

**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, 18 March 1993  
continued from 27/2/93

**TRANSCRIPT OF PROCEEDINGS**

unedited

PRESIDENT: Are there any changes in appearances? Mr Vines?

**MR G. VINES:** Thank you, Mr President. If the commission pleases, I, GREG VINES, together with **PAUL MAZENGARB**, appear today for the Tasmanian Public Service Association. I have also been asked to and I believe correspondence has been forwarded to you, sir, to lodge an appearance for the Australian Workers' Union, and I have verbally requested to lodge an appearance for the TAFE Staff Society who will join these proceedings shortly. They are currently involved in other proceedings before the commission. If the commission pleases.

PRESIDENT: Yes. I have received authorisation in relation to the AWU.

COMMISSIONER GOZZI: .... back of the window now.

PRESIDENT: Yes. Yes, Mr Pyrke?

**MR D. PYRKE:** If the commission pleases, DARRYL PYRKE appearing on behalf of the APESA, Professional Engineers Branch, Tasmania. I believe MR BUTLER appeared last time, sir.

PRESIDENT: Yes. Thank you. No other changes in appearances? Mr Willingham?

**MR C. WILLINGHAM:** Good morning, Mr President members of the bench. This morning I appear with **MR HANLON** for the Minister administering the State Service Act. If it pleases the commission.

PRESIDENT: Very good. Well, this is a report back hearing to hear the view of the parties in respect of comments made in our decision last issued. Who wants to lead off?

**MR VINES:** I'll take first bat, if the commission pleases. As was reported to the full bench at the last hearing, my union was about to commence a round of consultation and decision making with its members and that did conclude yesterday following a series of, I think, around 200 work place meetings and then a audio linked meeting of members yesterday.

The TPSA's formal position on the continuation of this case and on the question of award coverage generally is as it has been for some time, that is, firstly, that we continue to pursue the award restructuring decision of November 1991 and to maintain our firm and unequivocal commitment to it. Secondly, that we pursue agency based awards where that is deemed appropriate and I'll come to what that means shortly, and thirdly, that we maintain an absolute priority for award coverage for our members in lieu of any non award alternative.



That -

PRESIDENT: You will put that into other terms later for us, will you, that third item. I was -

MR VINES: I can put that into other terms immediately, sir.

PRESIDENT: Very good.

MR VINES: I wasn't intending to, but quite very simply that our union has a very firm policy that has been ratified as of yesterday that we will be pursuing the maintenance of awards for our members or award based agreements for our members as opposed to entering into enterprise agreements that are now permitted under the new part of the legislation.

In relation to the TPSA's position. As I have indicated we have continued to support the decision of the commission in November 1991, particularly as it relates to the four model awards, and the implementation of work place reform, including where necessary, the review of conditions of employment. That is, of course, not to be read that we would support any reduction in the conditions of employment, but we accept that there may, in instances, be need for a review of that.

I would also say to the commission, as was our case through the earlier proceedings, that our - whilst we have an interest in all of the four model awards, our submissions primarily relate to those three awards that we have the overwhelming responsibility for, that is, the professional, admin and clerical and technical, because we respect the fact that with the operational services, we are one of many players in that area.

We continue also, as we have put to the commission of more recent time, to support the separate negotiations that are being undertaken in relation to the Department of Health so-called Memorandum of Understanding and what will hopefully come out of that, so that is a variation, if you like, to the November decision, but nothing new to the commission.

We do though, in relation to the November 1991 decision continue to express our concern with the centralised approach that was envisaged in that decision for the implementation of the award restructuring and again, that's no secret to the commission. We have continually expressed our reservations about the success of that and I think it would be fair to say that it is my view and probably my organisation's view that it's not possible to get a proper implementation of award restructuring on the basis of that centralised approach.

COMMISSIONER GOZZI: I think we ourselves, as a bench, have moved past that point, haven't we, Mr Vines, given the invitation to the parties in the decision of the 4th of

February 1993.

MR VINES: Yes, sir, that's what I'm responding to now.

COMMISSIONER GOZZI: Yes. Yes.

MR VINES: The association, as we have reported before to the commission, and indeed since the 4th of December, have continued to have discussions with separate agencies of government - separate departments of government, and I think that I can very easily or very clearly indicate that it is most definitely possible to implement the decision and the thrust of the decision on an agency basis, and it would be my submission to the commission that whilst they might not be empowered to say it to the commission that most agencies that are interested in agency awards would indeed welcome the implementation on that basis, as opposed to a centralised process.

Indeed, it would be our submission that in several instances agencies have already started classifying current positions on classifications that closely equate to those classifications that are envisaged in the model awards.

What we would propose to the commission is that you do proceed to establish the model awards and that they have general application across the public sector with the General Conditions of Service Award continuing also to have its general application. We would be putting to the commission that it must be recognised that since the decision of November 1991 and throughout the proceedings in the 12 months leading up to that decision, that there has been major productivity and efficiency improvements throughout the public sector and across the public sector, those include what can only be regarded as a massive reduction in jobs in the public sector, expenditure cuts and savings that equate to somewhere 9 per cent over that period, and also continually and recently as the last day of this hearing, massive restructuring of departments and also, of course, of work units within those departments; all of which are very clearly ongoing productivity and efficiency matters which, in the main, my organisation and members have been cooperating with and will cooperate with.

What we would propose is that once those - as I say, that those general awards be established, but then where necessary - where deemed appropriate - either at our request or at the request of individual agencies - that separate agency negotiations could occur where there was a requirement for something different to what was in those model awards, so that, if you like, the model awards would be the standard; where there was required to be a variation to those, there would be negotiations on an agency basis.



To facilitate that and to ensure that this did happen and I guess so that we can test the bone fides of those departments that tell us they would welcome this whole process, we would propose that those general awards be established as soon as possible with an effective operative date of no later than the 1st of July this year. That, in our view, would give sufficient time for negotiations on an agency basis to see where variations to those general awards would be necessary so that we could have as much as possible of this finally cleared up by the 1st of July, that those negotiations would include looking at the salaries, classifications, and standards, the conditions of employment that might be peculiar to particular agencies, variations to those to accommodate requirements of various agencies, and other work place reform and productivity and efficiency measures which, again, I put very clearly on the record, we support the continuing pursuit of work place reform and productivity improvement within the public sector.

Our union recognises that if we are to have security of employment for our members we have to participate and ensure that our public sector is an efficient and effective public sector.

In relation to the four specific questions that were included in the decision of the commission of the 4th of February, I can respond as follows: firstly, whether an agency award should contain clearly delineated divisions which may facilitate the demarcation process. We do support the concept of people knowing where they stand, however, our view would be that the union movement itself would need to have the opportunity to put detailed submission to the commission in that and hopefully resolve it - or preferably resolve it within their own ranks, and we would also put to the commission that there should be a recognition that in some instances there is nothing wrong - indeed it may well be appropriate - that there is joint coverage of employees. In some instances it can be constructive. So we would support that - the concept of a delineation of divisions within an award.

On the second questions: whether particular class or classes should be excluded from agency specific awards and the criteria for such exclusions. I - my view - or our view on that would be that that is a matter that would be part of those negotiations that would occur with agencies that required variations, that if it was agreed that particular classes of employees should be excluded from the agency award, then in our view, they would continue to be covered by the general award. I can't immediately think of occasions where that would be necessary, but in the event that it is shown to be necessary, we would support that, but I would go back to the

basic premise that I put before that no employee should be excluded from award coverage, but it's a matter of whether they are most appropriately covered by a general award or an agency award.

