IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2399 of 1990	**IN THE MATTER OF** an application by the Tasmanian Public Service Association to vary nominated public sector awards
T No. 2511 of 1990	**IN THE MATTER OF** 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	**IN THE MATTER OF** 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	**IN THE MATTER OF** an application by the Association of Professional Engineers, Australia, Tasmanian Branch to vary the Professional Engineers Award
T No. 2508 of 1990	**IN THE MATTER OF** an application by the Hospital Employees Federation of Australia, Tasmania Branch to vary nominated public sector awards
T No. 2605 of 1990	**IN THE MATTER OF** an application by the Federated Miscellaneous Workers Union of Australia, Tasmanian Branch to vary the Miscellaneous Workers (Public Sector) Award
	re structural efficiency principle

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, 17 September 1992
continued from 16/9/92

TRANSCRIPT OF PROCEEDINGS

unedited

PRESIDENT: Mr Jarman?

MR JARMAN: Thank you, Mr President. Perhaps at the outset I might indicate that we intend this morning to take a slightly different tack with our presentation to the commission and there are very good reasons for that. Yesterday the government representatives here had some discussions with Mr Vines regarding the memorandum of understanding. There has been a suggestion put to us by Mr Vines that we discuss the memorandum of understanding and its content in the hope that we could gain some consensus.

As the bench would appreciate the government has an agreement with four out of the five unions in this particular situation, therefore all parties to the memorandum of understanding that are - those parties that are in agreement to the memorandum of understanding should be party to any discussions concerning possible amendments to it. Obviously from our point of view and, I'm sure, from the commission's point of view, it would be appropriate if we could submit to you that all parties are in agreement with the memorandum of understanding.

It has been suggested that we have an adjournment to discuss the TPSA's approach and any changes that it may seek to the memorandum of understanding. We have put that to the other unions who are in agreement with the memorandum of understanding and they have agreed that further discussions can take place if there is a chance that consensus can be achieved.

On that basis what I would propose to do today, with the indulgence of the commission, is put to you submissions that support the memorandum of understanding, its approach and why we believe it's appropriate that a single health industry award be put into effect.

COMMISSIONER WATLING: So are you really asking us to make the decision today on which awards should remain and which awards should go?

MR JARMAN: No, I don't think I'm asking you to do that.

COMMISSIONER WATLING: So you're reporting - this is your view and this is what discussions centre around rather than requesting us to make the decision at this time as to which awards the commission should repeal and which ones should continue.

MR JARMAN: That's correct. What I would be putting to you today, commissioner, is that the memorandum of understanding, as it sits before this commission, is the approach that we wish to adopt. We believe it's appropriate that the commission, after we report back on our discussions, endorse the memorandum of understanding so that we can put into effect

the processes that are outlined in the memorandum of understanding. Does that answer your question?

COMMISSIONER WATLING: I think so. I'll listen to what you have to say.

MR JARMAN: We started to go through the memorandum of understanding yesterday and I think we reached item 3(b) on page 2 of the memorandum of understanding. And we were about to embark upon discussions with respect to 3(c). If I could just quote from that particular part of the memorandum of understanding. It goes as follows:

> The health industry award will contain an operational stream involving the broadbanding of classifications. In determining the appropriate operational stream the parties during their negotiations will have regard for the following:
>
> (i) the appropriateness of the 100% benchmark determined in the November 1991 decision.
>
> (ii) the introduction of the operational stream at minimal cost.
>
> (iii) the minimisation of translations involving absorption of salaries and/or allowances.

I there end the quote.

The government's position has been outlined before in submissions to this commission. The government has instructed representatives of the Department of Health to continue its discussions with the unions for a single health industry award. But the government's position is that any award which contains new classification streams should be implemented on a cost neutral basis. Those are our instructions and we will be seeking to carry those instructions out as intended by government.

COMMISSIONER WATLING: So does that mean that the 100 per cent benchmark will alter or may alter in your discussions?

MR JARMAN: In previous discussions with the unions we have indicated that the benchmark, as it's currently situated, is appropriate. However we have agreed that the unions can come to us with suggestions on how the stream can be adjusted to cater for what we see as problems in its implementation. We have indicated to the commission previously that there are problems below the 100 per cent benchmark, as we see it, currently.

People classified at the lower levels - and I'm talking about levels 1, 2 and 3 in particular, could be going backwards. So

what we intend to do is have a closer look at how the existing operational stream can be applied and where the problem areas are and see if we can't adjust some of the classification levels so that problems can be resolved.

COMMISSIONER WATLING: Now are you talking about altering the classification levels, the rates of pay or redesigning the jobs and broadbanding the jobs so people are eligible to be classified at a different level?

