

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 2323 of 1990 and  
T No. 4287 of 1993

**IN THE MATTER OF** applications  
by the Tasmanian Public Service  
Association to vary the General  
Conditions of Service Award

re workplace representatives and  
payment of wages

DEPUTY PRESIDENT

HOBART, 15 July 1993

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT ROBINSON: Any changes in appearances?

**MRS S STRUGNELL:** If the commission pleases, Mr Deputy President, MRS SUE STRUGNELL, appearing for the Tasmanian Public Service Association.

DEPUTY PRESIDENT ROBINSON: Thanks, Mrs Strugnell.

We have two files listed for today. I think it would be tidier if we dealt with only one today, and that being 4287 of 1983, and when we have gone as far as we can with that one we'll consider the next matter which deals with workplace representatives.

Now we are here today following the giving of a further threshold argument last time, and as a result of that I issued a further - a Reasons for Further Interim Decision - on 5 July 1993.

And I think it is worth us just pausing, and it is only fairly brief, and I am going to read it for the purposes of everybody so that they understand it.

And the text of it says that:

This matter concerns an application by the Tasmanian Public Service Association to vary the General Conditions of Service Award by including for the first time provisions in relation to payment of wages.

And of course it refers to 4287 of 1993.

The same matter has been before the Commission on three separate occasions to date and was last listed for hearing on 29th of June following the handing down of my Reasons for Interim Decision on 10 June 1993 which dealt with the threshold question of referring the file back to the President and whether or not the claim by the TPSA should more appropriately be dealt with by a Full Bench.

I gave reasons why I believed such a referral was not necessary, and gave notice to the parties that they should be prepared for the claim to be dealt with on proper criteria on the next sitting day.

However, on 29 June 1993 the Minister again raised threshold arguments as to why I should not proceed to hear the matter and said my Reasons for Interim Decision of 10 June 1993 pre-empted argument which the government had been denied the opportunity to put.

On this, but no other basis, I allowed Mr McCabe to argue the subject matter of not proceeding to hear the merit myself and the alternative suggestion of referring the file back to the president.

The TPSA and the HSUA and the Tasmanian TAFE Staff Society raised a number of objections, including the fact that the minister had not been denied the opportunity to argue the same subject matter and indeed had exercised such a right at an earlier hearing.

They said the minister had made a submission in this regard at the time when there concurrently existed a dispute over payment of wages to certain school-related employees.

Mr McCabe refuted the assertions made in this regard and insisted that any submissions made previously by him did not relate to this file but to another.

I accepted Mr McCabe's explanation at the time in good faith, however a subsequent search of the transcript has revealed that on the 15 March 1993 Mr McCabe in fact addressed the commission in relation to Application T.4287 of 1993 and was permitted to put such argument as he wished in relation to the subject matter on whether it was appropriate for me to hear the TPSA claim as to merit.

This being the case, there exists no valid reason as to why I should further consider the matters contained in my Reasons For Interim Decision of 10 June 1993 which shall stand.

And I finish up by saying that so that there can be no doubt I re-emphasise that this application will commence to be heard on the next scheduled sitting day, which is today.

And if there is any doubt about what I said in that decision about a submission being made on the 15th of March I will refer to that part of the transcript and make it absolutely clear that at page 2 of transcript on 15 March of 1993 it started off at the top of that page by Mr McCabe saying - well, I said first of all to introduce it:

Mr McCabe, I think you had a threshold question you wanted to raise, a threshold question?

MR McCABE: Yes, indeed, Mr Deputy President. We would wish to put to you some preliminary arguments if it is the intention of the TPSA to proceed with their award amendment application as contained in Application T.4287 of 1993.

I think Mr Vines has indicated -

- the transcript seems to be wrong -

- that in this morning's proceedings that they do intend to go ahead with it today.

DEPUTY PRESIDENT ROBINSON: Well, let's not be in any doubt. Is that so?

MR VINES: That is so, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Right.

And then Mr McCabe gives us an argument in many parts concerning why the matter should not be dealt with. It goes to questions with the matter being before a full bench, and it goes to wage fixing principles, and it goes to addressing section 35 of the act in relation to what matters should go to full benches and what matters should not.

Now I'm rather annoyed that I wasted a hearing on the last occasion and bent over backwards and rather generously, I think, and allowed further argument on the basis that it hadn't been put before, and I think it calls for an explanation from the minister's representative.

MR McCABE: Yes, thank you, Mr Deputy President. I find myself in some problem in that I don't seem to have that transcript.

DEPUTY PRESIDENT ROBINSON: Well it's only a record of what you said.

MR McCABE: Yes, but if I don't have it, I can't refer to it.

DEPUTY PRESIDENT ROBINSON: Well I'm - I just read it out to you and I assure you that I wasn't just making it up.

MR McCABE: Well I'm sure you weren't, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Well what - what's your problem? Don't you believe that the transcript is right?

MR McCABE: Well if I had it, I'd be able to answer your question, but if I don't have it -

DEPUTY PRESIDENT ROBINSON: Well I just told you it's right - that's what you said - that's why I read it out.

MR McCABE: I have transcript 15th March which goes to page 74 - it starts on page 9.

DEPUTY PRESIDENT ROBINSON: Well I suggest you look at page 2.

MR McCABE: Well I'll look at page 2 -

DEPUTY PRESIDENT ROBINSON: But are you disputing what I say is correct?

MR McCABE: Well I'm not - I'm not sure, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Well what's the point?

MR McCABE: Well if I had the - if I was able to look at the transcript itself I would be able to answer your question, but I do have a problem.

DEPUTY PRESIDENT ROBINSON: Well what I'm telling you - what I'm pointing out to you is that you raised what was regarded as a threshold question on our last time we were here on the basis that you hadn't had the opportunity to put argument in relation to 4287, and I'll go on if you need reminding as to what - as to what you said. Do you have the transcript of the last time we were here?

MR McCABE: Yes, I believe I do - that's 29th June is it?

DEPUTY PRESIDENT ROBINSON: Yes, indeed.

MR McCABE: Yes. Yes, I certainly have that transcript.

