



*Tasmanian Industrial Commission*  
Industrial Relations Act 1984

T No. **9236 of 2000**

**IN THE MATTER OF** an application by  
The Australian Workers' Union,  
Tasmania Branch to vary the  
Silviculture and Afforestation Award

Re: Part I Application and Operation of  
the Award, Part II Employment  
Relationship and Associated Matters,  
Part III Wage Rates and Related Matters,  
Part IV Allowances, Part V Hours of  
Work, Penalty Payments and Overtime,  
Part VI Leave and Holidays with Pay,  
Part VII Consultation and Dispute  
Resolution, Part VIII Occupational  
Health and Safety, Tools and Amenities,  
and Part IX Award Compliance and  
Union Related Matters

DEPUTY PRESIDENT WATLING

HOBART, 19 December 2000  
Continued from 11 December 2000

**TRANSCRIPT OF PROCEEDINGS**

Unedited

**(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)**  
**(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)**

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**HEARING RECOMMENCED 9.20am**

DEPUTY PRESIDENT: I'll take appearances, please.

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

5 DEPUTY PRESIDENT: Yes.

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

DEPUTY PRESIDENT: Thanks, Mr Dilger. Is there anything we need to deal with off the record, before we start?

10 MR FLANAGAN: No, I don't believe so, deputy president. There is one minor amendment which we need to place on record but otherwise we should be right, I think.

DEPUTY PRESIDENT: Well, we'll just amend the document, then.

MR FLANAGAN: Yes.

15 DEPUTY PRESIDENT: We might do that off the record.

**OFF RECORD 9.22am**

**ON RECORD 9.25am**

MR FLANAGAN: I've got an amended schedule which Carol should have there and I formally tender that during the hearing but if you go  
20 to page 21 -

DEPUTY PRESIDENT: When you say, amended schedule, what do you mean by, amended schedule?

MR FLANAGAN: When we originally filed the application.

DEPUTY PRESIDENT: Is there a schedule attached?

25 MR FLANAGAN: I had thought so. Do you have the original application there?

DEPUTY PRESIDENT: Yes. I thought you said there was an amended schedule to this?

MR FLANAGAN: No, this is the amended schedule.

30 DEPUTY PRESIDENT: Right. It's the amended application?

MR FLANAGAN: Yes, that's right.

DEPUTY PRESIDENT: Right. I just saw a little line here as well.

ASSOCIATE: The copy that's come through on their machine is slightly at variance to what we've got because it didn't pick up all the nuances.

5 DEPUTY PRESIDENT: It was an e-mail, was it?

ASSOCIATE: No. It was handed on a disc but, for example, quote marks have come out differently and there are some variances but ours is right.

DEPUTY PRESIDENT: Right.

10 MR FLANAGAN: We can't do anything about that. It's just the way the system's picked up inverted commas more than anything.

DEPUTY PRESIDENT: Yes. Are you on an up to date system down there?

MR FLANAGAN: I presume so.

15 DEPUTY PRESIDENT: Are you meaning to send Mr Dilger in to check this out.

MR DILGER: We're still working on MacIntosh. I think you've still got one of those old BBCs.

MR FLANAGAN: No, the Y2K bug sorted that out.

20 DEPUTY PRESIDENT: Commodore 64?

MR DILGER: I think they're still working on the Vic 20.

DEPUTY PRESIDENT: Right. Sorry.

MR FLANAGAN: On page 21, under the heading -

25 DEPUTY PRESIDENT: Mr Flanagan, you've tendered a document, **EXHIBIT F.1**. I understand this document being the draft order you're submitting is to replace the draft order that was attached to the application?

MR FLANAGAN: That's correct, deputy president, yes.

30 DEPUTY PRESIDENT: Right. Thank you. All the subject matters that are contained in the index of this draft order are matters currently before the commission for determination?

MR FLANAGAN: Yes, that is correct, deputy president.

DEPUTY PRESIDENT: Thank you.

MR FLANAGAN: Deputy president, if I can explain F.1 to you, the form of the order which the union is seeking this morning, by consent of the TCCI. The order seeks to place into the Silviculture and Afforestation Award, which at this point in time, exists only in name, scope and award interest - it is to place into that award the rates of pay and conditions of employment for employees engaged within the industry as defined by clause 3 - Scope in F.1.

If I can give you a brief outline of the history of industrial regulation of this industry, deputy president - up until the 1970s forestry was an element of the federal AWU Construction and Maintenance Award 1969. In 1975 there were discussions between the union and employers in forestry bound by the federal award and it was agreed that forestry would be removed from the AWU Construction and Maintenance Award with employers picking up that regulation in their own specific industrial regulation. For example, the Forestry Commission of Tasmania, as it was then, became a party to an AWU Tasmanian public sector award and forestry was transferred through to there.