MR JARMAN: I can't answer that question specifically, commissioner. All I can say is that all of those issues that you just raised will be addressed during our discussions. There is no doubt that some jobs will be redesigned and employees in those jobs will be required to carry out a wider range of skills. That may very well lead to an adjustment in their classification.

COMMISSIONER GOZZI: In accordance with existing classification standards?

MR JARMAN: Quite so.

COMMISSIONER WATLING: Well isn't that what the original decision in the four streams envisages?

MR JARMAN: It certainly did.

COMMISSIONER WATLING: That's why we called for redesign of jobs and broadbanding of jobs so as people could be classified at the appropriate level.

MR JARMAN: That is correct. However if we were to apply the guidelines as they are now and translate people directly across to the new streams -

COMMISSIONER WATLING: Which was never designed to do that.

MR JARMAN: Well if we have a look at what a person is doing now and we apply the classification guidelines and translate across to the new streams and we find that people are going backwards, and considerably so, then we would want to have a look at that and the reasons why.

COMMISSIONER WATLING: But our decision was never designed to translate across. That's the point we've been trying to make for some time. Our decision was designed for the employer, in consultation, to look at redesigning and broadbanding jobs.

MR JARMAN: And that's exactly what we will be doing. We will be carrying out a comprehensive workplace reform exercise. In fact, the agency has to look at approximately 6,000 jobs and that's a task that is not going to be completed overnight.

COMMISSIONER WATLING: Oh, look, I totally agree with all that but you just threw in the comment, if you make a translation across. I'm saying we've never agreed that there should be a translation directly across anyway, been totally opposed to that.

MR JARMAN: Well perhaps it's in the terminology that we're using. At one stage, commissioner, a job that is currently in the system which has an incumbent is going to be translated across to the new stream. Now what happens in between in the process that occurs, if you like, from when you have a look at the job that they're doing now and the job that you want them to do in the future, is the workplace reform exercise.

But nevertheless there still is an administrative exercise undertaken which translates a job from there to the new classification stream that we're putting into place.

COMMISSIONER WATLING: After the redesign process has taken place.

MR JARMAN: Quite so.

COMMISSIONER WATLING: So how do you know that they're going to take a significant drop if you haven't done the work?

MR JARMAN: We haven't done the work to a great degree but we have had a cursory examination of what may occur once we start the detailed exercise.

COMMISSIONER GOZZI: Do you think that will have implications for the wider public sector, Mr Jarman?

MR JARMAN: Well that's a difficult question to answer, commissioner, because I'm not really familiar with areas outside of health in any specific way. I can indicate to the bench that, as I understand it, there could be problems, particularly in the operational stream because we do have what could be referred to as generic classifications, generic jobs is probably a better way of putting it, that carry different classifications between agencies.

One of the jobs that I have in mind when I make these submissions is cleaning. Cleaners are classified at different levels in a number of agencies.

COMMISSIONER GOZZI: Well I think the structure provides - I think it's 78 per cent of the 100 per cent benchmark, isn't it, for a cleaner?

MR JARMAN: I think that's the case, yes.

COMMISSIONER GOZZI: Currently. And that - on this, sort of, generic exercise, do you think demonstrates that there might be a problem as far as what people earn currently?

MR JARMAN: Well, yes, I think that is precisely the case. And that is going to create some problems, not only for the employer but for the unions as well.

COMMISSIONER WATLING: But it will depend if they're on the base rate or they're someone like an infection control cleaner, won't it?

MR JARMAN: Quite so. If we're talking about an ordinary cleaner then, as I see it, there will be some problems in that area but if we're talking about a cleaner that has a range of skills, particularly an infection control cleaner, then that becomes a different exercise because in all likelihood they would be classified at a higher level.

COMMISSIONER WATLING: My questioning is really only to just get a feel for what (c) really means. The words look good but often you've got to get a feel for what's behind the words. Quite frankly, if you just pick it up and read it, it could really mean nothing. It's all nice pie sort of stuff but you want to get a feel for what it means in reality.

MR JARMAN: Well I hope that we've given you an indication of what we intend to do. I'm not for one moment suggesting that we could come before you with 100 per cent agreement on this particular issue because I think that we are going to have some problems when we start to open it up. But I think it will help this commission and it will certainly help the parties if we can identify those problems, work through them and hopefully resolve them so that people can be appropriately classified under the streams in the new award.

PRESIDENT: Mr Jarman, is the - sorry to interrupt you further - is the concept of implementation at neutral-cost part of the agreement?

