

**HEARING RECOMMENCED 10.05am**

PRESIDENT: Where are we then? Mr Flanagan?

MR FLANAGAN: Thank you, Mr President. Actually, I'd seek leave to convert the report back into a hearing. On the last occasion that the parties were before you, the matter was adjourned in order for the AWU to demonstrate to the employers, in particular TCCI, that there was a *bona fide* industry, the subject of this application.

The union forwarded to TCCI the details of a number of - or rather identified a number of employers operating in the industry. The TCCI in turn has had discussions within the industry and have accepted that there is an industry there to be regulated and that following that conclusion there were discussions with Mr Dilger about the appropriate terms of the scope provision for the proposed award.

So flowing from that discussion essentially the agreement was that which was proposed when the matter was last before you that if the proposed application excluded a number of awards of the commission from the scope then it would be acceptable.

Now that is embodied in correspondence which was forwarded to Mr Dilger on 11 November.

PRESIDENT: Do you want this marked as an exhibit?

MR FLANAGAN: Yes, I think it needs to be marked as an exhibit.

PRESIDENT: I don't think we've had any previous exhibits. Is that the case?

MR FLANAGAN: Yes, I think that's correct.

PRESIDENT: Though you did tender some -

MR O'NEILL: You did tender some exhibits last time.

MR FLANAGAN: Oh, that's right, yes, there was an F.1 and an F.2, I suspect. Some definitions.

PRESIDENT: Just F.1, I think. That was the dictionary definitions. That's all I have. Is that what all of you have?

MR FLANAGAN: Yes, that's right.

PRESIDENT: All right. We'll mark this **EXHIBIT F.2**.

MR FLANAGAN: If I can take you to, under the heading *Scope*, Mr President, the third last line of that provision, it starts with the words *In forests*, up to the words *in forests* reflects the application in the matter in terms of provision in scope, the words that follow on: *unless*

*otherwise covered by the Farming and Fruit Growing Award, the Plant Nurseries Award or Civil Construction and Maintenance Award. And the effect of that is to overcome the concerns which were discussed when the matter was last before you.*

5 So that what we are seeking by consent today, Mr President, is that the award be made in title and scope, that scope to be the provision which is detailed in F.2.

PRESIDENT: So this is really an amendment to the application, isn't it?

10 MR FLANAGAN: That's right, yes.

PRESIDENT: Yes. So you're seeking to amend your application at scope clause?

MR FLANAGAN: That's right.

PRESIDENT: To be read as per F.2.

15 MR FLANAGAN: Yes, that's right.

PRESIDENT: All right.

MR FLANAGAN: And then for that award to be made. I suppose I should deal with another matter, Mr President. I've received a copy of correspondence to yourself dated 12 November from the Forestry  
20 Division of the CFMEU.

PRESIDENT: Yes, I asked for the letter to be circulated to those present.

MR FLANAGAN: Thank you, Mr President. Sir, the union  
25 understands that perhaps in the absence of being involved in the discussions that the CFMEU may not really understand what the nature of the application is before you, they refer to an interest particularly in the areas of plantation construction, clearing, roading, thinning and harvesting.

30 In terms of construction, clearing and roading, where there is mobile plant involved in that, and indeed even if there's labouring involved in that, that is clearly within the scope of the Civil Construction and Maintenance Award. There is no intention for this award to extend into the area of harvesting, that is in fact covered by the Timber Merchants Award, as I understand it.

35 So, I understand what they're saying. I think that with further information provided to them, including a copy of their constitutional rule, we wouldn't anticipate that the CFMEU would need to pursue the matter further but we're happy to have those discussions with them. If it pleases the commission.

PRESIDENT: Yes. In any event, that particular union is at liberty to make application to have an interested granted at some future time in any - so we can't pre-empt that at this point.

5 MR FLANAGAN: Oh no, certainly. Any debate around that issue is something which we can have on another occasion.

PRESIDENT: Yes. All right. Yes, thanks, for that. Mr O'Neill, do you wish to respond?

10 MR O'NEILL: No, sir, apart to say that we consent to the matter for the title and the scope of the award being made and consent to the fact that Mr Flanagan wishes to amend his application to reflect that. If it pleases. Thank you.

PRESIDENT: Fine. Thanks, very much, Mr O'Neill. Mr Rice?

15 MR RICE: Thank you, Mr President. Well, it's rather a surprise that I'm here today seeing that I withdrew last time, sir, and I would like to put -

PRESIDENT: I'm told you were a little bit perturbed about my parting comments.

20 MR RICE: Your comments - and I don't wish anything to reflect on the integrity of Mr Flanagan or Mr O'Neill or yourself, sir, but we did seek leave to withdraw and that was granted, but your comments did play on my mind and they were taken on board - I do so at my own risk and at my own peril, I think the words were - and I was in Hobart for another matter and seeing that this matter was still being discussed on the scope, and we did enter into some dialogue on transcript last time, I thought it best that I come and I thank you for  
25 your indulgence. We were a little late coming today, but we, too, sir, have no objection and consent to the scope as it's written in F.2. If it please the commission.

30 PRESIDENT: Yes, all right. Yes, thanks, Mr Rice. Well, that being the case, I will agree to - or approve the application in the form amended, Mr Flanagan, and the orders will be issued in due course.

MR FLANAGAN: Thank you.

PRESIDENT: Very good. Thanks for your attendance.

**HEARING CONLUDED 10.12.am**