DEPUTY PRESIDENT ROBINSON: Right. Well there's some - if you look at page 58 and 59 it deals with this very question; you indicate at the top of page - well I take you to the top of page 58 and you say: Now Mr Hunt raised the question of referral to a full bench who made the astounding suggesting that you should have used the argument that was put to you in a dispute matter under section 29 as a substantive argument in this particular application.

MR McCABE: Yes.

DEPUTY PRESIDENT ROBINSON: Yes.

MR McCABE: I stand by that submission entirely.

DEPUTY PRESIDENT ROBINSON: But I'm just telling you - do you want me to read it again?

MR McCABE: No, I don't. I'm just telling you that I don't have that, and if you would -

DEPUTY PRESIDENT ROBINSON: Well I'm telling you -

MR McCABE: - if you would just bear with me for a moment -

DEPUTY PRESIDENT ROBINSON: Did you read my - my - further into the decision of 5th July - wouldn't that cause you to check what you said and what you hadn't on 15th March?

MR McCABE: Well, exactly, yes, and I went to the transcript which I'd received and I don't appear to have the transcript of 15th March covering those particular matters.

DEPUTY PRESIDENT ROBINSON: And you don't also appear to have a recollection of what you said on that day?

MR McCABE: Well this has been such a confused and protracted hearing that -

DEPUTY PRESIDENT ROBINSON: It's not my fault -

MR McCABE: - between -

DEPUTY PRESIDENT ROBINSON: - if you say it's been protracted.

MR McCABE: - March and June that it may have escaped attention that I'd put those previous arguments.

DEPUTY PRESIDENT ROBINSON: Well I'm telling you that you - that you as a representative of the government misled this commission last time and that - and that caused a frustration of due process.

MR McCABE: Well, all I'm saying is -

DEPUTY PRESIDENT ROBINSON: And I'm asking for an explanation. And your explanation is you haven't got the transcript.

MR McCABE: Yes, exactly.

DEPUTY PRESIDENT ROBINSON: Well I don't think that's a very satisfactory explanation.

MR McCABE: And my explanation is that if you'd bear with me for one moment; I have transcript for matter No.T.4270 of 1993, which is the dispute hearing. That started on 26th February. It went from page 1 to page 8 and I have that. It's again - it was relisted on 15th March starting on page 9. Now I have page 9 going up to page 74.

DEPUTY PRESIDENT ROBINSON: Well it's not my fault if you haven't got transcript - it's obviously available.

MR McCABE: Well, it wasn't sent to me.

DEPUTY PRESIDENT ROBINSON: So unless you get transcript of everything you don't know what you said before.

MR McCABE: Well I just wonder why we produce transcript, Mr Deputy President, if it's not for that purpose.

DEPUTY PRESIDENT ROBINSON: Well we produce all the transcript we can afford to produce, but I'm telling you that's what you said. I read it out to you.

MR McCABE: Then this matter, which is T.4287 -

DEPUTY PRESIDENT ROBINSON: Yes.

MR McCABE: - starts on 3rd June at page 1 and goes through to -

DEPUTY PRESIDENT ROBINSON: I don't know what you're talking about, to be frank.

MR McCABE: - page -

DEPUTY PRESIDENT ROBINSON: I'm just telling you what you said on 15th March; it was in relation to 4287, when I asked Mr -

MR McCABE: - page 64 and that is all the transcript I've been - I've received.

DEPUTY PRESIDENT ROBINSON: Well I can't help that of what you've got and what you haven't. I'm just telling you what you said and I'm telling you that it indicates that the commission was misled.

MR McCABE: Well, it's a very strong -

DEPUTY PRESIDENT ROBINSON: And it's just not good - good enough.

MR McCABE: - very strong word, Mr Deputy President.

DEPUTY PRESIDENT ROBINSON: Yes, well I think - and I think it's fully justified in the circumstances. I just don't like being frustrated in dealing with matters in a proper manner. Anyway, I'll leave you to contemplate on what I've said and I would expect you to give a more fulsome response at a later time.

Now I wish for -

MR McCABE: If I could just continue at the moment with my response to your question. I would suggest that the commission itself is not bound by any limitations on threshold questions. Now -

DEPUTY PRESIDENT ROBINSON: No, but you - it is bound to accept the word of people that they hadn't addressed a matter before. That's the point I'm making.

MR McCABE: But the subsequent submissions that were made -

DEPUTY PRESIDENT ROBINSON: You were saying - you said before

MR McCABE: - on 20th June -

DEPUTY PRESIDENT ROBINSON: - that the submission you made wasn't in relation to 4287, and I just read out to you that part of the transcript where it did refer to 4287 -

MR McCABE: I think - I think what Mr Hunt -

DEPUTY PRESIDENT ROBINSON: - and I asked Mr Vines whether or not that matter was going to proceed that day, and he said yes. And then you proceeded to put your threshold argument.

MR McCABE: Well if that was - if in fact I did put argument on 15th March, as I said, I haven't received transcript and I don't believe the other parties have from the inquiries that I've made -

DEPUTY PRESIDENT ROBINSON: But that's why I read it out to you to remind you of what you said.

MR McCABE: The record - the record of proceedings would not reveal that I put those threshold arguments.

DEPUTY PRESIDENT ROBINSON: Are you - what -

MR McCABE: Now -

DEPUTY PRESIDENT ROBINSON: - are you suggesting here?

MR McCABE: Well I'm suggesting that -

DEPUTY PRESIDENT ROBINSON: That I'm wrong.

MR McCABE: - I'm asking you was in fact - and that's why the purpose of reading out those particular pages of transcript as to whether you could throw any light on to - on the - as to where -

DEPUTY PRESIDENT ROBINSON: I don't have to throw any more light on anything than I've already done. I've gone to a lot of trouble in a further interim decision and reading to you from - from a record which I've got here and I'm sure will be verified by a tape - and we'll play it back to you if you like - and if you then need any further convincing then I just don't think it's the sort of defence that you're offering for what you're - for what you're now saying, that - relying on the fact that you didn't get transcript. I think that's very weak.

MR McCABE: Well -

DEPUTY PRESIDENT ROBINSON: I'm telling you, you misled this commission -

MR McCABE: - sorry.

DEPUTY PRESIDENT ROBINSON: - either deliberately or not, and I'm asking for an explanation.

