

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

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

T No. 2653 of 1990

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

re Ward Clerks

T No. 2655 of 1990

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

re Maintenance Staff

T No. 2656 of 1990

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

re Trade Instructors

T No. 2654 of 1990

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

re Laundry Machine Operators

T No. 2657 of 1990

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

re Attendants

T No. 1844 of 1989

IN THE MATTER OF an application by
the Tasmanian Teachers Federation
to vary the Teaching Service
(Teaching Staff) Award

re recreation leave allowance

T No. 2264 of 1989

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

re recreation leave allowance

T No. 3200 of 1991

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

re Coxswain's Certificate
Allowance

FULL BENCH

PRESIDENT
COMMISSIONER GOZZI
COMMISSIONER WATLING

Hobart, 27 January 1993
continued from 11/11/92

TRANSCRIPT OF PROCEEDINGS

unedited

PRESIDENT: Are there any changes in appearances?

MR R. HUNT: Mr President, members of the bench, Mr Vines will not be appearing today, I'll be appearing for the TPSA.

PRESIDENT: Thank you.

MR. M. BUTLER: Yes, sir, if the commission pleases, I appear for the Association of Professional Engineers and Scientists of Australia, Professional Engineers Branch, Tasmania - BUTLER M.

PRESIDENT: Thank you, Mr Butler.

MR. T. HARDING: Mr President and fellow commissioners, HARDING T., appearing on behalf of the Metal Workers Union.

PRESIDENT: Mr Harding - thank you.

MR C. WILLINGHAM: Mr President, if it pleases the commission, CLIVE WILLINGHAM appearing in lieu of Mr Hanlon for the Minister administering the State Service Act.

PRESIDENT: Yes, thank you, Mr Willingham. Well what's to report?

MR HUNT: Mr President, I know a lot of people start off their submissions by saying that they'll be brief and then aren't quite so brief, but it is my intention today to be brief. I guess whether I am brief or not will to some extent depend on the questions which come from you. But I can report to the full bench that the TPSA have been involved in discussions with the employer prior to and following the last reportback and those discussions or the first part of those discussions anyway concluded late last week. The outcome of those discussions is about to be considered by TPSA members and by the government.

Now we, from our point of view, are of the opinion that one of the outcomes of those discussions will be the proper implementation of award restructuring.

In that context we are seeking for the full bench to adjourn these matters for us to put the outcome of the discussions which concluded last week to our respective masters. And of course from the TPSA's point of view that is our members. Now we will ask the commission to reconvene to be advised of progress in those discussions following the conclusion of our consultation process with our members. So that, Mr President, is the extent of the submissions which I intend to give this morning.

PRESIDENT: So, Mr Hunt, are you saying you've had and are continuing to have discussions with government

representatives?

MR HUNT: That's correct, Mr President. The first stage of those discussions is, in our view, complete but we would see it as an ongoing process, yes.

PRESIDENT: And that is in relation to the whole range of the matters before us, that is, the - the restructuring of the award, agency-specific matters and conditions of service?

MR HUNT: All of those, Mr Commissioner, extremely comprehensive discussions and we hope an extremely comprehensive outcome.

PRESIDENT: And you of course recognised the difficulties that may flow from that in respect of operative date - or not difficulties, but the differences which will flow in respect of operative date?

MR HUNT: Yes, all of those matters have been comprehended in discussions that we've had, Mr Commissioner, and that is one of the issues which is in our minds, yes.

COMMISSIONER GOZZI: Well the only observation I make, Mr Hunt, is that conditions of employment and agency-specific matters have been holding up the conclusion of this exercise. We were advised on a previous occasion that the trade union movement have not been able to have a collective position to - and haven't been able to negotiate collectively with the government - are you negotiating simply on behalf of the TPSA or are your negotiations wider than that?

MR HUNT: Yes, Mr Commissioner, I must apologise to the bench for not indicating that those discussions were only on behalf of the TPSA and I must apologise to my union colleagues if I've given the impression that I'm speaking for anybody else - apart from the TPSA I am not speaking for anybody else - I'm speaking only for the TPSA.

COMMISSIONER GOZZI: Yes, I suppose to a certain extent, my comments might be premature, but it's quite clear that we've viewed the whole exercise as a package, in other words, conditions of employment, agency-specific matters and award structures all going together. What is the view of the TPSA about the proposition that it needs to be a package?

MR HUNT: We -

COMMISSIONER GOZZI: And because of that, commitment from other people involved in the negotiation process - other unions involved?

MR HUNT: We recognised when you handed down the decision in November 1991, Mr Commissioner Gozzi, that it was a package;

we haven't had any other view since that time. We have taken the decision that we will negotiate on our own behalf. We've informed the other unions of that. We've also informed the government of that. The outcome of those discussions we hope will provide a mechanism for any difficulties which might be - are caused to be resolved.

COMMISSIONER GOZZI: Well there a lot of questions we could ask but probably, as I say, they might be premature, so I won't -

PRESIDENT: You did say a fortnight did you, Mr Hunt? Was that the time you sought to have these matters adjourned?

MR HUNT: No, no I didn't - I didn't mention a fortnight, Mr President.

PRESIDENT: You didn't mention a time?

MR HUNT: No, I didn't. I -

PRESIDENT: Do you have any idea of how long you need?

MR HUNT: Mr Commissioner - Mr President, we expect that our consultation process with members will take at least 6 weeks.

PRESIDENT: Is that what you're seeking - an adjournment for 6 weeks?

MR HUNT: Yes, I believe that that would be suitable for our purposes. We would hope to have the matters resolved - that's the matter of discussing the outcome of our discussions with our members by the conclusion of that time.

PRESIDENT: Alright. Thanks, Mr Hunt. Mr O'Brien or Mr Warwick?

MR O'BRIEN: Mr Warwick wants me to go before him I think -

PRESIDENT: Mr O'Brien.

MR O'BRIEN: He wants to take place at the back of the field today, not the front. The position, Mr President, and members of the commission, is that when the matter was last before the commission you asked - or you advised the parties resuming - they're intending to resume on 14th December - that you expected every party to respond to the submissions made by Mr Hanlon on 11th November -

PRESIDENT: Yes.

MR O'BRIEN: - and inform the bench as to whether their organisation believes there is any good purpose in pursuing a restructuring decision. Now on that day I foreshadowed a

submission, it being the day in which there was a - a rally organised and there was - there were applications for adjournment on that day, and I advised the commission on that day that we intended to seek the removal of our matter from the - these proceedings to be dealt with separately.

We indicated that we had discussions with officers representing the minister administering the state service and had been given to understand that they were supportive of such a course of action and that we were desirous of sitting down with the employer and working through award restructuring in relation to our award in the context of a one-to-one set of negotiations. We do so, and I'm in the commission's hands as to whether they want to hear me now or consider whether the matter ought to be adjourned. I understand whether Mr Hunt intended to or not that he asked that all matters be adjourned. That was my impression anyway; I apologise if I'm wrong.

PRESIDENT: That was certainly the impression that I had and I think other members of the bench had.

MR O'BRIEN: I'm in the commission's hands - I am prepared to proceed now or to allow Mr Hunt time to pursue his negotiations. They are, as I understand, one-to-one negotiations as well, and they may well - although I really don't know what particulars are involved in those negotiations because we're not party. They may well give assistance to my argument at the end of the day - they may not. But I'm in the hands of the commission -

PRESIDENT: Yes.

MR O'BRIEN: - I'll proceed now or then if the commission is seriously entertaining adjourning the matters. I'm having regard to what the commission directed to us address ourselves to today in appearing before you.

PRESIDENT: You're quite right, Mr O'Brien. I should have asked Mr Hunt what his response was to the submissions made by Mr Hanlon on the last occasion, which was to abandon the whole process, but I - I should have asked that specifically, but I gathered from the tenor of Mr Hunt's submission that he was not seeking an abandonment so much as a deferment of that decision to enable further discussions to go on.

MR O'BRIEN: Well -

PRESIDENT: But - but in terms of your - your application I think the - that could well make - making submissions on whether or not you should have T.2605, I think it is -

MR O'BRIEN: Thanks, sir.

PRESIDENT: - hived off separately, I think that's a decision which could flow from later consideration of the process after we determined whether or not there should be an adjournment.

MR O'BRIEN: Okay, I'm happy to do that on that basis.

COMMISSIONER GOZZI: Yes, I suppose, Mr O'Brien, it does go back to the discussion you and I had on the last occasion about the process, and I think it's probably relevant to other organisations as well, because it seems now that we're heading down the track of unions wishing to pursue their own negotiations with the government.

MR O'BRIEN: And indeed doing so.

COMMISSIONER GOZZI: And doing so. The - the applications currently are all joined on the basis that there was going to be a collective approach to it. I suppose it will be matter for the bench at the end of the day to determine just how the process should go forward, if in fact every union wants to pursue their own agenda.

MR O'BRIEN: Yes, that is a matter upon which some consideration would have to be given - to -

COMMISSIONER GOZZI: I just wonder how that impacts -

MR O'BRIEN: - which consideration would have to be given, I should say.

COMMISSIONER GOZZI: - I just wonder how that impacts upon the whole package?

MR O'BRIEN: Well I guess I'm in a quandary if I'm awaiting until the other matter is dealt with - I don't address that - if I answer your question I do. I'm happy to do either. As I say, I'm in the hands of the commission.

My view is - is simply put that it is competent for the commission at this stage there not being a final decision in the matter to do anything in relation to how it handles the matters. Interim decisions are interim decisions are not necessarily the final result in anything. In relation to the overall process, we would be submitting - and I put this in general terms only - that the important element to be looked at in this process is the achievement of real change through consensus where possible and that's the most desirable outcome in this exercise and if there is a process put forward which achieves that but may well not achieve every aspect of those matters that have been argued before the decision - the commission to date, but achieves the outcomes desirable under the principles, then that in my submission ought be acceptable to the commission and that's what I'm putting - I put that in general terms.

COMMISSIONER GOZZI: I've got no difficulty with that type of notion; the only query I have with that is the likelihood of different outcomes when the objective in fact was rationalisation in the context of conditions of employment.

Certainly what you say with regard to agency-specific items - I mean I would expect that there would be different matters to be addressed in different agencies - I mean it would be the sort of degree of commonality there, but I'm just wondering what it does to the overall objective with regards to standardising conditions of employment and looking at the agendas that have been put forward by the government on that issue, and I dare say we'll hear about that a bit later on anyway but -

MR O'BRIEN: Well if I can answer that, sir, the government is obviously going to be party to every set of proceedings or negotiations and so they have a - a strong hand in those outcomes. Now if parties in different forums agree that there ought be some difference and bring that matter before the commission, well, okay, it's got to run the test there, but I would - I would think that if that is the view of the parties then subject to the public interest test, what's wrong with that.

COMMISSIONER GOZZI: And is that the sort of view that you have that that's the way it's progressing at the moment?

MR O'BRIEN: I don't think it is progressing at the moment to put it in a nutshell. It certainly isn't as a collective thing - it's obviously broken down into a number of individual negotiations as evidenced by Mr Hunt's submission this morning and I think perhaps we all set ourselves some very high and noble objectives at the start which we found that have been beyond us.

COMMISSIONER GOZZI: Yes, and I guess if that's the general consensus it comes right back to what the president put on record last time; just where are with the whole exercise and what should we do about it. I mean I don't think any of us wants to have another year like we did last year and the year before. This case is now, you know, 14-15 months old, we don't want to go around that merry-go-round for another 2 years if we can avoid it.

MR O'BRIEN: As you know, Mr Commissioner, I've been involved in cases that have gone longer, but I must - must say that they seemed to have achieved things at the end of the day and it's a question of whether that achievement would necessarily be forthcoming the way matters are. And they certainly aren't going anywhere in terms of the discussions between the parties on a collective basis - hence the breakdown into an individual set - or party by party set of negotiations. And I

intend at the appropriate time now or later to pursue the position I've outlined.

COMMISSIONER GOZZI: Thank you.

COMMISSIONER WATLING: Mr O'Brien, Mr Hunt has essentially put a submission to us calling for an adjournment for approximately 6 weeks; what's your submission in relation to that request?

MR O'BRIEN: I - I don't oppose it on the basis that I'm prepared to put the submission I've outlined now or later. What we would intend to do is if there is an interregnum in the proceedings is to seek to further negotiate with the - the employer and hopefully have an even more substantial to put in relation to those negotiations before the commission.

COMMISSIONER WATLING: So does that mean you're supporting the adjournment?

MR O'BRIEN: Well, yes, I'm not opposing it; I'm having two bob each way - I don't mind - I go either way - I won't oppose it. If the commission wishes to adjourn I - I do not oppose it. If the commission wishes to go on I'm prepared to go on.

PRESIDENT: And Mr O'Brien, do we take it from - from that you oppose at this stage the submissions which were put by Mr Hanlon that there should be an abandonment of the process?

MR O'BRIEN: Well I can only say that in relation to my own application which is all I'm speaking to, we don't seek that that application be dismissed, we simply seek that it be removed and dealt with separately. Now I don't know if that's inconsistent with what Mr Hanlon is putting, so in that context - I'm not saying the commission - if they take Mr Hanlon to mean dismiss all applications, then I don't agree - if they take it to mean to - to cease to proceed in the way the commission is now proceeding and deal with the matters individually well obviously I would support that.

PRESIDENT: Yes, I don't think Mr Hanlon's saying dismiss the application, I think he was saying the process should be abandoned.

MR O'BRIEN: Yes, well - and that's what I thought he meant but I just wanted to put it in that way so that it wouldn't be misunderstood, because I'm not asking the other organisations do anything other than which they wish to do. I'm not seeking to prejudice them, I mean that's not my wish.

PRESIDENT: Yes, but I take it really what you're saying is you don't have any objection to the process being abandoned.

MR O'BRIEN: Insofar as our application - no.

PRESIDENT: Right.