MR JARMAN: It's not contained in the - in the agreement itself but the unions have been advised that the government's position is that the implementation of a new health award must be on a cost-neutral basis. In fact, I think you will find from reading transcript that Mr Warwick from the HSUA referred to that situation in his submissions a few - two report-backs ago.

PRESIDENT: Yes, yes, but it's not part of the agreement?

MR JARMAN: No, it's not written into the memorandum of understanding.

COMMISSIONER WATLING: Is that for any reason or - because there could be some disputes over that couldn't there?

MR JARMAN: There could be, but I'm standing here now saying that the unions are aware of it. They may not necessarily like that position adopted by government, but nevertheless that is a factual situation. The reason that the words aren't contained in the memorandum of understanding is that this document was completed prior to Cabinet giving consideration to it and Cabinet making its decision on the cost-neutral situation.

COMMISSIONER WATLING: So seeing that you're going to go back into negotiations again on it, will that be one of the things that will be contained in any new draft?

MR JARMAN: Well now that you've mentioned it, commissioner, there's no reason why it can't - can't be included or addressed during discussions.

COMMISSIONER WATLING: Can I just ask another question: if you are going to take us through the document, I just question what would be the relevance of continuing this sort of submission if you've already foreshadowed you really want to have further discussions on the memorandum of understanding?

MR JARMAN: Well, I suppose that the - the parties are in a position where they have submitted their - the memorandum of understanding to their members for consideration. It was made quite clear to everybody concerned this morning in our discussions that any changes made to the document now would be minor changes only, because union members have considered the content of this agreement and if there were to be any significant change to the content of the agreement then obviously they would have to go back to their members again to get their approval to proceed with it.

COMMISSIONER WATLING: Yes, right. So where does that leave my question? Is it true to say you're going to discuss the memorandum of understanding?

MR JARMAN: That's correct.

COMMISSIONER WATLING: And it's true to say it may or may not alter in some way, shape or form?

MR JARMAN: That's correct.

COMMISSIONER WATLING: And if we were to continue to work our way through it now we might find some of the things you're putting to us may well change.

MR JARMAN: That's correct, although from indications I've been given already I don't think that the areas I'm addressing currently will change.

COMMISSIONER WATLING: Right, thank you.

COMMISSIONER GOZZI: What, they'll go more to budget initiatives, will they?

MR JARMAN: I don't think so, commissioner, not - not in any great way.

COMMISSIONER GOZZI: Well I won't fire any further questions.

MR JARMAN: I think it's appropriate that the other parties be given the opportunity to answer some of these questions.

COMMISSIONER GOZZI: Fair enough.

MR JARMAN: I shouldn't be second-guessing what they may be thinking.

COMMISSIONER GOZZI: Fair enough.

COMMISSIONER WATLING: Well that's probably why I raised the question - are you better off keeping your powder dry and allowing them to keep their powder dry until you come back?

MR JARMAN: I think you can take it as given, Mr Commissioner, that I've got plenty of powder.

COMMISSIONER WATLING: Yes, well -

PRESIDENT: Let's hope it's all dry.

COMMISSIONER WATLING: You - you might - you might have a lot of dry powder but then I'd still question the relevance of you continuing if you've already foreshadowed that you want to go away and reconsider the document, because your submission may be slightly different if you come back. And then - so what do we do with the stuff you've told us today?

MR JARMAN: Well I don't think that the agreement is going to change drastically. I think there may be some minor changes made to accommodate some concerns. However, if there were to be a suggestion that the agreement changed drastically, then as I've already indicated to you, I think we would be going through a different exercise.

COMMISSIONER WATLING: Yes, well obviously the parties have consented to it would obviously -

MR JARMAN: Yes.

COMMISSIONER WATLING: - want to go back to their members, and therefore it might an entirely different or somewhat different document. Anyway, I'm - I'm prepared to sit here and listen, but I - I've got the thing going through my mind that -

MR JARMAN: Well perhaps I can -

COMMISSIONER WATLING: - that says, well I've got to .... all your submission with the overriding factor that it may or may not change once you have further discussions.

MR JARMAN: It's unfortunate isn't it that we find ourselves in this situation?

COMMISSIONER WATLING: Yes, well I agree, from where I sit as well.

MR JARMAN: But nevertheless it has occurred and I think we have to work our way through it. I can shorten my submissions to the extent that what we're saying today, what we intend to put to you today, is that a health award should be put in place covering those employees currently working in public hospitals and in community health services.

We've given the commission an indication that we intend to undertake a comprehensive workplace reform exercise. That particular exercise is mentioned in the memorandum of understanding under part 3(d), and I would seek to address that now if I may.

COMMISSIONER WATLING: Right.