Question 3: whether the classification standards and salary rates contained in the interim decision of the 30th of November should be used as the base for those awards with appropriate variations to cater for the specific needs of the agency. Our question to that would be unequivocally, yes, that we see the four model awards as the base for this whole process and we don't believe there would be an overwhelming requirement to variation to those four model awards, or particularly our three model awards.

On the fourth question: whether conditions of employment should be discussed on an agency by agency basis only with the organisations that have an interest in the proposed agency award. Again, our answer to that would be, yes, that quite clearly there is no point involving organisations external to a work place in those sort of negotiations and one would assume that if agency specific awards are established, that they would have a scope which covered only that agency and the unions - or the organisations that were a party to it, so there wouldn't be any need for non interested - in the formal sense of the word - parties to be involved in that.

So, that, Mr President members of the bench, is the TPSA's position. In relation to the general question and those four specific questions, I reiterate what I said at the outset, sir, that we - throughout this whole process - have applauded the decision of November 1991. We believe that it is with that sort of - that sort of award structure it is the only way that we're going proper efficiency and productivity improvements into the public sector, that we are committed to having this introduced on the basis of proper productivity and efficiency improvements, but would also state - and I again have stated many times - that it must be recognised that massive improvement has already occurred through - concurrent with this process through the Tasmanian Public Sector.

We would wish to submit in the strongest possible terms that the thrust of the November '91 decision not be abandoned. We believe it is capable of implementation in the way that we have put to you and we believe that most agencies throughout government would agree that it is possible of implementation in that fashion and, as I've said, would welcome implementation in that fashion.

I would be concerned if the decision was to be abandoned fully, that we would go back to an even more chaotic position in the public sector than has existed up until now and I think that there is the potential for a most orderly approach to the



necessary reform if the commission accepts the sort of submissions that we have put to it this morning.

If the commission pleases.

COMMISSIONER GOZZI: Mr Vines, you suggest making the four model awards in the context of the structures that we determined in November '91.

MR VINES: That's correct, sir, yes.

COMMISSIONER GOZZI: There has been a problem identified with respect to the operational stream. What do you suggest about that? Are you saying that we should make the award as the operational stream currently stands? Have you thought about that at all?

MR VINES: Only - and I qualify what I say on the operational stream with what I said before, sir, we don't take the leading role in relation to that area although, obviously, we do have an interest in it. I am happy for other organisations to put submissions to you on that but what I would be satisfied with or what my organisation would be satisfied with is that being established as a model award but recognising that it can be varied to suit the requirements of particular agencies where that was necessary. But similarly if other unions put to you that that should not proceed or that it should be fully reviewed, we would support that as well.

COMMISSIONER GOZZI: Yes, right. And the operative date you're proposing is 1 July '94.

MR VINES: '93, sir.

COMMISSIONER GOZZI: Sorry, '93.

MR VINES: If you take '94 I'll go back to '92.

COMMISSIONER GOZZI: And what would happen, in your submission, in the event that the conditions for agency specific matters weren't able to be finalised by that date? Would you see a translation from existing awards to the model awards or what do you propose there?

MR VINES: That would be our view, from 1 July. But where there was a recognition in departments that change needed to happen, I think they would pull out all stops to have things included by 1 July. Indeed, it would be my submission that in many instances they're ready to go now, that they've got the list of issues that they want to discuss with us.

COMMISSIONER GOZZI: All right. Well reconciling that operative date, with your estimation of how long the negotiating process would take to finalise the agency award

matters where the TPSA has a direct involvement, what sort of time frame are you looking at? What's your feeling?

MR VINES: Our view is we could have it concluded by 1 July.

COMMISSIONER GOZZI: How much work has been done already?

MR VINES: In agencies I can't be specific but the indication that we have had informally from agencies is that they are well advanced in their consideration of it, but are not in a position to do anything with it at the moment because there's not a forum for that to occur. From our point of view we obviously have done a great deal of work on the whole exercise and we're in a position to sit down and start those negotiations as soon as we're permitted to do it.

COMMISSIONER GOZZI: Thank you, Mr Vines.

MR VINES: If the commission pleases.

PRESIDENT: Mr Vines, all your comments this morning, can they be also attributed to the AWU and the Staff Society?

MR VINES: Sorry, Mr President, I don't think I am in a position to say that. In relation to the AWU I think simply all I can put for the AWU is that they maintain the position that they have put to the commission in the past and I'm not necessarily one hundred per cent sure what that is.

In relation to the TAFE College Society they have asked me simply to put an appearance in for them on the basis that they would be appearing themselves later in the morning. I haven't had any direct discussions, although my discussions with the AWU were to the extent that when I explained what we would be putting they had no difficulty with that at all. So all I can say, I'm sorry, sir, is that you can only take from that what you can.

COMMISSIONER GOZZI: Well Mr Cooper advocated last time that the process be abandoned and -

MR VINES: His interest is in relation to the operational services stream so that's not necessarily of great problem to or inconsistent with what we're saying. I think they want it abandoned on the basis of the difficulties of the salary rates.

COMMISSIONER GOZZI: Well the difficulty with the process of trying to reconcile conditions in agency specific matters in the centralised type of -

MR VINES: Yes, the centralised approach, sir, that's right. If the commission pleases.



PRESIDENT: Yes, thanks, Mr Vines. Mr O'Brien?

MR O'BRIEN: If the commission pleases, our submission in respect to the questions asked of us in your recent interim decision is that we maintain the view that we put to you then which is that our matter be separated from the proceedings if they continue.

PRESIDENT: And your matter being the application in respect of the Miscellaneous Public -

MR O'BRIEN: Miscellaneous Workers (Public Sector) Award, yes, that is our position. With regard to - and I might say that in that regard we have continued to have discussions with the government. We have established a timetable for further meetings. We have met in conjunction with those meetings with representatives of other agencies who, we understand, support that approach. Our interest is, as Mr Vines categorises it, limited to a part of the operational stream. We see no difficulty with pursuing award restructuring in that regard and achieving work place reform in that regard as we have been in a position to pursue it for some time. We see that as being a speedy and efficient way of reaching objectives which are acceptable to the employer and to the employees and achieving that objective in a relatively short space in time.

With regard to the proposals for the making of the four model awards we would obviously oppose that because that runs across the aim that we have with regard to pursuing negotiations based around the coverage of that section of the operational stream which is covered in our award now. Obviously we have conceded that a part of that coverage would be subsumed into an award made as a consequence of the discussions between the various unions and the government in relation to the health matter but that would be the limitation .... limitation which we would seek to place upon those discussions.

We were at pains to put submissions which merely separated our matter from the other matters before the commission as currently constituted to allow parties who have other interests to put submissions in that regard so that we weren't trying to cut across the interests of those parties nor the government - nor the commission in relation to those proceedings. But we do say that we believe we're in a position to achieve the aims which are set out within the principles to achieve work place reform, to achieve award restructuring and albeit on perhaps a lesser agenda than the one which is contained in the decision of this commission with regard to the four stream structure, nevertheless to achieve changes which satisfy the principles, which would satisfy the needs of work place reform and would allow us to go on perhaps with a slower timetable to achieving - in the sense of achieving four awards but perhaps going on towards that objective over a much longer time frame.



But in the interim we believe that the only way we will really be able to make progress in a cooperative way is to pursue the course which we have advanced. I do not believe that the making of an operational award based upon conditions of service which do not now apply and rates of pay which do not now apply will be .... in relation to implementing work place reforms which we have been discussing and continue to discuss with our members and the employer.

We would therefore, with respect, oppose the submission for making of the model awards in relation to the operational area. If I understand Mr Vines correctly he's suggesting that if that were acceptable to organisations in the operational area, then perhaps the commission might make the model awards in the professional and technical and the admin. and clerical areas so that that aspect of the original decision would continue. I make no submission with regard to that. It's not my area of responsibility. It's a matter which the various parties who have a direct interest in those matters may care to put submissions on and the commission may be prepared to consider.