COMMISSIONER GOZZI: And just finally, Mr O'Brien, essentially you were saying that the public sector Miscellaneous Workers Award should be dealt with -

MR O'BRIEN: That application should be dealt with and whatever comes out of it will come back before the commission in the appropriate forum. I might suggest that it probably can be dealt with by a single member of the commission - at least that's my current view.

PRESIDENT: Thank you, Mr O'Brien. Mr Devine? Yes, you had best come forward to a microphone.

MR DEVINE: You sounded as if you were surprised to hear from me then, Mr President.

PRESIDENT: No, I wasn't. I gave you the wrong impression.

MR DEVINE: Members of the bench, with respect to the United Firefighters Union, within this whole process now we've pursued and vigorously pursued I'd say our special case which was detailed under T.2594 and that's now completed and we're awaiting a decision on that matter.

Further to that - or in fact almost at the completion of that particular issue, the government put forward a further claim with respect to the United Firefighters award which dealt with - or in fact that claim was T.3969 and it dealt specifically with conditions of service, agency specific items, and a whole range of things which concerned the restructuring of the firefighters award.

Now we were put in a position where we needed to either oppose it or attempt to negotiate it and we took the path of negotiation and for some considerable time now we've dealt with that claim 3969 and reached a position, I believe, where we had to a very large extent, agreement and in fact, to some - to the extent of being almost 90 per cent, and we're currently in the commission in front of the deputy president and the government are running that claim.

Now, where that leaves the United Firefighters Union with respect to this process I'm not entirely sure except to say that we've pursued a special case as were enabled by this commission. The government made their claim with respect to our award and we believe we've dealt with that and it's my view that to a very large extent that almost - it's put us outside of this process anyway, except to say there are one or two items which, if it's deemed necessary by either party that they be dealt with - need to be dealt with by a full bench, and I'm sure you're aware of what I'm alluding to.

Now to some respect except to say and to repeat that I believe that what we've done to date puts us outside of this anyway. I'm guided by the bench as to what your view is.

PRESIDENT: Well, Mr Devine, we did determine that there would be common conditions of service in certain areas and that this bench would be responsible for sorting those out. The - whether or not those matters get referred back to us by the deputy president remains to be seen. I assume that will happen and probably at the application of the various employer and it will be determined then as to what happens to those particular matters.

Now if this bench makes decisions in the interim which remove the need for common conditions to be determined by it, then your position is clarified. If it determines to proceed with the common conditions process, then you will still be bound. But there are things that - there's a lot of water to go under the bridge yet.

MR DEVINE: I'm just deciding whether I should pursue it further. I think I shall and simply say that I, and to a very large extent, hold a view that if we've pursued our position with respect to the special case, the government have pursued strongly their position with respect to the conditions of service and the agency specific items which are indicative to the United Firefighters Union or the Fire Brigades Award, I have some difficulty in having to come back and run it through once again except to say that obviously with the - some things that need to go before a full bench and not necessarily this one, but a full bench.

PRESIDENT: Well that will be determined by the president.

MR DEVINE: If the commission pleases.

PRESIDENT: Thanks, Mr Devine. Mr Harding?

MR HARDING: Thank you, Mr President. I'd just like to report since the last hearing we've had no talks with government whatsoever. We were too busy trying to protect our own jobs down there rather than sitting down and talking about conditions of service. So quite obviously there were no discussions in relation to where the metal workers stand in this whole process.

But I'd just like to add that the way I see things that are going in this place is that we're just going round and round in circles and I think we need to get out of it somehow and unfortunately, we were roped into it in the first place. We had a case before Commissioner Watling, the 'Mechelec' Award, it was getting somewhere and it was in a process of making change where work structures would be different and we got

roped into this - must be nearly 2 years ago now. It's that far back I can't remember, and there's been no progress whatsoever as I see and to be quite honest with you, if we continue down this path, I think I'm just wasting my time coming up here each time. So that's basically what I've got to say on the matter.

PRESIDENT: I can understand your concerns about that, Mr Harding. The bench has got similar feelings.

MR HARDING: Thank you.

COMMISSIONER WATLING: So, Mr Harding, are you supporting the adjournment put up by Mr Hunt?

MR HARDING: Look, I'll support anything, Mr Watling, because I've been supporting that view for 18 months or more and in supporting it, not getting anywhere and I would hope that one day we might be able to revive the 'Mechelec' award and come back before you and maybe achieve something in this whole process.

COMMISSIONER GOZZI: So you're really supporting the view put by Mr Hanlon on the last occasion that the way things currently stand the process, as it currently is, could - or should be abandoned.

MR HARDING: I don't think this will deliver what the government require and what we require, and let's face it for the next six months I might be fighting to protect more jobs rather than negotiating at where we're going.

PRESIDENT: Got to get your priorities in place, Mr Harding.

MR HARDING: That's correct, sir.

PRESIDENT: Thank you. Mr Butler?

MR BUTLER: Yes, sir, if the commission pleases. On the issue of the adjournment that's a matter that came only to APESA's attention this morning and so therefore we're not in a position to really comment on that except to say that - to echo the comments made by Mr O'Brien. We wouldn't oppose an adjournment. The association however wouldn't like to see an adjournment for too long and I think that echoing other comments that have been - have had a long life already and I say that as someone who has had no involvement in these proceedings at all.

I came here today to be in a position to respond to the questions on the transcript of last November and I've got certain instructions from my organisation. Essentially, I can report that APESA had discussions with government representatives and that we see a number of shortcomings in

the commission's decision. I think the association has previously argued that there's an insufficient number of levels contained in the decision and I'm instructed that the association adheres to this position which has been put to the commission previously.

From the association's point of view, the key question is how we best pursue - to be perfectly frank - a modification of the current classification structure, and in this regard it is acknowledged that there is some scope to do this within the processes already determined by the commission and in this regard I refer to the May 4th statement of 1992, but principally I'm advised that it would take far too long and that it would delay the resulted enterprise bargaining increases.

Therefore, the association in summary is attracted to an agency focus with progressive work place reform and in doing so we'd make the following points. Firstly, we have supported the exhibit V.27 which was the union's position on the processes to be used to implement award restructuring. We see the agency focus as more consistent -

PRESIDENT: V.27 you say, Mr Butler?

MR BUTLER: Yes, that's correct, Mr President.

PRESIDENT: So you're seeking to put the clock back even further in respect of those processes?

MR BUTLER: No, I'm just indicating by history that the association has been in support of that previously. We believe that -

PRESIDENT: What do you want to do - what is it that you want to do in the - from now on? I'm not certain that revisiting the decision is going to help us a lot, that what you would like to do in the future would be - we would like to hear.

MR BUTLER: Okay I can certainly address that particular issue. We, as I indicated, have had discussions with representatives of the Tasmanian Government and our understanding of the discussions is that both parties would like an agency by agency focus which we are in support of. We acknowledge - I'm advised that the government wants to move down the path of having a federal award for the Department of Roads and Transport which we are in support of.

PRESIDENT: You've been informed of that by the minister, have you?

MR BUTLER: No, I personally have had no discussions.

PRESIDENT: So, how do you know the government supports the making of a federal award in respect of roads and transport?

MR BUTLER: I'm advised - I've had - I'm at a serious disadvantage in these proceedings in that I've had absolutely no involvement in any discussions and I'm simply indicating to the bench what my understanding of what the position is, but I certainly couldn't comment on the specifics and -

PRESIDENT: No doubt Mr Willingham can fill us in on that.

MR BUTLER: The association would wish to be a party to - as I understand it - section 61 agreements and particularly in traditional -

COMMISSIONER GOZZI: What section 61?

MR BUTLER: Sorry?

COMMISSIONER GOZZI: I'm sorry, what's that? Section 61 agreement.

MR BUTLER: the association would wish to be a party to various enterprise agreements which I understand would be negotiated in accordance with section 61.

COMMISSIONER GOZZI: I see. Yes, I'm with you. Thank you.

PRESIDENT: I think the section is 55, actually. 61, I believe is the private arbitrations that - this is the new legislation, is it?

MR BUTLER: I stand corrected if I've got it wrong.

PRESIDENT: No, you may well be right, Mr Butler. I haven't got the new act in front of me.

COMMISSIONER WATLING: Just that it's not up and running yet.

MR BUTLER: Our general understanding is that subject to some fine tuning at the top end of the structure the government would want to persevere with the definitions for professional employees which were determined by the commission.

COMMISSIONER GOZZI: Who's saying subject to some fine tuning? Is the government saying that?

MR BUTLER: Mr Commissioner.

COMMISSIONER GOZZI: Well you're making submissions. I mean, is it your feelings about this or are you being informed? I mean, a couple of comments you've made are quite interesting such as the delay in enterprise bargaining increase. Now where does that come from? What delay and who is delaying it?

MR BUTLER: Now our view would be that to persevere with the commission's decision would delay because of the process resultant increases.

COMMISSIONER GOZZI: Which resultant increases?

MR BUTLER: Well presumably at the end of the process.

COMMISSIONER GOZZI: You were talking specifically about enterprise bargaining increases a moment ago. I assumed that there might have been some discussions about those section 61 agreements you referred to and enterprise bargaining increases. I was just wondering what, if any, discussion took place.

MR BUTLER: But again perhaps I should, indeed, leave those issues well enough alone. I haven't been involved in those discussions and am simply outlining a position which presumably at some stage we will be called upon to respond to in some detail.

COMMISSIONER GOZZI: Mr Butler, it would be useful to know whether or not the APEA have had discussions with the government about enterprise bargaining and consequential enterprise bargaining increases.

MR BUTLER: As I understand it the discussions that have been held with the government have been how to progress the agency by agency enterprise agreements as an alternative to this decision. That's as I understand it, there's the general centralised approach, so to speak, if I can use that word, or agency by agency implementation.

COMMISSIONER GOZZI: Okay, thank you.

MR BUTLER: Look, beyond that, members of the bench, as I said, I haven't been involved in the discussions before and suffice to say that's our general direction in which we would like to head. If the commission pleases.

PRESIDENT: Yes, thanks, Mr Butler.

MR COOPER: Mr President -

PRESIDENT: Mr Cooper?

MR COOPER: Yes. What I'd like to do is two matters, one the adjournment. We weren't advised of that until we heard this morning that the PSA were seeking an adjournment. Initially my response to that would be that we oppose an adjournment on the basis that we would like the questions that were asked by the government at the last hearing to be determined or

answered one way or the other. We would like to put it on the record our view with respect to that.

It is a little bit complicated in respect to the Australian Workers Union as we have - the majority of our members are covered by a federal award which is the Australian Workers Union Tasmanian Public Sector Award 1987. We do however have people employed by agencies in the government that come under the General Officers Award with respect to their wage rates and also with respect to the Botanical Gardens we have people who are employed that come under the terms and conditions of an unregistered agreement.

So the application of the decision would be that the decision would affect all our people and invariably we would be party to one of the awards that were to be made with this commission. Prima facie it would be the Operational Services Award. Now with respect to the whole process the Australian Workers Union has not made application in any of these matters but being that we are covered under the act we are automatically, as with the metal workers, tied into the process. And the process itself would have application to us by virtue of the fact of the full bench decision. I'd see it very unlikely that a full bench decision of this commission would be ignored by any federal commission in the restructuring of our federal award.

Now having said that the government have indicated to us that the vehicle, that is the end product, for which we achieve the change is something that they're not focusing on at the moment. What they want to do is they want to deliver the change and that is with respect to conditions, agency specific items and wage rates. And where it ends up is something that we deal with at the end of the process.

We've some concern with that because at the moment we do have, as I said, a federal award with which we are the only respondent union and the government is respondent under a number of agencies. Now our concerns would be, do we abandon that award, and these are some of the big questions we have had to ask ourselves. Do we abandon that award and come back to the state jurisdiction, and we have no problems with the state jurisdiction, we've worked quite well within that. But as I've said what that would mean is that we would have a state award that would have not only ourselves respondent to it, but a number of other unions. And that in itself creates some problems.

So what we've got to look at, I suppose, from our point of view is, how do we progress the matters that are before the bench in the decision of '91. And I must say that progress to date as a result of the sheer magnitude of the task that is before us has really been insignificant. We have talked and we have talked and we have actually categorised the whole

process and we have currently in our officer five Arch folders that are full of information that has exchanged hands between the unions, the government and the bench. We have a further basket of information that we haven't actually categorised because it's a bit too difficult to categorise at this stage, so that's a miscellaneous file. We've got six folders full of information that has exchanged hands between ourselves, the bench, the government and other unions since the beginning of the process and all that has achieved, in our view, very little with respect to improving or standardising the conditions of work for our members. It's achieved very little.

Now I must say to the bench too that as with the metal workers submissions we support those in that we also are involved in protecting the jobs of members in the Department of Construction prior to Christmas and our emphasis on progressing award restructuring was actually a secondary matter and we didn't proceed with that with any great We have subsequent to that decision of the 14 December hearing have had discussions on two occasions with the government and we are of the view that the process itself is not working and we have, unfortunately, come to the conclusion that we can no longer participate in the process that will not deliver to our members.

Now that puts us in a bit of a quandary as well because we don't know - walk away from this decision where do we go from here, and that's a question that we've addressed with government and we are going to address it basically on an agency specific matter with respect to the Department of Construction, the Forestry Commission, the Department of Parks, Wildlife and Heritage, the Department of Primary Industries and also the Botanical Gardens. We are going to pursue for our members in those areas conditions of service that will have application to all our people as best we can. And unfortunately it's our opinion that the bench should decide what happens to the process from here on in.

And I would like to qualify further by saying early on in the process when we were involved quite heavily we were at times a lone voice supporting the process because we obviously want to see something achieved for the public sector that is consistent, delivers consistent application of conditions but the task in itself is not achieving anything at the moment. And we -

PRESIDENT: The task is too big or does it cut across too many separate interests?