MR JARMAN: The particular part of the memorandum of understanding goes as follows:

> The parties agree that the workplace reform process will be completed by November 1993 and will be undertaken with the participation and co-operation of all parties. The parties acknowledge that the reform process will address:
>
> (i) skill mix assessments.
>
> (ii) technological advancements.
>
> (iii) job evaluation and/or redesign and drafting of accurate position descriptions.
>
> (iv) work practices and demarcation.
>
> (v) productivity and efficiency improvements.

And I there end the quote.

If I could take the opportunity to tender an exhibit at this stage.

PRESIDENT: J.10, I think is the next exhibit of yours, Mr Jarman.

MR JARMAN: Thank you, Mr President. I've tendered this exhibit to give the commission an indication that the Department of Health has done a lot of background work on workplace reform issues and we intend to embark upon the workplace reform exercise as soon as the issue concerning the memorandum of understanding is resolved and has been endorsed by this commission.

The booklet which you have will be circulated to employees within the Department of Health, and as I understand it, there will be a pamphlet placed on this booklet also distributed amongst the workforce. It is designed to give employees an understanding of the workplace reform and award restructuring process and how it will be effected within the department.

What we would submit to the commission is that health is an industry. It's an industry which has linkages at a local level in the private and public sectors, it also has national linkages. What we would submit to this commission in the strongest terms is that a brick wall should be built as thick as you want to make it and as high as you want to make between the health industry, the public sector health industry and the rest of the state service.

I heard some suggestions from the unions and this commission that there may be a problem with flow-on if separate arrangements are made for health that aren't made for the rest of the state service. Our submission is that health should be treated as an industry in its own right. It may very well be that over a period of time the awards and agreements that apply to people employed in the health industry are different to those applying to people employed elsewhere in the state service or public sector. And we make no apologies for that.

It is within the power of this commission to determine that health is a separate entity and should be treated accordingly. That what happens in health should have no impact on the remaining part of the state service and that what happens in the state service should not impact on health. This commission has already endorsed a nexus, accepted that a nexus exists between the public sector and the private sector in respect of award coverage for employees working in hospitals.

So it can be argued that the industrial relations linkages are stronger between the public and the private sector as far as the health industry is concerned as they are between the health industry and the remainder of the public sector.

Whatever the outcome from the discussions we are going to have about the memorandum of understanding our position will still remain as it is today, and that is that there should be a separate health industry award covering people who work in public hospitals and who work in community health services in this state.

There were some comments yesterday from the bench and from my union colleagues about award coverage and how award coverage will apply for the next six to 12 months as we work through the workplace reform exercise. And as the memorandum of understanding indicates, it is our position that the existing awards should be kept in place until such time as 1), the negotiations for the new award have been completed and we are in a position to bring to this commission a draft award, and 2), that the workplace reform exercise has been completed.

COMMISSIONER WATLING: Now are you talking about the 10 awards that you listed yesterday?

MR JARMAN: That's correct, commissioner.

COMMISSIONER WATLING: Yes, well when you say the awards, I take it that it's all the ones that you've listed yesterday.

MR JARMAN: Yes, that's correct. We will go further and say that during the period under which the workplace reform exercise is being completed, if there are problems going to award coverage because the commission has indicated an intention or a desire to repeal some awards, then we would say that the Hospital Employees Award could be amended to extend coverage to those people who work in the health industry but who are covered by an award which has additional application elsewhere in the public service.

We accept that during the transition process there could be a few obstacles, but they are obstacles that I am sure with a little initiative and innovation we can overcome.

COMMISSIONER GOZZI: So to be clear, you're suggesting if rather than keeping the 10 - if we weren't attracted to that - keep the Public Hospitals Award in place, extend it to include classifications such as that might apply to Miscellaneous Workers (Public Sector) Award classifications?

MR JARMAN: Yes that's - yes, exactly, that's what I'm suggesting. That if - if the commission feels that, you know -

COMMISSIONER GOZZI: To put those structures -

MR JARMAN: - there's a need to repeal those other awards because, you know, the machinery is a little messy, then we

would say that the Hospital Employees Award could be amended on an interim basis to cover those classifications.

COMMISSIONER GOZZI: So take for instance the Miscellaneous Public Sector Award which applies across the public sector, has application in schools, for instance, so, are you suggesting that the - the streams - or the structures - wage rates, I suppose - would go into the Public Hospitals Award, that award could then be repealed and those classifications in that award - those people working in the Education Department, for instance, cleaners, would then be picked up by the operational stream which would have application to the rest of the public sector.Is that the sort of thing you're suggesting?

MR JARMAN: Well what I'm suggesting is that we may need to use the Hospital Employees Award as a decanting process in that we need somewhere to rest -

COMMISSIONER GOZZI: Yes.