But we would strongly oppose the proposal for making the model award in relation to the operational area. We believe that we could make much more progress in relation to the aims of the principles if we pursue the path which we have already submitted to the commission as appropriate for our area, indeed, to the extent that there has already been a departure from the original decision, at least in part in relation to the health area and we believe that what we propose is not inconsistent with the sort of approach that might be taken there.

We believe that the ultimate objective in these proceedings is to attain work place reform. We believe we are in a position to do that and we believe the proof of the pudding will be in the eating .... we will be able to come back to the commission with details of those changes and satisfy the commission that, indeed, we have achieved the aims and satisfied the requirements of our original negotiations initially obtained in our 3 per cent wage increase based upon prospective change. And going further down that path, coming back to the commission and reporting those changes and reporting meaningful changes which have been cooperatively attained, approved by our membership, approved by the employer and subsequently, we'd hope, approved by the commission.

So that's the path we would seek to follow. If the commission pleases.

COMMISSIONER GOZZI: Mr O'Brien, you have clarified it. You said at the outset you oppose the making of the four model

awards but I think that's distilled down to really opposition to making of the operational model award.

MR O'BRIEN: Yes.

COMMISSIONER GOZZI: Yes. Now the other aspect goes to .... off the Miscellaneous Workers (Public Sector) Award. Your view, I think, would be that that award should apply across the public sector where employees are subject to that award now.

MR O'BRIEN: Yes, and I simply say this that in the context of discussions we've been talking about coverage in the departments that it now operates in with one exception, and that is that our members employed in the Department of Construction were transferred to the Department of Environment and Planning and to that extent the award would follow that coverage. We do not see the award as encroaching upon departmental areas that it hasn't hitherto covered, not seeking to create some great demarcation problem with that.

We do say, of course, that if you're talking about general structures and you're getting away from specific classifications, that the generality of the work covered may vary slightly from that which is now specifically covered by the existing classifications as would be envisaged in the proposed operational structure in any case in terms of duties and responsibilities and skills covered.

COMMISSIONER GOZZI: Mr O'Brien, the thought that exercises my mind about that approach is simply this, how does the public sector wide award process fit in with eliminating or substantially reducing demarcations which you might be able to achieve if you had a agency specific award. In other words, you prima facie would have great integration perhaps in an agency specific award as opposed to having, say, Mr Vines' proposal of agency specific awards, then a Miscellaneous (Public Sector) Award running right across the four of the agencies.

MR O'BRIEN: I'm not sure how far this agency award concept goes and Mr Vines did mention it. He said he would enlarge upon it and he didn't. But in relation to the model award concept that does go across all agencies and if that occurs I suspect there are other organisations who would oppose it. And, indeed, if I am correct in saying that the AWU oppose it, my organisation opposes it and the health area goes it's own way, then there isn't - that the minority of the operational area would be left in this model award.

So if we confine the comments to the operational area perhaps we're going to end up with a number of compartments and each of those compartments may take a step towards the



rationalisation process in this phase. But understand that you started from a much more complex position in that area than you do in professional and technical and admin. and clerical. You know, that's not an unreasonable position to take.

COMMISSIONER GOZZI: I guess the sorts of things that I'm thinking about relate to multiskilling, integration, wider job scopes, all of which could be reduced, if you like, by having a public sector award going right across the whole spectrum of the operation because, by definition, that could, in fact, be limiting. I don't know whether it would be or not.

MR O'BRIEN: I don't see it as exceeding the limiting. There would be some limitations but they'd occur irrespective of the award structure you place upon it. We're talking about in some cases substantial change and the key to making that effective to having it occur and having it occur in a way that actually achieves its aims for increased productivity and better and more meaningful jobs, is that it's done in a cooperative way.

Now that's the opportunity that we believe we have and that's the reason that we would seek to pursue that course. And we've made no secret of the fact that we've had some difficulties with the overall structure. I think that perhaps pursuing the course that we espouse allows us to, as it were, take a couple of steps up the flight towards the objectives of the original decision established but at the same time recognising that that being a long term objective in any case because of the differences that existed to start with. That that's probably more achievable and that whilst one could have the aim of a single operational award, there are other factors which obtain - which have a bearing upon that.

One of the factors will no doubt be the rationalisation of union structures which is proceeding and which will see some of the barriers which have hitherto existed melting away. There'll be changes which I'm sure that management would be seeking to implement in some areas which would have a bearing upon that. When Mr Vines was talking in respect of his organisation continuing to pursue the objectives of restructuring and reform at the work place, we seek to pursue exactly the same in the way that I think we are most capable of doing it.

COMMISSIONER GOZZI: Mr O'Brien, have you given thought to how you would give effect to your proposals? By that I mean do you intend to pursue an enterprise agreement or do you intend to pursue award variations?

MR O'BRIEN: We intend to keep the existing .... and to use that as a vehicle for any changes. We have not been asked to



nor do we consider that we would be supportive of a process of breaking up the existing award structure that we have as a legal instrument for establishing the minimum for our members in the public sector and we would - we've already advised the employer that that's our intention. There's been no .... from that so we would expect that we will be coming back to this commission with packages to put before you on the progress we've been able to make.

COMMISSIONER WATLING: So simply put, your preferred position is to restructure your craft award -

MR O'BRIEN: No - well -

COMMISSIONER WATLING: - as opposed to any agency based award or stream based award.

MR O'BRIEN: No, I wouldn't call it a craft award although it may be that it's more referred to occupations now.

COMMISSIONER WATLING: Well occupation or craft, pick your name.

MR O'BRIEN: Okay, I'll pick the name 'occupation'. But in relation to answering your question, we would support pursuing that as an operational award in particular areas as a part of the operational area, yes. As an operational award for part of the operational area.

COMMISSIONER WATLING: But as a first step you're saying that you would prefer to carry out the restructuring process in that award that you have, as a first step. And then where does that sit then with our question as to whether or not an agency award might be -

MR O'BRIEN: I don't support that.

COMMISSIONER WATLING: You don't support an agency -

MR O'BRIEN: I don't support that.

COMMISSIONER WATLING: And you don't support the stream award.

MR O'BRIEN: No, I don't support the model award proposal.

COMMISSIONER WATLING: Right. And you don't support the agency award.

MR O'BRIEN: No.

COMMISSIONER WATLING: Right, good.

MR O'BRIEN: And I understand the agency award to be an award specific to one agency. If that's what it means I don't support -

COMMISSIONER GOZZI: Yes, that's what it means.

MR O'BRIEN: Yes.

COMMISSIONER WATLING: Right, good.

MR VINES: Or part of an agency.

MR O'BRIEN: I'm advised it could be part of an agency and we would equally not -

COMMISSIONER WATLING: Well the thing does say with exclusions and what would the exclusions and the criteria be for exclusions?

MR O'BRIEN: Well, I mean -

COMMISSIONER WATLING: For example, you might have the law agency and you might want to exclude prison officers.

MR O'BRIEN: Yes, or you might have the education and the arts agency and then you've got the teachers and then you've got people - our area of membership and then you've got the Public Service Association's area of membership. Do we sectionalise there? We get back to what we've got now.

COMMISSIONER WATLING: Right. I've got my answer, thanks.

MR O'BRIEN: Thank you.

PRESIDENT: Yes, thanks, Mr O'Brien. Mr Warwick?

MR WARWICK: Mr President members of the bench, as we see it there are five questions before the bench this morning. The first is the question of whether or not the decision should be abandoned.