MR COOPER: Well it's just too big, it involves too many people, it's just unwieldy. And it's very difficult to achieve anything. And at the same time in setting up a set of common conditions we're concerned that we as a union may have

achieved something that we have to give up because of the common conditions. And I understand the whole package would deliver to us in other areas. We say we take it away in one hand and give it back in another. And that in itself has provided the complication because some other unions or some other departments and unions in particular have been able to negotiate conditions far in excess of what we've got at this present point in time and that in itself provides a complication.

So we're at the crossroads now -

PRESIDENT: In the operational stream?

MR COOPER: Sorry?

PRESIDENT: Are these things that have been achieved by other organisations, that which are far and above yours, are they in the operational stream?

MR COOPER: Prima facie I would say that some of those conditions are in the operational stream. There are certain unions that do have conditions that are in excess of ours, yes, and that goes to in some instances plant operations, in some instances cleaners, in some instances gardeners.

PRESIDENT: And so you don't think a process of rationalisation is worthwhile and you're prepared to just go your own way and end up with probably what you've got now everywhere.

MR COOPER: We've fully supported the rationalisation process with the view to delivering standard conditions for all workers in the public sector because prima facie it's inequitable for a person to be a gardener in one department to be receiving conditions in excess of someone else. But the whole process hasn't been able to deliver with respect to commonality and also with respect to some finality. It just seems to be going on and on and on and achieving nothing. Now that's where our concerns are. How much longer do we go on to achieve, for our people, what should have been, if it was just a single employer, a fairly straightforward process.

PRESIDENT: And you've got an understanding, have you, now with the employer that you will be able to proceed with agency specific negotiations?

MR COOPER: My initial instructions from the government are that they will be prepared to discuss with us all matters relating to the award restructuring process with the objective being a final result that will deliver, through whatever form it delivers, whether it's a federal award or whether it's state award, whether it's an agreement, it delivers something to our people. That's my understanding.

COMMISSIONER GOZZI: Mr Cooper, is that against the background of the structures that were determined earlier on in the November '91 decision?

MR COOPER: With respect to the structures in particular, and if I can go to operational services, this is another reason we are concerned with the whole process, is that in doing the exercise merely point to point our concerns were not dissimilar to those expressed by the HSUA in that we are concerned that people will either be paid their existing allowance and then have that absorbed over a period of time. But the whole process needs to be finalised before we can see where people actually slot in and translate on their new jobs develop the new job structures. That was something the government was to do - I think the bench gave them the authority to unilaterally develop that last year. We haven't seen that yet.

COMMISSIONER GOZZI: See, I wonder what your view would be if the bench did abandon the whole process and virtually said to the parties: Okay, well, look negotiate your own arrangements but in doing so the model award streams that have been determined will also go by the by. In other words we would revert back to the existing 63 odd awards and parties to those awards would negotiate pretty well in the traditional sort of way.

MR COOPER: I understand the implications of what I've put to the bench.

COMMISSIONER GOZZI: What's your response to that if we did that?

MR COOPER: We believe that our union would be able to negotiate on our members, conditions superior to those contained in the decision of November '91.

COMMISSIONER GOZZI: So effectively it would not be of concern if the model awards were abandoned and the whole process that developed from that was abandoned as well and you reverted back to, as I say, the negotiations involving existing awards and parties within those awards.

MR COOPER: Well, commissioner, I don't want to sort of sound flippant but we obviously would be concerned that the amount of time and effort that's gone into this process up until now. It's been a tremendous amount of effort on the part of all the parties but it hasn't delivered so with respect to that what we have to say to ourselves is what is the best way for us to achieve something for our members. And obviously, unfortunately, we've concluded that the best way for us to achieve something for our members is to start from scratch.

COMMISSIONER GOZZI: Yes, I suppose if we went right back to taws it raises all sorts of other interesting questions, some of them almost don't bear asking but they do raise questions such as the endorsement of a package by this bench for the second 3 per cent and the delivery on that package, for some very cogent reasons hasn't been able to be achieved, doesn't look as though it's going to be achieved. All that's really been achieved in that time is the determination of model awards and the health agency agenda which we've kept the options open on.

It raises issues of 18 special cases which were subsumed into the model award streams. But listening to what you say one can't help but come to a conclusion that perhaps the best way forward is to put the lid on what we've done thus far and let you come back with some other proposals.

MR COOPER: Well that's my submission, commissioner, yes.

PRESIDENT: Mr Kadziolka?

MR KADZIOLKA: Mr President members of the bench, firstly I will refer to a letter we sent you, Mr President, dated 14 December '92 outlining the PAT's position in relation to this matter.

As you'd be aware, Mr President, this has already been tendered in our special case. I again tender it for the benefit of these proceedings.

PRESIDENT: Yes, thanks, Mr Kadziolka. What exhibit number would this be? Is this your first exhibit, Mr Kadziolka?

MR KADZIOLKA: Our second, Mr President.

PRESIDENT: Second, is it? I'll take your word for it, PAT.2.

MR WILLINGHAM: Excuse me, Mr President, are copies available to the bar table?

PRESIDENT: I'm sorry, I thought they were being distributed.

MR KADZIOLKA: Mr President members of the bench, the police special case has advanced since that correspondence to the stage where the commissioner is, indeed, making submissions. The association indicates for the record that we seek to be released from the conditions of service process so that we can argue our special case to its finality.

The association believes that its application involves genuine structural efficiency as envisaged by the principles. Furthermore, the Commissioner of Police lodged on 21 January this year an application which was T.4214 which further widens

the agenda for changes to the Police Award. This application, Mr President members of the bench, has, in our view, heightened the necessity for our matter to be finalised in the special case arena as the Commissioner of Police's proposed award has created a great deal of concern amongst our membership, particularly in relation to the desire to abolish penalty rates as such.

Our submission does not place a barrier on the Commissioner of Police arguing that common conditions apply in our special case, indeed, the commissioner's representatives have done that. All we seek is that the matter be determined at that point, in other words, in our special case. In summary, Mr President, we seek leave to withdraw from the proceedings for the making of common conditions.

PRESIDENT: Yes, what do you say to the government's application actually for an abandonment of the process? Are you supporting that, are you?

MR KADZIOLKA: Mr President, we're only, as we see it, a minor player in this matter. We haven't been covered by any award stream. That matter is currently being determined by you. We believe also that we are a unique group, the police are a unique group and discrete in relation to the vast majority of conditions of service. And, of course, Mr President, that will be determined by you in our special case. On that basis it's the association's submission that our proposal doesn't impact on the continuance of this process, Mr President.

PRESIDENT: All right. Well, thank you for your submissions. Mr Clifford?

MR CLIFFORD: Mr President, members of the bench, on behalf of the CFMEU we would agree with the PSA's calling for an adjournment of 6 weeks - that we are not in any position at this point in time to comment whatsoever on askings of the government, but for many months of last year we've been trying to save jobs and as of December of last year that fell in a heap. We still have further problems with further cutbacks at this year, and until we've had negotiations with the government on that we would be in a position of not being able to make any comment as to where we stand in this proceeding at this point in time.

If the commission pleases.

PRESIDENT: So you've had no - had no discussions with government representatives about the award restructuring matters?

MR CLIFFORD: We had - we had a meeting with the member for the minister, I think, late November and started to set

another agenda as to how we could deal with the conditions of service and agency-specific items as to where the majority of our members were of the ex-BWIU side of it. That's pretty academic at the moment. And what we need to now do is to find out what the final status of the DAC will be in the future, and there are a lot of rumours running around as to whether it will or not survive.

PRESIDENT: Yes, I understand your position. Yes, thanks, Mr Clifford. Mr Warwick?

MR WARWICK: Mr President, members of the bench, may I say that with some interest we listened to the comments which have been put by the workers industrial organisations this morning. Firstly I wish to indicate that the comments made by Mr Hunt from the PSA were most interesting. Mr Hunt is quite correct in indicating that his organisation wrote to us towards the end of late last - towards the end of last year and indicated that his organisation intended to seek discussions singly with the government in respect to a range of industrial matters including structural efficiency.

I should indicate that it's not until this morning that we've heard that those discussions have led to any - any - development of any - of significance. The only thing I'd seek to put on record and indicate to the commission in relation to that is that it would be our expectation that those discussions and the outcome of those discussions do not involve us - do not involve us - as indeed we haven't been involved in those discussions we would see that there would not be a need for us to be involved and in saying that I guess what I'm indicating is that it would be our expectation - that nothing has been discussed would be - or could be considered to be business of the Health Services Union of Australia.

PRESIDENT: Is that taking a bit of a risk?

MR WARWICK: Well that would be our expectation, Mr President.

PRESIDENT: What, that it's a risk?

MR WARWICK: That it's a risk?

PRESIDENT: Yes.

MR WARWICK: I'm sorry, I don't follow the -

PRESIDENT: No, I just wonder whether - whether or not- what you're saying is you don't wish to be involved in further -

MR WARWICK: No, I didn't say that.

PRESIDENT: - negotiations - is that what you're saying?

MR WARWICK: No, I didn't say that at all, Mr President, I said it would be in our expectations that whatever is being discussed they're matters that don't involve us. We would expect that the parties are not discussing matters which are the business of the Health Services Union - that would be our expectation.

PRESIDENT: That's why I asked you the first question.

MR WARWICK: Yes, indeed, Mr President, I'm glad for the opportunity to clarify that.

COMMISSIONER GOZZI: Just while you're on that point, Mr Warwick, I assume that the discussions around the Health Award and restructuring of the general health area are still involved in the TPSA and HSUA?

MR WARWICK: That's correct, Mr President - Mr Commissioner Gozzi, that's correct.

In respect to the submissions which - which followed the comments on - from my colleague, Mr Hunt, I guess it comes as something of a surprise to us to hear a number of organisations seeing that they don't see the process as being particularly adequate or fruitful. It comes as surprise to us as a consequence of the Health Services Union having been vilified and castigated last year for its approach in respect to the process involved in implementing the decision. And it seems - I think I should frankly - say frankly that - that there is something of a level of inconsistency in some of the submissions that have been put to you this morning with regard to what was being said last year.

In that regard we would indicate that we believe we have been consistent throughout. Our position is, that we support the decision of 29th November 1991 within the context of the Health Memorandum of Understanding and within the context of the modifications to the decision comprehended by that Memorandum of Understanding.

COMMISSIONER GOZZI: interesting way, Mr Warwick. You don't support 29th November decision at all. I mean you've just told us that everybody else who's suddenly agreed with you - they ought to be given the chop.

PRESIDENT: I think that was a wonderful - wonderful reflection on inconsistency, Mr Warwick.

COMMISSIONER GOZZI: Indeed. Well we - we've consistently said that there are three streams which are appropriate, and they're the professional, technical, administrative and clerical - we've consistently said that there is some difficulty with the operational stream.

Now it seems that some other organisations are also saying that.

And I think it's always been said that there are difficulties with the operational stream.

MR WARWICK: I'm sorry, Mr Commissioner.

COMMISSIONER GOZZI: And I think it's always been said that there are difficulties with the operational stream.

MR WARWICK: Yes, indeed. In respect to those submissions that have been put, I think it's worth the commission bearing in mind that in respect to the professional stream there have only ever been three organisations - union organisations - who have been involved in - with regard to the negotiations on those streams - on that stream - three organisations who have been involved in the TTLC documentation that was put to the bench and only three organisations who have put submissions to the bench prior to 29th November, and they are the professional engineers, the PSA and ourselves.

In respect to the technical and administrative and clerical streams there are two only organisations have a meaningful interest in relation to those streams and the making of those awards and they are the PSA and ourselves. And the organisations which have put submissions to you this morning which in various ways could be read to mean that the process should be abandoned do not have an interest - a meaningful or significant interest in any of those three streams.

COMMISSIONER GOZZI: Well, Mr Warwick -

MR WARWICK: With the possible exception of what was put by the professional engineers and I'm not too sure exactly what was put.

COMMISSIONER GOZZI: - it's a bit hard to say that because in making those model awards, particularly the technical award, for the first time that award was going to apply to people holding technical qualifications and as a consequence it may well have been in the final wash up of things that other organisations may have claimed interest in the other award -

MR WARWICK: Indeed they may have.

COMMISSIONER GOZZI: - as it stands - as the award currently stands, I think you're quite right, but the way it was intended to operate, in fact all the awards, the professional award and the technical award, that they were going to be rigidly applied in the context of entry criteria.

MR WARWICK: I - I take your point, Mr Commissioner, but I maintain that the broad brush of what I've put to you -

COMMISSIONER GOZZI: Mm - maybe.

MR WARWICK: - still holds true, particularly in relation to the PSA and ourselves being the only organisations with significant interest in respect to those particular streams.

We do - we do not believe that the decision should be abandoned at this point in time. The - the fact of the matter is, from our point of view we have a Memorandum of Understanding with the government in respect to the health agency. We intend to honour those commitments, we intend to do the work involved in implementing that Memorandum of Understanding. There is a significant amount of work to be done.

PRESIDENT: Is it finalised?

MR WARWICK: The work that's to be done?

PRESIDENT: The memorandum - is it -

MR WARWICK: The memorandum is finalised, Mr President, yes.

PRESIDENT: I was interested in some comments attributed to your organisation made a couple of weeks ago which indicated there were some substantial wage increases likely to flow from it and career paths would be improved and I thought it must of all been in place because there was an indication that there was agreement on it. Is that so?

MR WARWICK: I'm unfamiliar - I'm unfamiliar with the reference you make, Mr President.

PRESIDENT: You didn't see the report in the 'Examiner'?

MR WARWICK: I've been on leave, Mr President, no, I didn't. You have me at something of a disadvantage.

PRESIDENT: Oh, it was issued by your organisation - I thought you would have been aware.

MR WARWICK: Indeed not. I came back to work on Monday. There is a process under way in respect to weekly meetings.

PRESIDENT: So is it - the agreement hasn't been or has been finalised?