MR McCABE: Well it certainly wasn't deliberately if in fact if I had misled them which I don't believe I have.

DEPUTY PRESIDENT ROBINSON: Alright.

MR McCABE: I'm just saying that the argument which I led on the - in June was additional; it may have covered some of the ground that I perhaps covered in the earlier parts of it - of the argument - but it's additional threshold argument fleshing out the earlier -

DEPUTY PRESIDENT ROBINSON: Well I'm telling you -

MR McCABE: - threshold argument.

DEPUTY PRESIDENT ROBINSON: - you're not getting any further opportunities to put additional threshold argument today. We're going to proceed to hear the matter on merit.

MR McCABE: Well, thank you for that.

DEPUTY PRESIDENT ROBINSON: Thank you very much, I'll hear the TPSA.

MR McCABE: If I could, before we proceed with that -

DEPUTY PRESIDENT ROBINSON: You're - you're out of order, Mr McCabe, if you were to just sit down please.

MR McCABE: Thank you.

DEPUTY PRESIDENT ROBINSON: Mrs Strugnell.

MRS STRUGNELL: Thank you, Mr Deputy President. My colleague, Mr Holden would like to make a brief - have a brief word with you before I proceed with my -

DEPUTY PRESIDENT ROBINSON: Yes, certainly, Mr Holden.

MR HOLDEN: Mr Deputy President, unfortunately I have a prior commitment which I'm obliged to keep -

DEPUTY PRESIDENT ROBINSON: Yes.

MR HOLDEN: - and therefore request your permission and indulgence to make an extremely brief general comment and then withdraw, leaving the remaining - the remaining submissions to my colleagues from the TPSA and the TTF.

DEPUTY PRESIDENT ROBINSON: Yes.

MR HOLDEN: I'm sure we'll present the commission with meritorious and persuasively compelling arguments in this matter.

The society thanks the commission for its resume of what has occurred in the past. The question before the commission - payment of wages - is central to the context of any contract of service. On the employees side, the employer requires employees to carry out their duties in a reasonable and proper manner and to a satisfactory standard. For doing so, the employee is entitled to be paid and paid in a reasonable and proper manner.

At present, the lack of an appropriate payment of wages clause in the award means that if the employee is not paid properly he has little if any protection. The society submits the inclusion of a - an appropriate payment of wages clause in the employees award provides basic protection to which all employees are entitled.

The society submits there is an overwhelming case for the inclusion of the clause sought by the TPSA and points out that the clause currently contained, for example, in the Public Hospitals Award, was previously agreed to by the minister representing the Tasmanian Government, and the clause is in fact similar to the one being sought in this matter.

As you've already pointed out, this matter has gone on for some time and it's been due to excess delays due to what the society can only described, and has previously described, as the obstructionist tactics that the minister's representative has been instructed to follow. Because of those uncalled for delays, the society submits submissions should be completed today and the commission determine the matter.

Based on actions to date, the society would not be in the least surprised if the minister's representative instructions are to seek to further frustrate and delay this matter. On that basis, notwithstanding that we have not heard the minister's submissions, the society wishes to place on the record that it is firmly and completely opposed to any adjournment of this matter for any reason whatsoever.

The society believes there can be no justifiable reasons for any adjournment. The minister has had more than adequate time to prepare any submissions. This is not the type of issue that is a trail blazing issue which I've already said, it

applies to a major proportion of public sector employees, and in fact, any award that does not contain a payment of wages clause is, in the society's submission a deficient award. The society urges the commission to find in favour of the applicant and insert the clause sought in the award.

That concludes the society's submissions. Sir, with your permission, I would withdraw. Thank you.

DEPUTY PRESIDENT ROBINSON: Yes, thank you very much, Mr Holden.

Yes - Mrs Strugnell?

MRS STRUGNELL: Thank you, Mr Deputy President. Sir, in 1989, the TTF presented an application to vary the Teaching Service (Teaching) Staff Award in relation to both the payment of salaries and the making of deductions from salaries due to teachers.

The submission at that time outlined such problems as late payment or non-payment of salaries, incorrect payments, non-payments of increments, overpayments and subsequent deductions made in an arbitrary fashion and financial embarrassment caused by readjustments when there was no awareness of initial overpayments.

These concerns and problems are all easily mirrored in the pay dispute dealt with in this commission earlier this year and which affected a majority of non teaching in the Department of Education and the Arts.

The Minister for Public Administration, in response to the TTF claim, acknowledged some problems in the Education Department, but stated these difficulties were being addressed with a view to correcting them which is also, unfortunately, the current situation in relation to that particular department.

The basis of your decision of that particular claim in 1989, simply highlighted the principle that the payment of correct wages at the correct time constitutes the most fundamental element of any contract of service.

DEPUTY PRESIDENT ROBINSON: What was that 'T' number, please?

MRS STRUGNELL: Just a moment, I have to check that, I'm sorry. Do you have the 'T' number for -

MR ....: Sorry, no.

DEPUTY PRESIDENT ROBINSON: You could get it to us later.

MRS STRUGNELL: Can I give it to you in a moment? I do have it here, but I just don't have it available.

DEPUTY PRESIDENT ROBINSON: Yes.

MRS STRUGNELL: And to quote you from that decision, that in return for excess hours in his or her skills, responsibilities and labours, pursuant to such a contract, an employee is entitled to be correctly paid to the full extent of his or her award entitlement.

We're before you today, Mr Deputy President, with an application to vary the General Conditions of Service Award to include a payment of wages clause which would extend to all public sector employees covered by the scope of that award. The variation would provide a grounding for fairness and equity for employees in relation to the basic principle of entitlement that I stated earlier in relation to payment of wages.

And, if the commission pleases, I would like to present the exhibit which is the clause which we would like to see inserted into the General Conditions of Service Award.

DEPUTY PRESIDENT ROBINSON: I think this will be TPSA.6 actually.