COMMISSIONER WATLING: Well I think we've actually discussed that one in the previous hearing, haven't we? We're not here today to debate that. Those submissions have been put on the last occasion. I think before we make that decision we're giving the parties an opportunity to address us on these four issues.

MR WARWICK: Well I did have some comments which I wish to make subsequent to the last hearing on the principle issue that I begun speaking about, Mr Commissioner Watling. If you bear with me I think you will probably see that it is relevant to the overall thrust of the submission and, indeed, in respect to what I want to say about points 1 to 4.



The bench, indeed, is aware that we have in place a memorandum of understanding in respect to, among other things, the implementation of award restructuring in our area of the public service. This memorandum of understanding is the principle vehicle or mechanism for the implementation of the structural efficiency principle and we see that all things are secondary to that document.

Now the last time we were before the commission the question of the relationship between the decision and the memorandum was discussed at great length. For example, Mr Willingham, for the Minister administering the State Service Act, made a number of comments regarding this issue at pages 1973 to 1974 of the transcript. I don't intend to go to those precise statements but I think it fair for me to say that Mr Willingham clarified the issues for us at that time and his word is good enough for us.

It was clearly Mr Willingham's view, the last time we were before you, that the cross reference in the memorandum to the professional, technical and clerical streams can't be misconstrued, undermined or abrogated. We don't .... there is therefore any impediment to proceeding to implement the terms of the memorandum or, indeed, any impediment to proceeding to meet the requirements of structural efficiency through the memorandum.

It is our view that there are a number of other organisations represented before you today who are in a substantially different position to the HSUA, that is they do not have a signed agreement with the government in respect to what will happen in their particular agency. It is therefore the case that you should have regard for the submissions of those organisations in respect to the principal question of the future of the decision rather than rely greatly on what we have to say on the matter.

The path before my organisation is clear and we will not deviate from it. The question is more a matter of where the other organisations who appear before you wish to go in respect to their structural efficiency negotiations.

Mr President members of the bench, the question before you is whether or not the other organisations appearing today wish to remain with the decision or whether they wish to pursue some other process. Clearly, we have already pursued another process. We do not therefore see that the decision you intend making as a consequence of these proceedings will alter the process we have embarked upon.

COMMISSIONER GOZZI: We're not saying that to be the case at all, Mr Warwick. And I agree with Commissioner Watling, the



fact is we have heard submissions on whether or not the process should be abandoned or not last time, we have issued a decision, we've made our position with respect to the memorandum of understanding clear, I think we did, anyway, and simply before we decide which to go we wanted to hear particularly from the union parties - well, from everybody as to the proposals contained on page 4 of our latest decision. I mean, I think the situation with respect to the memorandum of understanding between the HSUA and the Health Department is simply, look, keep on doing what you're doing and when you're in a situation to put something before us, bring it up and we'll have a look at it.

MR WARWICK: I appreciate your comments, Mr Commissioner Gozzi. I'm not sure that I entirely glean from the decision that that is your position although, clearly, you're making that known now.

COMMISSIONER GOZZI: I thought we made it pretty clear last time too.

MR WARWICK: Indeed. I guess that's a moot point.

PRESIDENT: You're simply restating what you put on the previous occasion, aren't you, Mr Warwick?

MR WARWICK: Yes, but a marginally different submission last time, Mr President, but I might say that that's all I intended to say on that subject.

I think the point is though that notwithstanding your comments, it is true to say that we are in a substantially different position to most other unions in that we have embarked the process or all of the processes comprehended in points 1 to 4.

PRESIDENT: Yes. So can you tell us what your view is in relation to points 1 to 4.

MR WARWICK: The submission that I have been instructed to make, Mr President, is that in respect to those four questions we do not see that the commission should make a determination in respect to our area of the public sector at this time. All of the matters listed in points 1 to 4, whether they be award divisions, demarcations, exclusions, classification standards, salary rates and conditions of employment are being discussed and negotiated at the present time.

COMMISSIONER GOZZI: You really, Mr Warwick, in an agency specific situation, aren't you, already? To all intents and purposes that's what you're doing.

MR WARWICK: I don't think I could do anything but agree with you, Mr Commissioner.

COMMISSIONER GOZZI: So I would have thought you would have agreed with the proposal that agency specific awards be pursued.

MR WARWICK: Well we are, I think, in fact, doing that. We have been doing that for some time, Mr Commissioner.

COMMISSIONER WATLING: But in respect to the points 1 to 4 in our decision you're saying that you don't wish us to make any decision on those points at this time.

MR WARWICK: Well particularly with respect to the question of divisions in an award. In respect to our area, Mr Commissioner, we would ask you to not make a decision on that and also in relation to demarcation because those matters are being discussed. Any exclusions, there have been discussions and there will have to be discussions on exclusions.

COMMISSIONER WATLING: Right, so have I over or under stated your position? You're asking us to make no decision on points 1 to 4 at this time.

MR WARWICK: In respect to our area of the public sector, Mr Commissioner, yes.

COMMISSIONER WATLING: Right.

MR WARWICK: We believe, Mr President members of the bench, if the commission were to make hard and fast rulings on these matters at this time I can't help but feel that this would hinder the bargaining process and, indeed, may even inadvertently advantage one side of the bargaining table relative to the other.

It is our intention to reach as far as possible mutual acceptable agreements on all matters contained in points 1 to 4 of your decision and on all matters contained in the memorandum and then to put those agreements forward for ratification at the earliest possible time.

On the basis of our submissions in respect to those questions, Mr President members of the bench, we do believe that it would be appropriate at this time for the applications or most of the applications we have before this bench to be, in fact, unjoined and separated for technical purposes.

PRESIDENT: We've virtually done that. You're talking about your specific Health Industry Award application.

MR WARWICK: I think the originating applications as well, Mr President.



PRESIDENT: So you want - we can hardly unjoin them from the decision. They're part and parcel of the decision of 29 November '91.

MR WARWICK: Well bearing in mind that the decision is not implemented I don't see why they can't be unjoined in respect to the process of implementation.

PRESIDENT: I would have thought -

COMMISSIONER WATLING: Well it would be undone if we abandon it. That's fair enough.

MR WARWICK: I should say that we do have four applications in respect to the model awards to which Mr Vines earlier referred and it's probably no point in separating those applications because they are the same issue.

PRESIDENT: Separating them from what? Or just separating them?

MR WARWICK: T.4018 of 1992, an application for a Health Industry Award.

COMMISSIONER GOZZI: 4014.

MR WARWICK: I'm sorry, I've got the numbers the wrong way around. Yes. That's the extent of the submission I'd seek to put to you this morning, Mr President members of the bench.

COMMISSIONER GOZZI: Mr Warwick, there's one point that I'm not quite clear on. I think the bottom line is that the HSUA wants to do a separate deal with - in the Health Department in respect to its membership. Putting it bluntly, I think that's what you want to do.

MR WARWICK: Yes, Mr Commissioner.

COMMISSIONER GOZZI: Yes. And in that process you want to renegotiate the operational stream in particular.

MR WARWICK: Amongst other things, Mr Commissioner, yes.

COMMISSIONER GOZZI: Yes, amongst other things. Now the problem that arises, of course, is that the TPSA is part of that memorandum of understanding and the TPSA coverage goes to other classifications. Now are you saying with respect to those employees that the TPSA might cover, that that should not be part of that so-called Health Award? Because that's what I understand you to be saying. You seem to be indicating that the HSUA should continue on its own with respect to its



membership in the health industry as defined by the memorandum of understanding, but the members that the TPSA might have in other classification categories ought to be covered by another document.