MR WARWICK: Well the document that is the memorandum has been finalised and the bench has the final copy of that, but all the work that emanates and the outcomes that emanate from

the memorandum have not been finalised, Mr President. I'm sorry if there's any -

COMMISSIONER WATLING: So a model award hasn't been finalised?

MR WARWICK: Not finalised - well under way, but it's not finalised.

COMMISSIONER WATLING: Right.

MR WARWICK: We've, as you'd be aware, Mr Commissioner Watling, just completed a very significant task in the private sector which has along with the festive season made it a little difficult to - to get to the point of finalising that draft award.

We - we are working on it. We're meeting weekly, meetings have been set down. There is - there is, as I say, been some delays because of the festive season and also I guess there is some expectation - the various quarters as to what might be the outcome of today's proceedings so it's not - I must say has not - hasn't been assisting things greatly.

I think I should indicate that the comment was made I think by my colleague from the Australian Workers Union that this process has not delivered in respect to changes to the award system and the employment of persons who are in the public sector. I'm sure that may very well be true for the Australian Workers Union - this certainly is not the case in our own agency and in our industry. There has been a process of - massive process of restructuring which has taken place over the last couple of years. The process which is before this bench we see as part of that. The memorandum comprehends change throughout the agency, not just industrial change, and we see that the package that we are discussing comprehends all of those features and we anticipate that this year there will be a resolution to the structural efficiency process to the broader restructuring within the agency process and indeed to the question of a new award.

In respect to the specific question of the 6 week adjournment we do not oppose Mr Hunt's application. Six weeks is probably a reasonable amount of time although if the bench has some earlier - well I would imagine the bench would have only entertain an earlier date given the circumstances and the submissions that have been put forward. If the bench considers an earlier date appropriate then we wouldn't oppose that.

PRESIDENT: But you think it should be at least 6 weeks?

MR WARWICK: No, no, that's - we would not oppose an earlier time. Obviously the PSA wants to consult with its members -

it wants to see a 6 week break - that's probably reasonable given their - their views in relation to that.

PRESIDENT: I suppose the cynic could make a point that really it doesn't interfere with your processes anyway, that in fact you're proceeding with your memorandum and that whether these - the other organisations decide to walk away from the November '91 decision or in the case of the PSA continue with negotiations is irrelevant as far as the HSUA is concerned.

MR WARWICK: Well the relevance, Mr President, is that they're asking to - the organisations are asking to walk away. Admittedly that appears to be what they're doing, but implicit in that is, I think, Commissioner Gozzi raises the point that implicit in that that is the result in abandonment of the decision and all of the streams involved in the restructuring exercise and that is of concern to us.

Now if the other organisations want to walk away from the process as it affects them - and that is the operational stream generally - I think in my - my understanding of the way - of the lie of the land then that - that's a decision for them I guess and one for the bench to - to also make a decision about. However, we don't believe that the bench should be - and I believe it would be precipitous of the bench to be saying, well, we should throw everything out simply because some organisations with a quite small interest when it's all said and done in the operational area are not happy about that particular stream. That would seem to us to be an inappropriate course of action and our concern extends to that issue.

PRESIDENT: Yes, thanks, Mr Warwick.

COMMISSIONER GOZZI: Mr Warwick, your concern if we were to abandon the process is simply what would happen to the Memorandum of Understanding?

MR WARWICK: Well the memorandum says that the three streams which - which I've referred to - professional, clerical and technical - will be implemented.

COMMISSIONER GOZZI: Mm.

MR WARWICK: And they say that they will be implemented by a certain date this year. So -

COMMISSIONER GOZZI: I mean couldn't it be construed by us that simply what you're doing in the health area is sought to be done by others in other areas where they have a particular interest? I mean you really are outside to all intents and purposes.

MR WARWICK: I think that's correct.

COMMISSIONER GOZZI: Yes. So why should it concern you if your negotiations on the memorandum were to continue and everybody else was to undergo the same sort of process?

MR WARWICK: Prima facie that's not a problem to us, Mr Commissioner. Our difficulty is whether the decision stands or not in respect to the other three streams.

PRESIDENT: And you want that to stand?

MR WARWICK: Yes.

COMMISSIONER GOZZI: So you see - you see the rates of pay in the other three streams as being okay - the Memorandum of Understanding puts in place your concerns or addresses your concern with respect to operational and if you can negotiate something there well then the whole package from your point of view would be acceptable?

MR WARWICK: Indeed. There are some difficulties with the rates in the other three streams. I'm not suggesting that everything's ideal, but - but our members see them as, you know, as being acceptable and we should pursue that.

COMMISSIONER WATLING: Mr Warwick, in view of your earlier comment that you've already reached agreement on the streams, the bench decided to abandon the process - what effect would it have on you if you've already got agreement?

MR WARWICK: Well it's an interesting question, Mr Commissioner. The only way I can answer that is that we would prefer to see the decision in respect of those streams continue to be in place. It's a fairly technical question to answer, Mr Commissioner, it needs considerable thought.

COMMISSIONER WATLING: Well you've either got it or you haven't.

MR WARWICK: And it also needs consideration of the exact words contained in the memorandum because the memorandum says that the three streams contained in the decision will be implemented now if there is no decision. It becomes a technical problem in respect of verbiage and what it all means, whereas if the decision is in place in respect of those streams there is no confusion.

PRESIDENT: Or if you had a registered agreement.

MR WARWICK: Indeed. Indeed. That's something I can raise with my constituents, Mr President. If the commission pleases.

PRESIDENT: Yes, thank you, Mr Warwick. Mr Willingham?

MR WILLINGHAM: I really don't know what to say, Mr President, and members of the bench.

PRESIDENT: There's plenty to respond to over that.

MR WILLINGHAM: Yes, I know, but I don't feel like swinging out wildly this morning, I was hoping we'd be constructive, but given the differing -

PRESIDENT: I hadn't noticed swinging out wildly -

MR WILLINGHAM: Oh, I am not promising anything. But, given the different responses and the differing responses from so many organisations here today, and so many whose submissions are nonexistent because of their absence today, it is still very difficult for us to draw the sorts of conclusions that we had hoped would be possible as a result of the question that was posed by the bench on the last day of hearing.

And, insofar as a number of organisations have addressed at your urging that question, I am still not entirely sure that the answers are particularly definitive.

The position of the minister is unchanged. That is, we still believe and continue to believe that the process by which the commission is constituted established for the implementation of award restructuring in its decision of November 1991 should be abandoned.

PRESIDENT: The process should be abandoned?

MR WILLINGHAM: Yes. I took the point that I think it was you, Mr President, who raised earlier, that if the process is abandoned I don't think Mr Hanlon in earlier proceedings had intended that the individual matters make up the generality of this case themselves. The point I think perhaps Mr Harding or Mr Clifford in an exchange with the bench spoke about that, and I think also Mr Cooper.

The totality of the case is still the sum of its intrinsic parts, but to the extent that they go forth as a compendium and that there is collective attention to the matters. So I think that most parties have agreed that that has proved not impossible, but incapable of any satisfactory results materialising.

A number of people here today have expressed the view that they believe that as far as their own organisations are concerned that they would be better placed to achieve mutually satisfactory outcomes if they were not in a collective process.

A number of organisations today have also indicated that it is their view that they should not be, or do not wish to be, involved in common conditions of service, negotiations, discussions or, indeed, any common conditions of employment award.

And I just say in relation to the Police Association I hadn't previously seen Mr Mullet's letter of the 14th which is addressed to you, Mr President, as I -

PRESIDENT: It was tabled in the police -

MR WILLINGHAM: - understand it tabled in the police case, but it is a funny way to get a response to our letter of 3rd of December when we wrote to the association asking them specifically their attitude to that question.

But, since I was earlier going to tell you that we haven't got a response from them, I can assume that maybe that letter to you is the vicarious response to our letter of 3rd of December.

PRESIDENT: Well I don't know what you put in that on the 3rd.

MR WILLINGHAM: Well the letter we wrote on the 3rd of December, Mr President, and thank you for prompting me, was to all unions to ask them what their position was in relation to conditions of employment, and a document which the bench itself insisted was produced by a certain date I think back in September.

And may I just preface my remarks by saying that the bench has heard that a number of organisations have had their priorities directed elsewhere than award restructuring and conditions of employment. But, I make no comment on that.

But I also say that in terms of the tardiness and the delay in getting people together, it should be noted that those comments have been made and for once perhaps the finger of accusation in relation to procrastination is not going to be pointed in the minister's direction.

Now, since September - that is almost 5 months - that common conditions of employment document has been before this commission, and earlier than that before the parties, and you have today 5 months later people saying we haven't even looked at it.

We've been unable to get people together. It is clear that a number of organisations don't wish to discuss it.

It is clear from the letter we sent on 3rd December inviting all parties to public sector awards to express in writing their view as a precursor to the report-back hearing - we got

five responses - and one of them is from the Tasmanian Teachers Federation, and given their involvement with this particular case that's almost not a response, and we now have the, as I say, the vicarious response from the Police Association.

So, if people have been busy elsewhere that's okay, I don't mind that. I'm just saying that there is not much evidence of commitment to the process as outlined by the bench which we have been able to give, and nothing I've heard today dents that proposition that I put to the bench.

Now, in relation to Mr Warwick's -

PRESIDENT: Could I take you a little further on that? The process was the process virtually put forward by the minister as being the way forward. Inherent in the process was that if it failed to produce by way of agreement the matters would be arbitrated. What's your view on that now? Have you changed your mind on that?

MR WILLINGHAM: I was the one who put the reaffirmation of commitment to the process, Mr President, as I am sure the members of the bench remember. Having been put in the position where there was virtually no alternative, I said words to the effect that, okay, if that's the way it is going to be, we will do whatever we can to derive whatever benefits from the process we believe are available to us. And we genuinely held that view, and we still do, and I think the record will show that we have strived to achieve those sorts of outcomes and to achieve that sort of process. It isn't working.

It isn't working. So the fact that it was us who suggested it, Mr President, doesn't take away from the fact that whatever it was that was suggested just doesn't appear to be achieving anything.

PRESIDENT: Well, you see, the point is it hasn't been worked through yet. There is contained in that document the provision that at the end of the day for matters to be arbitrated to resolve everything.

MR WILLINGHAM: I have a feeling that that was implicit in what a number of speakers have said to me.

PRESIDENT: And you're saying - well, I don't think it was actually, implicit in what they were saying - but are you saying that the minister does not want to go through the remaining avenues contained in H.27 to resolve all outstanding matters?

MR WILLINGHAM: I'm saying that all of the process that is currently in train should be abandoned.

COMMISSIONER WATLING: Including the structures?

MR WILLINGHAM: That was a point I was going to come to, Commissioner Watling, because it was raised as a matter of concern by the HSUA.

If you could bear with me, could I come to that in a few moments?

COMMISSIONER WATLING: Right.

COMMISSIONER GOZZI: Well, just getting back to the president's comments, why wouldn't we simply in the absence of any progress - take Exhibit MATSSA.2 - and just to refresh everybody's memory, MATSSA.2 is a document prepared by the Director, Public Sector Management Division, in September last year and specifies conditions of employment - and I assume it was addressed to all of the unions involved in the case - it simply says: Please find attached a list of quantum for the various conditions contained in the government's proposed conditions of employment award - and it goes on to arrange some discussions about that document.

Why wouldn't we simply invite the minister to address this document seriatim and we go through the process in terms of conditions of employment?

MR WILLINGHAM: There is no reason why you shouldn't, Mr Commissioner Gozzi.

COMMISSIONER GOZZI: Well, I thought that's what the president was asking about, that process of arbitration being the final avenue before the process was - well, to take the process further.

MR WILLINGHAM: Perhaps I misunderstood you. I am not arguing that that process - I wouldn't suggest that that process is not available to the commission if it chooses.

If perhaps you are asking me do I think that's an appropriate avenue?

COMMISSIONER GOZZI: I'm just simply saying, why wouldn't we do that to get over this obstacle of no progress being made.

MR WILLINGHAM: Indeed, I fully expected 4 weeks ago that that would be the submission I would place before you today.

A number of organisations, as you have heard, are engaged in discussions with the minister's representatives at various levels, and those discussions obviously contemplate this specific issue, as well as a number of others; and, just going back to Commissioner Watling's question, the question of

the award structures, and whether those which are contained in the November 1991 decision should be the cornerstone of any agreements that are reached, or whether they should not, whether they need modification, or whether they do not.

So, yes, it is true on all fronts either the minister has initiated discussions or organisations with whom we deal have initiated discussions, but they are taking place at varying levels and with varying degrees of intensity, and you've heard from the Tasmanian Public Service Association that a fairly major exercise is going on, and that is something a little different from December of last year.

And, being the pessimist I am, I don't perhaps share the optimism that a number of other people have for that process, but we're still in there and things are progressing well at this stage, and whether the eventual outcome is going to be mutually satisfactory I am unsure. But I take it that Mr Hunt's application for an adjournment is as insurance policy -

COMMISSIONER GOZZI: Mr Willingham, before we deal with that -

MR WILLINGHAM: - and he wants to go through the process - if I may, commissioner?

COMMISSIONER GOZZI: - if I can just drag you back to what I was asking you.

MR WILLINGHAM: Yes.

COMMISSIONER GOZZI: It seems to me, having regard to what the unions are saying, the individual discussions would be predicated on the government's position as put forward to us in that letter, and I would anticipate that there would be a consistency of approach between the government representatives in their negotiations with the various union representatives.

Now, if that's the case, if we were to go down the path of dealing with these matters individually it would simply be a case of however that matter was constituted as far as the commission is concerned; that we would be faced with the same position from the government in respect of all conditions matters, and different arguments from the parties - depending on what their particular view is.

So, from a simplistic view, I come back to the point. If the government's position is as it is set out in that exhibit, MATSSA.2, is unchanged why wouldn't we simply go down that path of having those issues determined?