MRS STRUGNELL: Thank you. Subclause (a) of this - of the payment of wages clause: Wages due to an employee shall be available not later than the usual time the employee ceases work at intervals of not more than 2 weeks and no later than Wednesday. This section, sir, provides for regularity of payment of wages, extremely important in this day of high technology when money transfer pays bills, mortgages, loans, insurance premiums, et cetera. This cannot happen smoothly unless there is the regularity to provide the source funds in the first place. Such regularity prevents penalties being applied to financial institutions for late payment of transactions.

Moving to (b). Payment of wages shall be by cheque, electronic funds transfer or direct deposit. Payment by electronic funds transfer or direct deposit shall be into a banking or financial institution nominated by the employee. The subclause simply prescribes the methods of payment which are acceptable, which are known and again we go back to the need for consistency, but also provides for mutual consent and/or reasonable notice of any change. The reasonable notice of any change is reflected in the second paragraph of that and I would like to read that to you: that the usual method of payment may be altered at any time, either by mutual consent or following the giving of reasonable notice by the controlling authority to the employee or employees concerned.

Moving to (c). On or prior to pay day the employer shall provide the employee with a written advice setting out full

details of the wages to which the employee is entitled. That advice shall at least include the following information: (1) the date of payment; (2) the period covered by the payment; (3) the total amount of gross wages; (4) the amount of wages at ordinary rate including the hourly rate where appropriate; (5) the amount paid as allowances so the employee can identify each payment; (6) any payments not usually included in the employee's wage so the employee can identify each payment; (7) the employee's classification; (8) the amount deducted for taxation purposes; (9) the amount and identification of any other deductions; (10) superannuation contributions made by the employer; and (11) the net amount of wages.

Provided that implementation of the items in subclause (c)(1) to (11) shall be effected within a period of 12 months from the date of this award variation is ratified or such other period as may be agreed between the controlling authority and the relevant employee organisations.

This is the 'what', 'when', and 'why' section, sir, so necessary when employees rely mainly on electronic transfer for them to know what has been paid, what has been deducted, why there has been an alteration and if overtime has been paid, et cetera. Some insurance payments, for instance, are CPI linked and the extra payment is automatic notification on pay advice will clarify to employee why the authorisation to take home pay has resulted. It is more efficient, Mr Deputy President, to have inbuilt into any system the reporting of such advice, far more efficient than a pay section needing to respond to telephone calls from employees seeking answers to what, when and why. The provision to this clause shows our preparedness to allow time for such a reporting system to be fully developed.

To subclause (d): the employer may deduct from wages due to the employee such amount as authorised in writing by the employee.

Simply enforcing what is reflected in section 51(3) of the Industrial Relations Act, and if I might, sir, I would like to quote that. I'll take the time to have a drink of water, I -

DEPUTY PRESIDENT ROBINSON: Yes, it seems as is your voice is -

MRS STRUGNELL: - excuse me.

DEPUTY PRESIDENT ROBINSON: - wearing a bit thin. What part of the act again - I'm sorry?

MRS STRUGNELL: 51(3), sir.

DEPUTY PRESIDENT ROBINSON: 51(3).

MRS STRUGNELL: And that section, sir, reads:

Where, by virtue of an award, an employee is entitled to be paid any sum by his employer, that employer is guilty of an offence if that sum is paid otherwise than in money without any deductions other than those that may be authorised by the employee.

So by including that subclause in this particular clause, it simply enforces that particular section of the Industrial Relations Act.

And from the events earlier this year, sir, I'd say that the Industrial Relations Act is clearly not enough, and therefore an inclusion of that statement within the award would certainly help to reinforce what is written there.

DEPUTY PRESIDENT ROBINSON: Mm. Can you tell us, Mrs Strugnell, where the details of your clause in TPSA.6 came from?

MRS STRUGNELL: Yes, sir, they simply reflect what is already within the Teaching Services Award.

DEPUTY PRESIDENT ROBINSON: Right.

MRS STRUGNELL: It is a - simply that clause which is already contained within that award.

Then go to subclause (e)(i):

Except in circumstances beyond the control of the employer and subject to subclause (e)(ii), an employee kept waiting for payment of wages for more than a quarter of an hour after the usual time for ceasing work on the normal pay day shall be paid waiting time at the rate of time and one half after that quarter of an hour with a minimum payment of a quarter of an hour and payment shall continue on that day until advised that payment will not be made on that day.

Further such payment at the rate of time and one half shall continue during all ordinary hours of work on each succeeding day or days, up to a maximum of 6 hours per day, until such time as payment is made.

We see this, sir, as a facilitative clause which is fair to both the employer and the employee. The opportunity to investigate or explain circumstances preventing a normal timely payment. It provides a flexibility depending on

circumstances but also an incentive for employers to keep things on track.

If I could move to section (ii) of that subclause:

Subject to subclause (e)(iii) the provisions of subclause (e)(i) shall not apply in circumstances whereby payment of wages is not made on pay day but the employer and employee agree to an alternative arrangement for payment.

Once again, as I've explained, this provides a flexibility depending on the circumstances.

Going to section (iii) of subclause (e):

Should, however the employer fail to make payment in accordance with the terms of the alternatively agreed arrangement as provided for in subclause (e)(ii), the employee shall be deemed to have been kept waiting for payment since pay day and shall thereby be entitled to payments in accordance with subclause (i) until such time as the payment is effected.

This protects, we believe, the employees should there be a failure to honour an agreement which has already been negotiated between the employee and the employer in relation to payment on a deemed day.

Section (iv):

Allowances prescribed by this award, other than allowances linked to the employee undertaking additional responsibilities shall not be taken into account in the calculation of waiting time rates prescribed in subclause (e)(i).

This excludes allowances from any penalty calculation and this is a standard practice, Mr Deputy President, an indication that this clause is not built on greed, just fairness.

Moving to subclause (f)(i):

Where employment is terminated, all wages due shall, where practicable, be paid to the employee on the day of termination.

And point (ii):

If payment on the day of termination is not practicable, the controlling authority shall, on the next working day of the pay office, forward all wages due to the employee to the employee's

recorded home address, or any other arrangement for payment as may be agreed between the controlling authority and the employee.

Section (i) of (f), sir, is self-explanatory and section (ii) provides a further example that we're taking a reasonable approach to these matters and providing that there is ample negotiation between both parties that that reasonable approach would be recognised in - in any invoking of such an award provision.