MR JARMAN: - certain parts of existing awards until we can put the new award in place. Now, I haven't had discussions with Mr O'Brien, so I really wouldn't like to make comments about the Miscellaneous Workers (Public Sector) Award at this stage.

COMMISSIONER GOZZI: Well it's a good award to look at by way of this example that you're promoting because it picks up, I think, the sorts of problems that need to be faced going to the relationship between the rate of pay for cleaners across the public sector and the operational stream. It's as pure and simple as that. I mean that is a fundamental problem and we're skirting around it, but it picks up and crystalises that particular problem.

MR JARMAN: It certainly does. I just put to the bench as a suggestion. It may be that we don't need to use the hospitals award for that purpose, that the commission is quite happy to leave those awards in place until such time as we can present you with a comprehensive draft for a new health industry award.

COMMISSIONER GOZZI: So the option in the context of resolving the problems that I've alluded to might be best left to be resolved in some other way, but needs resolving, on the basis that those 10 awards, in fact, continue to operate until the health industry award is made, if we adopt that principle.

MR JARMAN: Yes, that's correct. I think that there is probably one or two more matters that I wish to go to today. One goes to demarcation. The commission did mention yesterday that during the process of repealing and creating new awards, there will be an examination of coverage, that is, an examination of the parties and persons bound to specific

awards. We were heartened to hear comments from Commissioner Gozzi which appeared to indicate that there will be decisions made by the commission in this area because if we wait for the unions to resolve their particular arrangements, we could be waiting till beyond the year 2000. We were also heartened to hear suggestions from - or comments from Commissioner Gozzi along the line that the employer would be given the opportunity to make submissions going to coverage and to parties and persons bound to any new awards that are put in place, because I would like to place on record here and now that we will be making some very, very strong submissions on the persons and parties bound clause to any new health award that is put into place.

PRESIDENT: There is another process that comes before that of course - determination of interest -

MR JARMAN: Quite so.

PRESIDENT: - and the provisions that attach to that.

MR JARMAN: Yes, we understand that, Mr President, and I am sure that given the opportunity, we would seek to demonstrate to the commission that coverage in the health industry should be looked and dealt with on an industry basis and we have some views about the unions that should have coverage in the health area.

I don't really intend to address much of what fell from Mr Vines yesterday. However, I feel that there are a couple of issues that I must respond to. Mr Vines did indicate that his organisation is extremely concerned that 350 jobs or more will go from the health agency. Earlier in the day, the HSUA advocate read into transcript a letter that his organisation had received from the Minister for Health, and with the commission indulgence, I think it's fair enough that we go to that letter again and read from it. The letter is dated the 25th of August 1992 and reads as follows:

> Dear Mr Rees
>
> Budget initiatives effect on positions
>
> I refer to your query on the statements alleging that the number of positions within the health agency that will be abolished will be in excess of 350. I can confirm my previous advice which has been given to all health unions that the budget savings required to achieve the budget target for the health agency equates to 350 jobs. The effect of discussions and consultations that can identify savings impacting on the target figure will be to reduce the number of jobs that need to go. In fact, it is my clear understanding that the purpose

of the Memorandum of Understanding is to maximise the consultative processes, the work reform process, and to identify all possible areas of savings thereby minimising job losses in the health agency. It is unfortunate that the TPSA seek to misconstrue the intent of the Memorandum to create an outcome that is totally opposite to the outcome agreed between all parties.

Yours sincerely

F. Roger Groom
Minister for Health.

I think it's important to address that issue because it is fundamental to the memorandum of understanding. The HSUA in particular has been most concerned about the potential job loss or levels of job loss in the health area and in their negotiations with us, they have always stressed that point and we've made it quite clear to the HSUA that we are prepared to sit down and consult with them on all issues that involve the potential to abolish jobs, and we will do what we can as an agency to minimise the number of jobs that are lost to the health industry.

Mr Rees has already indicated that even though there will be some jobs lost in the public sector health industry, there is the potential for some of those employees to be picked up by the private sector in the health area.

Again, we will do what we can to assist in helping employees find useful employment within our agency, within the State Service, and if we can do anything to help them find a job in the private sector, we will do that as well because we too are concerned about the numbers of jobs that are being lost.

I wish to point to one other part of Mr Vines' submissions where he says that his organisation does not accept the debt reduction rate established by this government. Well, perhaps his organisation doesn't accept, but nevertheless, the elected government in this state has decided that it is crucial that it rein in its public sector spending, that it reduce the debt. I'm sure this commission has already heard from other advocates that after health and education, the next largest part of expenditure coming from the government's total public sector finances goes to reducing the debt. It's running at something like 11 per cent of total public sector finances. That the government's decision has meant that agencies have to reduce their spending; they have to become more efficient in order to provide the services the government believes it must provide to the citizens of Tasmania.