MR WILLINGHAM: I'd just say that I think the minister himself had indicated that the conditions of service document was capable of negotiation on elements that the other parties might consider appropriate, and with the passage of time and

developments of significance since 17th September it may be that there are more appropriate ways for all parties to deal with that particular matter.

It may not be, Commissioner Gozzi, that in all instances total uniformity of conditions is either necessarily now the most desirable objective or, indeed, will be the actual outcome.

So, without going further into that, because it may open up more than I wish, I'm just saying that we are not, for our part, ruling out any possible combination of award restructuring in structural efficiency principle matters in our discussions with various organisations.

COMMISSIONER GOZZI: Alright. Just so that we can form a view on how we should proceed from here, what would be the logic then in keeping this case in place but dealing with the conditions matters and agency specific matters separately in the context of agendas that individual union parties may have? Why wouldn't we simply say, okay, look, now if there is going to be a disparate outcome in these areas, abandon the whole process and let people make their own applications, start afresh, and it could well be in that process that the structures may be put forward by agreement with conditions and agency specific matters as an attachment to that?

MR WILLINGHAM: That's possible - in fact, it might even be desirable, commissioner.

COMMISSIONER GOZZI: Well, wouldn't it be simpler?

MR WILLINGHAM: How you arrive at that end package, the process by which you arrive at that end package, is probably what we're talking about, and whether that should be, if you like, delegated back to the organisations before you with the commission effectively distancing itself from the process, or whether the commission should continue to not only oversee but have a hands-on role in the way in which it's done.

COMMISSIONER GOZZI: I take it, though, Mr Willingham, your preference from what you said at the start is for the conditions matters to be left to individual organisations to bring forward within the context of the applications that they have which make up this case?

MR WILLINGHAM: It is very difficult to go through this, commissioner, because it is - as another speaker said - fairly technical and complicated. You have to consider all the permutations that are possible.

But, at this stage, we would prefer our conditions of service - as with all other elements of the decision and its ancillary matters - to be abandoned.

But, with the conditions of employment document and all the matters that are contained in it, yes, we're prepared to try to work our way through on the discussion that are currently under way and those that we fully expect this case will attract.

If at the end of the day the minister cannot achieve those residual benefits it believes outstanding from the whole SEP process there are a number of avenues by which we might want to seek then.

If the bench had agreed with us that the process ought to be abandoned, then clearly we would do it by way of a subsequent application.

And, at this stage, I can only say to you honestly that that is our best view of our insurance policy. That probably we would roll up a new conditions of employment award application to replace the current general conditions of service, and whether that would have specific application or whether it would have widespread application would depend on the outcomes of the processes that we're putting in train over the next few months.

COMMISSIONER GOZZI: So the abandonment in that context, if we were to do that, would really only impact of course on the model awards.

MR WILLINGHAM: Well, yes, we keep coming back to that aspect. Unlike - I don't, I am not critical of my colleague, Mr Warwick's submission to you - but that was playing at a blackjack table and taking insurance and having a cheque that you haven't signed, and everything else.

He basically wants out of your decision process for reasons which he has enunciated, but he wants to keep the decision alive and the process alive because the HSUA feel that it underpins the Memorandum of Understanding.

And I think it was Commissioner Watling's point it up with your indulgence, is that as Mr Warwick said it is a very technical point. But the fact that the commission walks away from a decision, or even abandons, or even rescinds it, doesn't alter that at a given moment in time the decision was made which was dated and contains amongst other things four model awards, and any reference in any document to that cannot be misconstrued and cannot be undermined or abrogated by what subsequently happens. It is a reference point, and no other.

COMMISSIONER WATLING: It's on the record, you can't get rid of it.

MR WILLINGHAM: Certainly, Mr Commissioner Watling.

COMMISSIONER GOZZI: The only comment there of course is that it was always intended to operate as a package, and the commission has made that very clear in numerous comments and statements, whatever.

MR WILLINGHAM: Indeed, commissioner, but I am only referring

COMMISSIONER GOZZI: So, if the package doesn't operate, I mean the other half doesn't operate. Nothing operates.

MR WILLINGHAM: No, but, commissioner, my point only is this, that if you have a document under the seal of the commission to which reference has been made in other processes, other documents, you can't then say that 2 years later that decision has been rescinded, or something like that, so therefore any subsequent reference is meaningless. I mean, that's an absurd proposition, in my judgment.

PRESIDENT: I could imagine it being tried, though, Mr Willingham.

MR WILLINGHAM: Oh, I'd like to try it myself if circumstances were different, but they are not, so I don't have to worry about it.

COMMISSIONER GOZZI: I wouldn't like anybody's chances on it, though, quite honestly. I mean, the fact is -

MR WILLINGHAM: But a minor adjustment to the Memorandum of Understanding, Commissioner Gozzi, would solve that problem totally. I mean, two words.

You could take away the words - one word - 'decision' in the Memorandum of Understanding and make some further reference, and the matter would be at an end.

So I am unsure whether the HSUA with that constructive suggestion they will take on board and would then reconsider whether their position is materially changed in relation to wishing you to keep this process in place.

PRESIDENT: But isn't your position - the government's position, in a way, very, very similar to the HSUA's. In fact, the HSUA are seeking the insurance of the model streams. The government is seeking the insurance of a new conditions of service arrangement so long as the model streams go out.

MR WILLINGHAM: No, no, no, we're working without a safety net, Mr President.

PRESIDENT: You're working without a safety net?

MR WILLINGHAM: Absolutely. We're saying abandon it and we'll take our chances.

PRESIDENT: So what does that do in terms of the streams as far as the government's concerned. Does it go out the window - do the streams go out the window?

MR WILLINGHAM: The government would have a view in relation to that particular matter and it is pursuing or will pursue that view in its discussions with the various organisations. Certainly, the various organisations with whom I've spoken in recent weeks have very fixed views about maintaining the integrity of the four nominal streams. There is no secret that a number of organisations do have a difficulty with operational services - and let's be clear. The reason that there's a difficulty with operational services stream award is because it doesn't deliver increases. In fact, there are those who would suggest that when it is fully implemented it may result in a loss of income which is not correct, but there are those who say that.

But for the remaining three, the professional, the administrative, and the technical awards, most organisations who are affected by them see that there will be increases to be had. Now whether that's true or not is immaterial, but that is the reason that there aren't many objections in relation to those three awards.

The professional and engineers or APESA with whom I wish to turn to in a moment, have a difficulty with the professional award for reasons that they have articulated at a number of hearings here and in writing, that they see that it is not advantageous for them to keep pursuing that, and they've written and told us so, and indeed, the last written communication from the APESA to the minister in relation to its attitude to your decision, Mr President members of the bench, is somewhat different from that which was put today, but I understand that the advocate for the organisation today prefaced his remarks by saying that he hadn't been involved at all and was taking it on de novo so it may be that I shouldn't be critical about that.

Can I just sort of keep rambling on for a little while, Mr President members of the bench?

COMMISSIONER WATLING: Well maybe if I could get back to my question, Mr Willingham. I'd like you to clearly explain what you see as the process - and you've asked us to specifically

abandon the process. Are you saying H.27 we should abandon, only?

MR WILLINGHAM: We think, Commissioner Watling, if I could put this as succinctly as possible that everything, including the decision of November 1991 - and that is the decision itself, everything which has gone subsequent to it - should be abandoned.

COMMISSIONER WATLING: The whole lot.

MR WILLINGHAM: Yes, sir.

COMMISSIONER WATLING: So it's more than just the process outlined in H.27?

MR WILLINGHAM: Yes. I think implicit - or included in our words of process, Commissioner Watling, includes the decision itself. I mean clearly, that must do so otherwise you really don't have a process by which

COMMISSIONER WATLING: Well I've taken it that the process of sorting out conditions of employment in agency specific matters is that which the bench endorsed in H.27 and -

MR WILLINGHAM: No, no, we're being - to that extent we're consistent, commissioner. We're -

COMMISSIONER WATLING: So you want the program - the whole program - decision, the lot - abandoned?

MR WILLINGHAM: Yes, sir.

COMMISSIONER WATLING: Right.

COMMISSIONER GOZZI: Yes. I must say I didn't understand you to be saying that -

COMMISSIONER WATLING: No.

COMMISSIONER GOZZI: - at the start. I thought that you were saying, look, leave the decision and the structure in place and that the government supported the position put forward by the unions that individual discussions could be held with regard to conditions and agency specific matters. You would then come back subsequent to the outcome of those discussions and we would then see how that outcome fitted with the notion of a package including those structures. I think you are going further now, aren't you? You're sort of saying now that the whole lot, right back to November, ought to be abandoned and in that context then - if we did that - that would mean, I would imagine, new applications if and when any party was ready to go.

MR WILLINGHAM: Yes.

COMMISSIONER GOZZI: Well I didn't understand at the start, but I certainly understand that very clearly.

MR WILLINGHAM: For not putting it clearly enough, I apologise to the commissioner and members of the bench.

Could I just go to a couple of comments that fell from other speakers that perhaps the bench might wish me to address?

PRESIDENT: Yes, please.

MR WILLINGHAM: I'm going to be selective, Mr President.

PRESIDENT: Yes. No doubt.

MR WILLINGHAM: In that I may not exactly match the questions you wish me to address. Would it be easier perhaps if I let you ask me the questions?

PRESIDENT: Oh, no, you address the ones that you want to address and we'll respond.

MR WILLINGHAM: Right.

MR: interesting.

MR WILLINGHAM: We would like to just discuss briefly the comments that fell from Mr Butler. There were a couple of them that I professed to no understanding. One of them was the reference which I think Commissioner Gozzi picked up going to perhaps a delay in enterprise increases I think were the words that were used. I suspect that Mr Butler subsequently explained and that may not have been exactly what he meant, but there is no arrangement - there are no discussions for any arrangement in relation to enterprise increases with anyone, let alone APESA.

COMMISSIONER GOZZI: Yes. Well I must say, Mr Willingham, I'm pleased to hear that, not that I'm suggesting that there shouldn't be increases if they are justified, but it seemed to me that these comments don't come out of thin air, that somebody is a commitment somewhere and the same view I had about the article attributed to the HSUA where there is commitment to significant pay increases -

MR WILLINGHAM: Might I turn to that in a moment?

COMMISSIONER GOZZI: - and I thought the two might have something in common. Now, as I say, it doesn't overly fuss me. What people do is their business, but when it comes to a proceedings such as this, then quite honestly we ought to be

appraised of what happening and why it is happening to help everybody get to a bottom line.

MR WILLINGHAM: Well, I've said what I said, commissioner, and I said it in clear terms. I don't think it needs to be repeated.

COMMISSIONER GOZZI: Well I appreciate those comments. I'm not sure where that leaves Mr Butler.

MR WILLINGHAM: I don't either, but I can only give you the minister's perspective -

COMMISSIONER GOZZI: Yes.

MR WILLINGHAM: - and that's what you were anticipating.

PRESIDENT: And your comments were precisely were that there had been -

MR WILLINGHAM: Have been and are no discussions in relation to enterprise increases. Mr President, for your own elucidation, we have not yet - we have not yet, even with our major customs, determined an acceptable method of productivity measurement and all of those other associated issues which might go up to forming the criteria by you would establish how increases are to be derived and over what period of time, and I think that would be commonly acknowledged by anyone with whom we spoke. The question of quantum, timing, or anything else, simply has not been discussed and certainly nothing has been conceded from the minister's perspective.

In relation to the article in 'The Examiner' which I have read, on the same day as, I think, that we got front page - page 1 in relation to another matter before the commission as constituted -

PRESIDENT: It certainly was, Mr Willingham.

MR WILLINGHAM: - and I would appreciate, Mr President members of the bench, if you'd take note of the comments which are attributed to me on page 1 of 'The Mercury' that day rather than those which appeared in another newspaper in a few pages down, and that was - that was, that the government is not in a position to agree to wage increases of any description at all unless the effect upon the budget and the operational and appropriations of departments was cost neutral.

PRESIDENT: And I take it that same message has been conveyed to the organisation which must have been responsible for the release of that press statement?

MR WILLINGHAM: I'm unaware of either the message, the message stick, or the message carriers, but I understand that discussions have taken place on that issue, Mr President. But again, such as it was a report attributed to the HSUA and not to the government or any particular minister, I can only stand in this place and tell you what the position is in relation to the minister, notwithstanding anything else which is purported in the press and attributed to another organisation.

PRESIDENT: Yes, we - I understand what you are saying, but we I think have some difficulty with the practical distinction between the minister for administering the Tasmanian State Service Act and the minister who has responsibility for the Department of - I think it is Community and Health Services, and whilst I don't know precisely what the relationship is there, it does seem as though there are two different negotiating mechanisms.

MR WILLINGHAM: And we all negotiate and speak, as I've repeatedly said in this place, under the one banner, Mr President. The Minister administering the State Service Act has many forms - many agents, and I'm comforted, Mr President, by the fact that Mr Warwick did not see that particular article, neither does it appear that it was drawn to his attention and it just seems to me that if the substance of that report had had a semblance of truth, it would have been a matter that would have been inescapably brought to Mr Warwick's attention because of its significance. The fact that Mr Warwick was unaware of it seems to suggest that -

PRESIDENT: A misreporting.

MR WILLINGHAM: I don't suggest it was a misreporting because I don't know what was said to the journalist, but let's say an exaggeration of the factual position - a vast exaggeration of the factual position.

PRESIDENT: That's quite disconcerting to - I would have thought to the public and certainly to the bench.

MR WILLINGHAM: I would have thought it would have been reassuring to the public, Mr President, if the government takes a view and the minister takes a view that increases to any employees in the state sector cannot be afforded if they are going to have an actual fiscal impact upon the appropriation and the consequences of trying to fund them, and I would have thought that a consistency of approach, whilst it might be unpalatable, was at least preferable to its alternative.