AWU forest workers engaged by ANM became regulated by an ANM instrument rather than the AWU Construction and Maintenance Award. When the industry was predominantly not out-sourced, if I can put it that way, that was a suitable form of regulation for the time.

During the 1990s however industry has opted to out-source a significant amount of silviculture and afforestation activities and this is particularly evident at establishments such as ANM and North Forest Products, where what was once a permanent workforce employed by those organisations, is now an area of activity which is principally conducted by contractors and those contractors engage their own employees.

With the moves of the 1970s effectively removing this type of work from the coverage of the AWU Construction and Maintenance Award, the union sought to enter into discussions with the TCCI in relation to the anomaly which we had detected and indeed some 12 months ago when the union first established the award in title and scope, we indicated to the then president of the commission the urgency, as we perceived it, of ensuring that this workforce became subject to industrial regulation.

Consistent with that concern, the AWU has modelled its proposal and its discussions on the AWU Construction and Maintenance Award and in fact you'll see, particularly in relation to the classification structure and the rates of pay which are contained in Part III, the structure itself is identical to the AWU Construction and Maintenance Award but it has been amended to reflect the fact that we are dealing here with silviculture and afforestation workers.

One of the concerns that we had was to ensure that where there are contractors, for example, people doing tree lopping that operate within the scope of the state Construction and Maintenance Award, again, a child if you like, of a federal award, where those persons operate across both silviculture and afforestation, on one hand for a part of the year and at other parts of the year in the construction and maintenance side, that employees engaged in that work will carry with them the same rates of pay and conditions of employment. In an administrative sense, it makes it much easier for the small contractors which are engaged in that activity.

There is a very strong relationship between this award and that federal award and it has formed the basis of many of the conditions which are found within F.1 which is presently before the commission. However, it has also been important, particularly in the area of protective clothing, amenities and bushfire fighting to take into account the arrangements which have traditionally been in place in organisations such as North Forest Products and indeed an unregistered industrial agreement which was in place at the time that their own employees were out-sourced, was used as the basis of those provisions to a significant extent.

What we have here, deputy president, is a comprehensive form of regulation introducing into what is presently unregulated employment, proper minimum rates of pay and minimum conditions of employment but recognising that it is an industry which has been unregulated since it became the domain of out-sourcing.

You will see, if I can take you to page 4 of F.1, what the parties have agreed to is the phasing in of that regulation so that employers and employees alike can identify what the rules are in respect of certain matters and once they become familiar with them, there will be additional obligations imposed. From the first full pay period on or after 1 January 2001 this award would become operative in relation to those matters identified in clause 4, paragraph (a). A period of six months after that, in clause 4(b), again, there are a number of other matters which become operative from 1 June 2001 which are identified there and on the following page, in 4(c) you will see that the final phase of introduction provides for a number of provisions which will become operative from 1 January 2002.

It's a little akin to an MRA in the sense that it has a phasing in arrangement. Given that it is a workforce which has not been regulated industrially, in our submissions, it is definitely in the public interest that this award ought to be made.

In our submission, it does not offend the Act or any other obligations or requirements on the parties and with the consent of the TCCI, the union seeks that the award be made in the terms of F.1 to this application.

DEPUTY PRESIDENT: Thank you. I take it from F.1, where some little hieroglyphics or glitches appear in the document, the commission is at liberty to correct those? I think they're computer glitches, really.

5 MR FLANAGAN: They are indeed and the commission has been provided with a copy of the disc, although I don't know if that's the right way to put it, but the commission certainly has a copy of the disc to this F.1, which doesn't have the problem with the hieroglyphics.

DEPUTY PRESIDENT: Right. Thank you. Mr Dilger?

10 MR DILGER: Thank you, deputy president. The TCCI come in consent of the application, as set out in F.1. I agree with the submissions of Mr Flanagan in terms of the public interest and not offending any other obligations under the Act and I do not have any objection to the Industrial Commission amending any hieroglyphics, I think they were mentioned as, in the application, F.1. If the  
15 commission pleases.

DEPUTY PRESIDENT: Thank you. No further submissions? I think this might be the last time we see Mr Dilger here in an official capacity. I just want to say for the sake of the record, Mr Dilger, I've certainly appreciated your appearance before the commission, I've certainly  
20 appreciated your openness and your ability to negotiate, in fact some quite heavy disputes which certainly you and I have been involved in and I hope you don't miss this arena too much, but certainly I wish you well in your new venture and I'm sure all those 150-odd employees you've got to look after will be given pretty good treatment by you in  
25 this new job.

That concludes this matter, thank you.

**HEARING CONCLUDED 9.45am**