I've already indicated to this commission that we have a budget shortfall of 8.5 million dollars this financial year. The memorandum of understanding contains a range of budget initiatives which need to be addressed this financial year, and four out of the five unions involved have accepted that they will work the health agency on those budget initiatives to see that the budget shortfall is reined in, that the health agency is able to balance its books, but at the same time minimising job loss, putting into effect a new health award, and carrying out a comprehensive work place reform exercise.

The government's attitude is that it must be financially responsible, that public sector spending must be reined in as far as possible - that is in the public interest.

COMMISSIONER GOZZI: Mr Jarman, we've heard a great deal about that, not only in these proceedings, but in other proceedings as well.

MR JARMAN: I understand that, commissioner.

COMMISSIONER GOZZI: And I think by and large in a collective sense the budgetary position of the government is very well understood, but I couldn't help noticing in a recent hearing in the Technical Colleges Staff Society matter were Dr Norton addressed the public interest and financial requirements - budgetary requirements - that the net debt servicing requirement of the state has now drifted from 100 million dollars to something like about 130, 140 million dollars. Now what that suggests to me is that it is a matter of government priority that determines exactly what should happen and where it should happen. So whilst the pressure is on - there's no doubt about that, on both the public and private sectors, there's still been a blow-out - if you like - well, maybe not a blow-out, but a deliberate budget exercise which has seen that figure go from 100 million dollars to an amount greater than that.

MR JARMAN: Yes, well, I'm not familiar with the current situation. I can say, however, commissioner, that some of those costs would no doubt be due to the fact that the government has to borrow money to make up for the shortfall in revenue and we have a shortfall in revenue because we are in the middle of a very bad recession.

COMMISSIONER GOZZI: And the proposed inability to raise revenue by further taxation measures.

MR VINES: Policy decision rather than inability, Mr Commissioner. Sir, I'm just - and I say that in all seriousness. There is no inability for this state to raise further taxes. It is purely policy decision. But I am a little bit concerned if we're starting to get into these debates on economics and suggestions of what you've heard in

other cases because none of that evidence has been presented in these -

COMMISSIONER GOZZI: Yes. I -

MR VINES: - in this particular case, and as I indicated the other day, we - with very senior economic expert advice, one of the most senior economists in this country is refuting what the state government does and if we're to get into that debate, we would be seeking to put formal submissions.

COMMISSIONER GOZZI: Yes. I'm just simply saying - I'm simply saying - you might use the word `policy'. I use the word `priority'.

MR VINES: Oh, yes, I know, I agree. I was picking you up on your word `inability' to increase taxes. There is no inability to increase taxes. There is an unlimited ability.

COMMISSIONER GOZZI: Oh, yes, increase taxes, but - I suppose you can do that easily enough. It's the consequences of it that might be more ....

MR JARMAN: .... I am sure this government is not into political suicide and I think that we've all seen the stats. Tasmania is perhaps the highest taxed state in the Commonwealth.

PRESIDENT: Coming down.

MR JARMAN: Coming down now is it, Mr President, but still on the top. Thank you.

MR VINES: It depends what they regard as taxes though, Martin. We're not in the highest tax if we take into account income tax.

PRESIDENT: Well, anyway, let's proceed.

MR JARMAN: Yes. The reason that I raise the financial issues was because Mr Vines went to it in his submissions yesterday, and I suppose that his point is made that taxes could be raised, but I would just make a further point that approximately one in three people in this state are employed by local government, federal government or state government, so you would really be attacking your own members, Mr Vines, if you suggest that they should pay increased taxes.

I think taking on board Commissioner Watling's comments, I really can't take my submissions any further today until the parties have had a chance to consider the approach made by Mr Vines to - to them with respect to the memorandum of understanding. If the commission pleases.

PRESIDENT: Yes, thanks - thanks, Mr Jarman. Mr Vines you're apparently - you have some role in the approach for the adjournment in that you want further time to discuss the proposed memorandum?

MR VINES: Yes, sir, that's right. And following discussions with the department last night and the Minister for Health this morning, I believe there is scope to alleviate, if not remove, our opposition to the memorandum of understanding by further discussion and there appears to be agreement that that can proceed. And that tomorrow's hearing not proceed until the 27th, I think it is, of -

PRESIDENT: 29th, I believe.

MR VINES: 29th of September.

PRESIDENT: Yes.

MR VINES: If the commission pleases. So we support the application for an adjournment.

PRESIDENT: Until that date?

MR VINES: Yes.