PRESIDENT: It's a - it's a pity the same medium was not used to correct that false public impression.

MR WILLINGHAM: Oh, maybe some attempt was made to do that, but you know what getting retractions is like, Mr President.

PRESIDENT: Well a straight out statement wouldn't go amiss.

MR WILLINGHAM: Mr President, there was also reference to negotiations for a federal award for the Department of Roads and Transport. It is true that the question of jurisdictional coverage for that department has been an item of which I'm personally aware has run now for some years and it is true that all sorts of possibilities and combinations and accommodations are being spoken about. Certainly nothing conclusive has been reached to the best of my knowledge but a lot of the result of that matter hinges on union amalgamations more than anything else and to that extent it is a live issue but it's not a new one. It's not, for instance, to be compared with the recent rash of people looking to be covered by the federal jurisdiction - in fact one arrived yesterday, Mr Commissioner, for a new TAFE award - all states.

COMMISSIONER GOZZI: I hope they hurry up and make it.

MR WILLINGHAM: I must make - make sure I get a copy down to you so that you can be fully apprised, and following the HSUA -

COMMISSIONER GOZZI: I'm only up to binder one of four - 1,000 pages in each so I've got no problems about that, Mr Willingham.

MR WILLINGHAM: At least the HSUA put one up in their own name - I must say that was a pleasure to see there. I mean everyone else is under some pseudonym State Public Services Federation or the Australian Teachers Union or whatever, but I tell you they can't get over the Bass Strait quick enough. And another couple of - two more showered down besides the TAFE colleges one this week. I mean I'm never going to be in this state which might please some people but -

COMMISSIONER GOZZI: Anyway I have to say that the TAFE was foreshadowed in the proceedings.

MR WILLINGHAM: Question their bona fides, that's all, commission - grab the money and run - is that something like it?

Unless I can be of any further assistance to the commission, I think I've probably covered the points that I wanted to raise.

PRESIDENT: Yes, I certainly was interested in those - those two points.

COMMISSIONER GOZZI: Mr Willingham, what about the response to the UFU and the Police Association with respect to their position? They were virtually indicating to us that the conditions matters are part and parcel of the special case that the government has responded with an application in those matters as in fact they did in TAFE and to a certain extent - lesser extent admittedly in teachers and in the result there's probably not much point in them taking any further part in these proceedings, or that was the gist of what they were saying.

MR WILLINGHAM: Yes, to the point that we believed at one - oh, about 5 months ago that everyone should be involved - it's certainly a change from that. It is an undeniable fact, Mr Commissioner, that the Fire Brigades Award is proceeding at its own pace - in fact it was, I think, concluded this morning, and it's undeniable that we would be seeking to get that basically concluded as a discreet model through the deputy president's decision. It may be, as with ambulance, for instance, some of those things have to be referred back either because of the statute or because of some other reason, but primarily we'd seek to have them dealt with discreetly.

With the Police Association the application the minister made of course is, as you say, similar to that which took place in the teachers matter amongst others and indeed TAFE teachers. It was more to ensure that those issues were before the commission under the structural efficiency principle because there was a fear that they wouldn't actually be raised by the Police Association. In fact it was more than fear - it materialised.

COMMISSIONER GOZZI: I guess the reason I'm asking is does impinge on TAFE and I took the opportunity to raise it this morning with - in the case of the UFU. I wonder whether the approach of the employer was consistent to the extent and it doesn't appear as though it was because in the TAFE case the request was for all conditions to be referred to this bench and it appears that UFU in the government seeking conditions which are not statutorily full bench matters to be determined by the deputy president in that case.

MR WILLINGHAM: I think - look, that's - what you say is true, but there's nothing sinister to it. I think that's just a reflection of the fact that about 6 weeks have passed by and a lot's happened in that time. Indeed the discussions I've had with Mr Devine have occurred substantially only in the last four or 5 days when certain common points of principle were reached. Indeed if you study the transcript of the case in the Fire Brigades you'll find our positions changed similarly in the last 5 weeks on some points of principle.

COMMISSIONER GOZZI: Would the government be writing to the commissioner concerned with respect to its changed position?

MR WILLINGHAM: I - I'd need to talk about that with my colleagues who are representing the minister and Mr Devine before I speak to that, commissioner.

COMMISSIONER GOZZI: Well I was thinking - take the opportunity of raising it with you to take on board as far as the TAFE is concerned.

MR WILLINGHAM: Can I -

COMMISSIONER GOZZI: Which of course is also an organisation represented in these proceedings. They're not here today.

MR WILLINGHAM: What - today?

COMMISSIONER GOZZI: They're not here today -

MR WILLINGHAM: Oh, sorry, I thought I'd missed -

COMMISSIONER GOZZI: - but they're certainly on the record.

MR WILLINGHAM: It would be hard to miss Mr Holden if he was actually here wouldn't it? Can I just say that the comment that fell from Mr Kadziolka in relation to his organisation's perspective that police were unique - there are a number of other organisations that have made that claim in the past and probably will continue to do so. I just want to place on the record -

COMMISSIONER WATLING: Doctors.

MR WILLINGHAM: Pardon?

COMMISSIONER WATLING: Doctors.

MR WILLINGHAM: I understand they've already put that to you quite forcefully, commissioner.

COMMISSIONER WATLING: Yes on every - on every hearing day.

MR WILLINGHAM: And - and taking a lot of time to do it too, I might say.

PRESIDENT: Health - health industry is unique.

MR WILLINGHAM: Well, one could make that construction. Certainly other disciplined forces such as police and prison officers, fire brigades, ambulance officers, can and make similar claims. We just don't accept from our perspective that there is any such thing as uniqueness that would lead itself to not being capable of collective action. But it may be that we agree in certain circumstances under certain arrangements that a particular part of the state service can

be separated from the remainder of the state service for the purposes of reaching agreements or awards.

That is reflected in the current decisions of this commission and its predecessors. It sounded like Mr Warwick that, didn't it?

PRESIDENT: Yes. Alright.

MR WILLINGHAM: Thanks, Mr President, and members of the bench.

PRESIDENT: Mr Hunt, I think you might have been caught by not addressing some of the major issues to begin with, and I think you might also need to respond to some of the more recent clarifications that have fallen from Mr Willingham is to what abandonment of the process means.

MR HUNT: Yes; thank you, Mr President.

It is true that in discussing - in putting my submissions earlier this morning, Mr President - I didn't go into those questions that were raised at the last hearing on 11th of November, I think it was, and they were raised both by Mr Hanlon on transcript and by yourself, Mr President, and I would have to say that all those matters and the responses that we would give to those matters have been comprehended by the discussions that we've had with government, and we would hopefully be in a position to respond to them when we are next before the commission.

But, of course we're in the midst of a process of seeking ratification of our members on a certain course of action, so to ask us at this point in time whether we want the process, the whole process, to be abandoned is really putting us in a position where we are halfway through the process and you are asking us for an answer, what will the answer be at the end of the process.

COMMISSIONER WATLING: That's why we have convened here today, though. You have taken it upon yourself to implement some course of action. You were required to address us today on a few questions which obviously a number of parties - including the parties on your side - have addressed; and that's the abandonment of the decision, the process, everything.

MR HUNT: I think you'll find the transcript actually says that we would be requested on the next time we appeared before the bench to respond to those points; and you're absolutely right that we were asked to respond to those points.

However, we were originally prepared to respond to those points on December 14th. Now that hearing did not go ahead.

We then became involved - well, actually the discussions had commenced before then.

COMMISSIONER WATLING: Well it didn't alter the agenda for this hearing, though, did it?

MR HUNT: Well, it certainly did from our perspective, Mr Commissioner, yes.

COMMISSIONER WATLING: Right, well I want to say to you from where I sit I would like you to put your submission on the submissions that have been made - a significant number of submissions that the whole process should be abandoned - because I don't want to deny you an opportunity to be heard; and I am going to take on board the submissions that have been made.

Now, you can either address the issues in your response, or you can give them a miss.

MR HUNT: What, you're saying this is my one chance and my one and only chance, and if I don't take it up, then look out? That's basically what you are saying, isn't it?

COMMISSIONER WATLING: Well, let me tell you what I am saying. I am saying to you that a number of submissions have been made by colleagues on your side that heard for the first time today that you were going to call for an adjournment, that the process should be abandoned.

We've heard from the respondent in this matter that the process should be abandoned, and you're saying to me that you don't want to address that question at this stage.

We're going to have to address it, because of the number of submissions that have been put to us.

Now, you can either say you don't want to address it. I think this is your opportunity because we've got to go away from this hearing and do something with the submissions that have been presented.

Now, maybe you might want some time over lunch to consider this, but certainly you shouldn't ignore the strength of the submissions that have been placed thus far by the respondent - the number of colleagues on your side.

MR HUNT: Well, I can say again that we have put a process in train, we believe we'll be in a position to respond to those matters when that process is completed.

If you are saying to me that I had better take my opportunity now, then that will affect obviously the points that I want to

make, and will draw me into making submissions that I have been instructed to avoid.

Now, obviously the instructions I have been given were not predicated on the basis that I would be, if you like, strongly urged to make those submissions.

I would have to say that, yes, a number of the unions have made submissions that the process should be abandoned, and the minister has repeated - or the minister's advocate has repeated - the submissions that were given. Not word for word, obviously, but the substance of those submissions.

But, it is also the case that the major unions who are represented here, the major unions who have the greatest stake in this matter, are not seeking the abandonment of the process.

COMMISSIONER GOZZI: Mr Hunt, it's clear, I think, that the way that the hearing and the process as currently arranged is not producing the sort of outcome that everybody had hoped for.

In the circumstances, I think we are required to consider the submissions that have been put by all of the parties, and the majority view is at the moment, well the majority view of the people that are here, is that the process ought to be abandoned.

I take the point that Mr Warwick made that within the existing structure of the awards that in the professional, technical and clerical areas that you may have the - the TPSA and the HSUA - may have the most membership, but that doesn't change the fact that submissions have been put that we need to consider.

Now, if the TPSA can't put a point of view on it, apart from saying, well, look, give us another 6 weeks, that doesn't really help us - particularly given that the government is saying, notwithstanding those discussions that are apparently taking place, they are still saying, look, the process ought to be abandoned, it is not working in its current form.

And, from where I sit I would have to support that, it is not working, and I quite honestly think that we need to find a different way around the problem; and it could well be that what you are foreshadowing is a solution to your particular requirement which is no different to the solution that has in fact been proposed by the other union parties this morning; and that is, that you go your own way and you negotiate on your own.

I don't see that your longer term position in that context is any more or less prejudiced than anybody else's.

But I think you should give us the benefit of some comment with regard to the general thrust of the submissions made this morning.

COMMISSIONER WATLING: Can I just say, from my perspective if you don't want to comment don't think you are being forced into it, but I don't want you to go away from this hearing saying you were denied the opportunity.

MR HUNT: Well, can I just repeat that what we are seeking is an adjournment of these matters to enable the process to be concluded.

If the bench is not of a mind to grant that adjournment - and it appears that that is the case - then I can say that the TPSA does not want the streams to be abandoned, and I would also say that we don't want the decision to be abandoned, and it may be that if we were granted an adjournment and our members told us to come back to the commission, we would be here - that is, if you granted us an adjournment - seeking arbitration of all matters.

Now, we are committed to achieving the goals of award restructuring. I don't think that is a surprise to anyone. We have been at the forefront of moves to achieve the goals of award restructuring within the state service in Tasmania, and that position hasn't changed and won't change. We aim to have award restructuring implemented.

Mr Hanlon made a whole series of points at the last hearing, not only about which organisations are involved in the process and committed to it and which are not, but other points that were made during the course of his submission.

And, as I said, I have been put in the position where it was my instruction to indicate that all of those matters have been comprehended by discussions that we've had with government, and will continue to have, and that we will respond when next before the commission.

But if you are saying to me that there is going to be no adjournment, that -

PRESIDENT: We haven't said that.

MR HUNT: No. I understand that. But if you were to put me in a position where there would be no adjournment, then I would be seeking arbitration on all matters.

PRESIDENT: Yes. We simply want to know whether or not you regard the decision of November '91 as being a decision that you as an organisation want to continue.

MR HUNT: Yes, Mr Commissioner, at this point in time, that's correct. We do want that decision to continue.

COMMISSIONER WATLING: Including the process as outlined in H.27?

MR HUNT: Well I am going to give the answer that I have given a number of times this morning. We've comprehended a number of those matters, not limited to those matters in relation to the process of H.27 in discussions that we've had with government. We would be in a position to respond if an adjournment was granted to those questions specifically.

PRESIDENT: And that might end up in arbitration at the end of the day.

MR HUNT: It might. It might.

COMMISSIONER GOZZI: And that would be arbitration, I assume, with respect to the TPSA only, because other parties, most of the other parties, have said that they wish to abandon the process?

MR HUNT: Yes, well in that situation, Mr Commissioner, I guess you would be divvying up the applications, or unjoining them, and dealing with them as the applicant organisations requested, and the respondent of course.

COMMISSIONER GOZZI: Mr Hunt, one of the real difficulties that I see in this whole process is that it came forward as a package of reform across the entire public sector. It meant divvying up to a certain extent conditions of employment with respect to the principles, and then implementation may take a different course over time.

Now, it seems to me if you hive off two particular organisations from that process and leave everybody else to do what they want to do that you are going to get totally away from the notion of that package.

MR HUNT: Well, there are elements -

COMMISSIONER GOZZI: It seems to me that it is either all in or all out, and the vast majority of people now are entering into separate negotiations, as you are, with the employer as the HSUA is in the health area, Mr O'Brien's organisation with respect to the Miscellaneous Workers (Public Sector) Award, Mr Cooper with respect to the General Officers Award, the APEA with respect to engineers, roads and transport with respect to their situation. So where is the common thread.

I mean, what's the TPSA - the TPSA is really not doing anything different from those other organisations.