Mr Deputy President, that is the clause and those are the reasons behind each of the subclauses within it. It's not an exercise of whim or fancy, that one born of need in a changing time, a time of reduced staffing, of changing technology and reduced resources which unfortunately we have seen can impact on some areas where responsibility lies to pay employees.

The new pay system of - new pay systems of varying capabilities are being considered in different areas within the public sector.

An award provision such as outlined will provide an incentive to the planners in the public sector to remember the basic principle which we alluded to previously and that is the right for every employee to be paid in a timely fashion.

The cost factor would be negligible because - and I precis very, very loosely from your 1990 decision from the TTF application - that if corrective or preventative measures are taken there would be no cost simply - but simply doing what other employees, both in the public and private sector, would do, year in and year out.

My colleague to my left may well argue that the imposition of an award provision does nothing to solve problems or provide solutions. Our reply to that, Mr Deputy President, is that we compare the difference perhaps between the health sector pay system and even perhaps to some considerations given to teachers within the Education Department who do have the award provision compared with those employees who do not have access to such a provision, and we would argue that most certainly in the Health Department where - in the health sector - where such a provision exists, there is a lot more planning and consideration goes into the appropriateness of the pay system and I know that there is a certain priority within the Education Department in relation to payment for teachers in - having regard for the provision contained within their award.

It does help to have award provision, and it provides incentive to get systems right. And I think those examples speak for themselves. And in view of the precarious times it is only fair to all employees to have access to such provision. Thank you, sir.

DEPUTY PRESIDENT ROBINSON: Are there demonstrated needs though, Mrs Strugnell, for something to go in the award? Have there been any difficulties in relation to payment of wages?

MRS STRUGNELL: Sir, yes there are. We have difficulties in the Education Department in relation to payment of wages. The response that we get from the Education Department is, you tell us what the difficulties are and we'll fix it on a piecemeal basis.

We have an example only yesterday in relation to payment of - of wages to DCS employees - Department of Community Services employees - where apparently there is a system whereby all wages are passed through the Island State Credit Union as a matter of course, and from that - from that institution then deposited in various accounts depending on the employees needs.

Now in that case that was - that is an arbitrary decision by the planners that that system should exist, except that there is no mechanism in place as was exemplified yesterday, that should Island State Credit Union computers not be operable that there was no contingency in place to - to allow people to their wages through Commonwealth Bank or Savings and Loans until -

DEPUTY PRESIDENT ROBINSON: What - what are you telling me - what was the effect of the problem yesterday?

MRS STRUGNELL: That people did not have access to their salaries even though they had been paid into Island State Credit Union yesterday, until such time as we began to be notified there was a problem of access and had actually the employer contacting Island State Credit Union to then contact each of the other financial institutions to - to arrange a - a method of payment until such time as - to honour payment of wages - until such time as their - their system -

DEPUTY PRESIDENT ROBINSON: Right - but if somebody -

MRS STRUGNELL: - was up and -

DEPUTY PRESIDENT ROBINSON: - to - yesterday to access their - their wages which were due -

MRS STRUGNELL: That's right.

DEPUTY PRESIDENT ROBINSON: - are you saying to me they couldn't?

MRS STRUGNELL: They could not do that.

DEPUTY PRESIDENT ROBINSON: They couldn't get them?

MRS STRUGNELL: It wasn't being transferred into their own - into their own financial institution account. So -

DEPUTY PRESIDENT ROBINSON: Right.

MRS STRUGNELL: - people who normally would use, say, the Commonwealth Bank, did not have access to those funds until such time of some time during the day when Island State Credit Union had arranged for access to funds on an honour system, if you like, until such time as transfer could take place.

Now that is an arbitrary decision that has - that has been made by a department to handle employees funds.

DEPUTY PRESIDENT ROBINSON: But was that an isolated sort of incidence?

MRS STRUGNELL: That was the first instance that we had heard of from that particular department yesterday.

DEPUTY PRESIDENT ROBINSON: Yes.

MRS STRUGNELL: But other departments within the state sector are looking at varying ways - varying systems to pay their employees. Our argument is that if there is an award provision that says unless these employees are paid properly it may cost you - it may then add the incentive for the planners to consider very carefully the sort of systems they're looking at, not to make arbitrary decisions about employees wages, and to take the utmost care that those wages are available at the time at which they should be available.

DEPUTY PRESIDENT ROBINSON: Mm.

MRS STRUGNELL: And it is too easy, I believe, for planners to lose sight of the fact that they are actually dealing with employees wages and it is too easy for employers to turn around and say, well, yes, well that is a bit of a glitch, we'll see if we can fix that, or, we'll pay you tomorrow or the next day.

DEPUTY PRESIDENT ROBINSON: Yes, but what I'm asking is, is your - is your application based upon prospective possibilities or actual experience?

MRS STRUGNELL: It's based on both; actual experience from the Department of Education and the Arts, actual experience from the Department of Community Services, and most certainly the potential in relation to other departments looking at new systems for payment, the reducing of - of staffing in pay personnel sections which is something that also has impacted on the Department of Education dispute, where there is no

consideration then in the planning of personnel to ensure that appropriate systems can be maintained.

Award provision will help to provide the incentive to ensure that these considerations are made before decisions are made.

DEPUTY PRESIDENT ROBINSON: Yes. Are you going to make some reference to wage fixing principles as to how such an application as you have today can be accommodated?

MRS STRUGNELL: Sir, I've already stated in my submission that this in fact should be a negligible cost because if employees do, as they should, there should be ever - there should be absolutely no reason ever to invoke the clause.

DEPUTY PRESIDENT ROBINSON: Yes, but are you going to point me to which principle you are relying upon?

MRS STRUGNELL: If you give me the time to do that.

DEPUTY PRESIDENT ROBINSON: Well, the principles are - of the state - following the State Wage Case of February 1992 have an Appendix A which that appendix deals with (1) wage adjustments, structural efficiency adjustment, (2) minimum rates adjustment -

MRS STRUGNELL: Yes.

DEPUTY PRESIDENT ROBINSON: - we seem to stop numbering there.

MRS STRUGNELL: Enterprise bargaining.

