon - that everything was progressing beautifully.

The first time we were told that all the negotiations had to be in confidence between the parties and that significant progress was being made. The second time we were told that those negotiations on conditions and other matters were progressing very satisfactorily and that - and that the parties could be in a position to put a - an agreed proposal before the bench and I think the date was in July - June or July.

It was only the last time we met that when we queried the commitment particularly HSUA that gave rise to these proceedings and today is the first time in a report-back process that we have been told by the government that the negotiation process is lacking goodwill, is not looking like reaching the outcomes - the desired outcomes - and up to this point in time we've been under the impression, having regard to the report-back hearings, that the parties were progressing and progressing to their mutual satisfaction and the record will show that.

MR O'BRIEN: Well, Mr Commissioner, the only comment I can make is that - that we have not changed our position in relation to either the confidentiality of negotiation nor on the - to our views on the progress of the matter up to this date. We don't change our reports or seek to - to advise the commission of anything different to that which we have advised the commission, but if now the government is saying well they have these concerns and they want the process abandoned then I think the commission will have to reflect upon the government's submissions - we don't to change anything we've put to the commission.

PRESIDENT: Very well. Thank you for your contributions this morning. We'll adjourn until our next hearing date, if we sit again, 17 June.

MR O'BRIEN: Does that mean that the process continues and .... the government's call for the abandonment of the process?

PRESIDENT: Until such time as our decision is handed down, I would expect people to continue as they have done in the past, be that good or bad.

MR O'BRIEN: Thank you, Mr President.

HEARING ADJOURNED