MR HUNT: Well, Mr Commissioner, if there's a common thread across all clerical employees within the public sector and all technical employees within the public sector and all professional employees within the public sector, there's a substantial common thread.

It may not be that the original objective is achieved, but I would say that is a fairly substantial achievement if that was achieved.

COMMISSIONER WATLING: Where's the common thread in the professional area? You have got the engineers wanting to do their own thing, you have got doctors wanting to do their own thing.

MR HUNT: Doctors weren't, I believe, comprehended by -

COMMISSIONER WATLING: You've got legal eagles wanting to do their own thing.

MR HUNT: Well, I don't believe doctors have ever been comprehended by these proceedings.

COMMISSIONER WATLING: No, but you are trying to say to us that there is a common thread throughout the whole of the -

MR HUNT: What I am saying, Mr Commissioner, is that if you achieved a common thread for those groups, then you have made a substantial achievement.

I also said that it may not be that the original lofty aims of this exercise are achieved, but quite often we fall short of our lofty aims and it would be, I believe, quite productive and quite an achievement to be able to go some way to achieving those aims.

PRESIDENT: Aim for the stars, Mr Hunt.

MR HUNT: Pardon?

PRESIDENT: Aim for the stars.

MR HUNT: Yes; exactly. And, to answer your original question, Commissioner Gozzi, there are certainly elements within the package that we didn't find all that palatable. There are certainly elements within the package that the government didn't find all that palatable. They did, I understand, find some aspects of it palatable. But there is still the opportunity for progress to be made.

Now, your decision of November 29th stated a whole lot of reasons - I think at page 3, 4 and 5 - why that decision should be made.

Now those reasons aren't going to evaporate just because 2 years has gone by. In fact, those reasons would be all the more compelling.

COMMISSIONER WATLING: It was part of a package, though, wasn't it, tied up with conditions? They weren't seen in isolation, they were linked, and that's the difference, I think. It was one package for restructuring of the public sector.

MR HUNT: Well, Mr Commissioner, we believe that through the process that we're involved in with our members there is a way that we can come to a resolution of a number of matters that are comprehended by the aims of the original package. Just for our members, I am not talking about anybody else, that would be to the satisfaction of the employer, we hope, and probably to the satisfaction of the commission as well.

But I simply ask once again that these matters be adjourned. I did say 6 weeks, I've had a check of the diary, we'd be asking the commission not to reconvene before the 15th March. Because if you did reconvene what we'd be saying is, we're in the midst of a process and we'll report to you when we finish that process.

PRESIDENT: What's the saying about the 15th of March?

MR WILLINGHAM: Beware the Ides of March, Mr President.

PRESIDENT: Thank you, Mr Willingham, I could have relied on you to give that. Thank you, Mr Hunt.

MR HUNT: Thank you.

PRESIDENT: Mr Warwick, do you have anything further to add?

MR O'BRIEN: Go on, you can go first this time.

PRESIDENT: If you want to resume your original order, that's fine. Yes, Mr O'Brien.

MR WARWICK: He's bashful, I'll go before him again. I just -

MR O'BRIEN: I just make the point that my - whatever was elicited from me by way of the answers to your questions, my intention was to refrain from putting the full submission until we had a determination on whether there was going to be an adjournment or not, so if there is - is not going to be an adjournment well I perhaps will take up some of the points that have been made and if there is going to be adjournment, obviously we'll pursue them at the later date.

COMMISSIONER WATLING: I think you need to comment because of the strength of the submissions that are coming from the bar

table. It's important that you respond to some of the submissions made now, and I understand your original submission.

MR O'BRIEN: I'm happy to do that. If you're telling me the matter's not going to be adjourned -

COMMISSIONER WATLING: Well we're not saying that at all, but we want to know all the arguments.

MR O'BRIEN: Oh, well, I suppose what you want me to do is to argue irrespective of whether the adjournment - to put the whole case irrespective.

COMMISSIONER WATLING: I think we've got to have all the issues before us because we're going to have to make some decision out of this.

MR O'BRIEN: Well I think the position that we take has been in part put before you in answer to your questions. Substantially it is our view that the process which has been running - let us think back - I think it was 28th February that the - the first hearing following the November decision, it has been clear that there have been difficulties from a number of sectors with the decision and indeed at one stage the HSUA effectively called for that part of the decision which they found most offensive to be set aside - and looked at anew.

The majority of the unions party to the proceedings said at that time that we would be prepared to continue on the basis that we will be looking to - in those discussions resolve the difficulties that we had with aspects of the decision and it has been on that basis that we have proceeded.

There have been a long list of meetings, and I'll call them that and not negotiations, on this matter over an extensive period of time. It is painfully obvious that progress has not been made. There is nothing in my submission which is before the commission which would indicate that anything other than process is being dealt with in those meetings, although Mr Warwick may be at some time in the - in the not too distant future able to say that there's been a development in the health area.

What has happened over the last 3 months is, I think, a number of organisations have come to the view that the joint process cannot work, hence they've taken decisions which are similar to ours and that is that they will proceed and seek negotiations on their own behalf.

That clearly is what the HSUA wanted to do and I think with regard to Mr Warwick's submission someone - Mr Butler suggested to me that when you occupy the high moral ground you

sometimes fall off. I think Mr Warwick had best be careful about claiming to have attained the high moral ground in view of the fact that I don't think the HSUA's record in relation to the decision has been any more consistent or inconsistent in the position which my organisation takes and indeed it seemed to me that the embracing of the decision that's envisaged in the - the health memorandum is not one which is without qualifications.

So getting back to the main point at hand the process that we've argued about we couldn't agree upon and which was arbitrated is not working. It seems to me that if we go back to the original intent -

COMMISSIONER WATLING: That's H.27 you're talking about?

MR O'BRIEN: Yes, yes, Mr Commissioner. If we go back to the original intent of the principles upon which the decision faced, we're looking for reform at the workplace. Now with respect, I think that whilst the commission intends that take place, the decision itself is focused upon to date reform of the award structure and reform of the classification structure and it seems to me that we have been focusing on that for a long time, and what my organisation would like to do -

COMMISSIONER WATLING: That's because we can't get to the conditions.

MR O'BRIEN: Well then -

COMMISSIONER GOZZI: Because it was the first part of the case, Mr O'Brien.

MR O'BRIEN: I beg your pardon?

COMMISSIONER GOZZI: It was the first part of the case.

MR O'BRIEN: Yes, well I'm not trying to be -

COMMISSIONER GOZZI: I know you're not, but -

MR O'BRIEN: - destructively critical, all I'm saying is -

COMMISSIONER GOZZI: I realise that.

MR O'BRIEN: - we've going down a path which has failed; we've attacked one side of the equation. People have - have got pluses and minuses in their eyes as to what's coming out that decision and that seems to, in my view, be - be an impediment. If - and I'm addressing the total issue. My primary submission is that our matter stand aside and that other people can speak for their area.

If you're asking me - well, bottom line - what is the position well the position is that we've all really gone our own way in terms of negotiations. The parties in a variety of ways are indicating that that's what they want to do. The government says they're happy to do that. Whether the commission simply shelves the process and awaits to see what progress that course affords or does what the government does and says, well we'll go back to the point before we - we join these matters - they're all separate applications - and it's as I understand what Mr Willingham is saying - they're all separate applications and now go away and see what you can do with them, is to me not all that important. The important thing is that we actually go and do what we - I think are capable of doing but in a different way and that is in a - a process which involves individual organisations.

Now the government obviously has influence over the degree of commonality that needs to come out of those - those discussions - indeed so does the commission but perhaps - aiming at - at almost total commonality is something which is more of an impediment than an assistance in the process of achieving workplace reform in this - the workplace of the largest employer in this state certainly, and one of the largest employers if you look at the total payroll nationally.

We look at what happened in the HEC where they did achieve one award and we're talking about a much smaller size and we're talking about a - a process that was achieved by consensus - it wasn't arbitrated in any way as far as I'm aware.

Now if that's possible it is, if it's not then perhaps we have to find a step to go towards it and maybe the ultimate aim is - is achievable over the longer term but not in the short term.

COMMISSIONER WATLING: So in essence you're supporting Mr Willingham's submission?

MR O'BRIEN: Well my primary position is that as I've put it earlier, if faced with the option I'll proceed with the total arbitration of everything - for abandonment or something close that, then I'd opt for the latter.

PRESIDENT: Mr O'Brien, why can't the unions join together in putting to what their view is on common conditions, emphasising where there is a need for difference and negotiate that with the government. Now that's effectively what you'll end up having to do anyway because the government will be coordinating its own activities.

MR O'BRIEN: Yes.

PRESIDENT: It's going to be - it really is the same process that you'll all have to go through except you'll do it

individually instead of together, because the government will be holding all the cards in terms of being the employer and Mr Willingham's smiling benignly there, but -

MR WILLINGHAM: Malignly, Mr President, or benignly?

PRESIDENT: Benignly.

MR WILLINGHAM: Thank you.

MR O'BRIEN: Well you're asking me a question that I'm unable to answer other than to say that this - we have attempted -

PRESIDENT: Everybody - yes -

MR O'BRIEN: - we have attempted, it has failed, if we're to blame we are to blame. I don't think the blame is entirely -

PRESIDENT: I'm not trying to sheet home any blame.

MR O'BRIEN: - any individual side or any particular organisation - everyone has their faults, but it just hasn't worked.

Now I mean I said it and recognised initially what you were saying about the government's control over commonality and my view is the total control and in my view the government would in proper negotiations recognise that there would remain differences but would be able to select areas where commonality was achievable and most desirable and by that process the coming together could be achieved and the administration of the public sector which I might say has more problems to it than simply fixing the award structure can be made more effective.

COMMISSIONER GOZZI: I must say I mean we haven't dealt with award structure for a long time and I know you're talking in a global sense, but we haven't dealt with award structure really since the decision was handed down as a bench. I know there's been comment about the operational streams.

MR O'BRIEN: isn't it?

COMMISSIONER GOZZI: Well the point is that there is a problem perceived - perceived to be a problem - with the operational stream, and that's the only stream -

MR O'BRIEN: No - no -

COMMISSIONER GOZZI: - that we've - that we've told apart from the professional area. But by and large it's the operational stream that's caused the problem as far as structure is concerned, but we've been focusing on conditions and agency-specific matters for a long time now, Mr O'Brien

and it's the inability, as I see it, and the trade union movement to be able to articulate its claim, if you like, for the presentation to the government because of, from where I sit, the vested interest that people have and somebody put it fairly plainly a little while ago, that people just perceive that - and I think it was Mr Cooper - that they might be losing out on a condition of employment that they've currently got. And it was in that context that we've tried to focus the parties' attention on the whole issue as a package and I find it difficult to understand - come to grips with - with the notion that you leave one part of the package in place, but, for instance, abandon the other of it - abandon the conditions and the agency-specific items.

MR O'BRIEN: Well -

COMMISSIONER GOZZI: I think it's got to be from where I sit either an integral package or we go back to square one, and I just make the observation to you and to other parties here that whilst it was a lofty objective I think - I thought it was attainable in the context of rationalising 64 public sector awards or whatever it was down to four with the - with the fifth or sixth stream still to be finalised, that if we didn't do it now we probably wouldn't achieve that objective for a long, long time and it's proving to be correct that it seems almost impossible for us to be able to get to that - what I would have regarded a very desirable position.

MR O'BRIEN: Well, I don't know whether it would be impossible or not; I think it's a very difficult matter to achieve and - and to get the workplace reform issues attended to, because whatever we think - and I might say it isn't just the operational stream that causes problems, because on the other side of the fence there's no secret - the government is - is unhappy with aspects of the package and what it perceives as costs and the government is, I think suggesting that they won't be doing anything that costs money. In relation to one decision of the commission the - the government has already indicated that in a variety of ways it will seek to avoid the impact of the decision, so let's not assume that it is just the operational stream that is a problem without agreeing that it is a problem.

COMMISSIONER GOZZI: Well certainly -

MR O'BRIEN: But - but let's - let's -

COMMISSIONER GOZZI: - certain, I'd -

MR O'BRIEN: - go beyond that and say well, what are we really trying to achieve? What do we really want to achieve in this process - and I guess you can probably think up a whole variety of aims of different organisations. Mr Willingham's undoubtedly from his submissions is to achieve a

- a neutral - cost neutral result whatever the outcome and we have grave concerns that it won't be able to deliver, and we won't be able to progress it under the current circumstances, and that's unfortunate.

That is really unfortunate, given the tremendous amount of work and effort, and even one could say the quite significant decision of this commission of November 1991, which was a decision that in fact put in the framework for us to proceed.

But, unfortunately, we haven't been able to. Whether we're to blame solely is questionable. I think it's just the whole process has become one that we no longer can control as an individual union, and as a result of that we haven't been able to progress it at all.

PRESIDENT: So you really have nothing of detail or significance to put further to that which you put this morning, and that was primarily that you want the process including the decision abandoned?

MR COOPER: That's it. I mean, in a nutshell I suppose one could say, well there's a number of special cases going and we are all aware of them. There's also with respect to the health services -

PRESIDENT: Yes, but so far as your organisation is concerned you want the process abandoned?

MR COOPER: That would be our position, yes. And I was just trying to qualify that to the bench. It's not something that we are standing up here saying, well look we have been here for 2 years and we are just walking away from it.

We are experiencing difficulty. We need to, for the benefit of our members, make sure that some progress is made, and our concern is that this process isn't delivering that.

PRESIDENT: Yes.

COMMISSIONER GOZZI: Mr Cooper, it seems as though that with forestry at least you are a fair way down the track in your negotiations.

MR COOPER: With respect to specific matters, that wouldn't be correct, but with respect to -

COMMISSIONER GOZZI: You said you'd secured a return. Did you mean -

MR COOPER: Oh, sorry. What we want to do is we want a secure return for our membership in there that gives them benefits with respect to flexibility. If we can offer flexibility in

the commission then we can obviously offset that against gains which will see rises.