I must say that wasn't my understanding of the intended memorandum of understanding. The reason I thought that you were joined together in that memorandum of understanding was ultimately to pursue a document which would have the HSUA and the TPSA as signatories to it and which would cover the health area to the extent that you're able to. You seem to be saying something different, the way I understand it. I'm happy to be corrected.

MR WARWICK: If I may correct you and with pleasure do so, Mr Commissioner.

COMMISSIONER GOZZI: Yes.

MR WARWICK: We've no intention other than to create, in time, an award for the whole of agency, in respect to all of the employees. And, indeed, the intent of the memorandum is for all of the unions to be involved to be involved in that process.

COMMISSIONER GOZZI: Well why would you then oppose item 1 of our decision which contemplates - no more than that - whether an agency award should contain clearly delineated divisions which may facilitate the demarcation process. I mean, why wouldn't you have within the Health Award, in plain terms, those categories that you cover and, similarly, a separate division for those categories that the TPSA or anybody else might cover?

MR WARWICK: I think the reality is, Mr Commissioner, that there are no areas of exclusivity. We compete at all levels. My submission, firstly, wasn't that we oppose point 1; we're simply asking that we be given the opportunity to debate those issues out by the parties. But I think my comment is nonetheless true, the TPSA and ourselves compete in respect to all members - all employees.

COMMISSIONER GOZZI: But your negotiations - you're holding joint negotiations with the employer.

MR WARWICK: And the TPSA and the other unions affected.

COMMISSIONER GOZZI: That's what I meant, TPSA and other unions are holding joint discussions with the employer.

MR WARWICK: Yes, everyone is involved and we are making progress.

COMMISSIONER GOZZI: So to that extent that supports an agency award then, doesn't it?

MR WARWICK: Well we prefer to think of it as an industry award, Mr Commissioner.

COMMISSIONER GOZZI: Oh, well, industry.

MR WARWICK: But I guess that's just a matter of nomenclature. I mean, I think the award will cover all of the employees of the agency. Now the question arises from that whether or not you can call that an industry. I guess we have a fairly .... approach to our coverage and we'd like to refer to it as an industry. That's the practical reality but it will be all of the employees of the agency.

COMMISSIONER WATLING: Well it certainly won't cover the industry because for starters they won't contain anything with the private sector and that's part of the health industry. So how can it be the industry?

MR WARWICK: Well that's recently been clarified by legislative change .... We're mindful of that fact.

PRESIDENT: So have you - I might have missed it, Mr Warwick. Have you commented on Mr Vines' proposition about the making of the model awards?

MR WARWICK: I haven't commented on that issue, Mr Commissioner. I would simply ask the bench to note that Mr Vines did, in fact, make a comment in relation to the health area being excluded from his proposal. I don't think we have any right to make submissions to you in respect to what should happen for the rest of the public sector.

COMMISSIONER GOZZI: Mr Vines' proposal simply is: Look, make the four model streams operative from 1 July '93 and then any other party might want to argue from that base, up or down, presumably.

MR WARWICK: Well that clearly was Mr Vines' submission but I think it was hand in hand also with his submission that there - his recognition .... different developments and different process under ....

PRESIDENT: Will it impact on your negotiations, do you think?

MR WARWICK: The making of the four model awards?

PRESIDENT: Yes.

MR WARWICK: I think it would enliven the debate, certainly, and the pressure would clearly be on us to have an award ready



for ratification by 1 July. There's no question about that. But that's clearly within the parameters of what we've been planning and our expectations are, in any event.

PRESIDENT: Well you've clearly got a memorandum of understanding as to how all the parties, the employers and employees, want to proceed in the health industry. That seems to be guaranteed at the moment that that negotiation process will continue. Will the making of model awards upset those negotiations, do you think?

MR WARWICK: I should think not, Mr President. As I indicated earlier, we do have applications before you in respect to the making of those awards. We would be seeking, if we were not in a position to bring a health industry or agency award before you, we would be seeking to negotiate and make submissions on the scope of those four model awards at the time they were to be made to ensure that the process in relation to health and the health memorandum can continue and bear fruit.

COMMISSIONER GOZZI: I mean, the bottom line really is that we would like to see the process reach some sort of conclusion in the most expeditious way and it may be that in getting to that bottom line that the agency award agendas may include the parties that have got, or the unions that have got members in that area at the moment.

MR WARWICK: Well that's not an unrealistic outcome. I think it depends on the agency, Mr Commissioner, but I don't think that that's an unrealistic outcome. It remains to be seen and I think a large part of that depends on what happens at the peak union level. If the commission pleases.

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

MR KADZIOLKA: Mr President members of the bench, the Police Association's position has not changed since the last time except that our special case is nearer, we hope, to finalisation.

In our case the Commissioner of Police is represented, indicated that there are core general conditions of service matters and those which have been modified for whatever reason. He indicated this on page 1906 of transcript and also how he believed the matter should be dealt with. I'd just like to put a short quote of that page on to transcript.

MR OGLE: I think it's - I think there's categories in that - that like we've tried where possible obviously there's those that we believe have a direct relevance to general conditions of service and there's no good reason why they should vary. And in that circumstance we believe that

they should be reserved until the public sector full bench decides, if it continues after the 27th.

We also believe that there is a number of conditions that we've tried, where possible, to reflect the government's position in those hearings but there are slight modifications for the police - and I'm only highlighting that. I think they can be proceeded with.

Mr President members of the bench, Mr Ogle is saying there that there are matters which are not general conditions of service and can be dealt with under our special case.

Mr President, further to that I have an exhibit which shows the extent of the common conditions in the Commissioner of Police's application, T.4214 of 1993.

PRESIDENT: Do you think it's important to pursue this line at the moment if there is a move towards agency awards, together with the propositions that have been, for example, put forward by the Public Service Association. Wouldn't that accommodate your situation?

MR KADZIOLKA: Yes, I take your point, Mr President. My reading of the first paragraph on page 4 of your decision was that if parties wanted to present further submission on the issues, then they could and that's basically what I'm doing. If the bench has accepted that there will be agency specific awards which, in effect, mean that there will be a police award and that will go to - be heard to finalisation in relation to conditions of service, then what I'm about to propose may not have any relevance. But if the bench hasn't made that decision then I think what I'm about to put forward has relevance.

PRESIDENT: Well what we asked was for the parties to tell us what they thought about moving towards agency specific awards.

MR KADZIOLKA: Yes, I appreciate what you're saying, Mr President. What I've done in this exhibit is reinforce our position that our police award should stand alone and, in effect, be withdrawn from the process, as I put at the last hearing. Now would you like me to proceed on that basis?

COMMISSIONER WATLING: Well I'm just more interested to know whether you - we've heard your submissions before in relation to pulling away from this and, in fact, we've got to make some decision on it. And I don't see there's any need to repeat the submissions that were made on the last occasion. Our task is to examine whether or not we should disband the process. However before we did that, and if you look at the beginning of - on page 3 we said: We've got to decide whether or not



the award restructuring process, including matters contained in the decision of 30 November 1991, should be abandoned.

Now we've heard submissions on that but we've said before we make a final decision on that we would like the parties to address us on those four points and then we'll go away and make a decision as to whether or not the process should be abandoned.

MR KADZIOLKA: Yes, Mr President members of the bench, from my reading of the first paragraph on page 4, our organisation believed there was a further opportunity to put submissions on the issues which have gone before. On that basis our submission has been structured. If what you're saying now is that I can't go down that track, then what status has this exhibit? Should it be withdrawn?

COMMISSIONER WATLING: Well let's look at the decision. It says: Before we make any decision - and that's on the question of whether or not we abandon the matter -

MR KADZIOLKA: Yes.