PRESIDENT: Any other - any opposition to that -

MR REES: We don't oppose the adjournment, sir, because we will certainly be renegotiating the agreement that we've sold so nicely to our members. If it can be improved we certainly will be at the conference table with the minister's representatives attempting to improve it.

PRESIDENT: Yes. Thank you. Well, there are a number of matters we have to consider and give you some comment on. The first matter which is of great concern to the bench has been the difficulty with the conditions of service procedures. The bench would remind the minister of its decision, which required that the conditions of service document with quantums be provided to the union parties on the 1st of September. And we would remind the minister of that and require that that condition be carried out. We will expect, of course, to hear on the 29th of September that that document has been circulated together with quantums.

MR VINES: Mr President, just in terms of procedure, could I - I understand yesterday the government's representatives said that that document had been finalised and that they, indeed, had determined what the quantum would be. In view of the fact that we have a meeting of the public sector unions tomorrow to discuss that particular issue, could I request that a request be made to the government that we are provided with that

documentation today, so that we've got it there to discuss tomorrow. It then allows us to progress this thing properly.

PRESIDENT: Yes. I think - I think that's probably pushing it a little bit too - too much, but I'll hear from Mr Pearce on that.

MR PEARCE: Yes, I think there will probably be some clarification internally. The quantum has yet to receive approval of government in the sense that it can be distributed to agencies, but - sorry, not to agencies, to organisations. So it still does mean, from an internal perspective, quantums have been prepared. It still needs some authority, through government, to have those ....

PRESIDENT: What are you saying? Has it got to go through Cabinet process?

MR PEARCE: Not the Cabinet process I don't - I don't believe, Mr President.

PRESIDENT: Well, when would it be available?

MR PEARCE: I would have to take that instruction. I don't know. Certainly the comments of the bench this morning and yesterday will be conveyed to the employer today.

PRESIDENT: Yes. Well, I'm rather concerned -

MR PEARCE: We have - we have the -

PRESIDENT: - that there'll be the same response to this direction -

MR PEARCE: Well, I think your comments -

PRESIDENT: - as there was to our previous direction.

MR PEARCE: Initially - initially your comments, Mr President, were that you would expect by the 29th of September that those matters be in the hands of the organisations. I think that provides sufficient scope -

PRESIDENT: We would hope that you'd be able to do it before then, but certainly no later than.

MR PEARCE: Certainly by that time.

COMMISSIONER GOZZI: You're not suggesting, Mr Pearce, that there's any chance that the documentation won't be provided?

MR PEARCE: I - I can't pre-empt, Mr Commissioner, but I can convey -

COMMISSIONER GOZZI: Well, we have a decision of the full bench saying it ought to be done, we've now addressed that by a direction. Are you suggesting that we might have to issue an order on the minister?

MR PEARCE: What I'm saying, Mr Commissioner, is I shall convey to the employer the concerns of the bench that the -

COMMISSIONER GOZZI: Well, it's already there in black and white.

MR PEARCE: Well, that was a subject of some debate yesterday, Mr Commissioner, and -

COMMISSIONER GOZZI: Yes, but we've now reaffirmed that position.

MR PEARCE: Right. And I hear what the bench is saying and have indicated that that will be conveyed to the employer.

COMMISSIONER GOZZI: Well, will the quantums be provided or not?

MR PEARCE: In the absence of authority I can't say yes or no, Mr Commissioner.

COMMISSIONER GOZZI: Well, does that mean then -

MR PEARCE: I have no reason to suspect no, but I cannot give that authority to this commission at this stage without instruction.

COMMISSIONER WATLING: Well, in your professional opinion, how long do you think it would take?

MR PEARCE: I can't give you a professional answer, Mr Commissioner.

COMMISSIONER WATLING: Well, maybe we should go away and issue the order on you now. If you - if you're not here under instruction, what are we meant to do? You - I know it's pretty hard for you, but you're along here representing someone: (a) without instructions and, (b) without carrying out the earlier decision. What are we meant to do?

MR PEARCE: Well -

COMMISSIONER WATLING: I think that it's one -

MR PEARCE: - I don't know that there would be any useful purpose served in going back and across old ground which was covered yesterday, but we still feel that there's been inadequate consideration given to the process.

COMMISSIONER WATLING: Well, it's not up to -

MR PEARCE: We're demanded to provide -

COMMISSIONER WATLING: - yes, but it's not up to you to consider that.

MR PEARCE: - not only the terms and conditions -

COMMISSIONER WATLING: If people don't want to attend meetings in the intervening period that's up to them, that's their democratic right not to attend the meeting. It still doesn't get you out of the order of the commission which said that you had to deliver the goods by a certain date.