Now the whole thing is that the public sector award that we operate under which is out of this jurisdiction but will be affected by the decision is still just a classification award, and we want to broadband that and also make the award itself more efficient; and the whole process that we are involved with here is saying, okay, you can do that, but you have got to do it in accordance with the decisions; and we've say, okay, that's fine, let's have a look at the whole process, and as a result of looking at that we've really progressed not one inch; and that's our concern.

So, in respect to that we want to continue with award restructuring, but it may be that we have to continue under a different direction than the one that was given to us from the full bench decision of November 1991.

PRESIDENT: You have got to move down the enterprise bargaining model.

MR COOPER: Well, I wouldn't like to state how we are going to achieve it, but that's one possibility, yes.

PRESIDENT: Yes. Thanks, Mr Cooper. Mr Plummer.

MR PLUMMER: If the commission pleases, in terms of the association's overall position I'd have nothing further to add than what I said earlier this morning.

However, in respect of one matter that did jettison controversy into these proceedings from our point of view, I certainly can confirm the submissions made by Mr Willingham that there has been no enterprise bargaining negotiations between the association and his department.

In fact, the concern of the association is that the delays with the implementation of this process may further delay even getting around to enterprise bargaining.

But, as I indicated earlier, that not being a participant in the discussions it's very difficult for me to elaborate any further.

PRESIDENT: Yes. Thank you. Mr Kadziolka?

MR KADZIOLKA: Mr President, members of the bench, our position hasn't altered from my submission this morning.

I'd just like to address two minor matters which Mr Willingham raised.

Firstly, Mr Willingham indicated that the association's proposed award in our special case omitted certain matters, and thereby he intimated that we may be trying to avoid certain issues.

I'd just like to indicate for the record that the subject matter of our proposed award covers virtually the same content as the commissioner's application T.4214.

The philosophy of our proposed award is to cover all matters which we believe to be industrial, and we have approached our case on that basis.

In relation to the question of uniqueness, this matter I suspect will be ultimately determined by you, Mr President.

In relation to Mr Willingham's submission on this, I would just like to indicate that it seems that in relation to - it seems that the police force is different enough to warrant some departure from the general conditions - notably, penalty rates in some circumstances.

The association, Mr President, doesn't want a foot in each camp. We only seek to have our matter determined through the special case application.

If the commission pleases.

PRESIDENT: Yes. Thanks, Mr Kadziolka. Mr Warwick?

MR WARWICK: Thank you, Mr President.

If I may, I would like to make some comments firstly of a more technical nature in relation to the applications that are before the commission, as currently constituted.

It was Commissioner Gozzi who this morning, if my memory serves me correctly, who addressed a hypothetical question, if you like, to Mr Willingham and said, well why shouldn't the commission abandon the process and make fresh applications.

Leaving aside the question of whether or not the commission as constituted decides to abandon the decision or not, I would like to make some comments on the second part of that question, and that is the question of the applications.

It would be our submission, Mr President, and members of the bench, that the applications before you - both the original ones emanating from 1989 and the ones from last year which seek to make in our case five public sector awards and in the case of the TPSA four public sector awards -

PRESIDENT: They are not joined at the moment to these proceedings.

MR WARWICK: That's correct, Mr President.

Our submission would be that all of those applications, the 1989 ones and the current ones, would continue to be live applications.

There is no reason why - even if the decision is abandoned and the processes associated with it - there's no reason why those applications should be abandoned.

If I may, I'd seek to refer you to a statement of the full bench of the Tasmanian Industrial Commission from 27 March 1990, Acting President Robinson, Commissioners Gozzi and Watling.

And at that point in time the commission made a determination in relation to certain aspects of the way the principles would operate, that is the 1989 principles that were adopted in August of that year.

And on page 4 of that statement - and if I may, I'd seek to read it to you - halfway down the page the document says, 'Special Cases': We wish to make it clear that special cases foreshadowed by a number of parties in these and other proceedings before the commission will:

(1) Be required to be processed through the Anomalies Conference in the first instance, and

(2) That all special cases will form part of a structural efficiency review.

(3) Those matters processed through the Anomalies Conference prior to the introduction of the state wage case principles in our 30 October 1989 state wage case decision and which have been referred to individual commissioners for determination are to be regarded as special cases, and accordingly will be processed as part of the structural efficiency review of individual awards.

It's our submission, Mr President, and members of the bench, that there are 16 special cases before the commission in respect of the applications emanating from 1989. They have special case status as a consequence of having been through the anomalies procedure at that time. There is now no anomalies procedure in the current system, the current wage fixing system. Those applications emanate from the wage fixing principles that were adopted at that time. They have that status as a consequence of those principles. We do not believe that that status should be foregone by virtue of the decision being abandoned.

I guess if it were the case that all applications were dismissed, then we'd have to go to the question of all those applications being made and full benches sitting again to hear whether in fact they are special cases or not; and we believe that that would be particularly time-consuming, but also somewhat unjust in all of the circumstances.

In any event, Mr President, and members of the bench, we see no reason why the applications for the five awards to be made we have before you, professional, technical, administrative and clerical, the operational, and the health industry award, why they should be affected in any fashion by a determination of the commission that appears to intend to enter into and make - the commission appears that it will in fact make a decision on that issue.

Turning to the question of -

PRESIDENT: Did you say that you're arguing that those matters should not be jeopardized if the commission were to decide to abandon the decision of November '91?

MR WARWICK: Well, I am simply saying, sir, there is no need to call for fresh applications. Those applications are current and valid and we will be pursuing them in all probability over time.

And, in relation to the earlier applications of 1989, there is the question of their historical context as well.

COMMISSIONER GOZZI: You recall I asked that question this morning, didn't I?

MR WARWICK: Indeed.

COMMISSIONER GOZZI: Also it raises the whole issue of what happens to the second instalment, the 3%, because it was paid on the basis of an agenda, and that agenda emanated from Exhibit W.2 and it was predicated on certain commitments made by people to do certain things.

Now all that's happened is that the 3% second instalment been paid and the agenda hasn't been delivered on, notwithstanding the best efforts of those involved.

The only thing that has really happened in any concrete way is that the commission has determined four model awards. The rest of it we are still waiting for, and in effect the decision of the commission with respect to those four model awards and the whole process subsumed all of the special cases, apart from those ones which were referred to other commissioners.

MR WARWICK: Indeed, Mr Commissioner, but it seems that the commission is entertaining the question of whether or not the decision should be abandoned.

So, if it is abandoned, does it therefore subsume those special cases?

COMMISSIONER GOZZI: Well, that was really the question I wanted to be addressed on.

PRESIDENT: The only reason we are entertaining it is because it's been put to us by nearly every party.

MR WARWICK: Except us, indeed.

COMMISSIONER WATLING: Well, let's face it, I'm not too sure that you've ever followed the program outlined in H.27, anyway. Let's be factual about it, your organisation has had its own agenda with the health agency, and on nearly every occasion that it's come before us you've argued to go your own way. So, let's be fair about this.

MR WARWICK: Well, I'm not asking for the decision to be abandoned, though, Mr Commissioner.

COMMISSIONER WATLING: You've never adopted one section of it. You haven't followed the procedures outlined in H.27. So, do actions speak louder than words?

MR WARWICK: In what regard?

COMMISSIONER WATLING: Well, you have been negotiating with your health agency separately on a new award.

MR WARWICK: Well, the decision says that there will be four awards unless you are persuaded to the contrary, so it was always open to us to negotiate a separate award. The decision does not say that we can't do that, nor does H.27.

COMMISSIONER WATLING: Well, all I say is, you've run your own race from day one - let's not kid each other - right? And it would not be proper to say otherwise because that's the situation. How many times have we come back here where you have put a report to us about your pursuing your own agenda?

The other unions here today are saying they want to pursue their own agenda. Everyone is telling us they want to pursue their own agenda. The police want to pursue their own agenda, those people that aren't here obviously want to pursue their own agenda.

MR WARWICK: Does this stem from the question of the applications in the special cases?

COMMISSIONER WATLING: Well, it does. I'm making a comment, not a question, because you made a statement to the bench and I am making a statement back to you.

MR WARWICK: Well, I had some comments prepared in relation to the memorandum and what we do about it. Would you care that I put those to you, it may help to assist you in respect to the comments you make?

I was talking about the technicalities of the applications, but we seem to have moved on from there.

COMMISSIONER WATLING: We seem to have moved on because you want to examine the statement that you made that caused us to move on.

COMMISSIONER GOZZI: Simply it arose, Mr Warwick, if you need to be reminded, because of your comment to say that you didn't want the process abandoned.

And I think the observation made from the bench is entirely appropriate. You haven't been part of that process in a substantial way for a long, long time. In fact, argued quite strongly against it.

I mean, it doesn't serve any purpose, I don't think, to rake over the situation, but they are the facts. The facts are that the HSUA wanted to pursue its own agenda, and today the other unions who virtually say, well, maybe we want to do the same thing.

MR WARWICK: We have consistently said from the outset that the operational stream gave us difficulties, and I mean the rest of the decision is probably workable. That's what we've said. Now -

PRESIDENT: But everybody else has the same sort of problems, Mr Warwick. Everybody finds some good parts in it and some bad parts, and it is all very well if you can get away with getting rid of the bad parts and just hopping on the good sections. Really, it was designed as a package.

MR WARWICK: I'm not suggesting that - by the decision staying in place that those people who find that the operational stream gives them some difficulty are necessarily bound by it. We don't seek to be bound by the terms of the operational stream.

I'm simply making the point that because they wish to negotiate something else -

COMMISSIONER WATLING: Therefore, you have abandoned it already.

MR WARWICK: Pardon?

COMMISSIONER WATLING: Therefore, you have abandoned it already.

MR WARWICK: We've abandoned that aspect of it that goes to the operational streams, sir.

COMMISSIONER WATLING: And, so if you abandon one section of the package, you must abandon the package.

MR WARWICK: Why's that?

COMMISSIONER WATLING: Well, certainly the bench has made it clear on a number of occasions that it's a package as a whole - streams, structure, and conditions.

MR WARWICK: That's quite right, the bench has made that clear on a number of occasions. I, from my own part, remain unconvinced that that is, in all of the circumstances, necessarily an illogical way of viewing the decision.

The government, for its part, has in fact agreed that three streams are appropriate, and they have signed a document called 'The Health Memorandum of Understanding' to that effect.

COMMISSIONER WATLING: Well, let me assure you, as one of the writers of the decision, you should see it as a package. If you were in any doubt that it wasn't a package I want to assure you that it is seen as part of a package.

MR WARWICK: I've not been left in any doubt about that. What I am simply saying is, from my own, I question the logic and the commonsense of that.

There are parts of it that are acceptable -

PRESIDENT: Well, thank you. I think we've heard that one before, anyway, Mr Warwick. If you'd like to continue with your submissions on the applications and the technicalities.

MR WARWICK: Indeed. Well, the memorandum itself - and I am turning here to those comments made by Mr Willingham this morning and the questions raised by Commissioner Watling.

The Memorandum of Understanding on Health says at point 3(b): the Health Industry Award will contain the clerical, technical and professional streams determined by the Tasmanian Industrial Commission in its November 1991 award restructuring decision. So that says it will contain the streams, it doesn't say it will contain the decision. It clearly says it will contain the streams.

And it goes on to say that those streams will be implemented

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COMMISSIONER GOZZI: The abandonment, Mr Warwick, if we decided to abandon this matter, wouldn't preclude any party coming forward with a structure proposal predicated upon what we'd previously decided. In fact, depending on how the negotiations go, you might even get agreement for that position from the government.

I think what abandonment could mean in the final analysis is that all the issues would be up for grabs.

MR WARWICK: Well, I appreciate those comments, and I take some comfort from them. They clearly -

COMMISSIONER GOZZI: I would half expect that with respect to structures, apart from the operational stream, that people might very well want to keep going with those particular structures and negotiate with the government on their specific productivity issues, and say, okay, now we've reached that point on agency specific matters and conditions of employment, we'll now want to go to the commission in our area, in our award interest area, and convince the commission to vary the awards and put into those awards the previously determined structures with these types of conditions.

In fact, that is a position that the TPSA put to us quite some time ago. If I had a crystal ball I would probably see that that's what the TPSA would be doing with their membership now. I mean, Mr Vines put that position to us on many occasions previously.

The only thing that has really happened, Mr Warwick, is that the HSUA and the government in respect to health were given leave to go off and negotiate on their Memorandum of Understanding with no commitment from the bench.

The commitment was that we would encourage you to do it and we would look at it when you finalised your discussions.

There was never a fifth stream, or a sixth stream, we just said go ahead and do what you can and come back and we'll have a look at it.

MR WARWICK: A fifth stream?

COMMISSIONER GOZZI: Yes, you said earlier that the health award was a fifth stream.

MR WARWICK: I'm sorry if I did that. That wasn't what I intended. It was meant to be a fifth award.

COMMISSIONER GOZZI: Yes, oh well, fifth award, fifth stream, it doesn't matter.

MR WARWICK: The application is for a fifth award.

I take comfort from those comments, but I wish to place on the record that from our point of view item 3 there in the health memorandum says that 'those streams will be implemented', and from our point of view, a deal is a deal.

PRESIDENT: You're agreeing with what Mr Willingham put?

MR WARWICK: I take some comfort from what he had to say. Nonetheless, our submission remains unchanged. We do not see a good reason for the whole of the decision to be abandoned when however offended certain organisations may be, the fact is that they represent small pockets of people in one of the streams, and they are discontented with that stream. There is large discontentment with that stream, and we do not see that there is a good reason to abandon the whole thing because of that level of discount in those isolated areas in relation to that stream.

If the commission pleases.

PRESIDENT: Very well. Thank you for your contributions. We will adjourn and issue a written decision in due course.

HEARING CONCLUDED