COMMISSIONER WATLING: Right. Before we make a decision on that, we wish to give the parties final opportunity to place further submissions before us on the question of - right - not whether it should be abandoned - on the question of whether or not any useful purpose would be served by altering the thrust of their negotiations to agency specific. Right? Now we've heard the argument about abandonment but now we want to hear an argument in relation to whether or not the direction should be changed to agency specific awards as opposed to a centralised system of streams.

MR KADZIOLKA: In relation to the streams itself.

COMMISSIONER WATLING: Well we heard the argument before about abandonment of streams. We want to know whether your organisation supports a change in direction from streams to agency specific awards?

MR KADZIOLKA: That's our position that we want to be able to proceed with the Police Award, so to speak, in isolation. And what I was putting forward is an indication that really the Commissioner of Police, through his application and the fact that it doesn't relate to either the current General Conditions of Service Award in relation to conditions matters, or the proposed public sector conditions of employment. What that is, is virtually an indication that it's more pertinent, more relevant to go down the agency specific path in relation to police.

Now is that acceptable and clear?

PRESIDENT: I think that makes pretty clear what you're seeking to achieve, Mr Kadziolka.

MR KADZIOLKA: Basically from that exhibit, Mr President, all I was seeking to show was that out of the 33 conditions in the Commissioner's application, four are the same as the general conditions of service and/or the proposed conditions of service.

On that basis -

PRESIDENT: Well we'll accept the exhibit and mark it PAT.3 and note your comments about it, Mr Kadziolka.

MR KADZIOLKA: Thank you, Mr President.

COMMISSIONER GOZZI: As I tried to indicate earlier on, Mr Kadziolka, we've really moved past the point of the four stream proposals and the discussions we had last time. By that I meant that we've heard submissions from the parties about their view, whether the format should continue or not and before we make a final ruling on that we've given everybody the opportunity to address the proposals we've put forward in this decision. And the proposal simply is whether we should change tack and go into an agency specific award process, see what the parties say about that and then we come to the conclusion whether we bomb the whole process or, if there is support for the proposal, whether we go down that path.

And what we're trying to do is to try and facilitate a resolution of this long-running case one way or another. Now we've heard submissions last time around, consensus appeared that we ought to bomb and we said: Well before we do that we gave the TPSA some time to hold consultations, we put some proposals here which we wanted the parties to address purely and simply so that we could come to a view as to what we should do next.

Now if the consensus ultimately is that it's just not going to work whatever initiatives we put forward then we'll have to consider that. However if the consensus is and the arguments are that we should have agency specific awards with the qualifications that have been made, well we'll consider that as well. But I think what we're trying to do is get as much as we can from the parties so that we can come to a conclusion as to just what the next step ought to be.

PRESIDENT: I think your position, Mr Kadziolka, is really to consider how you would see an agency award affecting the police force because there are other employees in the agency other than members of your association with its dedicated award.



MR KADZIOLKA: Yes, Mr President. On what you've raised there, I think the bench has accepted that the police is an area aside inasmuch as in the decision of 29 November we were set aside from the streams and on that basis our position would be that we should be able to pursue the police specific award. In relation to demarcation and exclusions, we have the membership, the demarcation of duties within the agency is very specific, we have all coverage of police. So I don't know if we can say any more on that.

In relation to conditions of employment the thrust of our case and the thrust of discussions and negotiations over the last year have been towards police award matters solely. On that basis, Mr President, I've nothing more to say.

PRESIDENT: If there was a move to an agency based system you would agree with point 1 of our decision of 4 February, that there should be a delineation of divisions?

MR KADZIOLKA: Yes.

PRESIDENT: And there may be some exclusions as in point 2.

MR KADZIOLKA: Yes, Mr President. In relation to point 3 I don't think that's relevant to or applies to our situation, Mr President. And I've indicated what our belief is in relation to 4.

PRESIDENT: Yes. Very good.

MR KADZIOLKA: Thank you, Mr President.

PRESIDENT: Thank you very much. Mr Lane?

MR LANE: Mr President, on behalf of the federation I'd like to say that the basic thrust of my submission, which will be very short this morning, is one of support for the position taken by the Public Service Association in this particular matter.

As regards the initial paragraph on page 4 of your decision, we agreed that there would be a great deal of merit served by altering the thrust of negotiations to agency specific awards, including wage rates, relevant conditions of employment and the finalisation of agency specific productivity and efficiency matters. There's no doubt that any other approach is doomed to failure. And therefore we see this as the only way of, in fact, moving this process forward.

In relation to the four questions again, our position is very similar to that of the Public Service Association. And in relation to No. 1 we believe that that is essential but, hopefully, this should be initially, at least, left to the unions to see if some commonsense can prevail and some fences

built which will make for good neighbours. It's always been said good fences make good neighbours and I think this is one area where, hopefully, that can be achieved.

As regard to the second point, yes, we agree that there should be exclusions, if necessary, and the criteria worked out for such exclusions. But that should be determined through negotiations with the agency and not something that is set down at this stage on how that should operate.

And in relation to the third question, whether the 30 November '91 decision, the salary rates and so forth in their classification standards should be used as the base, unequivocally, yes. Of course, mindful of the fact that the teaching service, as such, should have its own unique thing, or division because that's been recognised as a separate matter from day one.

PRESIDENT: Similar to police.

MR LANE: Yes, similar -

COMMISSIONER WATLING: It was excluded from the streams.

MR LANE: Separate stream, I suppose you could put it that way, Mr Commissioner.

COMMISSIONER WATLING: Well it's excluded from that decision.

MR LANE: Pardon?

COMMISSIONER WATLING: It was excluded from that decision.

MR LANE: Yes, it was excluded from the stream.

COMMISSIONER WATLING: So you might be in the same position as Mr Kadziolka, the relevance of that might -

MR LANE: Well, certainly. I mean, either we would see the - let's say the Department of Education and the Arts either having one award with a very clearly delineated division for the teaching service or two awards, two agency awards, one for the, if you like, the education service and one for the administrative services within that department. But that's something that's got to be worked out at the agency level between the parties by negotiation. I don't believe that it should be hard and fast at this stage.

On point 4 -

COMMISSIONER GOZZI: When is it going to become hard and fast?

MR LANE: Well I would be hopeful that -



COMMISSIONER GOZZI: We've been talking about this since November '91, I think.

MR LANE: We've been talking about a lot of things since even before November '91, Mr Commissioner -

COMMISSIONER GOZZI: Don't remind me, Mr Lane.

MR LANE: - and the big question is when will anything be finalised.

COMMISSIONER GOZZI: At least we know where we're heading in the other one.

MR LANE: Look, I couldn't give you a time. I mean, I said the teachers' case would be over in December '91.

MR .... : You were wrong.

MR LANE: I couldn't give you a time. But all I can say is that we would work -

COMMISSIONER WATLING: So is that what your submissions are worth this morning, then?

MR LANE: Pardon?

COMMISSIONER WATLING: Should we place any weight on that then in relation to your submissions this morning?

MR LANE: Place any weight on what, Mr Commissioner?

MR .... : You got it wrong.

PRESIDENT: I think the commissioner was referring to the accuracy of your -

COMMISSIONER WATLING: Your predictions.

PRESIDENT: - prophecy in relation to the conclusion of the other matter.

MR LANE: Well that's what I'm saying, I'm saying I couldn't give you a time. I've given up trying to do that. That's like weather forecasting 3 weeks in advance; you just can't do it.

COMMISSIONER GOZZI: Three weeks ....