DEPUTY PRESIDENT ROBINSON: Enterprise bargaining, allowances principle, superannuation principle, work value changes principle, paid rates award principle, first awards and extension to existing awards, conditions of employment, standard hours and economic incapacity.

MRS STRUGNELL: So we're looking at the fact that there's an extension to an existing award that we're asking - yes?

DEPUTY PRESIDENT ROBINSON: Well, you might take some instructions.

MRS STRUGNELL: Conditions of employment. Conditions of employment.

DEPUTY PRESIDENT ROBINSON: Conditions of employment principle.

MRS STRUGNELL: Yes.

DEPUTY PRESIDENT ROBINSON: Right, okay. What does - what does that say?

MRS STRUGNELL: Except for the flow-on of test cases - test case provisions, applications for changes in conditions other than those provided elsewhere in the principles will be considered in the light of their cost implication, both directly and through the flow-on. In respect of any application where the cost impact either directly or through flow-on is prima facie not negligible that must application must be processed in accordance with the special case principle.

We argue, sir, that of course this is a negligible cost -

DEPUTY PRESIDENT ROBINSON: Yes, I understand.

MRS STRUGNELL: - for the inclusion of this.

DEPUTY PRESIDENT ROBINSON: Good.

MRS STRUGNELL: Thank you.

DEPUTY PRESIDENT ROBINSON: Mr Philp, do you have something to add?

MR PHILP: Yes, thank you, Mr Deputy President. I don't believe I need to add too much to Mrs Strugnell's submission. I believe - I support entirely what she has said. For your - you'll be aware, sir, that as Mrs Strugnell indicated a similar clause was inserted in the Teaching Service (Teaching) Staff Award some time ago and that that has proved to be of some use in terms of people not receiving any pay at all.

It hasn't been of much use for people who have got incorrect pays in terms of missing out on increments or missing out on higher duties allowances, but where people haven't been paid at all, the clause has been utilised, I think Mrs Strugnell is quite right, that hasn't been a huge number of those people in the last little pay - education pay fiasco which was earlier this year. I think the number that actually - that that clause was actually applied to - it turned out to be about six employees from the teaching service and you will recall of course, sir, that we had a dispute application in George Town - I think it was last year - where it related to the similar matter and that - then that dispute was successfully resolved, I think because of the presence of this particular clause. So I simply, from our perspective, we do have members that are not - that are covered by awards other than the Teaching Service (Teaching) Staff Award and I think they ought to be given the protection which I think this clause would therefore give them by being placed in the General Conditions of Service Award.

I regret that following that decision we didn't seek to immediately flow that similar clause on for those - their awards, but we all learn, I suppose. But certainly it meant that in this - in the - in the pay troubles that the Education Department had in early this year, that our members that were covered by, say, the Non-Teaching Staff Award or by the Occupational Therapists Award, Speech Pathologists Award and those other type so awards, didn't have protection that their teaching colleagues did. So we would certainly support the submission by Mrs Strugnell. We believe that it is necessary to have the - the clause in the award. We also believe it's capably dealt with by - under the wage fixing principles as outlined by Mrs Strugnell and we - we support - we support the clause.

DEPUTY PRESIDENT ROBINSON: Thank you. Mrs Strugnell, I point out to you that under section 36 of the act the commission must be satisfied with regard to public interest and as I'm in some sort of a reading mode today I'll read it to you, that 36(1) says that:

Before the Commission makes an award under this Act or before the Commission approves an industrial agreement under section 55, the Commission shall be satisfied that that award or that agreement is consistent with the public interest.

And 36(2) says:

In deciding whether a proposed award or a proposed industrial agreement would be consistent with the public interest, the Commission shall -

(a) consider the economic position of any industry likely to be affected by the proposed award or proposed agreement;

(b) consider the economy of Tasmania and the likely effect of the proposed award or proposed agreement on the economy of Tasmania with particular reference to the level of employment; and

(c) take into account any other matter considered by the Commission to be relevant to the public interest.

How does your application sit with section 36?

MRS STRUGNELL: Mr Deputy President, I think our submission sits very well in relation to fulfilling the terms of public interest.

As I stated previously the economic position of any agency is not likely to be affected. Well, providing that - that the planners consider very carefully the sort of systems they're putting in place there should never be any need to invoke the award provision; that it just provides, I believe, the incentive for more consideration to be made of both the systems being put in place and the staffing levels being maintained in the areas from when the pays are - are made to employers - employees.

The economy of Tasmania likewise should not be impacted on at all, providing the employer takes a ready approach to the application of - of the basic principle of paying the employees at the time at which they are due to be paid and in the correct manner. So there should most certainly - the public interest would be well and truly looked after in regard to that.

DEPUTY PRESIDENT ROBINSON: Thank you. Mr McCabe, do you want to - are you prepared to proceed at the moment or do you want some time?

MR McCABE: I do have some argument to put to the bench. I would say I'm not prepared to reply to the substantive arguments of Mrs Strugnell at the moment and if I could elaborate on that as to why we would seek the course that we do, that's that the government has given the matter of provisions governing the payment of wages some considerable thought since the dispute matter with the Department of Education and the Arts, which is matter T.4270 which occurred earlier this year and which has been sort of interwoven with this particular application to vary an award.

We acknowledge that the situation which arose in that instance was not good, either for the employees involved nor the department. In an attempt to address the overall question of how and when wages and salary are paid to state employees generally, there have been ongoing discussions involving a number of central government agencies. What we are attempting to do is to draw up a set of procedures to be observed by all government agencies which will set down in a logical and, we believe, equitable way the processes that are to be followed.

Now these processes will ensure that the payments to state employees are properly processed and that the cash due to employees is available to them within a reasonable time of it being due. Now what we are finalising is a procedure which addresses the problems which can and do arise in a system of wages payment developed to work in an electronic funds transfer environment. Now that is, of course, the predominant system applying in the state public sector today.

As you would probably be aware, Mr Deputy President, this system started with the 4 per cent second tier agreement in

1988 which applies in various - there are several agreements applying in various areas of state employment where all employee organisations entered into those agreements, committing their members to foregoing cash payment of wages and to accept payment by direct deposit, electronic funds transfer or, in some instances, by cheque. The vast majority of payments in 1993 in the Tasmanian public sector is by electronic funds transfer. And that transfer is carried out to the employees' bank or financial institution accounts.