MR PEARCE: As I understand it, Mr Commissioner, there is no intention not to provide those quantums.

COMMISSIONER WATLING: Right. So, you'll let us know sometime today will you when they'll be provided?

MR PEARCE: I can let the commission know today what processes have been put in train in terms of advising the employer. I can't commit the employer to indicate to the commission today whether he can give that answer.

COMMISSIONER WATLING: Well, we might have to consider our position I think.

MR PEARCE: The commission seek - could I seek the indulgence of the commission of, say, 5 minutes?

PRESIDENT: We'll just alert you to this possibility, Mr Pearce. We are considering issuing an order to make - to require the minister to provide that information by the 25th. So, if - you might convey that to your instructors. And we'll take a break for 5 minutes.

SHORT ADJOURNMENT

PRESIDENT: Mr Pearce?

MR PEARCE: Mr President, members of the bench, I have to advise that in the short adjournment that we were given, that there is an inability on the part of the employer, having regard to the terms of H.27 regarding the requirement to provide quantums by the 1st of September.

Secondly, the implied and/or explicit terms of H.27 which required a process to take place between the 15th of July and the 1st of September.

And the third point being, what has fallen from the bench in both yesterday and today's proceedings, for the employer to consider those three matters and come back with an answer at this point in time.

PRESIDENT: Yes. All right, Mr Pearce. Well, at this point I should probably say to you that rather than consider an issue of an order at this stage, we will - we'll put the parties on notice that on the 29th of this month we will hear argument from the parties as to whether or not we should continue to link the operative date of awards with the conclusion of conditions of service and agency specific matters.

Yes. And, of course, it goes without saying we still would expect the completed document to be provided to the parties by the 25th of September.

MR PEARCE: Thank you, Mr President.

PRESIDENT: Yes. Thank you.

MR JARMAN: If I could just revisit one matter, Mr President, I think there may have been a little bit of confusion just before the adjournment. We made a submission to the commission today to the effect that the TPSA had approached the then Department of Health about the memorandum of understanding and possibility of having some further discussions to see if there could be total agreement reached on that memorandum of understanding.

That position was put to the other parties who are currently in agreement with the existing memorandum of understanding, and I said that there should be agreement from those parties to any adjournment proposal put today. And I think that the bench, and I'm sure will, should extend the opportunity to the other parties to the memorandum of understanding to give an indication as to whether they are prepared to set the adjournment.

PRESIDENT: Yes.

MR JARMAN: If the commission pleases.

PRESIDENT: Quite. Quite right. I apologise to the other two parties for having overlooked that point. Mr O'Brien?

MR O'BRIEN: We certainly have no opposition to the proposal to adjourn and to allow the memorandum to perhaps develop into a consensus document.

PRESIDENT: Yes. Yes, thanks.

MR COPPLEMAN: Yes.

PRESIDENT: Mr Coppleman?

MR COPPLEMAN: .... the same thing ....

PRESIDENT: Yes, thank you. Thank you for that. There are a couple of other matters which we were going to address before the unfortunate matter of conditions of service intervened. We were also looking to hear from the parties on or at some subsequent time after the 29th as to title and scope of the four proposed new awards, which will give us some mechanism to deal with many, many matters, and in particular the health matter.

Just one moment. We'll go off the record for a second, thank you.

OFF THE RECORD

PRESIDENT: Thanks. I've just been reminded that I should make it clear to the parties that if the documentation on conditions of service is available by the 25th of September then we will not be considering the - the question of continuing the link between the conditions of service and agency specific matters and the operative date. And the only reason we have put this back on the agenda is because of the concern over conditions of service being delayed unnecessarily.

The - so, on the 19th there may be that matter to be considered. On the 19th we will certainly look at title and scope.

MR VINES: Mr President, just in relation to that, could - could the date for receipt be something other than the 29th? Because it's a little bit difficult if -

PRESIDENT: 25th. Date for receipt is the 25th.

MR VINES: Sorry, I thought you just said then that was assuming the documentation was available by the 29th.

PRESIDENT: No. Well, if I did, I apologise for that.

MR VINES: Right. That's -

PRESIDENT: 25th is the date.

MR VINES: The 25th, if the commission is not aware is a Friday, we're back in here on the Tuesday, it doesn't allow us a lot of time to consider any documentation that is presented,

if it is presented. Nor does it allow us any real time to prepare what would have to be detailed submissions.

PRESIDENT: Well, it'll allow - it will allow time for something to start, that's - that's the point, Mr Vines. Now, the remaining matter is the application for the adjournment, and - and naturally that is - that is granted. We'll adjourn now until the 29th.

HEARING ADJOURNED