MR LANE: On point No. 4 we certainly agree with the conditions of employment being discussed on an agency by agency basis. We believe that there is an acceptance that the nature of one's work requires different salary rates and

structures. We firmly hold to the view that there is much justification for differing conditions of service as appropriate and as negotiated at an agency level, that there may be some conditions which are common across the service but generally speaking there should be room for flexibility to ensure the conditions of service and employment are appropriate to the nature of one's occupation and work, and that can only occur if such negotiations can occur at an agency level. And therefore we would endorse point No. 4.

And basically that's all I've got to say on this particular matter. If the commission pleases.

PRESIDENT: Yes, thank you, Mr Lane. Mr Pyrke?

MR PYRKE: Thank you, Mr President. Sir and members of the bench, the APESA believes that there would be a useful purpose to be served by altering the thrust of the negotiations to agency specific awards, including wage rates, all the conditions of employment and the finalisation of agency specific productivity and efficiency matters.

That being the case I address you on the four further questions that you've asked. In relation to whether agency awards should contain clearly delineated divisions which may facilitate the demarcation process, I'd ask that you - I support the view put to you by Mr Warwick on this occasion that we perhaps hold fire on that question that perhaps it would unnecessarily tie the hands of people negotiating agency awards over the next few months.

PRESIDENT: We weren't really going to decide what the delineation would be today. That would be done subsequently given the submissions of parties.

COMMISSIONER WATLING: And it also says that they may wish to give consideration to - that means you, I think.

MR PYRKE: Certainly we've lived with both types of situations. We've lived with awards which have delineated, we've lived with other awards where they haven't been and either way it seems to have worked satisfactorily. Certainly we'd also be seeking to have some discussions with other organisations who might perhaps share the professional stream.

On the matter of whether a particular class or classes should be excluded from an agency specific award, our view would be, no, that they shouldn't, that if there is an employee that there should be award coverage for those people. On the classification standards and salary rates contained in the 30 November 1991 decision should be used as the base. But we have put it to the bench previously that we have some problems with the classification standards and also with salary rates.



Having said that they are only views at this stage that have to be tested and we think there's enough merit in the decision - in the professional stream that was determined that be the base of testing within the structure - sorry, within the context of agency awards.

And finally, whether the conditions of employment should be discussed on an agency by agency basis, yes, we think that's appropriate. We think that approach would be more conducive to producing administrative efficiency than the current approach has been. I think it would also better serve the goal of equity than the current approach has done.

And just the last part of that question, should it be done with the organisations that have an interest? And the answer to that would be 'Yes'. If the commission pleases, that's my submission.

PRESIDENT: Very good. Thank you, Mr Pyrke. Are there no comments from - no further comments?

MR WILLINGHAM: Having my back to the audience, Mr President, it's difficult to know if you're getting up prematurely or not.

Mr President members of the bench, I don't think there's going to be very much we need to say. Our position, as the bench has already noticed, was made very clear on the occasion of the last hearing day. And in response to your specific question, no, we do not believe that any useful purpose would be served by altering the thrust of negotiations between parties. We believe that the thrust of deliberations between the parties should be .... to the extent that any combination of permutations which are currently available or which may be considered desirable in the future should be left in place.

The tenor of your first paragraph on page 4 suggests an overwhelming, if not exclusive, direction towards agency specific awards and our response is framed accordingly. On that basis it is unnecessary for us specifically address the questions 1, 2 3 and 4. However can I just say this, that it would be implicit, and it is now explicit in our response, that it is possible that as we develop with unions the direction that we must follow, depending on the decision made by this bench, any of those possibilities are, of course, open for consideration and possible implementation.

I would not want to resume my seat, Mr President members of the bench, without making a couple of comments, if I may, in relation to some of which has fallen from previous speakers because I would not want this bench and other parties to be under any misapprehension about the question of agency specific awards or agency awards. It may be the view of other parties that that is the most desirable way to go and it may

be their vigorously pursued course of action. I would not want this bench to be left in any misunderstanding that that is not necessarily a view which is shared by the minister.

It may be that in particular cases we have a preference to follow that particular path. It may not. It may be by award, it may not. It may be that we support in some instances an occupational approach. That will depend very much on the views that both we hold and those of other parties hold. It may be that we choose some other path, and already today you've heard a wide divergence of views in relation to how even people who speak about agency awards actually distil their own preferences in relation to that question.

I think there's no need for me to say anything further unless the bench has questions they specifically wish to address to me.

COMMISSIONER GOZZI: What you're saying, Mr Willingham, is that really from the minister's point of view you want to explore all options available, whether they be award variations, agency specific awards, enterprise agreements, section 55 agreements or whatever.

MR WILLINGHAM: Exactly so, Mr Commissioner.

COMMISSIONER GOZZI: Yes. And each circumstance and each negotiating position will be determined having regard to what is considered appropriate for the circumstance.

MR WILLINGHAM: That's precisely so, Mr Commissioner.

PRESIDENT: And what would you have to say about the proposition from Mr Vines that there be four - the four model awards be made as awards of this commission?

MR WILLINGHAM: Well again I say two things. Firstly, as Mr Vines put to you, and we confirmed on the last day of hearing on 27 January, quite extensive and intensive discussions have been taking place between the association and the government's representatives and I'm sure you're aware that a series of exchanges or that continuing consultation both between Mr Vines' members, the government's representatives and .... was known as the secret deal. So it got quite a lot of prominence.

It will remain, as far as I am concerned, or the details of it will remain confidential of the parties, notwithstanding that they seem very much in the public domain. However it is not until this morning, Mr President members of the bench, that we'd heard Mr Vines' response. It was, as I understand, conveyed in general terms in this morning's press, which I've not had an opportunity to peruse. So until Mr Vines spoke to you this morning I was unaware of his membership's response to



the proposals that were contained in those preliminary confidential discussions to the extent that he says that his position or his organisation's position is that they wish to have the implementation of the four streams. It seems to me to be, a) totally incompatible with his subsequent submission that it should be an agency based focus and, b) our own submission must explicitly say we disagree totally with it since we believe the process ought to be abandoned, and that includes the streams themselves.

COMMISSIONER GOZZI: Don't you think it's got some merit to at least stick with the model awards, given that the classification standards are, in fact, those put forward by the minister, on behalf of the minister and I think in all cases - I think in all cases the number of levels were the levels - there might be one exception to that - were the levels put forward by the minister as well.

MR WILLINGHAM: I would think it entirely likely that many aspects of that would form the basis or would be included in the subsequent arrangements that are reached, Mr Commissioner. Indeed, I'm reminded that Mr Warwick has already alluded to the memorandum of understanding in health which makes specific reference to just that happening.

So whilst we talk about the decision being abandoned and the commission effectively walking away from it, it does not by any means impute that we would not take as a reference point much of that structure of which you speak.

COMMISSIONER GOZZI: Well why wouldn't we crank it up a notch or two by doing exactly what Mr Vines has asked to do, provide some sort of catalyst to get this exercise moving because that would provide, if we did what Mr Vines wanted us to do, that would certainly provide some incentive because it implies - well it doesn't imply, it would mean translation to those structures on 1 July '93, and that would provide some incentive, wouldn't it?

MR WILLINGHAM: Well as I understand it, that was Mr Vines' submission. I'm not certain it was anyone else's apart from, perhaps, Mr Lane who is singularly disinterested in this particular matter. I'm not even quite sure whether .... make a submission because he's cosily insulated and insured by proceedings elsewhere. Whether there will ever be a .... between Mr Lane's organisation's award and this particular matter I'm uncertain but I'd love someone to point me to it if it is going to emerge.