Sir, in our view, what the penalty provision in the payment of wages clause proposed by the TPSA in this matter represents, is a clause designed to deal with the old procedure of paying employees in cash on pay day and generally during working hours. Now employees traditionally collected their pay from the pay office on pay day and the clause, as proposed in TPSA.6 at (e)(i), is designed to address a situation, in our view, where a failure occurred in that traditional pay system.

So what we are doing is developing a procedure to address any shortcomings which may occur in the electronic funds transfer environment which, as I said, predominates today. So what we would ask you to consider today, sir, is a further adjournment of these proceedings which would enable us to fine tune the various procedures being developed by a number of central agencies. As you'd appreciate it involves - there are several departments, such as Treasury, Audit, Public Sector Management Office, need to coordinate these types of - and there being a number of pay systems applying in the public sector, it's not an easy task.

So when those procedures have been completed and fine tuned we would then seek discussions with the TPSA and any other interested organisation to see whether they feel that the procedures we are suggesting address their concerns in this matter. Now I'm sure that they will but, of course, if they don't then the unions will always have the option of coming back to the commission to press on with this application.

Now I've only very briefly floated this idea with the unions present this morning so it's somewhat new to them. However we consider that there is scope here for the matter to be settled by agreement and we would seek your indulgence for those discussions to go ahead. We say that there are no current problems in payment of wages despite what Mrs Strugnell has alluded to this morning. They've certainly - if there were problems they haven't been brought to our attention so we say there is no immediate urgency to settle this claim. It hasn't been demonstrated that any employee will be immediately disadvantaged if this award provision isn't put in an award in the next week or so.

So, on that basis, we would seek an adjournment of, say, 3 weeks to enable us to tie up the loose ends of the envisaged

procedures and to have discussions with the employee organisations about it.

If we haven't been able to come to some arrangement in that time, then the unions can and will no doubt press on with their claims.

So we would ask that in the spirit of section 21(b) of the Industrial Relations Act that you give the parties the opportunity to effect a conciliated resolution to this matter.

If I could just address briefly some of the matters that Mrs Strugnell raised in relation to the difficulties in the pay system yesterday.

They are not as bad as they might have seemed, and we do acknowledge that there was a glitch in the system which occurred after the payroll transfer from the Reserve Bank who acts on behalf of the government to distribute, if you like, the information to the various financial institutions as to what employees are due by way of wages.

In our submission, the correct payroll was provided to the Reserve Bank and the Reserve Bank fulfilled their duties by sending it off to the financial institutions, and I think it is somewhere, as Mrs Strugnell said, between the Island State Credit Union and the other financial institutions - their systems were somewhat strained, I believe, and unable to cope with the crediting of the employees' pays as well as copying with their day-to-day customers.

DEPUTY PRESIDENT ROBINSON: The government didn't have the money, the Commonwealth Bank didn't have the money, somebody had the money. The employees didn't have the money, who had it?

MR McCABE: Well, no, that's not quite true. The financial institutions did have the money, but it wasn't - as I understand it - put into the various employees' accounts, and that was the problem.

However, I was heartened to hear Mrs Strugnell's remark that at sometime during the day the arrangements were made for the employees' accounts to be credited, or honoured, and if I could remind you that according to the TPSA's application that the pays don't have to be in an employee's account until, well, at the latest, 15 minutes after the normal time of ceasing work on pay day; which would make it about 20 past 5 or so for the majority of the employees on a Wednesday evening.

So - and of course a lot of employees enjoy in the normal course of events their pay being in their accounts sometime on a Tuesday, sometime very early on a Wednesday. In the normal

course of events employees are paid well and truly in time, and even prior to pay day, so -

DEPUTY PRESIDENT ROBINSON: Or in advance.

MR McCABE: And occasionally it might just go the other way. But, as Mrs Strugnell said, all employees requesting withdrawals from their accounts were honoured, so I don't believe that anyone was disadvantaged, in effect.

On that basis, we would ask that you consider our application for a further adjournment.

I know your remarks earlier today that you're feeling somewhat frustrated by the process, and we acknowledge that. It has been a long drawn out and - but we think that what we are proposing will address more - in a more meaningful way - the procedures which - and, as Mrs Strugnell says, you know, the proposed payment of wages clause might encourage the planners to do what they should be doing - and my reply to that is that in fact we have been doing it ever since the faults in the system were revealed in February this year. It is not an easy process.

DEPUTY PRESIDENT ROBINSON: Well, your request is for about a 3 weeks' adjournment to enable you to hopefully reach an agreement with the applicant?

MR McCABE: Well, yes. I mean, the TPSA is not aware of any of the detail of it. It is something we've been developing in-house and which we believe is nearly ready to go.

DEPUTY PRESIDENT ROBINSON: I'm wondering whether improvements to the system are actually relevant to having something in the award. I mean, the argument broadly by the applicant is that it's some sort of insurance to fall back on, and like all insurances I suppose it is hoped that it's never - or most insurances - that it won't be required - a contingency type of provision - and that if the system is to be refined further and make it better and better, I'm not quite sure how that impacts upon having something in the award.

MR McCABE: Well, I took it that that was the substance of - or something that Mrs Strugnell did say - was that she believed that if this was in an award it would encourage the planners to make the system better.

And, in fact, her counter to the costs question in the principles was that if the system is working properly then there would be no costs involved.

We do have problems with that, of course, but I think that was the substance of her argument, so - if the commission pleases.

DEPUTY PRESIDENT ROBINSON: Mm. Mrs Strugnell, you've had -

MRS STRUGNELL: Yes, Mr Deputy President, I'd like to just register a grave concern that these proceedings are going to be further adjourned after having got to this stage and after having this application been lodged for such a long, long time.

DEPUTY PRESIDENT ROBINSON: Well, I guess it behoves you to respond to the suggestion that there be some discussions and adjourning for that purpose.

I mean, you can respond how you wish as to whether you agree or don't.