Mr Vines himself accepts that the submissions of others relating to the operational services stream should be heeded by the bench. So what Mr Vines is saying actually we want the bits that we like and don't take the bits that we don't. Mr Vines himself says that negotiations are gathering momentum

with agencies, I think were his words, that agencies were mad keen to walk up the aisle and perhaps even get to the alter with him. I can only say in response to that, Mr Commissioner, what I've said so many times before, that agencies are not yet empowered to make such arrangements, that the discussions going to the government's business in its role as an employer are still conducted by the agency of public sector management. There is no suggestion, neither has Mr Vines been given any reason to believe it should be so, that that situation has altered.

So I would hope that in his enthusiasm, which I understood he was showing this morning, for the way people are eager to deal with these matters, he will bear in mind that the focus for negotiations resides with my colleague, Mr Hanlon, and his office.

PRESIDENT: Mr Willingham, it was a feature of previous submissions of the minister that there was little chance of achieving a great deal of movement in relation to agency specific conditions which were seen to be very important, and the bench regard them as very important. Don't you think that a move towards - part of the way towards developing something which will have an agency focus, such as agency awards, would give the minister the opportunity to achieve those sorts of things which were desired earlier in the piece?

MR WILLINGHAM: I'd like to answer your question with a positive view one way or the other. I'm unsure of the answer to that question, Mr President. Our experience with the process to date gives me no cause to believe that any process we adopt in relation to conditions of employment, whether it's divided into an agency based focus, whether it retains its state service wide focus, and that bears in mind yet again the number of different discrete awards, such as those mentioned by Mr Kadziolka, Mr Lane and my colleague, the state's leading industrial advocate, Mr Holden, were he here -

MR HOLDEN: Good evening, Clive.

MR WILLINGHAM: I'm sorry, I didn't feel the electricity going up my neck as I usually do when I'm in the presence of greatness.

However that process is further complicated and particularly when one bears in mind that even though the owners, in inverted commas, of those particular awards regard them as discrete. They do have more than a casual connection with other awards and I instance perhaps those in what we would call custodial and emergency services, those .... TAFE area and the teaching service and a number of others.

So I can't really answer that. My view would be that no matter where you deal with conditions of service and at what



level, it's going to be a very complicated process because, as Mr Vines says and I think he articulates it properly, the general view of the union movement is that they're prepared to look at it but if they perceive it to be a change in any way detrimental to their membership they're going to oppose it vigorously and, of course, that's the rock we've foundered on all the way through. Now I don't really think it matters where those discussions take place. That's going to be the prevailing problem.

PRESIDENT: Yes, because that was so much central to our decision of November '91. It was the government's position at the time that it was imperative that there be some achievement of rationalisation of conditions of employment. And that's the way it was written into the decision.

Now the options that seem to be falling to us now are to put all the matters of conditions back to individual awards, that the teaching service go its way on conditions, that police goes its way on conditions, similarly fire brigades, prison officers and the General Conditions of Service Award by itself. Is that what the minister would prefer?

MR WILLINGHAM: The minister's view is unchanged. We still will be vigorously pursuing, as far as they can be achieved in a sensible way, the uniform and rationalised conditions of service applying to the state service. Our view has not altered on that.

Now I was relating my comments, Mr President, merely to your question as to whether that could be best achieved at the state service wide basis or at an agency level. Our view is completely unchanged. It may be, Mr President, that in the true context of enterprise bargaining, that is where you deal directly with an enterprise and what may be on offer by way of benefits to either party. It may be that suggestions would persuade us in specific instances to a different course, but I have no instructions on it at the moment so I can only repeat what we've previously put to the bench in very forceful terms.

COMMISSIONER GOZZI: Yes, it seems to me that the range of options that you've proposed to pursue, that is a whole range of industrial documentation, award type agreement, enterprise agreement, whatever, really doesn't lend itself to uniformative conditions of employment. It really depends what, for instance, in an enterprise agreement what is being discussed and what is being offered up and the conditions part of it may well not be a feature.

MR WILLINGHAM: Indeed, commissioner, but then if we were to take, let's say, an occupational award which had the capacity for having an effect across more than one agency, then you might have to look at that in a different light. I think it's a complex subject and I don't particularly want to be tied

down other than to say that we are looking to continue that process.

COMMISSIONER GOZZI: Yes. One thing is clear though, whilst there is a different view expressed by the unions here this morning, there is a consistent view that all the arrangements be prosecuted through the commission. But that narrows down the option to either awards or section 55 agreements. So to that extent there is a uniform view which is contrary to the view you are expressing. You are, in fact, extending it beyond that. That's your wish.

MR WILLINGHAM: Yes, commissioner.

COMMISSIONER GOZZI: Now how do you propose to handle that situation, given that that is the view of the unions that you're going to be negotiating with?

MR WILLINGHAM: Well we are already - as a number of speakers have said, we are already commenced or are well into the process of negotiations with a number of organisations.

COMMISSIONER GOZZI: What, enterprise type negotiations?

MR WILLINGHAM: Well I again, commissioner, don't divulge any kinds of details of confidential discussions. The parties with whom I deal and my colleagues deal have put their conversations with us on the basis that they are confidential and without prejudice and that's for my part how they will stay.

COMMISSIONER GOZZI: Oh, well, I was really referring the police one which wasn't all that confidential.

MR WILLINGHAM: Well I .... confidential, I don't know anything about it.

COMMISSIONER GOZZI: Well you mustn't read the paper then, Mr Willingham.

MR WILLINGHAM: I was in Melbourne for the weekend and I still don't very much from reading the newspaper.

But, yes, look, it's this simple, the parties with whom we speak will put a view as to how they believe matters should be processed. For instance, my colleague, Mr O'Brien, says he wants an award. If we have a different view we'll put it and we'll see what happens from there.

COMMISSIONER GOZZI: What responsibility do you feel the commission has to try and get the award rationalisation process to a position where the objectives are realised? Do you think that as custodians of state awards we should simply agree to what you're putting, abandon the whole process and



leave the awards in the state that they are currently in without anything further that the commission would do to try and bring about a conclusion that we would aspire to for 2 years?

MR WILLINGHAM: The answer to your question is, yes, that is what I believe, commissioner. And as Mr -

COMMISSIONER GOZZI: You don't think we've got any responsibility to do other than that?

MR WILLINGHAM: I think your responsibilities, of course, commissioner members of the bench, are shaped by the submissions of the parties before you. It seems to me that overwhelmingly the majority of parties have put to you quite clearly that they wish to move away from the essence of your decision.

COMMISSIONER GOZZI: Yes.

MR WILLINGHAM: Now whilst some may wish to retain those parts which are attractive to them, it is clear that the focus by which they intend to arrive at their end destination is not that was envisaged by the commission in November 1991. Now it seems to me from the submissions of the parties that have gone today and prior to today, that they retain the right, indeed, they've articulated it, that if in the process of discussions and negotiations with the employer they can't achieve a degree of satisfaction which is acceptable to their membership they will, in fact, come before this commission and ask you to deal on an individual basis those matters to which you've just referred.

So I don't think it's a question of the commission abandoning its responsibility by acceding to the minister's submissions, is acceding more to the general wishes of the parties and still reserving options to all of the parties to complete the process before the commission if that's the way they choose to do it.

COMMISSIONER GOZZI: Yes, of course, that then really does mean that the whole process should be abandoned because part of the process of arriving at the four model streams was the rationalisation of 60-odd awards down to four, getting agency specific and conditions of service matters on board and having a total rationalisation of what happens in the public sector.

MR WILLINGHAM: Well I agree with your comment that that would suggest that the process should be abandoned, commissioner. That, of course, is our position. If the commission pleases.

PRESIDENT: Yes, thank you, Mr Willingham. Thank you very much for your contributions this morning. The commission - this bench will issue a formal decision in due course.

HEARING ADJOURNED