MRS STRUGNELL: I can see - I'm just wondering whether Mr McCabe is saying that if we proceed with this and ask that the award be varied. The new details that have been revealed today in relation to fine-tuned procedures to address the overall question of payment is actually going to stop and why the two things can't go in tandem, anyway.

Quite rightly, as I have said in my submission, that this clause is there to provide the incentive to planners to ensure that there is a system that is maintained to the point that it allows the proper and appropriate payment to employees. Now if the government or central agencies, or whomever, are also in the process of discussing other procedures to further fine tune that process, then surely that can continue, anyway, whether or not we are able to vary the award.

DEPUTY PRESIDENT ROBINSON: So, do you -

MRS STRUGNELL: I'm asking whether Mr McCabe is saying that unless the procedures stop here and we enter into discussions, then the fine-tuning process he has revealed today will not continue.

DEPUTY PRESIDENT ROBINSON: Maybe he was saying that some -

MR McCABE: Well, if I could say, no, it won't stop here.

MRS STRUGNELL: It won't stop? Well, that certainly is a relief.

Sir, I would ask for your consideration for these proceedings to proceed as today, and for an appreciation to be given to the central agencies that there are ongoing discussions in order to address the overall question of payment, but that that process should not prevent our application for varying the award to proceed.

DEPUTY PRESIDENT ROBINSON: Yes, I am inclined to agree with you, Mrs Strugnell, that an adjournment - particularly an

adjournment of 3 weeks on the basis of having some discussions and improving the system - at this stage of proceedings isn't warranted, and I would express the view that the matter - the hearing of the application should continue - at the normal pace, and I would ask the government to indicate when they can respond to the merit argument that's been put up thus far.

MR McCABE: Well, I suppose at the risk of incurring the wrath of the commission again, I could say in 3 weeks, but - by which time, you know, we will have been able to have discussions with the unions. But if the commission thinks that a shorter adjournment is more appropriate -

DEPUTY PRESIDENT ROBINSON: I think it would be more appropriate, yes.

MR McCABE: I'm just wondering then, perhaps 2 weeks, or -

DEPUTY PRESIDENT ROBINSON: You are not in a position today - late this afternoon, for instance?

MR McCABE: Well, not really, Mr Deputy President, no.

DEPUTY PRESIDENT ROBINSON: No?

MR McCABE: I mean, there's been no discussions between us on the substance of this clause.

DEPUTY PRESIDENT ROBINSON: But there could have been, with respect, couldn't there? I don't want to get into an argument about who should contact whom first.

MR McCABE: Yes, indeed.

MRS STRUGNELL: With due respect, Mr Deputy President, there most certainly has been discussion in relation to this clause, and Mr McCabe would remember quite well that prior to the last hearing the TPSA spent some time with himself and Mr Hanlon discussing this clause.

MR McCABE: Yes. When I said there was no discussion I was talking more about the substance of the actual claim. I mean there were general discussions about the principle of whether we should have such a clause or not, but -

DEPUTY PRESIDENT ROBINSON: Well, I -

MR McCABE: As said earlier, I don't see that there is anyone - any employees - being seriously disadvantaged by the absence of this clause from the award. And we are offering in good faith, offering to negotiate in good faith, on a possible solution, which -

DEPUTY PRESIDENT ROBINSON: Well, if my memory serves me correct, and I don't want to refer to transcript, but I recall that you gave an indication that your instructors didn't oppose there being such a provision in an award in principle -

MR McCABE: That's right, yes.

DEPUTY PRESIDENT ROBINSON: And I take it that you wouldn't necessarily agree with the same provision as put forward in the application and in TPSA.6, but that the principle of having something in the award didn't appear to be a problem.

MR McCABE: Yes, well we would stand by that. I used the word philosophically. We don't oppose the notion of a payment of wages clause. Whether it's in an award or whether it's done by some other method, I -

DEPUTY PRESIDENT ROBINSON: Regulation, perhaps?

MR McCABE: Well, that's always a possibility, and that is something which we would want to discuss with the employee organisations.

DEPUTY PRESIDENT ROBINSON: Is it customary to discuss regulations with employees before they are drawn up?

MR McCABE: Well -

DEPUTY PRESIDENT ROBINSON: Look, Mr McCabe, I would like you to give some priority to responding to the application in whatever way you see fit, and I would have liked to have been in a position for the matter simply to flow on today, given the history of the matter and given the firm indications that I had given as to this matter.

You can't go this afternoon?

MR McCABE: Well, I mean I could, but I don't think it would be helpful, if I can put it that way.

DEPUTY PRESIDENT ROBINSON: To whom?

MR McCABE: To anyone.

DEPUTY PRESIDENT ROBINSON: Well, I mean, you either oppose the application or you don't, or you have got some alternative suggestion.

MR McCABE: Yes, well as I say, I would like the chance to put forward - sorry - to have discussions with the unions as to a possible solution through these refined procedures that we have got in mind.

If it's a matter of pressing on with this application, then - We'll certainly be opposing the - on certain grounds.

DEPUTY PRESIDENT ROBINSON: I have got to deal with an application that's allocated to me. I just can't refuse to deal with it. Indeed - or not deal with it at a reasonable pace. I have got a duty and a responsibility to hear applications.

MR McCABE: I could just remind you, Mr Deputy President, that the application sat for 2 years I think it was, if not more - 3 years - waiting for the TPSA to do something about it.

No-one seemed to be terribly concerned about that. So, anyway, I don't see what a week's delay in finalising what has become an historical process in this particular case is going to make.

DEPUTY PRESIDENT ROBINSON: Alright, Mr McCabe.

My diary is a bit full. Wednesday the 28th is a fairly generous time for an adjournment. It's dictated as much as anything by the fact that I can't put it on earlier.

We'll just perhaps go off the record.

OFF THE RECORD

DEPUTY PRESIDENT ROBINSON: Yes, Wednesday, the 28th of this month, at 10.30 is the most practicable and available date at this time, Mr McCabe, and I would sincerely hope that you will be in a position to complete your submissions on that day.

MR McCABE: Yes, I can promise you that, Mr Deputy President, that we'll certainly be ready to proceed to conclusion on that day.

DEPUTY PRESIDENT ROBINSON: That would please me greatly. Thank you. This matter is now adjourned.

HEARING ADJOURNED